

DEVELOPMENT AGREEMENT

Between

PALM BEACH COUNTY, FLORIDA

(“County”)

And

THE RELATED COMPANIES, L.P.

(“Related”)

And

CITYPLACE HOTEL, LLC

(“Developer”)

# TABLE OF CONTENTS

	<b>Page</b>
RECITALS .....	1
TERMS OF AGREEMENT .....	2
ARTICLE 1 .....	2
Section 1.1    Primary Objective and Principles of Contract Interpretation .....	2
Section 1.2    Definitions.....	2
ARTICLE 2    CONSTRUCTION.....	11
Section 2.1    Conditions Precedent to Commencement of Construction.....	11
Section 2.2    Commencement and Completion of Construction.....	14
Section 2.3    Completion of Construction.....	15
Section 2.4    Construction Bonds and Insurance; Contractor Requirements; No Liens; Contractor Requirements .....	17
Section 2.5    Legal Descriptions .....	17
ARTICLE 3    PLANS AND SPECIFICATIONS .....	17
Section 3.1    Acceptance and Modification of Plans and Specifications.....	17
Section 3.2    Compliance with Requirements; Construction Standards .....	20
Section 3.3    Construction.....	20
Section 3.4    Design and Décor.....	20
Section 3.5    Development Dispute.....	21
Section 3.6    Design Review and Recommendations .....	21
ARTICLE 4    DEVELOPMENT BUDGET .....	21
ARTICLE 5    MISCELLANEOUS CONSTRUCTION PROVISIONS.....	22
Section 5.1    Title to the Improvements.....	22
Section 5.2    Procurement Requirements.....	22
Section 5.2.1    Pre-award Submissions.....	22
Section 5.2.2    SBE Project Goals.....	22
Section 5.3    Construction Agreements.....	22
Section 5.4    Demolition .....	25
Section 5.5    Coordination With Convention Center Facilities and Events; Cooperation With County .....	25
Section 5.6    Interfacing of Separate Construction Agreements .....	26
Section 5.7    Shop Drawings.....	26

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
Section 5.8	Coordination ..... 26
Section 5.9	Weather Protection..... 26
Section 5.10	Design and Construction Quality Control..... 27
Section 5.11	Project Site Requirements..... 27
Section 5.12	Construction Administration..... 27
Section 5.13	Applications for Payment and Payments to Contractors ..... 29
Section 5.14	“As-Built” Set ..... 29
Section 5.15	Administrative Records ..... 29
Section 5.16	Occupancy..... 30
Section 5.17	Warranty, ..... 30
Section 5.18	Repairs ..... 31
Section 5.19	Developer’s Experience ..... 32
Section 5.20	Changed or New Requirements ..... 32
Section 5.21	Applicable Codes ..... 32
Section 5.22	Project Site Conditions ..... 33
Section 5.23	Project Site Security, Safety, and Protection ..... 33
Section 5.24	Protection of Construction Work and Property; Responsibility for Losses ..... 34
Section 5.25	Personnel, Tradespeople, and Craftspeople ..... 35
Section 5.26	Equal Employment Opportunity ..... 37
Section 5.27	Quality Observations, Testing, and Rejection of Construction Work ..... 38
Section 5.28	Miscellaneous Construction Provisions ..... 39
ARTICLE 6	DISBURSEMENT PROCEDURES ..... 40
Section 6.1	County’s Subsidy ..... 40
ARTICLE 7	INSURANCE..... 43
ARTICLE 8	43
ARTICLE 9	CONDEMNATION ..... 43
Section 9.1	Taking ..... 43
Section 9.2	Effect of Taking on This Agreement ..... 43
ARTICLE 10	RIGHTS OF RECOGNIZED MORTGAGEE ..... 44

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
Section 10.1 Notice and Right to Cure Developer's Defaults .....	44
ARTICLE 11 OWNER PARTICIPATION.....	45
Section 11.1 County's Right to Use Field personnel.....	45
Section 11.2 County's Right to Notice, Access and Review .....	45
ARTICLE 12 MAINTENANCE AND REPAIR .....	47
Section 12.1 Maintenance of Project Site.....	47
Section 12.2 Waste Disposal.....	47
ARTICLE 13 REQUIREMENTS.....	47
Section 13.1 Requirements .....	47
ARTICLE 14 DISCHARGE OF LIENS .....	48
Section 14.1 No Creation of Liens; Notice.....	48
Section 14.2 Discharge of Liens .....	49
Section 14.3 No Consent to or Request for Work .....	50
ARTICLE 15 NO LIABILITY FOR INJURY OR DAMAGE ETC .....	50
ARTICLE 16 INDEMNIFICATION.....	50
Section 16.1 Indemnification Generally .....	50
Section 16.2 Governs Agreement .....	50
Section 16.3 Survival.....	50
ARTICLE 17 CERTIFICATES BY OWNER AND DEVELOPER .....	50
ARTICLE 18 RIGHT TO PERFORM THE OTHER PARTY'S COVENANTS .....	51
Section 18.1 Right to Perform Other Party's Obligations .....	51
Section 18.2 Discharge of Liens .....	51
Section 18.3 Reimbursement For Amounts Paid Pursuant to this Article.....	51
Section 18.4 Waiver, Release and Assumption of Obligations .....	51
ARTICLE 19 EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC .....	52
Section 19.1 Definition .....	52
Section 19.2 Enforcement of Performance .....	53
Section 19.3 Expiration and Termination of Agreement.....	54
Section 19.4 Strict Performance .....	55

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
Section 19.5	Right to Enjoin Defaults ..... 55
Section 19.6	Remedies Under Bankruptcy and Insolvency Codes ..... 55
Section 19.7	Inspection ..... 56
ARTICLE 20	NOTICES, CONSENTS AND APPROVALS ..... 56
Section 20.1	Service of Notices and Other Communications ..... 56
Section 20.2	Consents and Approvals ..... 58
ARTICLE 21	FINANCIAL REPORTS AND RECORDS ..... 59
Section 21.1	Books and Records; Audit Rights ..... 59
ARTICLE 22	ARBITRATION ..... 60
Section 22.1	Expedited Arbitration of Development Disputes ..... 60
ARTICLE 23	NONDISCRIMINATION ..... 62
Section 23.1	Nondiscrimination ..... 62
ARTICLE 24	INDICTMENT, INVESTIGATIONS, ETC ..... 62
Section 24.1	Cooperation in Investigations ..... 62
Section 24.2	Palm Beach County Office of the Inspector General ..... 63
ARTICLE 25	HAZARDOUS MATERIALS ..... 63
Section 25.1	General Provision ..... 63
Section 25.2	Survival ..... 63
ARTICLE 26	MISCELLANEOUS ..... 63
Section 26.1	Governing Law ..... 63
Section 26.2	References ..... 63
Section 26.3	Entire Agreement, etc ..... 64
Section 26.4	Invalidity of Certain Provisions ..... 64
Section 26.5	Remedies Cumulative ..... 65
Section 26.6	Performance at Each Party's Sole Cost and Expense ..... 65
Section 26.7	Recognized Mortgagee Charges and Fees ..... 65
Section 26.8	Time is of the Essence ..... 65
Section 26.9	Successors and Assigns ..... 65
Section 26.10	Notice of Events of Default ..... 66
Section 26.11	No Representations ..... 66

**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
Section 26.12	Corporate Obligations.....	66
Section 26.13	Nonliability of Officials and Employees .....	67
Section 26.14	Partnership Disclaimer.....	67
Section 26.15	Time Periods .....	68
Section 26.16	No Third Party Rights.....	68
Section 26.17	Governmental Authority .....	68
Section 26.18	County Obligations (Funds).....	68
Section 26.19	Counterparts.....	68
ARTICLE 27	NO SUBORDINATION.....	68
ARTICLE 28	WEST PALM BEACH AGREEMENT AND RESTRICTIVE COVENANT; LABOR PEACE AGREEMENT.....	69
Section 28.1	Obligation to Comply with West Palm Beach Agreement and Restrictive Covenant.....	69

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012 (the “Effective Date”) by and between PALM BEACH COUNTY, FLORIDA (“County”); THE RELATED COMPANIES, L.P., a New York limited partnership (“Related”); and CITYPLACE HOTEL, LLC, a Delaware limited liability company (“Developer”).

### RECITALS:

A. In 1995, County determined that it was in the best interest of the County to construct the Convention Center in order to stimulate tourism and economic development in Palm Beach County, Florida;

B. County has also determined that in order for the Convention Center to be as successful as possible, a first class convention center hotel is needed immediately adjacent to the Convention Center;

C. County included provisions in its contracts relating to the Convention Center site acquisition to ensure its ability to acquire land adjacent to the Convention Center for a convention center hotel;

D. In April 2005, County acquired title to the Hotel Land at a cost of \$10,000,000.00;

E. County has selected Related: (a) to cause the Hotel to be constructed on the Hotel Land, and (b) to cause the Garage to be constructed on the Garage Land, and County has directed its representatives to negotiate the terms under which the Hotel and Garage will be developed and constructed;

F. Developer, an Affiliate of Related, has entered into this Agreement and agrees to cause the Hotel and Garage and all related improvements, to be constructed on the Hotel Land and Garage Land, respectively, and thereby succeed to, accept and agree to fully discharge each and every liability and obligation whatsoever of Related in connection with the development and construction of the Hotel and Garage and County has agreed to accept such succession by Developer to the liabilities and obligations of Related and County agrees to accept the performances of Developer contained and set forth in this Agreement;

G. County and Developer have entered into that certain Hotel Lease (the “Hotel Lease”), dated of even date herewith, pursuant to which Developer (as “Tenant”) has agreed to lease from County (as “Owner”) the Hotel and related Improvements in accordance with the terms thereof;

H. This Agreement and all of the other Project Documents are an integrated set of contractual relationships constituting a unified single transaction between and among County, on the one hand, and Related and Developer on the other hand, which agreements are not severable except as expressly set forth therein. This Agreement is not assignable.

TERMS OF AGREEMENT:

NOW, THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Agreement is made upon the terms, covenants and conditions hereinafter set forth. The foregoing Recitals to this Agreement are hereby incorporated as if set forth in full.

ARTICLE 1

Section 1.1 Primary Objective and Principles of Contract Interpretation. The primary objective of this Agreement is to provide for the design, construction, equipping, and furnishing of: (i) the Hotel and all other Improvements on the Hotel Land in accordance with this Agreement and the Hotel Plans and Specifications, and (ii) the Garage and associated improvements on the Garage Land in accordance with this Agreement and the Garage Plans and Specifications, all of which, together with related amenities and improvements, will compliment the Convention Center as a first class convention destination. Developer agrees, subject to Unavoidable Delays and/or any Unforeseen Condition (as defined herein), to diligently and timely perform or cause to be performed all design and Construction Work on the Hotel and all other improvements, furnishings, fixtures and equipment described in the Hotel Plans and Specifications in accordance with the Hotel Plans and Specifications, this Agreement, and the Requirements. Developer agrees, subject to Unavoidable Delays and/or any Unforeseen Condition (as defined herein), to diligently and timely perform or cause to be performed all design and Construction Work on the Garage and all other Garage-related improvements, furnishings, fixtures and equipment described in the Garage Plans and Specifications in accordance with the Garage Plans and Specifications, this Agreement, and the Requirements. Except as specifically provided to the contrary herein, Developer shall bear all costs and risks associated with the design, land development, permitting, construction, equipping, or furnishing of the Hotel and Garage.

Section 1.2 Definitions.

For all purposes of this Agreement (a) in the event of any conflict or contradiction whatsoever between the terms defined in this Agreement and the terms defined in the Hotel Lease, the terms of this Agreement shall govern and prevail; and (b) any capitalized terms not defined in this Agreement shall have the meanings given to them in the Hotel Lease; and (c) the terms defined in this Article 1 shall have the following meanings and the other provisions of this Article 1 shall apply:

“3rd Party Debt” has the meaning provided in Section 6.1(b)

“AAA” means the American Arbitration Association.

“Affiliate” or “Affiliates” has the meaning provided in the Hotel Lease.



“AIA” means the American Institute of Architects.

“Applicable Law” has the meaning provided in Section 13.1(b)(i).

“Application for Payment” has the meaning provided in Section 6.1(e).

“Approvals” means any and all required approvals (including, without limitation, zoning or subdivision approval for the Land, development approvals, environmental permits, or Water Management District approvals issued by any Governmental Authority in connection with the development of the Land or the Hotel or Garage, as applicable.

“Architect” means Nichols, Brosch, Wurst, Wolfe & Associates, Inc.

“Architect’s Consultants” means Wilson Associates, LLC, for interior design, Kimley Horn Associates, Inc., civil engineering and traffic consulting, or such other consultants as and all other consultants to the Architect and/or the Developer, retained in connection with the Hotel and/or the Garage, including without limitation, structural engineers, “MEP” (*i.e.* mechanical-electrical-plumbing) engineers, site engineers, landscape architects, specification writers, and all other consultants and engineers retained by Architect and/or the Developer in connection with the Hotel and/or the Garage, each having at least an equal amount of required professional experience as specified in the definition of Architect herein. Notwithstanding the foregoing, subject to the prior approval of Owner, such approval not to be unreasonably withheld, Developer may designate substitute Architect’s Consultants for those named above, provided such substitute consultants have equivalent experience and expertise in the areas of the previous consultant.

“As-Built Plans and Specifications” means the Hotel Plans and Specifications and the Garage Plans and Specifications, as applicable, with all addenda and other changes thereto and all Change Orders in respect thereof, clearly marked to show all actual changes, additions, deletions and selections made during the course of Construction of the Hotel or Garage, as applicable.

“Best Efforts” means the obligation to make every effort a prudent business entity (in the case of the Developer) or governmental entity (in the case of the County) under similar circumstances would make when acting in a determined manner to obtain the intended result by action or expenditure, provided that no action or expenditure will be required which is unreasonably disproportionate or burdensome under the circumstances.

“Building Equipment” has the meaning provided in the Hotel Lease and, for the purposes of this Agreement, shall be interpreted to apply to the Hotel and Garage.

“Business Day” means any day on which the Palm Beach County Courthouse is open for the transaction of normal business.

“CAI-Related Inspection(s)” means any inspection by the County or County Representative(s) to determine whether or not any defect, deficiency, or other non-conformity of CAI with the Plans and Specifications and the Requirements exists with respect to the Project.

“Change Order” means a written instrument, prepared and executed by the Developer, the applicable Contractor, and Architect (and if for County requested additional work, reviewed by County), stating with specificity all provisions of their agreement on the work, cost and time period changes that are the subject of the Change Order.

“CIAR” has the meaning provided in Section 22.1(d).

“City” means the City of West Palm Beach, Florida.

“CityPlace” has the meaning provided in Section 28.1(a).

“CityPlace Partners” has the meaning provided in Section 28.1(a).

“CityPlace Retail” has the meaning provided in Section 28.1(a).

“Conditions Precedent” has the meaning provided in Section 2.1(a)(ix).

“Commence Construction” or “Commencement of Construction” shall mean commencement of any and all preliminary site work (including, without limitation, clearing, grading, soil borings, environmental remediation and ancillary demolition).

“Common Areas” means, collectively, those portions of the Hotel and amenities, not including room floors, which are hotel accessory uses including, without limitation, the lobby, restaurant(s), retail/sundries shop, lounge(s), banquet facilities, meeting center, business center, pool, amenity deck, fitness center, and other customary convention center hotel amenities and which are intended to be accessible to Hotel or Convention Center guests.

“Completion Date” has the meaning provided in Section 2.3(c).

“Consenting Party” has the meaning provided in Section 20.2(c).

“Construction” means the construction of: (a) the Hotel on the Hotel Land in accordance with the Hotel Plans and Specifications, the Permits and Approvals, and all Requirements, and (b) the construction of the Garage on the Garage Land in accordance with the Garage Plans and Specifications, the Permits and Approvals, and all Requirements.

“Construction Agreement(s)” means, collectively, any Contractor’s agreement, architect’s agreement, engineers’ agreements, or any other agreements for the provision of labor, materials, supplies, or other services entered into with respect to the Construction of the Hotel and/or the Garage, as the same may be amended or otherwise modified from time to time.

“Construction Commencement Date” is the date on which Commencement of Construction occurs as memorialized by a written agreement between County and the Developer.

“Construction Commencement Deadline” means the date that is eighteen (18) months from the Effective Date of this Agreement subject to extensions due to Unavoidable Delays and/or any Unforeseen Conditions or as otherwise provided in this Agreement.

“Construction Work” means any and all construction work performed under any provision of this Agreement and the Construction Agreements with respect to Construction.

“Contractor” means any contractor, subcontractor, sub-subcontractor, laborer, supplier, vendor, materialman or professional supplying materials, goods, labor, or other services in connection with the Construction of the Hotel and/or the Garage. “Contractor” shall include firms acting as Construction Managers.

“County” except as specifically set forth herein to the contrary, means the County, acting in its proprietary capacity, and any assignee or transferee of the entire County’s Interest in the Premises (if permitted pursuant to and effectuated in conformity with the applicable stipulations, agreements, conditions and covenants contained and set forth in the Hotel Lease) from and after the date of the assignment or transfer pursuant to which the entire County’s Interest in the Premises was assigned or transferred to such assignee or transferee. As used herein, “County” has the same meaning as the term “Owner” as used in the Hotel Lease.

“County Guarantee” has the meaning provided in the Hotel Lease.

“County Indemnified Parties” means, collectively, the County and its respective elected and appointed officials (including the County Commissioners), directors, officials, officers, shareholders, members, partners, holders of other ownership interests, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and Affiliates thereof. A “County Indemnified Party” shall mean any of the foregoing.

“County Litigation” means any suit, claim, litigation or other legal proceeding, filed before the Commencement of Construction, between the County, on the one hand, and any party that responded to the RFQ (other than Developer and/or Related) or otherwise (other than Developer, Related, or any of their Affiliates), on the other, which seeks, or has the potential, to temporarily or permanently enjoin the prosecution of the Project or otherwise seeks, or has the potential to, prohibit the parties to this Agreement from constructing or operating the Project (hereinafter collectively referred to as “Litigation Risks”) as provided for in the Project Documents.

“County’s Areas of Interest” or “CAI” means those certain elements of the design and construction of the Project listed in the attached Exhibit 1, which elements are of particular interest to County and with respect to which County has by the terms of this Agreement reserved unto itself the right of review and acceptance over such elements, which acceptance shall not be unreasonably withheld, conditioned or delayed.

“County’s Interest in the Premises” has the meaning given to “Owner’s Interest in the Premises” in the Hotel Lease as if the references to “Owner” in such definition were references to “County”.

“County’s Representative” means such person as County may, from time to time, designate in writing to Developer.

“CRA” has the meaning provided in Section 28.1(a).

“Default Date” means the date that is thirty four (34) months after the Construction Commencement Date, subject to extensions due to Unavoidable Delays and/or any Unforeseen Conditions or as otherwise provided in this Agreement.

“Default Notice” has the meaning provided in Section 19.1(b).

“Design Development” has the meaning ascribed thereto in the standard contract documents published by the AIA.

“Developer” has the meaning set forth in the first paragraph of this Agreement.

“Developer Equity” has the meaning provided in Section 6.1(b).

“Developer’s Interest in the Premises” has the meaning provided in the Hotel Lease for “Tenant’s Interest in the Premises” as if the references to “Tenant” in such definition were references to Developer.

“Developer Requested Change” means a request from the Developer to modify a CAI in previously approved Preliminary Plans and Specifications, or to modify a CAI in previously approved Plans and Specifications.

“Development Agreement” (or “this Agreement”) means collectively, this Development Agreement and all exhibits and attachments hereto, as any of the same may hereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Agreement or by mutual agreement of the parties.

“Development Arbitrator” means the person designated by County, Related, and Developer to arbitrate Development Disputes, which Development Arbitrator shall be designated as provided in Section 22.1(j).

“Development Budget” means all design and development costs and all hard and soft design, development, and construction costs (including, without limitation, costs to produce, distribute, revise, and obtain County’s acceptance of the Preliminary Plans and Specifications and the Plans and Specifications) incurred in connection with the design, development, and Construction of the Project.

“Development Dispute” has the meaning provided in Section 3.5.

“Development Team” shall mean those persons and entities shown in Exhibit 2.

“Escrow Account” that escrow account, maintained by the Palm Beach County Clerk and Comptroller, into which the County subsidy shall be placed and from which disbursements shall be made in accordance with the Escrow Agreement.

“Escrow Agreement” that mutually acceptable agreement to be entered between and among, as necessary, Palm Beach County, Related, Developer, Palm Beach County Clerk and Comptroller, and third party construction lenders containing the terms and conditions

regarding the maintenance and disbursement of the funds held by the Palm Beach County Clerk and Comptroller in the Escrow Account.

“Effective Date” has the meaning provided in the preamble of this Agreement.

“Emergency” means a situation which requires immediate action in order to prevent death, bodily injury, an imminent threat to Project-related operations, or to prevent property damage.

“Event of Default” has the meaning provided in Section 19.1.

“Exterior Elevations” when capitalized means those conceptual exterior elevations of the Hotel which are attached hereto as Exhibit 3. The Exterior Elevations are the agreed upon starting point for the development of the Preliminary Plans and Specifications and the Plans and Specifications and are not to be materially changed without the written consent of the County which shall be obtained as provided for in Article 3.

“Final Completion Deadline” means the date that is five (5) months after the Substantial Completion Deadline, subject to extension due to Unavoidable Delays and/or any Unforeseen Condition, but, in any event, occurring no later than the Default Date.

“Garage” means the parking facility to be constructed pursuant to the Garage Plans and Specifications, the Permits and Approvals, and all Requirements, by the Developer on the Garage Land.

“Garage Easement” means that certain Garage Easement attached hereto as Exhibit 5.

“Garage Land” means the real property described in Exhibit 4 attached hereto.

“Garage Land Lease” means that certain lease of the Garage Land dated as of \_\_\_\_\_, 2012, by and between CityPlace South Tower II, LLC, a Florida limited liability company, as Landlord, and Developer, as Tenant, as same may be amended from time to time.

“Garage Plans and Specifications” means all final plans, elevations, sections, details, schedules, specifications, sample boards, fixture layouts, and all other working drawings and construction documents for the Garage, which describe in detail and with specificity all architectural, structural, mechanical, electrical, life-safety, lighting, interior design, landscaping, site development, and all other aspects of the Construction Work comprising the Garage as may be required to obtain the Permits and Approvals and to fully and satisfactorily complete Construction of the Garage, as prepared by Architect and Architect’s Consultants using the Preliminary Plans and Specifications, in compliance with all Requirements, as modified from time to time in accordance with the provisions of Article 3.

“Garage Spaces” has the meaning provided in the Hotel Lease.

“General Contractors” means Coastal Construction Group of South Florida, Inc.

“Governmental Authority” or “Governmental Authorities” means the United States of America, the State of Florida, Palm Beach County, Florida (in its governmental as opposed to its proprietary capacity), the City of West Palm Beach, Florida, and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, and any quasi-governmental entity, having jurisdiction over a person (including, without limitation, Developer) or over or under the Project Site or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or lying in front of, or adjoining the Project Site, or any vault in or under the Project Site or any portion thereof, or airspace over the Project Site or any portion thereof.

“Hearing” has the meaning provided in Section 22.1(b).

“Hilton Standards” means the design standards of Hilton License Company contained and set forth in the 2012 Brand Standards for Hilton Hotels & Resorts incorporated herein by reference and any written modification or amendment thereto or variance or approval granted by the promulgator thereof.

“Hotel” means a first class convention center hotel containing a minimum of four hundred (400) rooms and hotel accessory uses including, without limitation, those identified in Exhibit 7 and other customary convention center hotel amenities, and all other uses typically accompanying first class hotels, together with all other Improvements to be constructed in accordance with the Hotel Plans and Specifications and the Requirements on the Hotel Land in accordance with the terms of this Agreement and the terms of the Hotel Lease (together with any and all permitted additions thereto and replacements thereof).

“Hotel Land” means the real property described in Exhibit 8 attached hereto.

“Hotel Lease” has the meaning provided in the Recitals to this Agreement.

“Hotel Plans and Specifications” means all final plans, elevations, sections, details, schedules, specifications, sample boards, fixture layouts, and all other working drawings and construction documents for the Hotel, which describe in detail and with specificity all architectural, structural, mechanical, electrical, life-safety, lighting, interior design, landscaping, site development, and all other aspects of the Construction Work comprising the Hotel as may be required to obtain the Permits and Approvals and to fully and satisfactorily complete Construction of the Hotel, as prepared by Architect and Architect’s Consultants using the Preliminary Plans and Specifications approved by County, in compliance with all Requirements, all applicable provisions of the West Palm Beach Agreement and all applicable provisions of the Restrictive Covenant, established in accordance with Article 3 and as modified from time to time in accordance with the provisions of Article 3.

“Hotel Room Block Agreement” means that certain Hotel Room Block Agreement entered into between the County and Developer of even date herewith.

“HVAC” means heating, ventilating, and air conditioning.

“Improvement(s)” means any building or structure (including footings and foundations), the Hotel or Garage, Building Equipment, FF&E and other improvements and

appurtenances of every kind and description now existing or hereafter erected, constructed, or placed upon the Land (whether temporary or permanent), and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

“Land” means, collectively, the Hotel Land and the Garage Land.

“Late Charge Rate” shall have the meaning set forth in Section 18.3

“Loan Documents” means, collectively, any loan agreement, promissory note, mortgage, guaranty or other document evidencing or securing a loan secured by, among other collateral, Related’s or Developer’s interest in the Hotel Lease.

“Mortgage” has the meaning defined in the Hotel Lease.

“NMTC” has the meaning set forth in Section 2.1(a)(iii).

“NMTC Financing” has the meaning set forth in Section 2.1(a)(iii).

“NMTC Requirements” means, collectively, the provisions of Section 45D of the Internal Revenue Code of 1986, as amended, temporary and/or final regulations promulgated under said Section 45D of the Code, and any guidance, rule or procedure published by the Community Development Financial Institutions Fund.

“Notice” has the meaning provided in Section 20.1.

“Notice of Failure to Cure” has the meaning provided in Section 10.1(a).

“Notice to Proceed” has the meaning provided in Section 2.1(a).

“On-site Representative” has the meaning provided in Section 11.1.

“Payment, Performance, and Construction Guaranty” has the meaning provided in Section 2.1(d).

“Permits” means any and all required permits issued by all Governmental Authorities in connection with the Construction of the Project.

“Plans and Specifications” means the Hotel Plans and Specifications and the Garage Plans and Specifications, collectively.

“Preliminary Plans and Specifications” means the preliminary plans, elevations, sections, details, schedules, specifications, sample boards, and all other drawings and documents for the Project, developed during the Schematic and Design Development phases of the Project, which, based on and further developing the Proposal submitted by Developer in response to the RFQ, fix and illustrate the size and character of the entire Project as to location, size, and relationship of spaces, furniture locations, types of materials, finishes, and colors, types of structural, mechanical, electrical, and all other systems, lighting, relationships to existing and future facilities, energy conservation approaches, equipment parameters, interior design, site and

landscaping schematic design, and such other items as may be required by County to satisfactorily understand the general scope and design parameters of the Project, as prepared by Architect and Architect's Consultants and approved by County, in compliance with all Requirements and all applicable provisions of the Restrictive Covenant, and as the same may be modified from time to time in accordance with the provisions of Section 3.1(c and d).

"Project Documents" shall have the same meaning as set forth in the Hotel Lease.

"Project" means, collectively, the Hotel and Garage and all necessary and related improvements and appurtenances.

"Project Site" means the Hotel Land, as defined herein, and any other land which the parties agree, in writing, shall be available to Developer for use during the construction of the Project.

"Recognized Mortgage" shall have the meaning as set forth in the Hotel Lease.

"Recognized Mortgagee" means the holder of a Recognized Mortgage as defined in the Hotel Lease.

"Reimbursable Costs" shall have the meaning provided in Section 6.1(d).

"Related" has the meaning provided in the Recitals to this Agreement.

"Requirements" has the meaning provided in Section 13.1(b).

"Response to RFQ" means the response dated August 4, 2009, as supplemented on August 18, 2009, submitted by Related in response to the RFQ.

"Restrictive Covenant" has the meaning provided in Section 28.1.

"RFQ" means that certain Request For Qualifications prepared by the County dated May 2009 and designated RFQ No. 2009-CCH.

"SBE" means Small Business Enterprise as defined by Palm Beach County Ordinance 2002-064 as amended.

"Schematic Design" shall have the meaning as normally used in the standard contract documents published by the AIA.

"Site Plan" when capitalized means those conceptual drawing(s) attached hereto and made a part hereof as Exhibit 9 which depict the proposed location of the Hotel and Garage within the boundaries of the Project Site. The Site Plan is the agreed upon starting point for the development of the Preliminary Plans and Specifications and the Plans and Specifications and is not to be materially changed without the written consent of the County which consent shall not be unreasonably withheld, conditioned or delayed.

"Subsidy" has the meaning provided in Section 6.1



“Substantial Completion” or “Substantially Complete” or “Substantially Completed” means that the Hotel and Garage shall have been: (1) substantially completed in accordance with the Plans and Specifications; (2) a duly executed original of the certificate of the Architect described in Section 2.3(b)(i) shall have been delivered to County; (3) written evidence of all Governmental Authorities’ approvals of all final Construction Work inspections has been delivered to County; (4) the Hotel, Garage, and all the other Improvements shall have been issued temporary certificates of occupancy by the appropriate departments of the City and releases of regulatory permits from any regulatory entity; (5) Developer has delivered to County all documents and information required in Section 2.3(b); (6) to the extent requested by County, Developer shall have satisfactorily performed or caused to be performed all training and other informational sessions in connection with the Building Equipment (including, without limitation, the Hotel’s emergency power and security systems) deemed reasonably necessary by County for use, occupancy, and operation of the Hotel and/or Garage; and (7) the Hotel has opened to the public for business as a Hilton Hotel.

“Substantial Completion Deadline” means the date that is twenty two (22) months after the Construction Commencement Date, subject to extension due to Unavoidable Delays or as otherwise provided in this Agreement, but in any event, occurring prior to the Default Date.

“Term” means the period commencing on the Effective Date and, unless sooner terminated as provided hereunder, expiring on the later of the Completion Date or last disbursement of the Subsidy in accordance with Section 6.1, subject, however, to survival of any provisions of this Agreement that are expressly stated herein to survive such expiration or termination (as the case may be).

“Unavoidable Delays” has the meaning provided in the Hotel Lease, except that, for purposes of this Agreement, said term shall also include (i) delays to Construction of the Project caused by or due to the failure of the County, in its proprietary/non-governmental role, to timely comply with its duties and obligations hereunder including, without limitation, unreasonable delays in reviews, inspections and approvals provided for in this Agreement and (ii) delays caused by or due to County Litigation. “Unavoidable Delays” also includes unreasonable and unforeseeable delays in inspections by any governmental entity having regulatory authority over the Project which delays are beyond the reasonable control of Developer.

“Unforeseen Condition” means, collectively or individually, (i) the presence of hazardous substances or materials, underground storage tanks, or other contaminants or contaminated conditions on the Hotel Land that are not known or reasonably foreseeable as of the Commencement of Construction; (ii) soil conditions in the Hotel Land adversely affecting the Construction Work that are not reasonably foreseeable upon Developer’s performing or causing to be performed all geotechnical and other soil investigations that would be customarily performed on a project of similar size, location, structural design, and soil type; (iii) the discovery of buried structures or objects or utility lines and systems materially adversely affecting the Construction of the Hotel that are not known, observable, nor reasonably discoverable upon performing all geotechnical and other soil investigations that would be customarily performed on a project of similar size, location, structural design, and soil type; or (iv) damage or destruction of all or part of the Hotel caused by casualty not required to be

covered by the insurance required to be maintained by Developer and the Contractors as set forth in Article 7 and in Exhibit 10.

“Warranty Notification” has the meaning provided in Section 5.17.

“West Palm Beach Agreement” means that agreement between the parties hereto as set forth in Section 28.1.

## ARTICLE 2 CONSTRUCTION

### Section 2.1 Conditions Precedent to Commencement of Construction.

(a) Subject to Section 2.1(c), Developer shall not commence any preliminary site work, environmental remediation, excavation, demolition, installation of temporary facilities, or Commence Construction of the Hotel, or any portion thereof, unless and until:

(i) Developer shall have obtained and delivered to County’s Representative true, correct, and legible copies of all Permits and Approvals required to commence construction (with the balance of all Permits and Approvals obtained prior to commencing construction on all corresponding Construction Work);

(ii) Developer obtains a binding commitment for construction financing in an amount of not less than \$50,000,000.00 which shall include a credit enhancement guaranty by the County in accordance with the terms set forth in the Hotel Lease, in an amount equal to Forty per cent (40%) of the construction financing but not to exceed \$20,000,000.00;

(iii) Developer obtains a New Markets Tax Credit (“NMTC”) allocation from a qualified community development entity(s) in the aggregate amount that provides a NMTC equity investment from any credit investor that nets Developer, after all expenses of closing the NMTC transaction, at least \$8,000,000.00 (the “NMTC Financing”). In lieu of a NMTC allocation the Developer, in its sole and absolute discretion, may elect to increase the amount of the construction financing to an amount of not less than \$58,000,000;

(iv) County places the amount of \$27,000,000.00 in an Escrow Account to be held by the Palm Beach County Clerk and Comptroller which shall be disbursed, in accordance with the terms of Article 6 hereof, after the disbursement of the Developer’s equity in the amount of \$20,000,000.00 and the net NMTC equity of \$8,000,000.00 from the NMTC Financing. The disbursements from the Escrow Account shall be pari passu with disbursements by the construction lender of the construction loan;

(v) Developer shall have delivered to County original certificates of the policies of insurance required to be carried pursuant to the provisions of Exhibit 10 and Article 7;

(vi) Developer prior to commencement of any Construction Work shall have delivered to County and recorded in the public records of Palm Beach County, Florida duly

executed and notarized originals of the payment and performance bonds required pursuant to the provisions of Section 2.4 for that portion of the Project;

(vii) Developer shall have recorded in the public records of Palm Beach County, Florida the notice required in Section 14.1(c);

(viii) Developer shall have recorded in the public records of Palm Beach County, Florida a memorandum of the Garage Land Lease, which memorandum shall confirm that (i) Developer is the lessee of the Garage Land and the owner of the improvements thereon and (ii) the term of the Garage Land Lease coincides with the term of this Hotel Lease; and

(ix) County shall have issued to Developer the written notice to proceed attached hereon as Exhibit 11 whereby County authorizes Developer to commence construction (the "Notice to Proceed"), which Notice to Proceed shall be issued by the County with respect to the Hotel within ten (10) days from and after the last to occur of the following: (a) the date that (and only in the event that) the Developer has fully performed all conditions precedent contained and set forth in this Section 2.1 with respect to the Hotel, (b) all requirements described in Section 2.1(c) and Section 2.1(d) are fully satisfied; (c) Developer shall have designated a competent, experienced, authorized representative acceptable to County and provided County with written notice of such representative's name, address, telephone number, mobile telephone number, facsimile number, and email address (that will be checked on no less than a daily basis), together with written documentation clearly setting forth such representative's scope of authority to act on behalf of Developer, together with all limitations on such authority; (d) Developer shall have arranged and held a pre-Construction meeting as further set forth in Section 2.1(e), and distributed to County written minutes of such meeting or (e) the County's funding of the bonds or budgeting and appropriating funds sufficient to cover all commitments of the County set forth in this Agreement as provided in Section 26.18 hereof. Developer's and County's obligations under this Agreement, the Hotel Lease, and the other Project Documents shall be subject to and conditioned up the satisfaction of the foregoing conditions precedent ("Conditions Precedent") prior to the Commencement of Construction.

(b) County (solely in its proprietary capacity and not in its governmental capacity) shall reasonably cooperate with Developer in obtaining the Permits and Approvals required by Section 2.1(a) and any necessary utility access agreements, and shall sign any application reasonably made by Developer that is required in order to obtain such Permits and Approvals and utility access agreements and shall provide Developer with any information and/or documentation not otherwise reasonably available to Developer (if available to County) which is necessary to procure such Permits and Approvals and utility access agreements. Any such accommodation by County shall be without cost to County and shall be without prejudice to, and shall not constitute a limit on, impairment or waiver of, or otherwise affect County's rights to exercise its discretion in connection with its governmental functions or authority to discharge its police or governmental power.

(c) Further, unless agreed to in writing by County, Developer shall not Commence Construction of any of the Hotel or Garage or any portion thereof, unless and until County shall have issued to the Developer its written acceptance of the Plans and Specifications.

(d) Contemporaneously with the execution of this Agreement, the Hotel Lease, and the West Palm Beach Agreement, Related shall have furnished to County the duly executed Payment, Performance, and Construction Guaranty, a form of which was attached to the Request for Qualifications as Exhibit “G” (the “Payment, Performance, and Construction Guaranty”), pursuant to which Related shall provide the required security for Liquidated Damages and in the event of Commencement of Construction shall guarantee timely, lien-free completion of the Hotel and Garage by the Final Completion Deadline, but, in any event, subject to Unavoidable Delays and/or Unforeseen Condition(s), no later than the Default Date. Notwithstanding anything to the contrary contained herein or in the Payment, Performance, and Construction Guaranty or in any other Project Document, Related’s obligations under the Payment, Performance, and Construction Guaranty shall be waived and of no further force and effect if (i) after all conditions precedent to the County’s delivery of the Subsidy have occurred or been waived by County, the County fails to timely deliver the Subsidy in accordance with the provisions of Article 6 and fails to timely cure such breach after proper notice, (ii) after all conditions precedent to the County’s delivery of the County’s Guaranty have occurred or been waived by County, the County fails to timely deliver the County’s Guaranty in accordance with the provisions of Section 11.13 of the Hotel Lease and fails to timely cure such breach after proper notice, (iii) the County is in default under this Agreement beyond any applicable cure periods or an Event of Default on the part of the County exists under this Agreement or (iv) this Development Agreement is terminated, in accordance with the provisions of Section 19.2(c). In the event that Commencement of Construction shall occur, Related’s obligations under Section 3, and only Section 3, of the Payment, Performance, and Construction Guaranty shall expire and be of no further force and effect and any letter of credit or performance bond delivered to County in connection therewith shall immediately be terminated and/or returned to Developer.

(e) Prior to Commencement of Construction of the Hotel or Garage, or any portion thereof, Developer shall arrange for, hold, and prepare written minutes of, a pre-Construction meeting. In addition to County, Developer shall cause to be in attendance at such meeting Developer’s authorized representative, authorized representatives of the General Contractors, Architect, Architect’s Consultants, and authorized representatives of each of the major trades and Contractors including, without limitation, excavation, site work, concrete, structural steel, masonry, plumbing, electrical, glazing, roofing, HVAC, framing, landscaping, exterior finishes, security, telecommunications and data, interior finishes, carpentry, and architectural millwork. The purpose of such meeting shall be to determine procedures related to the smooth progress of the Construction Work and establishment of all procedures for processing and distribution of all documents and correspondence in connection with the Construction Work, including, without limitation, the quality control program, the safety program, progress schedules, inspections, sign-offs, Shop Drawings, Product Data Sheets, Samples, Change Orders, inspections, applications for payment, partial and final releases of liens, final payment and Construction close-out. The meeting shall also establish procedures to minimize disruptions to the operations of the Convention Center.

(f) County and Developer shall complete all of the foregoing conditions precedent in a manner such that Commencement of Construction can occur on a date that is on or before the Construction Commencement Deadline. In the event that the foregoing conditions precedent cannot be completed on or before the Construction Commencement Deadline, as mutually agreed by County and Developer or as determined in accordance with Section 3.5 in the

case of any dispute between County and Developer with respect thereto, or in the event Developer earlier determines that any of the conditions precedent cannot be completed, then, after the final resolution of any such dispute in accordance with Section 3.5 and Section 22.1, County and Developer shall each have the absolute and unconditional right in its sole discretion to terminate this Development Agreement, the Hotel Lease and the other Project Documents to which they are parties by furnishing written notice of termination to the other, which termination shall be effective upon the receipt (or deemed receipt) of such notice of termination, and upon such termination, Developer shall surrender Developer's Interest in the Premises (and possession thereof) to County in the manner required by this Development Agreement and the Hotel Lease, and both parties shall be relieved of all further obligations hereunder, except to the extent this Development Agreement expressly provides that an obligation hereunder shall survive such termination. Notwithstanding the foregoing, unless such termination is pursuant to the provisions of Section 19.2(c), termination pursuant to this provision shall not affect any of County's rights or remedies under the Payment, Performance, and Construction Guaranty and County shall be entitled to require Developer to pay Liquidated Damages under Section 3(b) of the Payment, Performance, and Construction Guaranty in the event the foregoing conditions precedent shall not be satisfied on or before the Construction Commencement Deadline.

## Section 2.2 Commencement and Completion of Construction.

Subject to the satisfaction of all conditions set forth in Section 2.1 above as well as the execution by Developer of a guaranteed maximum price construction contract for the construction of the Garage and the Hotel upon terms and conditions satisfactory to Developer in its sole and absolute discretion, Developer shall, subject to Unavoidable Delays and/or Unforeseen Condition(s), at its sole cost and expense commence construction of the Hotel within sixty (60) days from and after the date of the issuance of the Notice to Proceed, but no later than the Construction Commencement Deadline, and (b) shall commence construction of the Garage in such time as to complete Garage construction so as to facilitate and permit the timely opening of the Hotel and thereafter continue to prosecute Construction of the Hotel and Garage with diligence and continuity to completion. Developer shall diligently pursue all conditions precedent to County's issuance of the Notice to Proceed. If Developer fails to timely Commence Construction of the Hotel or if, after Developer has Commenced Construction of the Hotel and Garage, Developer, subject to Unavoidable Delays and/or Unforeseen Condition(s), fails to diligently prosecute Construction of the Hotel or Garage, and such failure continues for thirty (30) consecutive days after Developer's receipt of notice of such failure, County shall, in addition to all of its other remedies under the Project Documents, have the right to seek such equitable relief (either mandatory or injunctive in nature), in accordance with Section 19.2(a), as may be necessary to cause diligent and continuous prosecution of construction of the Hotel and Garage by Developer, it being understood that Construction of the Hotel and Garage is a material inducement to County to enter into the Project Documents and monetary damages shall be inadequate to compensate County for harm resulting from such failure. Notwithstanding anything to the contrary contained herein, if Developer fails, subject to Unavoidable Delays and/or Unforeseen Condition(s), to Complete Construction of the Hotel and Garage by the Default Date, then the same shall constitute an Event of Default under this Agreement and under the other Project Documents and County shall be entitled to exercise its remedies in the manner set forth in Section 19.2(a).

Section 2.3 Completion of Construction.

(a) Substantial Completion of the Construction Work shall be accomplished in a diligent, good, and workmanlike manner, in substantial accordance with the Plans and Specifications, in accordance with all Requirements, at Developer's sole cost and expense, and, and in any event Substantial Completion of the Construction Work shall occur, subject to Unavoidable Delays and/or Unforeseen Condition(s), no later than the Substantial Completion Deadline. Final completion of the Construction Work shall be accomplished in a diligent, good, and workmanlike manner, in accordance with the Plans and Specifications, in accordance with all Requirements, at Developer's sole cost and expense, and, in any event, the Completion Date shall occur, subject to Unavoidable Delays and/or Unforeseen Condition(s), no later than the Final Completion Deadline.

(b) Upon Substantial Completion of Construction Work, but in any event, subject to Unavoidable Delays and/or Unforeseen Condition(s), prior to the Substantial Completion Deadline, Developer shall deliver to County the following:

(i) an original Certificate of Substantial Completion in form of AIA G704-2000, attached hereto as Exhibit 12, and otherwise in form and substance reasonably acceptable to County duly executed by Architect whereby Architect certifies that (i) it has examined the Plans and Specifications and that, in its professional judgment, after diligent inquiry, Construction of the Hotel and Garage have been Substantially Completed in accordance with the Plans and Specifications, and (ii) as constructed, the Hotel and Garage and all other Improvements comply with all Requirements;

(ii) a copy or copies of the temporary certificates of occupancy for the Hotel (or portion thereof, as applicable) and Garage issued by the City of West Palm Beach, Florida, Building Department allowing a limited period of legal occupancy of the Hotel and Garage and all other Improvements (until same is renewed, expires, or a final, permanent certificate of occupancy is issued therefor by the City of West Palm Beach, Florida, Building Department (or other applicable Governmental Authorities);

(iii) originals of duly executed and notarized final waivers and releases of lien in recordable form, complying with all requirements of Sections 255.05 and 713.20 of the Florida Statutes, and otherwise in form and substance reasonably satisfactory to County, from Developer, General Contractor, and each Contractor, retained by or on behalf of Developer in connection with the Construction of the Hotel and/or Garage, and all other persons having lien rights on the Project Site, or any portion thereof or appurtenance thereto, or any governmental appropriations in connection with the Hotel and Garage evidencing that such persons have been paid in full for all work performed, materials supplied, or other services rendered in connection with the Construction of the Hotel and Garage;

(iv) a complete set of As-Built Plans and Specifications (which shall be signed and dated by Developer's authorized representative, and a notation affixed to each sheet indicating that all conditions are accurate and all deviations, substitutions, and other changes from the Plans and Specifications are clearly marked) and a survey certified to County (and to all other parties that County shall direct in writing) meeting all ALTA/ACSM standards and all

minimum technical standards required by Section 472.027 of the Florida Statutes (Minimum Technical Standards for Surveying and Mapping) and by Chapter 61G17-6 of the Florida Administrative Code (Minimum Technical Standards for Land Surveying) performed by a licensed surveyor in good standing in Florida showing the locations of all Improvement(s) for which the Construction of the Hotel and Garage has been completed. County shall have an unrestricted license to use the As-Built Plans and Specifications and survey for any purpose related to the Project Site or any portion thereof without paying any additional cost or compensation therefor, subject to copyright and similar rights of the Architect to prohibit use of designs for purposes unrelated to the Project Site, as such rights exist in law or may appear in the Architect's contract, and subject to applicable public records laws.

(v) to the extent requested by County, copies of all guarantees, warranties, and Building Equipment and all other operation and maintenance manuals. Such manuals shall be bound in three-ring binder format with their contents clearly labeled on the outside cover;

(vi) compact diskettes containing a complete set of the Plans and Specifications in electronic format (all Plans are to be provided using AutoCAD® software, or such other mutually agreed upon software, in “.dwg” format, bound with external references such that a complete drawing includes, without limitation, border, fonts, external references, provided such that all other drawing features can be plotted from each “.dwg” file, in such version as determined by County. All Specifications are to be provided in Microsoft Word format, in such version as agreed to by Developer and County);

(vii) duly executed originals (in recordable form, complying with all requirements of Sections 255.05 and 713.06 of the Florida Statutes and otherwise in form and substance reasonably acceptable to County) of Developer's and General Contractor's Final Payment Affidavit, in the form attached as Exhibit 13, whereby Developer and General Contractors state under oath that all Contractors or other persons performing labor, supplying materials, or rendering services to the Hotel and Garage on their behalf have been paid in full; and

(c) Developer shall (i) Substantially Complete the Construction Work and the Improvements; (ii) deliver all documents and items required by Section 2.3(b); (iii) fully complete all Construction Work and all outstanding punch-list items in the Project, and cause Architect to review and issue a written unconditional approval of such Construction Work and punch list work; (iv) deliver to County an original duly executed consent for final payment from the surety issuing the construction bonds described in Section 2.4, in the form of AIA Document G707-1994 and otherwise in form and substance reasonably acceptable to County; (v) deliver to County the original, permanent certificate of occupancy (and any other applicable public assembly approval or permit) for the Hotel and Garage issued by the City of West Palm Beach, Florida, Building Department (or other applicable Governmental Authority); and (vi) deliver to County originals of the Certificate of Final Completion substantially in the form attached hereto as Exhibit 14 duly executed by Architect, Developer, and General Contractor whereby (x) Architect certifies that the Construction Work is satisfactorily and fully completed in compliance in all material respects with the Plans and Specifications and in accordance with all Requirements; (y) Developer certifies that the Construction Work is fully completed in

compliance in all material respects with the Plans and Specifications; and (z) General Contractors certify that the Construction Work is fully completed in compliance with the Requirements, the Construction Agreements, and the Plans and Specifications. The date on which Developer fully completes all the foregoing items in this Section 2.3(c) is the "Completion Date". In any event, the Completion Date shall occur, subject to Unforeseen Condition(s) and Unavoidable Delays, no later than the Final Completion Deadline.

Section 2.4 Construction Bonds and Insurance; Contractor Requirements; No Liens; Contractor Requirements. Developer shall also require the General Contractors to furnish for the benefit of County a payment and performance bond equal to the cost of the corresponding Construction Agreement and prepared in the form attached as Exhibit 15 meeting all requirements of Section 255.05 of the Florida Statutes, naming County as obligee. Developer shall also require all Contractors to furnish satisfactory evidence of statutory worker's compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, in such amounts and in such manner as County may reasonably require and consistent with Article 7 and Exhibit 10. Contractor(s)'s Insurance shall be no less than the amounts set forth in Exhibit 10. County may require additional insurance for any alterations or improvements approved hereunder, in such amount as County reasonably determines to be necessary.

Section 2.5 Legal Descriptions. The legal descriptions of the Hotel Land and Garage Land and any related Easements are attached hereto as Exhibits 8 and 4 respectively.

### ARTICLE 3 PLANS AND SPECIFICATIONS

#### Section 3.1 Acceptance and Modification of Plans and Specifications.

(a) Preliminary Plans and Specifications. Developer will cause preliminary plans to be prepared and, to the extent requested, shall submit them to County at the end of the Schematic Design and Design Development phases for the Hotel and Garage. To the extent requested, these submissions shall include two (2) complete bound sets together with two (2) sets of compact diskettes containing electronic versions of all required information, in a format to be agreed upon by County and Developer, together with password access to all submission documents posted on Developer's web-based document management system as approved by County. County shall have the right to review, request commercially-reasonable modifications to, and approve each Submission of the Preliminary Plans and Specifications as provided in Section 3.1(d). This process shall produce Preliminary Plans and Specifications for the Garage and a first class convention center hotel, which meets the Hilton Standards.

(b) Plans and Specifications. Developer shall cause the Plans and Specifications to be prepared and, to the extent requested, submitted to the County. To the extent requested, the Developer shall submit two (2) complete bound sets together with two (2) sets of compact diskettes containing electronic versions of all required information in a format, in a format to be agreed upon by County and Developer, with password access to all submission documents posted on Developer's web-based document management system as



approved by County. If any such submitted Plans and Specifications are materially inconsistent with, or contain material modifications to, the most recently County reviewed set of Preliminary Plans and Specifications or Plans and Specifications, as the case may be, then such Plans and Specifications shall clearly indicate, by revision “clouds” or “bubbles”, highlighting, or blacklining all such inconsistencies or material modifications to the Plans and Specifications, and the title block of each such modified drawing shall contain a revision list using revision symbols referencing each revision’s number, date and description. Each submission shall include a written memorandum in sufficient detail to clearly describe all material modifications to the Preliminary Plans and Specifications or the Plans and Specifications. This process shall produce Plans and Specifications for the Garage and a first class convention center hotel, which meets the Hilton Standards.

(c) Developer Requested Changes. If Developer desires a Developer Requested Change, Developer shall cause to be prepared and delivered to County two (2) copies of any such proposed modified Preliminary Plans and Specifications, or Plans and Specifications, for County’s acceptance. Such modified Preliminary Plans and Specifications, or Plans and Specifications, shall clearly indicate, by revision “clouds” or “bubbles”, highlighting, or blacklining all such proposed modifications to the Plans and Specifications, and the title block of each such modified drawing shall contain a revision list using revision symbols referencing that certain revision’s number, date and description. No Developer Requested Change shall result in a diminution of the quality of the Hotel below the Hilton Standards.

(d) County Review Process. Within thirty (30) days of its receipt of any submission of Preliminary Plans and Specifications, Plans and Specifications, or Developer Requested Changes, County shall notify Developer, in writing, describing, with specificity, any changes or modifications which the County would like to have made to the submitted documents or the basis for its disapproval of any material inconsistencies or material modifications between the current submission and the last County reviewed submission or any objection which County has to any Developer Requested Changes. County’s failure to so notify Developer of its requested changes or modifications, or of its disapproval of proposed inconsistencies or modification, within such time period shall be deemed to constitute County’s conclusive acceptance of such Preliminary Plans and Specifications, Plans or Specifications, Developer Requested Changes, or “clouded” or otherwise highlighted modifications or inconsistencies in the Plans and Specifications; provided, however, that if County shall notify Developer within thirty (30) days following its receipt that any submission that the complexity of the submission necessitates an extension of such time period to complete County’s review, such period shall be extended to the date which is forty-five (45) days after County’s receipt of the submission; provided, further, however, that County shall not be responsible for, and shall not be deemed to have accepted, any material inconsistency or modification that is not indicated as required by Section 3.1(b). Notwithstanding anything to the contrary contained herein, the foregoing County review and acceptance process shall not be applicable with respect to and the County shall have no acceptance rights with respect to: (a) any modifications to the Preliminary Plans and Specifications, or the Plans and Specifications, which are necessitated by Requirements or as a result of the correction of a drafting, coordination, mechanical or technical error or as required to accommodate field conditions, and/or (b) any material modifications to the Preliminary Plans and Specifications and/or the Plans and Specifications unless, and only to the extent that, such modifications would affect a material modification of a CAI.

(e) Dispute Resolution. If County disapproves all, or any part of, any of the submissions described above, or any material inconsistencies or material modification in the Preliminary Plans and Specifications, the Plans and Specifications, or any Developer Requested Changes, then Developer shall, at its election either: (i) submit County's disapproval to expedited arbitration pursuant to Section 3.5 and Section 22.1 as to the materiality of the inconsistency or modification and/or the reasonableness of the disapproval; or (ii) within thirty (30) days after receiving County's disapproval notice, cause to be prepared and delivered to County, revised Plans and Specifications or revised modifications to the Plans and Specifications to meet County's objections, which revised Plans and Specifications or revised modifications shall be reviewed as provided in Section 3.1(d).

(f) County Acceptance. When Developer advises County in writing, and County agrees with Developer in writing (which agreement by the County shall be issued to the Developer or a notice which states, with particularity, the reasons for the failure of the County to agree shall be issued to the Developer, within ten (10) days from and after the date the Developer so advises County in writing), that the Plans and Specifications are complete, sufficient, and suitable to construct, furnish and equip the Hotel and Garage in accordance with the provisions of this Agreement, such written agreement shall be deemed to constitute County's conclusive acceptance of the Plans and Specifications. Notwithstanding anything to the contrary contained in this Agreement, County's review of, request for modifications to, and acceptance of any Preliminary Plans and Specifications, or Plans and Specifications, shall not constitute or be deemed to constitute County's determination, certification, or confirmation that such Plans and Specifications comply with the Requirements or will perform as intended, and County assumes no responsibility whatsoever and shall not be liable for the design, performance, or non-compliance with the Requirements, of such Plans and Specifications or of the improvements built on the basis of such Plans and Specifications.

(g) Use of Plans and Specifications. Developer shall be the sole owner of the Preliminary Plans and Specifications for the Hotel and the Garage. Within ninety (90) days from and after the Construction Commencement Date, Developer hereby covenants and agrees to cause Architect and Architect's Consultants (and to cause all other persons owning or otherwise having such rights) to grant to County a nonexclusive license to reproduce, copy, refer to, and otherwise use the Preliminary Plans and Specifications and the Plans and Specifications in connection with County's completion, use, leasing, maintenance, operation, advertisement, renovation, modification, addition, demolition, casualty restoration or condemnation restoration of the Project or any part thereof. Further, Developer hereby covenants and agrees to cause Architect and Architect's Consultants (and to cause all other persons owning or otherwise having such rights) to grant permission to County to use the electronic versions of the Plans and Specifications referenced in Section 2.3(b)(vi) as "base drawings", "backgrounds", external references, or any other uses delineating existing conditions in connection with any renovation, modification, addition, demolition, casualty restoration or condemnation restoration of the Hotel or Garage, or any part thereof.

### Section 3.2 Compliance with Requirements; Construction Standards.

Notwithstanding anything to the contrary contained herein, the Plans and Specifications shall comply with all Requirements. It is Developer's responsibility to assure

such compliance. County's acceptance in accordance with this Article of any Preliminary Plans and Specifications, Plans and Specifications, or Developer Requested Changes shall not be construed as being, or relied upon as, a determination that such Preliminary Plans and Specifications, Plans and Specifications, or Developer Requested Changes comply with Requirements, including, without limitation, any Requirements providing for the review and acceptance of the Plans and Specifications by any Governmental Authority (in its governmental capacity as opposed to its proprietary capacity).

### Section 3.3 Construction.

Construction of the Hotel and Garage shall be carried out pursuant to Plans and Specifications prepared by the Architect and Architect's Consultants, with controlled inspections conducted by a licensed architect or professional engineer in good standing in Florida, and as otherwise required by the Requirements

### Section 3.4 Design and Décor.

County shall have the right to provide input with respect to matters of interior design and décor of the Common Areas to the limited extent necessary to attempt to achieve architectural harmony at the confluence of the Common Areas and the Convention Center. All material elements of the interior design and décor of the Common Areas shall be presented to County in a design charette, utilizing story boards and samples to demonstrate that the elements are compliant with Hilton Standards. After County has provided its input with respect to the interior design and décor of the Common Areas, neither Developer nor Franchisor may materially change or materially modify the Common Areas without advising the County of such proposed changes or modifications so that the County is afforded the opportunity to provide its input with respect thereto; provided, however: (a) the County shall promptly provide its input, and (b) notwithstanding any stipulation, agreement, condition and covenant contained and set forth herein to the contrary, it is specifically understood and agreed that the final determination shall be made, in all instances, by the Developer in its reasonable discretion.

### Section 3.5 Development Dispute.

Any dispute or disagreement between County and Developer arising prior to the Hotel Opening Date with respect to the following matters (a "Development Dispute") shall be finally resolved in accordance with the provisions of Section 22.1:

(a) Any dispute as to whether Developer's modifications to the Preliminary Plans and Specifications or the Plans and Specifications pursuant to Section 3.1(a) or 3.1(b) or 3.1(c), respectively, affect a CAI, or are material and/or materially inconsistent with any previously approved Preliminary Plans and Specifications or Plans and Specifications and are, therefore, subject to County's acceptance;

(b) Any contention by Developer that County has unreasonably withheld, conditioned or delayed its acceptance or consent to any modifications to the Preliminary Plans and Specifications pursuant to Section 3.1(a), or the Plans and Specifications pursuant to Section 3.1(b) or Developer Requested Change pursuant to Section 3.1(c);

(c) Any contention by Developer that County has unreasonably withheld, conditioned or delayed its acceptance or consent to a Change Order as to which County has acceptance rights;

(d) Any dispute as to the existence or non-existence of any defect, deficiency or other non-conformity of either Construction Work or CAI with the Plans and Specifications and/or the Requirements; and

(e) Any dispute with respect to (i) either party's compliance with Section 2.1, including, without limitation, timely completion of the conditions precedent to Construction Commencement set forth in Section 2.1.

### Section 3.6 Design Review and Recommendations.

Developer shall supervise, coordinate, and otherwise facilitate and familiarize itself thoroughly with the evolving Preliminary Plans and Specifications and the Plans and Specifications and shall direct and closely follow the development of such documents from preliminary design through working and construction documents. Developer shall make recommendations to Architect and Architect's Consultants with respect to the selection of systems, materials, and cost reducing alternatives (including assistance to County in evaluating alternative comparisons versus long term cost effects, and value-engineering). Such evaluation shall be directed to the benefits of the speed of erection and early completion of the Project. Developer shall furnish to County pertinent information in connection with the availability of materials and labor that will be required for the Construction Work. County's failure to notify Developer that such alternative comparisons are not acceptable within thirty (30) days following receipt of such pertinent information from Developer shall be deemed to constitute the County's approval of such alternative comparisons. Developer shall prepare or cause to be prepared by qualified cost estimators an estimate of the Construction cost utilizing the unit quantity survey method.

## ARTICLE 4 DEVELOPMENT BUDGET

Developer shall prepare and submit to County, prior to the Commencement of Construction, the Development Budget. After the Commencement of Construction, Developer shall provide County with copies of any material modifications of the Development Budget which reflect a change to any CAI.

## ARTICLE 5 MISCELLANEOUS CONSTRUCTION PROVISIONS

### Section 5.1 Title to the Improvements.

Subject to the Hotel Lease, the Hotel shall constitute the property of County. The Garage shall constitute the property of CityPlace South Tower II, LLC, a Florida limited liability company.

Section 5.2 Procurement Requirements. To the maximum extent possible, Developer shall require its General Contractors to select their subcontractors and subconsultants, through competitive selection in accordance with Developer's qualifications and selection criteria, following public notice and advertisement for such services by request for bids, or proposals, with a deadline for responses. Any such advertisement shall be advertised in at least one newspaper of general circulation in Palm Beach County and two newspapers of limited circulation in Palm Beach County. Any solicitation forms used by Developer and its General Contractors shall be provided to the County prior to being sent to prospective respondents for the limited purpose of ensuring that the solicitation forms require compliance with the County's preferences for local businesses and SBE Project Goals. General Contractors' qualifications and selection criteria shall be established at the sole discretion of Developer and General Contractors; provided, however, that the selection criteria shall (i) provide a preference for SBE's and local businesses, as set forth in the Development Agreement, and (ii) require the maximization of hiring of Palm Beach County residents. Notwithstanding anything to the contrary herein and without being restricted in any manner by this paragraph, Contractor shall be permitted to employ single source contractors and vendors that are not local if qualified contractors and vendors are not available in the local area. The County's Representative may review and provide its input as to the responses and attend any selection committee meetings (but shall not have a vote).

Section 5.2.1 Pre-award Submissions. Prior to the award of any contract by General Contractor, General Contractor and Developer shall submit to County a summary of all bids or proposals obtained for all contracts and procurements required to construct the project and, if any recommended award is to a vendor other than the lowest bidder, General Contractor and Developer shall submit to County a justification for such selection.

Section 5.2.2 SBE Project Goals. Developer shall comply with Palm Beach County Code § 2002-064 as amended and shall meet the County's Small Business Enterprises goals of Fifteen per cent (15%) in connection with the Project.

Section 5.3 Construction Agreements.

(a) Required Clauses. All Construction Agreements that provide for the performance of labor on the Project Site or any portion thereof shall include the following provisions (or language substantially similar thereto which is approved in advance by County):

(i) an agreement by each of the General Contractors to provide, prior to the commencement of its portion of the work, and maintain during the performance thereof, the insurance set forth on Exhibit 10 attached hereto. Such General Contractors shall procure an appropriate clause in, or endorsement on, any policy of insurance carried by it pursuant to which the insurance company waives subrogation or consents to a waiver of right of recovery consistent with the release, discharge, exoneration and covenants not to sue contained herein. Original Certificates of Insurance, in quadruplicate (all of which shall be original signed counterparts) and including County (and any successor to County) as additional insureds (the "Certificate of Insurance"), shall be furnished to Developer and County by each General Contractor prior to commencement of work, denoting all insurance required of such General Contractor pursuant to the terms of the Contract. The General Contractors shall secure an original Certificate of

Insurance from each of their subcontractors and/or suppliers with limits of liability equal to those carried by the General Contractor;

(ii) The words, “Contractor hereby waives all rights of recovery, claims, actions or causes of action against County (and any successor to County) and their respective elected and appointed officials (including, without limitation, the County Commissioners), directors, officials, officers, shareholders, members, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and affiliates (collectively the “County Indemnified Parties”), for any loss or damage to property of Contractor which may occur at any time in connection with the Project or any portion thereof, except to the extent such loss or damage to property of Contractor is caused by the gross negligence or willful misconduct of any of the County Indemnified Parties).”

(iii) The words, “To the fullest extent permitted by law, Contractor shall and does hereby indemnify and hold harmless the County Indemnified Parties, from and against any and all liability, claims, demands, damages, losses, fines, penalties, expenses and costs of every kind and nature, including, without limitation, costs of suit and attorneys’ fees and disbursements (collectively, “Expenses”), resulting from or in any manner arising out of, in connection with or on account of: (1) any act, omission, fault or neglect of Contractor, or anyone employed by it in connection with the work or any phase thereof, or any of its agents, contractors, subcontractors, employees, invitees or licensees in connection with the work, or anyone for whose acts any of them may be liable, (2) claims of injury (including physical, emotional, economic or otherwise) to or disease, sickness or death of persons or damage to property (including, without limitation, loss of use resulting therefrom) and all other claims of whatsoever kind, type, nature, description, or characterization including, without limitation, all claims related to delay in the performance of the Construction Work, claims related to interference by County or any other person with Construction of the Hotel or Garage, all claims related to changes in the Construction Work, and all claims related to activity sequencing, timing, or ‘stacking’ (*i.e.* concurrent scheduling) of trades occurring or resulting directly or indirectly from the work or any portion thereof or the activities of Contractor or anyone employed by it in connection with the work, or any portion thereof, or any of its respective agents, contractors, subcontractors, employees, invitees or licensees in connection with the work, or anyone for whose acts any of them may be liable, or (3) mechanics’ or materialmen’s or other liens or claims (and all costs or expenses associated therewith) asserted, filed or arising out of the work or any phase thereof other than liens or claims arising out of Developer’s failure to make the required payments properly due Contractor. In no event shall Contractor be able to seek or be entitled to consequential damages (including, without limitation, loss of profits or loss of business opportunity) for claims arising under this contract, except to the extent any of the foregoing is caused by the gross negligence or willful misconduct of any of the County Indemnified Parties. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to Contractor under worker’s compensation acts, disability benefit acts or other employee benefit acts or other insurance provided for by this contract; or (y) the fact that the Expenses were caused in part by a party indemnified hereunder. The Contractor further agrees that this indemnification shall be made a part of all contracts and purchase orders with subcontractors or material suppliers. The indemnification agreement included in this contract is to be assumed by all subcontractors.

(iv) (1) the right of Developer to assign to County, subject and subordinate to the rights of the Recognized Mortgagee, any Construction Agreement and Developer's rights thereunder, at County's request, without the consent of the Contractor, and (2) that without the necessity of such assignment and without thereby assuming any of the obligations of Developer under the contract occurring prior to such assignment and/or purchase order, except for Developer's payment obligations, County shall have the right to enforce the full and prompt performance by the Contractor of such Contractor's obligations under such Construction Agreement;

(v) The words, "Upon the termination of the Hotel Lease, County may, at its option, subject and subordinate to the rights of Lender, terminate its contract with Developer and, upon such termination and receipt of a written request from County, Contractor will honor this agreement as if this agreement had been originally entered into with County.";

(vi) The words, "Nothing contained in this contract is in any way intended to be a waiver of the prohibition on Contractor's ability to file liens against property of County, or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments.";

(vii) The words, "Upon a termination of the Hotel Lease, all covenants, representations, guarantees and warranties of Contractor hereunder shall be, subject and subordinate to the rights of Lender, deemed to be made for the benefit of County (and County shall be deemed to be a third-party beneficiary hereof) and shall be, subject and subordinate to the rights of Lender, enforceable by County.";

(viii) The words, "Unless and until County expressly assumes the obligations of Developer under this contract (and then only to the extent the same arise from and after such assumption), County shall not be a party to this contract and will in no way be responsible to any party for any claims of any nature whatsoever arising or which may arise in connection with such contract."; and

(ix) The words, "Contractor hereby agrees that notwithstanding that Contractor performed work at the Project Site or any portion thereof, County shall not be liable in any manner for payment or otherwise to Contractor in connection with the work performed at the Project Site or any portion thereof, except to the extent County expressly assumes the obligations of Developer hereunder (and then only to the extent such obligations arise from and after such assumption)."

(x) Provisions requiring compliance with the equal employment opportunities provisions contained in this Agreement.

(xi) Provisions requiring Contractor to exercise and document Best Efforts to employ the maximum number of local residents in the construction and development of the Project. For the purposes of this commitment local residents shall be residents of Palm Beach County, Florida and such residence shall be sufficiently established by production of a valid Florida voter's registration card, Florida driver's license, state issued identification card, or

affidavit of residency if the document submitted for proof of residency shows on its face that the employee resides at an address located in Palm Beach County.

(xii) Related and Developer shall ensure that all design and construction contracts for the Hotel and Garage name Palm Beach County as an Intended Third Party Beneficiary of those agreements.

Section 5.4 Demolition.

Except as necessary and as provided in the County approved Plans and Specifications in connection with construction of the Hotel and Garage or as part of a Casualty Restoration or Condemnation Restoration or as may be otherwise permitted under this Agreement or the Hotel Lease, Developer shall not demolish any portion of the Project Site. Any demolition permitted hereunder shall be performed in accordance with all Requirements, and, prior to commencement of any demolition work, Developer shall obtain all approvals and permits from all Governmental Authorities having jurisdiction.

Section 5.5 Coordination With Convention Center Facilities and Events; Cooperation With County.

(a) Developer shall actively coordinate with the management of the Convention Center to ensure that performance of the Construction Work, including, without limitation, deliveries and removals of materials, equipment, and other items to and from the Project Site, utility or other facility demolition, installation, and temporary interruptions in connection with the Construction Work, material and equipment storage and staging areas, temporary facilities and protection, and Developer's and all Contractor's and other person's vehicle parking, do not unreasonably interfere with or otherwise materially adversely affect any events, operations, facilities, or procedures at the Convention Center. Developer hereby covenants to use Best Efforts to schedule all such deliveries, removals, and utility interruptions at such times and dates as to not unreasonably interfere with any events, operations, facilities, access and egress, and procedures at the Convention Center.

(b) Developer shall, and shall cause all Contractors to, reasonably cooperate with County, County's Representative, On-site Representative, and all other parties designated by County, to minimize any delay or other hindrance of their observation of the Construction Work. Unless unreasonable to do so in the opinion of the Developer, County may require that certain facilities be used concurrently by Contractor and other parties and Contractor shall comply with such requirements.

Section 5.6 Interfacing of Separate Construction Agreements.

(a) Developer shall take all measures as are appropriate to provide that the total Construction Work will be fully covered by all the separate Construction Agreements and that such separate Construction Agreements and their related general conditions items shall be performed without duplication or overlap, and sequenced to maintain timely completion of all Construction Work (including, without limitation, long lead-time items). Developer shall ensure that each bid package clearly identifies the portion of the Construction Work to be included in that particular separate Construction Agreement, its schedule for start and completion, and its



relationship to other separate Contractors. Notwithstanding the foregoing, it shall remain Developer's obligation to properly supervise, coordinate and schedule all portions of the Construction Work for the satisfactory and expeditious completion of the Construction Work in accordance with all Requirements, the Construction Agreements, and the Plans and Specifications.

(b) Developer shall be the single point of interface with all Contractors for County, County's Representative, and all of County's agents and representatives. However, when health and safety are threatened, Developer shall act immediately to remove the threat to health and safety.

(c) If Contractor requests an interpretation of the Plans and Specifications affecting a CAI, Developer shall, subject to County's Representative's review and acceptance, provide interpretations of the Plans and Specifications requested by any Contractor and shall maintain a written request for interpretation control system to promote timely and proper response to all such requests. Developer shall promptly advise County's Representative when timely responses are not occurring on any of the above items.

#### Section 5.7 Shop Drawings.

All Shop Drawings, Samples, and product data sheet submissions shall be maintained and filed using the current Construction Specialties Institute format and numbering system.

#### Section 5.8 Coordination.

Developer shall be solely responsible, through its contractors and design professionals, for the coordination of the Plans and Specifications and the Construction.

#### Section 5.9 Weather Protection.

Developer shall ascertain and provide or cause to be provided all temporary enclosures and other Project Site protection and procedures (including, without limitation, removal, securing or fastening of any materials or Construction items) in order to assure orderly progress of the Construction Work in periods when extreme weather conditions are likely to be experienced (including, without limitation, storms and hurricanes). In the event a tropical storm or hurricane threatens the Project Site, Developer shall use Best Efforts to protect the Convention Center from damage resulting from the work on the Project Site including, but not limited to, damage from blown materials, structural collapse, flooding, or any other cause. Developer shall indemnify County from any uninsured loss suffered by the Convention Center solely as a result of Developer's failure to take the precautions required by this section.

#### Section 5.10 Design and Construction Quality Control.

Developer shall develop and maintain a design and construction quality control program, a written form of which shall be submitted to County prior to commencement of any design work or Construction Work (as the case may be), to assure quality control of the design and Construction Work. Developer shall supervise the work of all Contractors promptly

providing instructions to each when their work, materials, or other services performed on the Hotel or Garage do not conform to the requirements of the Plans and Specifications and Developer shall continue to exert its influence and control over each Contractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Construction Work.

Section 5.11 Project Site Requirements.

(a) As part of its obligations under this Agreement, Developer shall provide each of the following activities during the Term:

(i) Maintain a log of daily Project Site activities.

(ii) Maintain a written roster of Contractors on the Project Site with names and telephone numbers of all Contractor's key personnel, project superintendent and project foreman, promptly updated to reflect any replacements thereof.

(iii) Provide the quality control program as further described in Section 5.10.

(b) As part of its obligations under this Agreement, Developer shall provide or shall cause to be provided personnel and equipment for each of the following activities during the Term:

(i) Arrange for and schedule the services of independent testing laboratories to provide the necessary testing of materials to ensure conformance to all requirements of the Plans and Specifications and the Requirements.

(ii) Provide printing and distribution of all required bidding documents and Shop Drawings, including any sets required by any applicable Governmental Authorities.

Section 5.12 Construction Administration.

As part of its obligations under this Agreement, Developer shall provide or cause to be provided all Construction administrative functions during Construction to assure proper documentation of the Construction. Developer shall prepare, submit to County, implement, monitor, and ensure compliance by all Contractors and other persons entering the Project Site with, a written Project Site safety program which includes, without limitation, all requirements set forth below:

(a) Developer shall be solely responsible for initiating, maintaining and supervising all safety precautions, procedures, and programs in connection with the Construction Work. Developer shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to all persons (including, without limitation, tradespeople, craftspeople, County's Representatives, On-site Representative, licensees, visitors, and invitees) involved in any way with the Construction Work. Developer shall set forth in writing all safety precautions and programs in connection with the Construction Work and the Project Site and submit the same for review and comment by County. County may, but shall not be obligated to,

make suggestions and recommendations to Developer with respect thereto. County's comments (or lack of comments) to such safety program shall not be construed as being, or relied upon as, a determination that such safety program is in conformance with the Plans and Specifications and the Requirements, and County shall have no liability whatsoever for any safety precautions or procedures in connection with the Construction Work and the Project Site.

(b) All Construction Work, whether performed by Developer, its Contractors, or any other person directly or indirectly employed by any of them, and all equipment, appliances, machinery, materials, tools and like items incorporated or used in the Construction Work, shall be in compliance with, and conform to all Requirements now or hereafter in effect.

(c) Should Developer fail to provide or cause to be provided a safe area for the performance of the Construction Work or any portion thereof, County shall have the right, but not the obligation, to make written demand to suspend Construction Work in the unsafe area. All costs of any nature resulting from the suspension, by whosoever incurred, shall be borne by Developer.

(d) Developer shall provide, or cause to be provided, to each Contractor or any other person entering or occupying the Project Site, all proper safety equipment for all duties being or to be performed by such person and Developer shall not permit any Contractor or person on the Project Site who fails or refuses to use same.

(e) Developer shall defend, indemnify, and hold County and its respective officers, directors, agents, employees, successors, and assigns, harmless from and against any and all liability (public or private), penalties (contractual or otherwise), losses, damages, costs, attorneys' fees, expenses, causes of action, claims, or judgments resulting either in whole or in part from any failure of Developer, any Contractor, or any other person directly or indirectly employed by any of them, or for whose acts any of them may be liable, to comply with the provisions of this Agreement.

(f) Developer shall not raise as a defense to its obligation to indemnify under this Section any contributing negligence of any of those indemnified hereunder, it being understood and agreed that no such contributing negligence shall relieve the Developer from its liability to so indemnify nor entitle the Developer to any contribution, either directly or indirectly, by those indemnified hereunder.

#### Section 5.13 Applications for Payment and Payments to Contractors.

Developer shall require all Contractors to submit their pay applications on AIA standard forms for any pay request which is to be reimbursed in full or part by County.

#### Section 5.14 "As-Built" Set.

Developer shall monitor the progress of Developer's own forces together with the Contractors on marked-up field prints, and, at Construction completion, will prepare the final "as-built" record set of Plans and Specifications to be delivered to County.

Section 5.15 Administrative Records.

Developer shall maintain, at the Project Site or at an off-site location within Palm Beach County, Florida, on a current basis, available for inspection by County and County's Representative at all times, all Construction files, books, and records including, without limitation, the following:

- (a) All Construction Agreements and purchase orders;
- (b) All Shop Drawing, product data sheet, and sample submittal/approval logs;
- (c) All Plans and Specifications with all addenda and Change Orders thereto;
- (d) All Project Site meeting minutes;
- (e) All Construction cost estimates;
- (f) All bulletin quotations;
- (g) All lab test reports and records of all other testing;
- (h) All certificates of insurance and copies of all bonds;
- (i) All Construction Agreement changes, amendments, and addenda;
- (j) All material purchase delivery logs;
- (k) All technical standards;
- (l) An "as-built" marked-up Plans and Specifications;
- (m) All Building Equipment operating and maintenance instructions and manuals;
- (n) All daily Construction progress reports;
- (o) All monthly Construction progress reports;
- (p) All Construction correspondence files;
- (q) All transmittal records;
- (r) All inspection reports;
- (s) All bid/award information;
- (t) All bid analysis and negotiations;

- (u) All SBE Contractor information;
- (v) All punch lists;
- (w) All schedules and updates maintained in a format customary in the construction industry (such as CPM schedules); and
- (x) All suspense (tickler) files of outstanding items and Requirements.

Section 5.16 Occupancy.

Developer shall provide all services during the design and Construction phases, to provide a smooth and successful occupancy of the Hotel and Garage. As part of its obligations under this Agreement, Developer shall provide consultation, coordination, supervision and project management services to facilitate occupancy and operation of the Hotel and Garage and provide transitional services to facilitate access to the Construction Work at such times and in such conditions as will satisfy the Franchisor's and Developer's operational requirements.

(a) Developer shall conduct the preliminary punch list inspection and coordinate the completion of all punch list work to be done taking into account the Franchisor's and Developer's occupancy requirements.

(b) Developer shall catalog and maintain, in written form, all operational and maintenance requirements of all Hotel and Garage Equipment to be operated by maintenance and operations personnel and, upon request by County, convey a copy of such documents to County in such a manner as to promote their usability.

(c) Developer shall assemble and deliver copies of all guarantees and warranties to County. Developer shall assemble and maintain, at the Hotel, originals of all guarantees and warranties.

(d) Developer shall continuously review "as-built" Plans and Specifications and mark-up progress prints to provide as much accuracy with current Construction conditions as is reasonably possible.

Section 5.17 Warranty.

(a) Developer shall require its Contractors to warrant that all labor, materials and equipment included in the Construction Work will be new except where indicated otherwise in the Plans and Specifications, and that all Construction Work will be of good quality, free from improper workmanship and defective materials and substantially in conformance with the Plans and Specifications and all Requirements. Developer shall further require its Contractors to repair, replace, restore, or otherwise correct all Construction Work not subject to a warranty enforceable against a third party, which is found during the period of one (1) year from the Hotel Opening Date to be defective in material and workmanship or not in conformance with the Plans and Specifications or the Requirements in any material respect.

(b) Upon receipt of written notice from County, Developer shall, during the applicable one-year warranty period, remedy any non-conformity of CAI with the Plans and Specifications and the Requirements in any material respect; provided, however, that County, as a precondition to the enforcement of the warranty obligations of the Developer, shall notify Developer, in writing (the "Warranty Notification") (which Warranty Notification shall be issued by the County promptly following the ascertainment by the County of the existence of the defect or nonconformity) of the specific CAI which is not in conformance with the Plans and Specifications and the Requirements, which non-conformance shall be stated with particularity. In the event of a dispute between the County and the Developer with respect to the Warranty Notification, the Developer may require the County to furnish a third party report which addresses the subject matter of the Warranty Notification, which report shall be requested, if at all, in a written request furnished to the County within twenty (20) business days from and after the receipt (or deemed receipt) of the Warranty Notification by the Developer. Should Developer fail to perform as required pursuant to this subsection (b), County may render such performance or cause such performance to be rendered at Developer's expense.

(c) Developer shall perform such tests as County may require to verify that such remedy complies with the Plans and Specifications and the Requirements. All reasonable costs incidental to such testing shall be borne exclusively by Developer.

(d) Developer shall be liable for the satisfaction and full performance of its warranties set forth herein and any damage to other parts of the Construction Work or the Convention Center, caused by Developer's or its Contractor's failure to perform pursuant to this Section 5.17 shall be promptly repaired, replaced, restored, or otherwise remedied (as applicable) at Developer's sole cost and expense.

Section 5.18 Repairs. Developer shall commence or cause to be commenced all such repairs to any and all such defective, deficient, or otherwise non-complying Construction Work within twenty (20) Business Days after receiving written (including facsimile transmittals) notice from County setting forth such defective condition; provided, however, all such repairs to the natural gas, sprinkler, fire alarm, security, and life-safety systems shall be commenced within 48 hours of County's written notification to Developer and Developer shall complete or cause to be completed (unless such systems are being maintained and serviced pursuant to a service contract or other agreement enforceable by County) all such repairs in an expeditious manner befitting the nature of the deficiency. If Developer, subject to Unavoidable Delays, fails to commence or, once commenced, to complete all such repairs within a reasonable time, then County may perform any such repairs to such defective Construction Work at Developer's sole cost and expense. Developer shall immediately reimburse all County's costs and expenses incurred for remedying such defects. If County does not receive full payment for all such costs and expenses within ten (10) Business Days, County may pursue any and all legal remedies it may have against Developer in connection with such non-payment.

Section 5.19 Developer's Experience. Developer warrants and represents that its personnel are fully experienced and properly qualified to construct or cause Construction of the Hotel and Garage and that it is equipped, organized and financed to complete or cause completion of all Construction Work as set forth in the Plans and Specifications and in accordance with the Requirements and that it will use duly licensed design professionals and

Contractors in connection therewith. Developer shall be and act as an independent contractor and not as the agent of County in performing this Agreement, maintaining complete control over its employees, agents, and other representatives, and all of its Contractors. Except for County's intended third party beneficiary status under all Construction Agreements, nothing contained in this Agreement or in any Construction Agreement shall create any contractual or other relationship between any such Contractor and County. Developer represents and warrants that all Construction Agreements entered into shall incorporate by reference the terms and conditions of this Agreement and, further warrants that County is and shall be an intended third party beneficiary of any such Construction Agreement.

Section 5.20 Changed or New Requirements.

(a) If, during the Term, there are any changed or new Requirements applicable to the Hotel or Garage, or to the Project Site not known or reasonably foreseeable on the Construction Commencement Date which become effective and which affect the time of performance of the Construction Work, Developer shall immediately deliver written notice to County containing detailed documentation of such effect on the time of completing the Construction Work. Upon concurrence by County as to the effect of such changes, an adjustment may be made which results in the prolongation of the time of performance.

(b) If any discrepancy or inconsistency should be discovered between this Agreement and any Requirement, Developer shall immediately deliver written notice to County containing detailed documentation of such discrepancy to County.

Section 5.21 Applicable Codes. Wherever references are made in this Agreement to standards or codes in accordance with which Construction Work shall be performed or tested, the edition or revision of the standards or codes most current, as of the anticipated date for the Commencement of Construction, shall apply, unless otherwise expressly set forth herein. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes. In the event of conflict among any standards and codes, Developer shall immediately deliver written notice to County containing detailed documentation of such conflict. In the event of conflict, the Parties to this Agreement shall make a good faith effort to agree as to which provision shall apply failing which County shall, in its sole discretion, determine which shall govern. Developer acknowledges that compliance with standards or code requirements represents minimum standards for Construction and shall not be interpreted as evidence that the Construction Work or any portion thereof has been performed or completed in accordance with the Plans and Specifications.

Section 5.22 Project Site Conditions. Developer shall have the sole responsibility of satisfying itself concerning the nature and location of Construction Work and the general and local conditions applicable to the land, including, without limitation, with respect to the following: (i) those affecting transportation, access, disposal, handling and storage of materials; (ii) availability, quantity and quality of labor, water and electric power; availability and condition of roads; (iii) climatic conditions, location of underground utilities as depicted in documents obtained from Governmental Authorities and others, and through verification with local utility companies; (iv) physical conditions of existing construction, topography and ground surface conditions at or near the Project Site; (v) subsurface geology, and nature and quantity of surface

and subsurface materials to be encountered at or near the Project Site; (vi) the nature of the ground water conditions; equipment and facilities needed prior to and during performance of the Construction Work; and (vii) all other matters which can in any way affect performance of this Agreement, or the cost associated with such performance. Except with respect to an Unforeseen Condition, Developer's failure to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully and timely performing this Agreement.

Section 5.23 Project Site Security, Safety, and Protection.

As part of the Project Site safety plan as required in Section 5.12:

(a) Developer shall, at its cost and expense, at all times conduct or cause to be conducted all operations under this Agreement and the Plans and Specifications in a reasonable manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any portion of the Project Site, the Construction Work or the adjacent properties. Developer shall promptly take all reasonable precautions that are necessary and adequate against any conditions that involve risk of loss, theft or damage to the Project Site, the Construction Work, or any adjacent properties. Developer shall continuously inspect all the Construction Work, and all materials, equipment and facilities to discover, determine, and properly remediate any such conditions.

(b) Developer shall prepare and maintain or cause to be prepared and maintained accurate reports of any incidents of loss, theft or vandalism and, shall report such incidents to appropriate Governmental Authorities.

(c) Developer shall be responsible for and shall bear any and all risk of loss or damage to Construction Work in progress, all materials delivered to the Project Site, and all materials and equipment involved in the Construction Work until the expiration of the Term.

(d) Developer shall use Best Efforts to conduct or cause to be conducted all Construction means, methods, procedures and all other operations so as to avoid or minimize damage to or the closing or obstruction of any utility installation, highway, road or other property. If any such facilities are closed, obstructed, damaged or rendered unsafe by Developer's or any Contractor's means, methods, procedures and all other operations, Developer shall, at its sole cost and expense, perform or cause to be performed such repairs and provide or cause to be provided all temporary guards, lights and other signals as necessary or required for safety and as acceptable to County and all insurance companies providing insurance in connection with the Construction Work.

(e) Developer shall conduct all Construction means, methods, procedures and all other operations so as not to damage any existing buildings or structures either on or adjacent to the Project Site. Developer shall verify that all Construction means, methods, procedures and all other operations used inside, adjacent to, under or over existing buildings will not cause damage. Developer shall provide protection methods which are reasonably acceptable to County and all insurance companies providing insurance in connection with the Construction Work.



(f) Developer shall not perform or allow to be performed any work that would materially disrupt or otherwise materially interfere with the operation of any pipeline, telephone, electric, radio, gas, transmission line, ditch or other structure, nor enter upon lands in their natural state until approved by all appropriate Governmental Authorities having jurisdiction. Thereafter, and before it begins such work, Developer shall give written notice to County of its intention to commence such work.

(g) Developer shall preserve and protect or cause to be preserved and protected all cultivated and planted areas and vegetation such as trees, plants, shrubs and grass on or adjacent to the Project Site, which, as determined by County, do not reasonably interfere with the performance of the Construction Work.

(h) Developer shall be responsible to repair or restore any damage to any such areas and vegetation and for unauthorized cutting of trees and vegetation, including, without limitation, damage arising from the performance of the Construction Work through operation of equipment or stockpiling of materials. All cost in connection with any repairs or restoration necessary or required by reason of any such damage or unauthorized cutting shall be borne by Developer.

Section 5.24 Protection of Construction Work and Property; Responsibility for Losses.

(a) Developer shall, throughout the Term, maintain adequate protection of all completed Construction Work and temporary facilities against loss or damage from whatever cause, shall protect all property of County and third parties from loss or damage from whatever cause arising out of the performance of the Construction Work and shall comply with all Requirements with respect to the prevention of loss or damage to the Project Site and any property. County, its representatives, or insurance carriers may, but shall not be required to, make periodic observations of the Project Site and the Construction Work as a part of its normal safety, loss control and security programs. In such event, however, Developer shall not be relieved of any obligations under this Agreement, Plans and Specifications, and the Requirements, and County shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon Developer under this Agreement, the Plans and Specifications, and the Requirements.

(b) Developer shall have full and complete charge and care of the Project Site and the Construction Work, and shall bear all risk of loss of, and injury or damage to, the Construction Work or any portion thereof.

(c) In the event of any loss or damage to the Project Site or the Construction Work, Developer shall promptly rebuild, repair, restore and make good all losses of, and injuries or damages to, the Construction Work or any portion thereof. Such rebuilding, repair or restoration shall be at Developer's sole cost and expense unless the loss, injury or damage requiring such rebuilding, repair or restoration is caused by the agents or employees of County (unless (1) such loss or damage would be covered by any policy or policies of insurance which Developer is required to maintain under this Agreement, whether or not Developer actually maintains such insurance; or (2) is otherwise covered by a policy or policies of insurance maintained by Developer, whether or not required in this Agreement).

(d) Emergencies. In the event of any emergency affecting the safety of persons or property, or in the event of a claimed violation of any Requirement, arising out of or in any way connected with the Construction Work or its performance, Developer shall act immediately to prevent threatened damage, injury or loss to remedy said violation, as applicable. Failure by Developer to take all necessary emergency action shall entitle County to take whatever action it deems necessary including, but not limited to, suspending the Construction Work upon written demand to Developer. Developer shall defend, indemnify, and hold County harmless against any and all costs, fees, or other expenses in connection with or relative to an emergency, by whosoever incurred.

(e) Fire Prevention. Developer shall, at its expense, conform to all Requirements pertaining to burning, fire prevention and control within or adjacent to the Construction Work and the Project Site, and Developer shall implement or cause implementation of all necessary precautions to avoid and eliminate fire hazards, including, without limitation, causing the Construction Work area to be and remain clear and free of all trash and all other debris at all times.

(f) Dust Control. Throughout the Term, Developer shall, to the extent reasonably possible and at its expense, keep and maintain all excavations embankments, haul roads, access roads, plant sites, waste disposal areas, borrow areas, and all other Construction Work areas free from dust. Industry-accepted methods of dust control suitable for the area involved shall be permitted.

(g) Surface and Subsurface Water. Surface or subsurface water or other fluid shall not be permitted to accumulate in excavations or under or in any structures on the Project Site. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the County in writing. The proposed location and coordination of any temporary channels and conduits conducting accumulated water from the Project Site shall be permitted by all necessary and appropriate Governmental Authorities. All such work shall be done at the sole expense of Developer.

#### Section 5.25 Personnel, Tradespeople, and Craftspeople.

(a) Developer shall employ or permit to be employed only competent and skilled personnel, tradespeople, and other craftspeople to perform any and all Construction Work.

(b) Developer shall cause all Construction Work assignments and the settlement of any and all jurisdictional disputes to be promptly and timely resolved using either (i) the “Rules, Regulations and Procedures of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry”, or any successor agreement thereto; or (ii) any other mutually established reasonable method of determining work assignments and settling jurisdictional disputes.

(c) Developer shall cooperate with County to determine, and shall comply with and cause all Contractors to comply with, all Project Site conditions, regulations,

procedures, and rules which directly affect the performance of the Construction Work including but not limited to starting and quitting time, smoking regulations, check-in and check-out procedures, job site safety regulations and security regulations, emergency plans and procedures, and daily clean-up. Developer shall be bound by and comply with (and shall cause all Contractors to be bound by and comply with) all federal, state and local laws with regard to minimum wages, overtime work, hiring, and discrimination. Developer shall comply (and shall cause all Contractors to comply) with the Copeland Anti-Kick Back Act (19 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3). This act provides that each Contractor shall be prohibited from inducing by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

(d) Developer shall use, and shall require its contractors and subcontractors to use, Best Efforts to attract, identify, train, and employ residents of Palm Beach County, Florida to work on the Project. Developer shall use Best Efforts to ensure that 60% of the total unskilled workforce man-hours utilized on the Project Site, by Developer and its contractors and subcontractors of any tier, and that 40 % of the total skilled workforce man-hours utilized on the Project Site, by Developer and its contractors and subcontractors of any tier, go to residents of Palm Beach County at a minimum, unburdened hourly rate for unskilled labor of \$11.40/hour and an average unburdened, hourly rate for skilled labor of \$18/hour. Developer agrees that if it fails to meet these goals and has not made a Best Effort to meet the goals, County may make an equitable adjustment reducing its Subsidy to the Project by an amount which, in the case of Developer's failure to meet the man-hour goal, shall not exceed the product of the number of man-hours by which Developer fell short of its goal multiplied by the average hourly rate for the affected category or categories of workers; or, if Developer fails to meet the average hourly rate for either category, such equitable adjustment shall not exceed the number of affected man-hours multiplied by the difference between the goal average hourly rate and the actual average hourly rate for the affected category or categories.

(e) For the purposes of this Agreement, workforce man-hours shall include all of the hours worked on the Project Site by the employees of Developer, its Contractors and subcontractors of any tier, except for those hours worked by employees who are management level employees or salaried superintendents or supervisors of Developer, its Contractors or subcontractors. Workforce man-hours for skilled labor shall include all of the workforce man-hours worked on the Project Site by employees of Developer, its Contractors or subcontractors of any tier, which employees work in a craft or trade and whose employment classification is above the first entry level classification for that craft or trade. Workforce man-hours for unskilled labor shall include all of the workforce man-hours worked on the Project Site by employees of Developer, its Contractors or subcontractors of any tier, which employees are not classified as skilled labor and includes, but not limited to, laborers, field clerks, non-salaried office personnel, and entry level helpers and apprentices.

The Developer and its Contractors and subcontractors shall be bound by and comply with all Applicable Law with regard to minimum wages, overtime work, hiring, and discrimination. For the purposes of this Contract, Palm Beach County's Living Wage Ordinance, Palm Beach County Code Section 2-147, et seq, shall be deemed an Applicable Law, applicable to the performance of this Contract.

Contractor shall not refuse employment to any person on account of such person's membership or non-membership in any labor union or labor organization.

Section 5.26 Equal Employment Opportunity.

Throughout the Term, Developer covenants and agrees (and shall cause all Contractors and other persons involved in the Construction Work to covenant and agree) as follows:

(a) Developer shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression. The Contractor will take affirmative action to ensure that applicants and employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Developer shall post in conspicuous places, available to all employees and applicants for employment, notices to be provided by County setting forth provisions of this provision.

(b) Developer shall, in all solicitations or advertisements for employees placed for, by, or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) Developer shall send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract, a notice to be provided by County, advising the labor union or workers' representative of the Developer's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Developer shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) Developer shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by County and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) Developer shall include the provisions of Section 5.29(a) through Section 5.29(e) in every Construction Agreement unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Contractor or other person. Developer shall take such action with respect to any Construction Agreement as may be directed to the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Developer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Developer may request the United States to enter into such litigation to protect the interest of the United States.

Section 5.27 Quality Observations, Testing, and Rejection of Construction Work.

(a) Quality Observation. Developer shall at all times be subject to quality surveillance, observations, and quality audit by County, County's Representative, and On-site Representative. Developer shall provide and shall cause to be provided safe and adequate facilities and all samples, drawings, lists and documents necessary for such quality surveillance, observation and quality audit. County shall be afforded full and free access to the shops, factories or places of business of Developer and all Contractors for such quality surveillance, observation and quality audit and to determine the status of the CAI-related Construction Work or any portion thereof; it being specifically understood and agreed that the extent to which the County fails to conduct quality surveillance, observations, and quality audit shall be conclusively deemed a waiver by the County of its right to do so and such failure shall not impose any liability or obligation whatsoever upon Developer.

(b) Rejection. If, with respect to any CAI, any material, equipment or workmanship is determined by County, either during performance of the Construction Work, during final quality observation, or during any applicable warranty period to be defective or not in conformance with the Plans and Specifications, or the Requirements in any material respect, County shall immediately furnish written notice to Developer which advises Developer that such material, equipment, or workmanship is rejected and states, with specificity, the basis for such rejection. Thereupon, Developer shall, at its own expense, immediately remove and replace or correct (or cause to be removed and replaced or corrected) such defective material, equipment, or workmanship by making the same comply with the Plans and Specifications, and the Requirements.

(c) Testing. Field-testing and shop-testing of materials, assemblies, components, or Construction Work shall be performed or caused to be performed by Developer at its expense and in accordance with the Plans and Specifications, the Requirements, and any applicable industry standards. If any Construction Work or material fails any initial test, such additional (re-test) tests shall be at Developer's expense, and shall be performed in accordance with industry standards. If County requests in writing to perform any additional test, Developer shall provide to County all samples as requested and shall provide reasonable assistance and cooperation as necessary to permit tests to be performed on materials or Construction Work in place including reasonable stoppage of Construction Work operations during testing.

Section 5.28 Miscellaneous Construction Provisions.

(a) Interest. Any monies not paid when due to either party under this Agreement shall bear interest at the current legal rate as set forth in Section 55.03 of the Florida Statutes.

(b) Invoices. All invoices submitted in connection with the Construction Work shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

(c) Books and Construction Records. Developer's construction books and records shall be maintained as prescribed in this Agreement for the longer of (i) the minimum period required by Requirements or (ii) a period of not less than four (4) years from the date of

Final Completion, and such books and records shall be made available in Palm Beach County to County or its authorized representative at mutually convenient times upon County's request therefor provided that the County provides not fewer than three (3) Business Days' prior written notice prior to such inspection.

(d) Taxes and Assessments. Developer shall: (i) pay, or make provision for payment of all lawful taxes and assessments levied or assessed by federal, state or any local government on the Hotel, Garage, or any materials, machinery, equipment or other property installed in or incorporated into the Hotel and/or Garage and (ii) pay all utility charges, including "service charges", incurred or imposed with respect to the Hotel and/or Garage.

(e) Maintenance of Corporate Existence, Permits, Etc. Developer shall at all times maintain its corporate existence and authority to transact business in good standing in its jurisdiction of incorporation and in the State of Florida. Developer shall maintain all licenses, permits, and franchises necessary for the Construction and Operation of the Project and Developer's businesses where the failure to so maintain would have a material adverse effect on Developer's ability to perform its obligations under this Agreement.

(f) Public Entity Crime Information Statement. "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list." Related and Developer represent and warrant that they are not on the convicted vendor list and shall not utilize contractors or subcontractors on the convicted vendor list.

(g) Criminal Background Checks. Where required by any law or County Ordinance, Criminal history background checks shall be obtained for all employees and agents of Developer and all Contractors, their agents and employees, and all other persons performing any of the design services or Construction Work in connection with the Hotel or Garage. Developer shall obtain and pay for each criminal history background report, which may be obtained by accessing the Florida Department of Law Enforcement online at <http://www.fdle.state.fl.us/criminalhistory>. For assistance, the Florida Department of Law Enforcement help desk is 850-410-8109.

(h) Discrimination; Denial Or Revocation For The Right To Transact Business With Public Entities. Any person or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

(i) Third Party Beneficiary. Related and Developer shall ensure that all contracts for the Hotel and Garage name Palm Beach County as an Intended Third Party Beneficiary of those agreements.

(j) Scrutinized Companies. As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, Related and Developer certify that they, their affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473. If the County determines, using credible information available to the public, that a false certification has been submitted by Related or Developer, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S. 287.135.

## ARTICLE 6 DISBURSEMENT PROCEDURES

### Section 6.1 County's Subsidy.

Provided that this Agreement has not been theretofore terminated by County pursuant to the terms of this Agreement, County shall deposit a total sum of Twenty Seven Million and No/100 (\$27,000,000.00) Dollars (the "Subsidy") in accordance with the following terms, conditions, and requirements:

(a) The Palm Beach County Board of County Commissioners, pursuant to the terms of this Development Agreement, is providing funds to Developer for use by Developer in planning, permitting, designing, and constructing the Hotel and Garage. Developer acknowledges that the funds being provided are provided directly from, or will be repaid from, public funds. Pursuant to the terms and conditions of this Development Agreement and the Addendum hereto, Developer agrees to only use the County provided funds for the purpose of planning, permitting, designing and constructing the Hotel and Garage in accordance with the Development Agreement and to exercise its best efforts to do so in a manner that will responsibly, efficiently, and economically advance Developer's and the County's objectives as expressed in the Development Agreement.

(b) The parties agree that the funds to be provided by County to be used for the design, construction, equipping, and furnishing of the Project will be delivered at closing of the construction loan to be held in escrow by the Palm Beach County Clerk and Comptroller in an escrow account (the "Escrow Account") pursuant to an escrow agreement (the "Escrow Agreement") in form and substance reasonably satisfactory to County. Disbursements from the County Escrow for payment of County's payment obligation pursuant to the requirements of the Development Agreement or the Addendum hereto shall not be made until the following funds have been paid and exhausted in full: (i) all of Related's and Developer's equity capital requirements in the amount of at least Twenty Million and No/100 (\$20,000,000.00) Dollars (the "Developer Equity") and (ii) any other source other than the Subsidy and 3rd Party Debt, including but not necessarily limited to the NMTC Financing described in Section 6.1(c) below. The Subsidy shall be disbursed, in accordance with the Escrow Agreement, *pari passu* with the

funds borrowed from third party lenders of Related and Developer to be in the amount of at least Fifty Million and No/100 (\$50,000,000.00) Dollars (the “3rd Party Debt”). In the event the cost of construction of the Hotel is less than the budgeted amount, then the Developer and the Owner shall share in any savings in the same proportion that the sum of Developer’s Equity and the 3rd Party Debt bears to the sum of the Subsidy and the NMTC Financing.

(c) It is acknowledged by Developer that the NMTC Financing will result in loans being made to the Developer in the aggregate gross amount of \$40,000,000. In connection with the closing under the NMTC Financing, it is further acknowledged by Developer that an estimated \$28,000,000 to \$30,000,000 sourced from Developer Equity, the 3rd Party Debt, or some combination thereof, shall comprise leverage debt made within a NMTC Financing structure, which leverage loan leverages an investment of an NMTC equity contribution by a credit investor in the estimated amount of \$10,000,000 to \$12,000,000. The amount of the NMTC Financing shall be disbursed pursuant to the terms of the documents which evidence the NMTC Financing.

(d) After full use, payment and exhaustion of the proceeds of the Equity and the NMTC Financing, if obtained by the Developer, funds shall be disbursed from the Escrow Account pari passu with the disbursement by the construction lender to reimburse to Developer or its designee, in accordance with Section 6.1(e) hereof, for all amounts properly incurred by Developer, after the conditions to County’s payments have been met, in accordance with this Development Agreement. Reimbursement will be made for amounts paid with respect to the design and construction of the Project, including but not limited to, all amounts incurred by Developer with respect to vendors and consultants, fees and expenses for construction permits, impact fees, connection charges and the like, and other costs or expenses (excluding attorneys’ fees and expenses) reasonably incurred by Developer directly related to materials and services provided by third parties associated with the planning, permitting, design and construction of the Hotel and Garage and fixtures and furnishings installed within the Hotel and Garage (collectively referred to herein as “Reimbursable Costs”). All construction contracts shall provide for the initial withholding of a minimum ten per cent (10%) retainage on all amounts due contractors paid from the Subsidy unless otherwise approved by the County. Such retainage amounts may be reduced to five percent (5%) after fifty percent (50%) of the contract work has been completed. All retainage under all Construction Contracts for payments reimbursed by County shall be retained by the construction lender and Clerk until Developer certifies to the construction lender and to the County that the Contractor is entitled to release thereof under the Construction Contract or until such earlier event as Developer and the County may agree. The County expressly agrees that it shall not make any payment nor release any retainage directly to any Contractor. The aggregate amount of payments hereunder by the County to Developer, or on behalf of Developer, shall not, in any event, exceed the amount of the Subsidy as set forth in Section 6.1 of this Development Agreement.

(e) Applications for Payment. Developer’s applications for Payment and disbursement from the County Escrow will be made on the tenth (10th) day of each month, commencing the month following the fulfillment of the conditions precedent to County’s and Developer’s funding obligations, to the construction lender and to the County. Developer shall be entitled to submit to the County for approval an application for payment from the County Escrow for Reimbursable Costs, which shall include a copy of invoices or receipts certified by



Developer, as well as copies of the documentation required by Developer in connection with payments due for design or construction services or in respect of payments due to vendors, consultants or others (“Application for Payment”). Such application shall be in substantially the form of Exhibit 16 and shall include a copy of the consolidated and reconciled pay application submitted to Developer by Developer’s contractors, certified by Developer’s engineer or architect, as applicable, and the Applicable Documentation (as hereinafter defined). Documentation submitted by Developer with each Application for Payment shall be sufficient to establish that amounts requested for payment were actually incurred for Reimbursable Costs. Within fifteen (15) Business Days after receipt of each Application for Payment, the County shall (i) review such Application for Payment solely for compliance with the foregoing requirements, (ii) based on such review, approve or disapprove, in whole or in part, such Application for Payment and (iii) disburse by wire transfer to such account(s) as Developer may direct in writing, funds in an amount equal to the approved expenditures. Developer acknowledges that the Clerk and Comptroller of Palm Beach County, as custodian of the County’s funds, will be disbursing the same, upon approval thereof by County, under County’s delegated authority. County shall not be liable for any delays in disbursement cause by the Clerk. Thereafter, upon the County Representative’s request, Developer shall provide documentation to the County to certify that payment has been made to Developer’s contractors, consultants, suppliers, vendors and subcontractors. Upon receipt of payment from the County with respect to any Application for Payment, the Developer shall transmit payment to each design professional, contractor, vendor, and consultant, the exact amount received from the County for the service or work performed by or materials and equipment delivered by each, within five (5) business days from the date of Developer’s receipt of such payment from the County. Any disapproved amount shall remain in the County’s accounts until the parties jointly determine the disposition of such disputed amount.

(f) Waivers and Releases. With each Application for Payment submitted to the County, Developer shall deliver to the County from the vendors, consultants, design professionals and the contractors for which payment is requested, as the case may be, fully executed partial waivers and releases of claims in the amount of the immediately prior payment made by the County to Developer for the vendors, consultants, design professionals or the contractors, excepting any claims that may remain in dispute. The County shall not release payment for any material or equipment supplied by any vendor or work performed by the consultants, design professionals or the contractors, as the case may be, unless the Application for Payment submitted to the County, incorporating a request for payment for such material or portion of the work performed by the vendors, consultants, design professionals or the contractor, as the case may be, is accompanied by such partial waiver and release of claims by the vendor, consultant, design professional or the contractor; provided however, the County shall make disbursements on account of the Construction Contract without such partial waiver and release of claims if the Contractor presents to Developer, and Developer presents to the County, a consent of surety to such payment, from the Contractor’s surety, in a form acceptable to Developer and the County.

(g) Cost Overruns. Developer will be responsible for any and all cost overruns.

(h) Subsidy timing. Notwithstanding any provision to the contrary contained in any of the Project Documents, County shall make the deposit of the County Subsidy to the escrow account no earlier than October 1, 2013, and provided all other conditions to payment have been satisfied, not later than November 15, 2013, with the actual date of deposit within this period being in the County's sole discretion.

## ARTICLE 7 INSURANCE

Developer shall, at all times maintain insurance in accordance with the requirements of Exhibit 10 to this Agreement.

## ARTICLE 8

In addition to the foregoing, during the Term, Developer shall procure and maintain and shall cause all Contractors to procure and maintain, all insurance required in Exhibit 10.

## ARTICLE 9 CONDEMNATION

### Section 9.1 Taking.

If all or any portion of the Project Site is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among County, Developer, any Recognized Mortgagee and those authorized to exercise such right, the provisions of the Hotel Lease applicable to such taking of the "Premises" described under the Hotel Lease shall govern the rights and obligations of Developer, County and any Recognized Mortgagee hereunder.

### Section 9.2 Effect of Taking on This Agreement.

Except as provided in Section 9.1 of the Hotel Lease, this Agreement shall not terminate, be forfeited or be affected in any manner, by reason of any taking of the Project Site or any portion thereof.

## ARTICLE 10 RIGHTS OF RECOGNIZED MORTGAGEE

### Section 10.1 Notice and Right to Cure Developer's Defaults.

(a) County shall deliver to the Recognized Mortgagee a notice ("Notice of Failure to Cure") in the event of the occurrence of an Event of Default at the same time as it gives notice of an Event of Default to Developer, and no such Notice of Failure to Cure shall be deemed effective with respect to any Recognized Mortgagee unless and until a copy thereof shall have been so received by and acknowledged or refused by such Recognized Mortgagee, as applicable. All such notices to a Recognized Mortgagee shall be sent as set forth in Section 11.4(a) of the Hotel Lease. The Recognized Mortgagee shall have a period of ninety (90) days after receipt of the Notice of Failure to Cure to (1) cure the Event of Default referred to in the

Notice of Failure to Cure or (2) cause it to be cured, subject to the same additional time periods provided to Developer pursuant to the provisions of Section 19.1(b). Nothing contained herein shall be construed as imposing any obligation upon any Recognized Mortgagee to so perform or comply on behalf of Developer.

(b) County shall accept performance by a Recognized Mortgagee of any covenant, condition or agreement on Developer's part to be performed hereunder with the same force and effect as though performed by Developer.

(c) Notwithstanding the foregoing provisions of this Section 10.1, if a Recognized Mortgagee fails (for any reason) to (1) cure any Event of Default by Developer referred to in the Notice of Failure to Cure or (2) cause it to be cured, subject to the same additional time periods provided to Developer pursuant to the provisions of Section 19.1(b) within ninety (90) days following receipt of the Notice of Failure to Cure regarding such Event of Default, then County shall provide written notice of its intent to do so to Developer and if Developer has not cured such Event of Default or caused it to be cured within ten (10) days after receipt of such notice from the County, the County may, but shall be under no obligation to, perform the obligation of Developer the breach of which gave rise to such Event of Default (including, without limitation, the performance of any of the obligations of Developer under any Construction Agreement), without waiving or releasing Developer from its obligations with respect to such Event of Default. Developer hereby grants County access to the Project Site in order to perform any such obligation. Any amount paid by County in performing Developer's obligations as provided in this Section 10.1(d), including, without limitation, all costs and expenses incurred by County in connection therewith, shall be reimbursed to County within sixty (60) days following County's demand therefor, together with a late charge on amounts actually paid by County, calculated at the Late Charge Rate from the date of notice of any such payment by County to the date on which payment of such amounts is received by County.

(d) If there is more than one Recognized Mortgagee, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Recognized Mortgage is most senior in lien shall be recognized as having rights under this Article 10, unless such first priority Recognized Mortgagee has designated in writing to County a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right.

## ARTICLE 11 OWNER PARTICIPATION

### Section 11.1 County's Right to Use Field personnel.

County reserves the right, at its sole cost and expense, to have access to the Project Site, any off-site locations where Construction materials are stored, or where off-site Construction Work is being performed and to maintain one or more representatives whose identity is disclosed, in writing, to Developer (from County's Representative, County or another entity designated by County) (collectively, the "On-site Representative") to conduct observations and inspections and otherwise be present at the above referenced locations during normal construction hours. Developer agrees to provide safe access to the Project Site and to permit such inspections, including, without limitation, inspection of the preparation work and work in

progress wherever located. No such observation by the On-site Representative shall impose upon County responsibility or liability for any failure by Developer to observe any Requirements or safety practices in connection with such Construction Work, or constitute an acceptance of any work which does not comply with the provisions of this Agreement, and no such inspection shall constitute an assumption by County of any responsibility or liability for the performance of Developer's obligations hereunder, nor any liability arising from the improper performance thereof. The On-site Representative shall not direct any Construction means or methods (or Project Site safety procedures), approve any Change Orders, or authorize any stop-work orders, or interfere with any Construction Work being performed at the Project Site and shall comply with all safety standards and other reasonable job site rules and regulations of Developer. The On-site Representative is an observer only, and is not responsible for means or methods of Construction, or for initiating, maintaining, implementing, or enforcing any safety procedures. The On-site Representative shall make only such communications with Developer's designated representative (including, without limitation, the General Contractor's project manager, project superintendent, or project engineer), as are reasonably necessary to enable such On-site Representative to conduct its observations, and in no event shall the On-site Representative give directions to such persons.

Section 11.2 County's Right to Notice, Access and Review.

(a) Developer acknowledges that County may appoint County's Representative as County's agent and representative in connection with the Construction in accordance with the terms of this Agreement and to conduct observations of the work. All costs, charges and expenses which relate to the County Consultant(s) shall be borne solely by the County. Developer agrees to cooperate fully with County's Representative. In furtherance thereof, Developer agrees that County's Representative, and its representatives designated in writing by County's Representative, shall have such rights of notice, access and review with respect to the Construction Work as is reasonably necessary to achieve the foregoing (including, verifying on County's behalf that the Construction is being conducted in accordance with the terms hereof), including, without limitation, the following:

(i) at least two (2) Business Days advance written notice of and the opportunity for attendance by County's Representative at (1) all regularly scheduled Construction Work status meetings; and (2) at any special or emergency meetings which Developer deems necessary in its reasonable discretion as to Change Orders, delays and other material issues concerning the Construction Work, together with copies of the minutes of all such meetings;

(ii) upon County's written request, the delivery by Developer to County's Representative of two (2) complete, true, and legible copies of:

(1) all Construction Agreements having an agreed contract price in excess of \$1,000,000, which shall be aggregated with respect to each Contractor or other person supplying materials or services;

(2) the Plans and Specifications (and modifications thereto, with such modifications being clearly indicated, by revision "clouding" or "bubbling",

highlighting, or blacklining on the Plans and Specifications, together with a written memorandum clearly describing in sufficient detail such modifications;

(3) all Certificates of Insurance required by Exhibit 10 and Article 7 (including those of Developer and all Contractors);

(4) all Contractors' requisitions for payment and Contractors schedule of values, together with all back-up information and documents (including, without limitation, copies of all final or partial lien waivers and releases);

(5) all drawdowns of equity and loan proceeds under the Loan Documents; and

(6) all periodic (but not less than twice each month) Construction cost-to-date reports corresponding to, updating, and showing all changes and modifications to all line items in the Development Budget, and otherwise in form and substance reasonably acceptable to County.

(iii) access to and the right to request two (2) copies of all Construction Agreements, Shop Drawings, product data submissions, and Samples, and all correspondence (in written, electronic, and any other form) to or from any person in connection with the development of and Construction of the Project, including, without limitation, all letters, facsimiles, invoices, receipts, purchase orders, sketches, Construction status and progress reports and schedules, "as-built" drawings, Change Orders and change directives, schedules of values, meeting minutes, requests for information or clarification, testing results, files, inspection sign-offs and approvals, and reports; and

(iv) at least one (1) Business Day's written notice of the scheduling of and the opportunity to attend and participate in all inspections, testing, Building Equipment start-ups, power-ups, and informational sessions, and all other evaluations and certifications in connection with the Project.

To the extent the exercise of County's rights hereunder requires the opportunity for review of any documents or the opportunity for participation in any meetings, Developer agrees, without request therefor by County, to promptly provide copies of such documents or notice of such meetings to County and County's Representative, as applicable, after receipt of the same by Developer and reasonably in advance of any meetings to allow for appropriate travel arrangements to the extent practical under the circumstances. If County's Representative is not in attendance, the meeting will proceed and Developer will promptly provide County's Representative with written minutes of the meeting. County's Representative shall not interfere with any Construction Work being performed at the Project Site and shall comply with all safety standards and other reasonable job site rules and regulations of Developer.

ARTICLE 12  
MAINTENANCE AND REPAIR

Section 12.1 Maintenance of Project Site.

(a) Maintenance and Repair.

(i) Developer shall take good care of, and keep and maintain, the Project Site in good and safe order and condition, and shall make all repairs reasonably necessary to keep the Project Site in good and safe order and condition.

(ii) Developer shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Project Site or any portion thereof.

(b) Cleaning of Project Site. Developer shall keep clean and free from rubbish all areas of the Project Site.

(c) Other Areas. Developer, at its cost shall promptly rectify, and repair, restore, or replace any damage or interference caused by Developer or its Contractors to any improvements, equipment, structures or vegetation outside of the Project Site (including, without limitation, the Convention Center and all access/egress roads thereto).

Section 12.2 Waste Disposal.

Developer shall dispose of waste from all areas of the Project Site in accordance with Requirements and in a prompt and sanitary manner.

ARTICLE 13  
REQUIREMENTS

Section 13.1 Requirements.

(a) Obligation to Comply. In connection with any Construction Work, and with the maintenance, management, use, construction and operation of the Project Site and Developer's performance of its obligations hereunder, Developer shall comply promptly with all Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment (but Developer may seek to obtain an easement in order to cure an encroachment, if permitted by Requirements), or affecting the maintenance, use or occupancy of the Project Site or any portion thereof, or involving or requiring any structural changes or additions in or to the Project Site or any portion thereof and regardless of whether such changes or additions are required by reason of any particular use to which the Project Site or any portion thereof may be put. No consent to, approval of or acquiescence in any plans or actions of Developer by County, in its proprietary capacity as County, or County's designee shall be relied upon or construed as being a determination that such are in compliance with the Requirements, or, in the case of construction plans, are structurally sufficient, prudent or in compliance with the Requirements.

(b) Definition.

“Requirements” means:

(i) any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over any person and/or the Project Site or any street, road, avenue or sidewalk comprising a part of, or adjacent to, the Project Site or any vault in, or under, the Project Site (including, without limitation, any of the foregoing relating to handicapped access or parking, and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable fire rating bureau, fire marshal, or any other body exercising similar functions)(collectively, “Applicable Law”);

(ii) the temporary and/or permanent certificate or certificates of occupancy issued for the Hotel and/or Garage as then in force;

(iii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Developer under this Agreement and under the Project Documents;

(iv) the obligations of Related and Developer under and pursuant to the West Palm Beach Agreement as set forth in Section 28.1;

(v) the Restrictive Covenant; and

(vi) the NMTC Requirements.

#### ARTICLE 14 DISCHARGE OF LIENS

##### Section 14.1 No Creation of Liens; Notice.

(a) Developer shall not create, cause to be created, or suffer or permit to exist (1) any lien, encumbrance or charge upon or against the Project Site or any portion thereof or appurtenance thereto, which is not removed within the time period required pursuant to Section 14.2, (2) any lien, encumbrance or charge upon any assets of, or funds appropriated to, County, or (3) any other matter or thing whereby County’s Interest in the Premises, County’s assets, or any portion of the foregoing or appurtenance thereto might be materially impaired. Nothing contained in this Agreement shall be deemed or construed to constitute the consent or request of County, express or implied, by implication or otherwise, to Developer or any Contractor for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Hotel and Garage or the Project Site or any portion thereof, nor as giving Developer, any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against the Project Site, County’s Interest in the Premises, County’s assets, rentals due to County under any Project Document or any portion of the foregoing. Without limiting the generality of the foregoing, Developer covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that County’s estate shall not be subject to such liability.

(b) County shall not create, cause to be created, or suffer or permit to exist (1) any lien, mortgage or encumbrance upon this Agreement, the Hotel Lease, or the income therefrom (except as expressly provided in the Hotel Lease), the Project Site, or any portion thereof or appurtenance thereto, which is not removed within the time period required pursuant to Section 14.2, (2) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Developer, or (3) any other matter or thing whereby Developer's Interest in the Premises, or any part of the foregoing or appurtenance thereto might be materially impaired.

(c) Developer shall notify any and all persons, including without limitation all Contractors, of this provision of this Agreement. Without limiting the generality of the foregoing, notice is hereby given, and Developer shall cause all Construction Agreements to provide, that to the extent enforceable under Florida law, County shall not be liable under the Construction Lien Law of the State of Florida, including without limitation for any work performed or to be performed on the Project Site or any part thereof for Developer or for any materials furnished or to be furnished to the Hotel and Garage or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect the Project Site, County's Interest in the Premises, County's assets, rentals due to County under any Project Document or any portion of the foregoing. Without limiting the generality of the foregoing, Developer shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida stating that all such County's Interest in the Premises shall not be subject to liens for improvements made by Developer.

#### Section 14.2 Discharge of Liens.

Except with respect to liens, encumbrances and security interests of any Recognized Mortgagee pursuant to the stipulations, agreements, conditions and covenants contained and set forth in any Recognized Mortgage, if any of the foregoing liens, mortgages, encumbrances, charges, matter or thing is filed against the Project Site, County's Interest in the Premises, County's assets, rentals due to County under any Project Document, Developer's Interest in the Premises, or any portion of the foregoing or any appurtenance thereto, or if any public improvement lien created, or caused or suffered to be created by Developer shall be filed against any assets of, or funds appropriated to, Developer or County, Developer shall satisfy such claim, or transfer same to security, within thirty (30) days after the date that Developer first obtains actual notice of the filing thereof. In the event that Developer fails to satisfy or transfer such claim within said thirty (30) day period, County shall provide written notice of its intent to do so to Developer and if Developer has not discharged such liens within ten (10) days after receipt of such notice from the County, the County may satisfy or transfer such claim and thereafter charge Developer, and Developer shall promptly pay to County, upon demand, all costs incurred by County in connection with the satisfaction or transfer of such claim, including reasonable attorneys' fees. Further, Developer agrees to indemnify, defend, and save County harmless from and against any actual damage or loss incurred by County as a result of any such lien, mortgage, encumbrance, charge, matter or thing.



Section 14.3 No Consent to or Request for Work.

Nothing contained in this Article shall be deemed or construed to constitute the consent or request of County, express or implied, by implication or otherwise, to any Contractor, to or for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Project Site or any portion thereof.

ARTICLE 15  
NO LIABILITY FOR INJURY OR DAMAGE ETC.

The provisions of Article 19 of the Hotel Lease shall be applicable to this Agreement as if the references to the “Premises” in such Article 19 were references to the “Project Site” and as if references to Tenant were references to Developer.

ARTICLE 16  
INDEMNIFICATION

Section 16.1 Indemnification Generally.

The provisions of Article 20 of the Hotel Lease shall be applicable to this Agreement as if the references to the “Premises” in such Article 20 were references to the “Project Site” and as if references to Tenant were references to Developer.

Section 16.2 Governs Agreement.

The provisions of this Article shall govern every other provision of this Agreement. The absence of explicit reference to this Article in any particular provision of this Agreement shall not be construed to diminish the application of this Article to such provision.

Section 16.3 Survival.

The provisions of this Article shall survive the expiration of the Term or earlier termination of this Agreement.

ARTICLE 17  
CERTIFICATES BY OWNER AND DEVELOPER

Upon request for reasonable purposes, either party shall provide a written statement to the requesting party certifying as to the relevant information required pursuant to Article 26 of the Hotel Lease with respect to this Agreement and the date to which amounts payable hereunder by either party have been paid.

ARTICLE 18  
RIGHT TO PERFORM THE OTHER PARTY'S COVENANTS

Section 18.1 Right to Perform Other Party's Obligations.

(a) Subject to Section 10.1(c) hereof, if an Event of Default shall occur, County may, but shall be under no obligation to, perform the obligation of Developer the breach of which gave rise to such Event of Default, without waiving or releasing Developer from any of its obligations contained herein, provided that County shall exercise such right only in the event of an Emergency or after ten (10) days' notice, and Developer hereby grants County access to the Project Site in order to perform any such obligation.

(b) If a default by County under this Agreement shall occur and be continuing beyond any applicable grace period, Developer may, but shall be under no obligation to, perform the obligations of County (other than those which are governmental as opposed to proprietary obligations) the breach of which gave rise to such default, without waiving or releasing County from any of its obligations contained herein, provided that Developer shall exercise such right only in the event of an Emergency or after ten (10) days' notice to County.

Section 18.2 Discharge of Liens.

If Developer fails to cause any mechanic's, laborer's, vendor's, materialman's, tax, or similar statutory lien to be discharged of record in accordance with the provisions of Article 14, County may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. If all or a portion of County's Interest in the Premises, or County's title is threatened or a material interest of County is impaired, County may also, if Developer has not done so (or bonded such lien), compel the prosecution of an action for the foreclosure of such lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances.

Section 18.3 Reimbursement For Amounts Paid Pursuant to this Article.

Any amount paid by County in performing Developer's obligations as provided in this Article, including all actual costs and expenses incurred by County in connection therewith, shall be reimbursed to County within thirty (30) days of County's demand, together with a late charge on amounts actually paid by County, calculated at the "Late Charge Rate" (as defined in the Hotel Lease) from the date of notice of any such payment by County to the date on which payment of such amount is received by County.

Section 18.4 Waiver, Release and Assumption of Obligations.

County's payment or performance pursuant to the provisions of this Article shall not be, nor be deemed to constitute, County's assumption of Developer's obligations to pay or perform any of Developer's past, present or future obligations hereunder.

ARTICLE 19  
EVENTS OF DEFAULT, CONDITIONAL  
LIMITATIONS, REMEDIES, ETC.

Section 19.1 Definition.

Each of the following events shall be an “Event of Default” hereunder:

(a) if an “Event of Default” shall have occurred under the Hotel Lease or any of the other Project Documents, resulting in the termination thereof; it being acknowledged and agreed that all of the Project Documents, including, without limitation, this Agreement, are part and parcel of an integrated set of contractual relationships between County and Developer (or Developer’s Affiliate, as the case may be).

(b) if Developer or County shall default in the observance or performance of any term, covenant or condition of this Agreement on their part to be observed or performed beyond the applicable cure period and, if no cure period is expressly provided for herein, Developer or County, as applicable, shall fail to remedy such default within thirty (30) days after notice by Developer or County, as applicable, to the other party of such default (the “Default Notice”), or if such a default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), then the cure period shall be extended so that Developer or County, as applicable, is afforded such additional period as is reasonably necessary to effectuate a cure of such default, provided that the alleged defaulting party (i) within thirty (30) days after the giving of such Default Notice, advises the other party of its intention to institute all steps necessary (and from time to time, as reasonably requested by the furnisher of the Default Notice, the alleged defaulting party shall advise such furnisher of the steps being taken) to remedy such default (which such steps shall be reasonably designed to effectuate the cure of such default in a professional manner), and (ii) thereafter diligently prosecutes to completion all such steps necessary to remedy the same;

(c) to the extent permitted by law, if Related or Developer files a voluntary petition under Title 11 of the United States Code, or if Related or Developer files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Related or Developer, of all or any substantial part of their properties, or of all or any part of Developer’s Interest in the Premises, and the foregoing are not stayed or dismissed within one hundred fifty (150) days after such filing or other action;

(d) to the extent permitted by law, if, within one hundred fifty (150) days after the commencement of a proceeding against Related or Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within one hundred eighty (180) days after the appointment, without the consent or

acquiescence of Related or Developer, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, of all or any substantial part of its properties, or of all or any part of Developer's Interest in the Premises, such appointment has not been vacated or stayed on appeal or otherwise, or if, within one hundred eighty (180) days after the expiration of any such stay, such appointment has not been vacated;

(e) if a levy under execution or attachment in an aggregate amount greater than \$250,000 (as adjusted for inflation in accordance with the Hotel Lease) at any one time is made against the Project Site or any portion thereof or rights appertaining thereto (except for a levy made in connection with actions taken by County (other than solely as holder of County's Interest in the Premises)), or this Agreement and such execution or attachment is not vacated or removed by court order, bonding or otherwise within a period of sixty (60) days, after Developer becomes aware of such levy or attachment, subject to Unavoidable Delays.

Notwithstanding the foregoing, no Event of Default shall be deemed to have occurred until such time as County shall have given Related or Developer, as applicable, written notice of the occurrence of an Event of Default; provided, however, if Related or Developer shall dispute County's assertion that an Event of Default has occurred within ten (10) business days after the giving of such notice by County, an Event of Default shall not be deemed to have occurred and County shall not be permitted to exercise any rights against Developer stated herein to arise out of an Event of Default until such time as the Development Arbitrator has issued a non-binding determination that an Event of Default has occurred. Notwithstanding anything to the contrary contained herein, no Event of Default shall be deemed to have occurred if Related cures such default pursuant to the Payment, Performance, and Construction Guaranty or otherwise performs or causes to be performed the covenant, condition or agreement on Developer's part to be performed hereunder, and County shall accept performance with the same force and effect as though performed by Developer; provided, however, all cure periods provided to Related shall run concurrently with the cure periods provided to Developer.

#### Section 19.2 Enforcement of Performance.

(a) If an Event of Default occurs (other than (A) the failure of the conditions precedent to the Commencement of Construction to timely occur pursuant to Section 2.1 or (B) the failure of the Developer to achieve the Completion Date on or prior to the Default Date), County may elect, as its sole and exclusive remedies, to (i) enforce performance or observance by Developer of the applicable provisions of this Agreement, and/or (ii) recover actual damages for breach of this Agreement; it being specifically understood and agreed that in no event shall County be able to seek or be entitled to consequential damages or any other kind or type of damages other than actual damages for breach of this Agreement, and/or (iii) only in the circumstances described in this Section 19.2(a) and Section 19.3(a) and in no other circumstances, terminate this Agreement pursuant to Section 19.3(a). If an Event of Default occurs (other than (A) the failure of the conditions precedent to the Commencement of Construction to timely occur pursuant to Section 2.1 or (B) the failure of the Developer to achieve the Completion Date on or prior to the Default Date), County's election of a remedy under this Section 19.2(a) with respect to such Event of Default shall not limit or otherwise affect County's right to elect any other remedies available to County under this Section 19.2(a), except as set forth herein. If the conditions precedent to Commencement of Construction shall

fail to timely occur pursuant to Section 2.1, the sole remedy with respect to such failure shall be as set forth in Section 2.1(f). If Developer fails to achieve the Completion Date on or prior to the Default Date, then Related or Developer shall pay County (and County agrees to accept such sums as the sole remedy of the County for such failure and its election of such sole remedy shall be conclusively deemed to limit County's right to elect any other remedies available to County, including, without limitation, any other remedies under the Payment, Performance, and Construction Guaranty, during and for such period of delay) One Hundred Fifty Thousand Dollars (\$150,000) per month (which amount shall be proportionally adjusted for fractions of a month using the actual number of calendar days in such month) from the Default Date until the Completion Date as liquidated damages, THE PARTIES HEREBY AGREEING AND ACKNOWLEDGING THAT COUNTY'S ACTUAL DAMAGES IN THE EVENT OF SUCH DELAY WOULD BE DIFFICULT OR IMPOSSIBLE TO ASCERTAIN AND THAT THE FOREGOING LIQUIDATED DAMAGES AMOUNT REPRESENTS A LIQUIDATED SUM OF DAMAGES AGREED UPON BY THE PARTIES AS A MEASURE OF DAMAGES IN THE EVENT OF SUCH DELAY AND NOT AS A PENALTY; it being specifically understood and agreed that, regardless of whether one or more of the buildings is incomplete, only one such monthly payment shall be due and payable per month, if at all, by Related or the Developer and it being further understood and agreed that the County shall not be obligated to accept such monthly payments of liquidated damages after that date which is the first anniversary of the Default Date and after such first anniversary, if the Completion Date has not occurred, the County may pursue any other legal remedy including, but not limited to, termination of this Agreement, the Hotel Lease, and the other Project Documents.

(b) If an Event of Default occurs, Developer may, as its sole remedies, elect to (i) enforce performance or observance by County of the applicable provisions of this Agreement, and/or (ii) recover actual damages for breach of this Agreement; it being specifically understood and agreed that in no event shall Developer be able to seek or be entitled to consequential damages or any other kind or type of damages other than actual damages for breach of this Agreement and, only in the event that specific performance or damages as specified in clauses (i) or (ii) above are not available or would not be an adequate remedy as determined by a Final Judgment, terminate this Agreement and the other Project Documents.

(c) In the event that County Litigation occurs, Developer may, upon written notice to 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 otherwise eliminated after which Developer shall resume the performance of its obligations under the Project Documents; provided, however, in the event that the County Litigation was brought by any party that responded to the RFQ (other than Developer and/or Related), the County and Developer shall enter into good faith negotiations to address any increased costs to the development of the Project incurred as a result of the County Litigation; provided, however, if the parties cannot agree on a resolution of any increase cost claim in a manner acceptable to Developer in its sole and absolute discretion, Developer may, as its sole and exclusive remedy, pursue a claim for damages provided that, in no event, shall Developer be able to seek, or be entitled to, consequential damages or any other kind or type of damages other than actual damages including, but not limited to, increased design or construction costs; provided, finally, and notwithstanding the above, in the event that the Litigation Risks are not dismissed or otherwise

eliminated within fifteen (15) months of service of the initial pleading on County, and the parties are, in good faith, unable to negotiate acceptable amendments to the Project Documents to address the impacts of further delay or the risks of an adverse outcome to the County Litigation in a manner acceptable to Developer in its sole and absolute discretion, Developer may, as its sole and exclusive remedy, terminate this Agreement and the other Project Documents.

### Section 19.3 Expiration and Termination of Agreement.

(a) If an Event of Default occurs under the Hotel Lease or the other Project Documents which results in a termination of the Hotel Lease, this Agreement shall terminate. If such termination is stayed by order of any court having jurisdiction over any case described in Section 19.1(d) or Section 19.1(e) or by federal or state statute, then, following the expiration of any such stay, or if the trustee appointed in any such case, Developer or Developer as debtor-in-possession fails to assume Developer's obligations under this Agreement within the period prescribed therefore by law or within ninety (90) days after entry of the order for relief or as may be allowed by the court, County, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Agreement on twenty (20) days' notice to Developer, Developer as debtor-in-possession or the trustee. Notwithstanding the foregoing, if a Recognized Mortgagee (as defined in the Hotel Lease) exercises its rights thereunder and timely cures any Event of Default under the Hotel Lease or in the other Project Documents, then it shall be deemed to have cured any Event of Default under this Development Agreement, and the Owner shall not have a right to terminate this Agreement. Upon the expiration of the twenty (20) day period this Agreement shall expire and terminate and Developer, Developer as debtor-in-possession and/or the trustee immediately shall quit and surrender Developer's Interest in the Premises and possession thereof.

(b) If this Agreement is terminated as provided in Section 19.3(a), County may, without notice, re-enter and repossess Developer's Interest in the Premises pursuant to the terms of the Hotel Lease and may dispossess Developer by summary proceedings, writ of possession, proceedings in bankruptcy court or otherwise, subject to Requirements.

### Section 19.4 Strict Performance.

No failure by County or Developer to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of the other party's default or an Event of Default, shall constitute a waiver of any such Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by either party, and no default by either party, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Event of Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Event of Default. Developer's compliance with any request or demand made by County shall not be deemed a waiver of Developer's right to contest the validity of such request or demand.

Section 19.5 Right to Enjoin Defaults. In the event of an Event of Default, County shall be entitled to seek to enjoin the Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent County's remedies are expressly limited by the terms hereof. In the event of any default by County of any term, covenant or condition under this Agreement, Developer shall be entitled to seek to enjoin the default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Developer's remedies are expressly limited by the terms hereof. Each right and remedy of County and Developer provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent County's remedies and Developer's remedies are expressly limited by the terms hereof, and the exercise or beginning of the exercise by County or Developer of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by County or Developer of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent County's remedies and Developer's remedies are expressly limited by the terms hereof.

Section 19.6 Remedies Under Bankruptcy and Insolvency Codes.

If an order for relief is entered or if any stay of proceeding or other act becomes effective against Developer, Developer's Interest in the Premises, or Developer's interest in this Agreement, or County, County's Interest in the Premises, or County's interest in this Agreement, as applicable, in any proceeding which is commenced by or against Related, Developer or County, as applicable, under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Related, Developer or County, as applicable, seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, County or Developer, as applicable, shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Agreement (except to the extent County's remedies and Developer's remedies are expressly limited by the terms hereof).

Section 19.7 Inspection.

Without in any way limiting Article 11, County, County's Representatives, and their representatives shall have the right, during normal business hours and upon 24 hours' prior written notice, to enter upon the Project Site to conduct inspections of the Construction Work, the Project Site, all books, records, documents, drawings, submissions, invoices, Construction Agreements, correspondence, and any other information and documents in connection with the Hotel and Garage, for the purpose of determining whether an Event of Default has occurred, provided that County shall be accompanied by a representative of Developer and provided further that such entry shall not unreasonably interfere with the Construction of the Hotel and Garage. If so requested by County, Developer agrees to make a representative of Developer available to accompany County on any such inspection.

ARTICLE 20  
NOTICES, CONSENTS AND APPROVALS

Section 20.1 Service of Notices and Other Communications.

(a) In Writing. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other (or any Recognized Mortgagee), or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Project Site or any portion thereof, each such notice, demand, request, consent, approval or other communication (referred to in this Agreement as a “Notice”) shall be in writing (whether or not so indicated elsewhere in this Agreement) and shall be effective for any purpose only if given or served by (i) certified or registered U.S. Mail, postage prepaid, return receipt requested, (ii) personal delivery with a signed receipt or (iii) a recognized national courier service, addressed as follows:

If to Related:	The Related Companies, L.P. 60 Columbus Circle 19th Floor New York, New York 10023 Attention: Bruce Warwick
With a copy to:	Carlton Fields, P.A. 525 Okeechobee Blvd. Suite 1200 West Palm Beach, Florida 33401 Attention: Lynda J. Harris, Esq.
If to Developer:	c/o The Related Companies, L.P. 60 Columbus Circle 19th Floor New York, New York 10023 Attention: Bruce Warwick
With a copy to:	Carlton Fields, P.A. 525 Okeechobee Blvd. Suite 1200 West Palm Beach, Florida 33401 Attention: Lynda J. Harris, Esq.
With a copy to:	CONSTRUCTION LENDER



If to County: Palm Beach County  
301 North Olive Avenue  
West Palm Beach, Florida 33401  
Attention: [County Administrator]

With a copy to: Palm Beach County Attorney's Office  
301 North Olive Avenue  
West Palm Beach, Florida 33401  
Attention: Real Estate

Any Notice may be given, in the manner provided in this Section 20.1, (x) on either party's behalf by its attorneys designated by such party by Notice hereunder, and (y) at Developer's request, on its behalf by any Recognized Mortgagee designated in such request.

(b) Effectiveness. Every Notice shall be effective on the date actually received, as indicated on the acknowledged receipt therefor, or on the date delivery thereof is refused by the recipient thereof, or on the date designated undeliverable or unclaimed by the U.S. Postal Service.

(c) References. All references in this Agreement to the "date" of Notice shall mean the effective date, as provided in the preceding subsection (b).

## Section 20.2 Consents and Approvals.

(a) Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals that may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting by a party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any other act.

(b) Standard. Except as otherwise provided in this Agreement, all consents and approvals which may be given by a party under this Agreement shall not, except as otherwise provided herein, be unreasonably withheld or conditioned by such party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving party shall, together with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.

(c) Deemed Approval. (i) If a party entitled to grant or deny its consent or approval (the "Consenting Party") within the specified time period shall fail to do so, then, except as otherwise provided in Section 20.2(c)(ii), and provided that the request for consent or approval (and the envelope in which such request is transmitted to the extent permitted by the

carrier) bears the legend set forth below in capital letters and in a type size not less than that provided below, the matter for which such consent or approval is requested shall be deemed consented to or approved, as the case may be:

“FAILURE TO RESPOND TO THIS REQUEST [FILL IN THE TIME PERIOD] PROVIDED IN THE DEVELOPMENT AGREEMENT BETWEEN PALM BEACH COUNTY, THE RELATED COMPANIES, L.P. AND (DEVELOPER), SHALL CONSTITUTE AUTOMATIC APPROVAL OF THE MATTERS DESCRIBED HEREIN WITH RESPECT TO SECTION [FILL IN APPLICABLE SECTION] OF SUCH DEVELOPMENT AGREEMENT.”

(ii) Notwithstanding anything to the contrary contained in Section 20.2(c)(i), if the County shall still have an interest in this Agreement and the matter, other than a matter referred to in Section 20.2(c)(iii) below, to be consented to or approved requires the consideration of the County Commission, as applicable (whether pursuant to Requirements or the written opinion of the County Attorney), then such matter shall not be deemed approved or consented to unless County shall fail to respond to Developer’s request by the date which is fifteen (15) days after the first regular meeting of the County Commission which occurs no earlier than ten (10) days following the receipt of such request (or second request, as applicable); but in any event not later than sixty (60) days following such request (or second request), as applicable.

(iii) County hereby agrees, for so long as the County shall have an interest in this Agreement that, subject to Requirements, the County Administrator, or his designee, as applicable, shall be authorized to grant consents or approvals on behalf of the County, as applicable, with respect to Section 2.1(c) and Article 3 of this Agreement.

(d) Remedy for Refusal to Grant Consent or Approval. Except as provided for in Article 3, if any consent or approval by County or Developer is alleged to have been unreasonably withheld, conditioned or delayed, then any dispute as to whether such consent or approval has been unreasonably withheld, conditioned or delayed shall be settled by an action filed in a state court of competent jurisdiction located in Palm Beach County. In the event there shall be a final determination that the consent or approval was unreasonably withheld, conditioned or delayed so that the consent or approval should have been granted, the consent or approval shall be deemed granted, subject to the limitations provided in this Agreement.

(e) No Fees, etc. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Agreement (provided that the foregoing shall not be deemed in any way to limit County acting in its governmental, as distinct from its proprietary, capacity from charging governmental fees on a nondiscriminatory basis).

ARTICLE 21  
FINANCIAL REPORTS AND RECORDS

Section 21.1 Books and Records; Audit Rights.

(a) Developer shall at all times during the term of this Agreement keep and maintain (separate from any of Developer's other books, records and accounts), accurate and complete books and records pertaining to the design, development, Construction Work, and the Construction of the Hotel and Garage (including, without limitation, all drawings, specifications, Change Orders, Shop Drawings, Product Data Sheets, Samples, correspondence, meeting minutes, and progress, cost, and manpower schedules) and all such other matters referenced in this Agreement. Financial records shall be kept in accordance with generally accepted accounting principles with such exceptions as may be provided for in this Agreement. County and its representatives shall have, during normal business hours and upon reasonable advance notice, access to such the books and records of Developer which shall be produced in Palm Beach County.

(b) The obligation of Developer under this Article to maintain, and to provide County and its representative's access to, the books and records shall survive the expiration or earlier termination of this Agreement for a period of four (4) years.

(c) At any time during the Project, and for a period of four (4) years following the Completion of Construction, County shall have the right to audit the books and records of Developer with respect to any aspect of the design and construction of the Project and, with respect to the books and records of Developer, shall have the right to audit same in the event of an Event of Default.

ARTICLE 22  
ARBITRATION

Section 22.1 Expedited Arbitration of Development Disputes.

(a) If Developer or County asserts that a Development Dispute has arisen, such asserting party shall give prompt written notice thereof to the other party and to the Development Arbitrator.

(b) The Development Arbitrator shall no later than five (5) business days after receipt of such notice, hold a preliminary, informal mediation meeting with County and Developer in an attempt to mediate such Development Dispute. If such Development Dispute shall not be resolved at that meeting, the Development Arbitrator shall at such informal mediation meeting establish a date, not earlier than five (5) business days after the informal mediation meeting nor later than twenty (20) business days after the informal mediation meeting for a hearing (a "Hearing") to be held in accordance with this Agreement to resolve such Development Dispute.

(c) Developer and County 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 needed and agree that neither party nor the Development Arbitrator shall have discovery rights in connection with a Development Dispute.

(d) The Hearing shall be conducted by the Development Arbitrator. It is the intention of the parties that the Hearing 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 the AAA Construction Industry Arbitration Rules and Mediation Procedures (including Procedures for Large, Complex Construction Disputes) effective as of the date of the dispute in question (the "CIAR") and the Florida Arbitration Code to the extent not inconsistent with the CIAR Rules and this Section 22.1.

(e) The Hearing shall be held in a location selected by the Development Arbitrator in Palm Beach County, Florida. Provided the Development Arbitrator is accompanied by representatives of both Developer and County, the Development Arbitrator may, at its option, visit the work site to make an independent review in connection with any Development Dispute.

(f) Once it has been determined by the Development Arbitrator or by agreement of the parties with respect to any Development Dispute that Developer's proposed modifications are material with regard to, or materially inconsistent with, the Preliminary Plans and Specifications, or the Plans or Specifications, pursuant to Article 3, the Development Arbitrator shall take into account, in determining whether County has acted unreasonably in failing to grant an approval or consent as described in Section 3.7(b) or Section 3.7(c), such factors as he deems relevant which are not inconsistent with this Agreement (including items 1 through 6, below), which in all events shall include without limitation the following factors:

1. The Hotel shall be a first class convention center hotel at a quality compatible with the overall quality set forth in the Preliminary Plans and Specifications or Plans and Specifications, as applicable, although recognizing that the modification which is the subject of the Development Dispute may validly effect a change (which may be a decrease) in quality for the particular matter to which the modification relates.

2. The mutual goal of Developer and County that the Construction of the Hotel and Garage be Substantially Completed prior to the Default Date.

3. Applicability of any Requirement.

4. The magnitude of the modification to the previously approved Preliminary Plans and Specifications or Plans and Specifications, as applicable.

5. The magnitude of the consistency or inconsistency from the previously approved Preliminary Plans and Specifications or Plans and Specifications, as applicable.

(g) Pending resolution of the Development Dispute, Developer may not implement the matter that is the subject of such Development Dispute. Notwithstanding the

foregoing or anything to the contrary in this Agreement, during the pendency of any Development Dispute, except for any items directly related to the Development Dispute, Developer shall diligently continue (or cause to be continued) timely performance of all other obligations under this Agreement, including, without limitation, preparation of the Preliminary Plans and Specifications (and any modifications thereto), preparation of the Plans and Specifications (and any modifications thereto), and performance of the Construction Work.

(h) 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. As to each Development Dispute, the Development Arbitrator's decision shall be limited to: (i) whether or not Developer's proposed modification(s) to the Preliminary Plans and Specifications or the Plans or Specifications affect a CAI, (ii) whether or not Developer's proposed modification(s) to the Preliminary Plans and Specifications or the Plans or Specifications is materially inconsistent with any previously approved Preliminary Plans and Specifications or the Plans or Specifications and are, therefore, subject to County's review and acceptance, (iii) whether or not County has unreasonably withheld, conditioned or delayed its acceptance or consent to any modifications to the Preliminary Plans or Specifications or the Plans and Specifications; and/or (iv) whether or not County unreasonably withheld, conditioned or delayed its acceptance or consent to a Developer Requested Change, or a Change Order as to which County has acceptance rights. The Development Arbitrator may not award any other or different relief.

(i) 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.

(j) County and Developer shall, within one hundred twenty (120) days from and after the Effective Date, designate a Development Arbitrator with regard to all Development Disputes that may arise. Contemporaneously with the designation of the Development Arbitrator, such individual shall acknowledge, in writing, his/her agreement to serve as the Development Arbitrator. If for any reason such individual shall be unwilling or unable to act as Development Arbitrator, then County and Developer shall cooperate to select an independent, neutral, professional having hotel and/or construction experience to serve as the Development Arbitrator. If the parties cannot agree, then any party may ask the AAA to select a substitute who will act as Development Arbitrator of that Development Dispute.

(k) Neither Developer (together with its Affiliates engaged in the hotel business) nor County shall hire or otherwise engage or give or cause to be given anything of value to the Development Arbitrator (or Development Arbitrator's spouse, children, siblings, or parents) until twelve (12) months after final completion of the Construction of the Hotel and Garage pursuant to Section 2.3(c).

(l) The fees and costs of the Development Arbitrator and the AAA shall be borne equally by the parties.

ARTICLE 23  
NONDISCRIMINATION

Section 23.1 Nondiscrimination. Developer shall be an equal opportunity employer, and shall not engage in any unlawful discrimination against any person because of race, color, religion, ancestry, creed, national origin, sex, age, disability, marital status, gender identity or expression, or sexual orientation.

ARTICLE 24  
INDICTMENT, INVESTIGATIONS, ETC

Section 24.1 Cooperation in Investigations.

To the extent required by the Requirements, Developer shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by a Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry. Notwithstanding the foregoing, following advice of Developer's counsel with regard to the provisions of this Section 24.1 shall be considered full cooperation for purposes of this Section 24.1. In addition, Developer shall promptly report in writing to the County Attorney of Palm Beach County, Florida any solicitation, of which Developer's officers or directors have actual knowledge, of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of County, or other person relating to the procurement or obtaining of this Agreement by Developer or affecting the performance of this Agreement.

Section 24.2 Palm Beach County Office of the Inspector General.

Palm Beach County has established the Office of the Inspector General, Palm Beach County Code Section 2-421, *et seq*, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All contractors and parties doing business with the County and receiving County funds shall fully cooperate with the Inspector General including receiving access to records relating to procurements or any resulting contract.

ARTICLE 25  
HAZARDOUS MATERIALS

Section 25.1 General Provision.

The provisions of Article 34 of the Hotel Lease shall be applicable to this Agreement as if the references in such Article 34 to "Owner", "Tenant" and the "Premises" were references to County, Developer and the Project Site, respectively.

Section 25.2 Survival.

The provisions of this Article 25 shall survive the expiration or sooner termination of this Agreement.

ARTICLE 26  
MISCELLANEOUS

Section 26.1 Governing Law.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to principles of conflicts of law. Venue for resolution of any and all disputes arising hereunder shall be in a state court of competent jurisdiction located in Palm Beach County, Florida.

Section 26.2 References.

(a) Captions. The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

(b) Table of Contents. The Table of Contents, if any, is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Agreement.

(c) Reference to County, Related, and Developer. The use herein of the words “successors and assigns” or “successors or assigns” of County, Related, or Developer shall be deemed to include the heirs, legal representatives and assigns.

(d) County’s Governmental Capacity. Nothing in this Agreement or in the parties’ acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of County in the discharge of its police or governmental power.

(e) Reference to “herein”, “hereunder”, etc. All references in this Agreement to the terms “herein”, “hereunder” and words of similar import shall refer to this Agreement, as distinguished from the paragraph, Section or Article within which such term is located.

(f) Reference to Sections, Articles, or Exhibits. Unless otherwise expressly stated herein, all references to Sections, Articles, or Exhibits shall refer to Sections, Articles, or Exhibits contained within or attached to in this Agreement.

Section 26.3 Entire Agreement, etc.

(a) Entire Agreement. This Agreement, together with the other Project Documents and the attachments hereto and thereto, contains all of the promises, agreements, conditions, inducements and understandings between County, Related, and Developer concerning the development and Construction of the Hotel and Garage on the Project Site and

there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such attachments thereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto, as the same may have heretofore been or may hereafter be amended. Except as expressly set forth herein, the rights and obligations of Related, Developer, and County hereunder are not severable.

(b) Waiver, Modification, etc. No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by, as appropriate, Related, County, and Developer. No waiver of any Default or Event of Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default or Event of Default thereof.

(c) Effect of Other Transactions. No Mortgage, whether executed simultaneously with this Agreement or otherwise, and whether or not consented to by County, shall be deemed to modify this Agreement in any respect, and in the event of an inconsistency or conflict between this Agreement and any such instrument, this Agreement shall control.

#### Section 26.4 Invalidity of Certain Provisions.

If any provision of this Agreement or the application thereof to any person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

#### Section 26.5 Remedies Cumulative.

Each right and remedy of either party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement).

#### Section 26.6 Performance at Each Party's Sole Cost and Expense.

Unless otherwise expressly provided in this Agreement, when either party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense.



Section 26.7 Recognized Mortgagee Charges and Fees.

Developer shall pay any and all fees, charges and expenses owing to a Recognized Mortgagee in connection with any services rendered by it as a depositary pursuant to the provisions of this Agreement.

Section 26.8 Time is of the Essence.

Time is of the essence for the performance of all obligations under this Agreement.

Section 26.9 Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, County and Developer, and, except as otherwise provided herein, their respective successors and permitted assigns. There can be no assignment by Developer of its rights or obligations hereunder or its interest in this Agreement, except Developer may assign all its rights hereunder to a Recognized Mortgagee as security for the performance of Developer's obligations under the Loan Documents. This Agreement, however, shall automatically transfer in connection with a transfer of Developer's (as tenant) interest in the Hotel Lease in accordance with the provisions of the Hotel Lease. Except as expressly set forth herein, County is not required to render performance to or accept performance from any trustee or similar representative appointed for or on behalf of Developer or its assets.

Section 26.10 Notice of Events of Default.

Notwithstanding anything to the contrary set forth in this Agreement, under no circumstances shall any party to this Agreement lose any right or benefit granted under this Agreement or suffer any harm as a result of the occurrence of any Event of Default of such party as to which Event of Default such party has not received notice thereof from the other party.

Section 26.11 No Representations.

County has made no representations, statements, or warranties, express or implied, as to (a) the Project Site, or any portion thereof, or the transactions contemplated by the Agreement; (b) the status of title to the Project Site or any portion thereof; (c) the physical condition of the Project Site or any portion thereof (including but not limited to geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water, and geologic faults and the resulting damage of past and/or future faulting.); (d) the occupancy of the Project Site or any portion thereof, if any; (e) the zoning, wetlands or other laws, regulations, rules and orders applicable thereto or the use that may be made of the Project Site or any portion thereof (including without limitation zoning or building entitlements to which the Project Site or any portion thereof may be subject); (f) whether, and to the extent to which the Project Site or any portion thereof is affected by any stream (surface or underground), body of water, wetlands, flood prone area, flood plain, floodway or special flood hazard; (g) drainage; (h) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any undershoring; (i) the presence of endangered species or any environmentally sensitive or protected areas; (j) the availability of any

utilities to the Project Site or any portion thereof including, without limitation, water, sewage, gas and electric; (k) usages of property adjoining the Project Site; (l) access to the Project Site or any portion thereof; (m) environmental matters relating to the Project Site or any portion thereof, including, without limitation, the presence or absence of "Hazardous Materials" in, on, under or in the vicinity of the Project Site; (n) the condition or use of the Project Site or any portion thereof or compliance of the Project Site or any portion thereof with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, statutes, codes, ordinances, orders, decisions, rules, regulations or guidelines of any Governmental Authority affecting or governing the Project Site or any portion thereof, County, Developer or this Agreement (as applicable); (o) the existence or non-existence of underground storage tanks, surface impoundments, or landfills, (p) any other matter affecting the stability and integrity of the Project Site or any portion thereof, (q) the potential for further development of the Project Site or any portion thereof, (r) the merchantability of the Project Site or any portion thereof or fitness of the Project Site or any portion thereof for any particular purpose, (s) tax consequences, or (t) any other matter or thing with respect to the Project Site or any portion thereof; (ii) Developer has relied on no such representations, statements or warranties, and (iii) County shall not be liable to Developer, in any event whatsoever, to correct any latent or patent defects in the Project Site or any portion thereof.

Section 26.12 Corporate Obligations. It is expressly understood that this Agreement and obligations issued hereunder are solely corporate obligations, and that no personal liability will attach to, or is or shall be incurred by the Board of County Commissioners, the incorporators, stockholders, officers, directors, elected or appointed officials (including, without limitation, the chairman and members of County and the members of any other governing body of County) or employees, as such, of County or Developer or any member, manager, employee, or agent of Developer, or of any successor corporation, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and, except as otherwise provided in Article 15, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against the Board of County Commissioners and every such incorporator, stockholder, officer, director, elected or appointed officials (including, without limitation, the chairman and members of County and the members of any other governing body of County) or employee, as such, and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against the Developer or any member, manager, employee, or agent of Developer, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

Section 26.13 Nonliability of Officials and Employees.

No member, official or employee of County shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by County or for any amount or obligation which may become due to Developer or successor under the terms of this Agreement.

Section 26.14 Partnership Disclaimer.

Developer acknowledges, represents and confirms that it is an independent contractor in the performance of all activities, functions, duties and obligations pursuant to this Agreement.

The parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for the purpose of developing the Hotel or Garage or any portion thereof, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement, any of the other Project Documents, or any of the other documents executed by the parties with respect to the Hotel or Garage or any portion thereof shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this Section shall survive expiration or earlier termination of this Agreement.

Section 26.15 Time Periods. Any time periods in this Agreement of less than thirty (30) days shall be deemed to be computed based on Business Days (regardless of whether any such time period is already designated as being computed based on business days). In addition, any time period which shall end on a day other than a Business Day shall be deemed to extend to the next Business Day.

Section 26.16 No Third Party Rights. Nothing in this Agreement, express or implied, is intended to nor shall confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement; provided, however, that a Recognized Mortgagee or its designee shall be third party beneficiaries hereunder to the extent same are granted rights hereunder.

Section 26.17 Governmental Authority. Nothing in this Agreement shall be construed to waive or limit County's governmental authority as a political subdivision of the State of Florida to regulate Developer or its operations. County's agreements under this Agreement are made in a proprietary capacity, rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all rules, regulations, ordinances, statutes and laws applicable to such party, nor alter or impair County's governmental functions, including, without limitation, County's right to lawfully exercise its regulatory authority over the development of the Hotel and Garage, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of County's governmental authority.

Section 26.18 County Obligations (Funds). As set forth in this Agreement, County, Related and Developer acknowledge and agree that the County's obligation to pay any of the amounts called for in this Agreement including, but not limited to, the obligations set forth in Section 6.1 is conditioned upon the County's issuance and sale of bonds. Until such time as the proceeds from the sale of bonds become available or to the extent that the proceeds from the sale of bonds are insufficient to cover the obligations of the County in this Agreement, County may, but shall not be obligated to, budget and appropriate funds sufficient to cover all commitments of

the County set forth in this Agreement. The parties acknowledge and agree that the County's funding of the bonds or budgeting and appropriating funds sufficient to cover all commitments of the County set forth in this Agreement prior to issuance of the Notice to Proceed is a condition precedent to the Developer's and Related's obligations under this Agreement, under the Hotel Lease and under the other Project Documents.

Section 26.19 Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties, notwithstanding that all parties have not signed the original or the same counterpart. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

#### ARTICLE 27 NO SUBORDINATION

County's Interest in the Premises, including, without limitation, County's interest in the Hotel Lease and this Agreement, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any Mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Developer's Interest in the Premises and Developer's interest in this Agreement or (c) any sublease or any mortgages, liens, or encumbrances now or hereafter placed on any subtenant's interest in the Project Site. Developer's Interest in the Premises and Developer's interest in this Agreement and all rights of Developer hereunder are and shall be subject to the "Title Matters" as set forth on Exhibit 2.1 to the Hotel Lease.

#### ARTICLE 28 WEST PALM BEACH AGREEMENT AND RESTRICTIVE COVENANT; LABOR PEACE AGREEMENT

Section 28.1 Obligation to Comply with West Palm Beach Agreement and Restrictive Covenant

(a) Developer hereby covenants and agrees to comply with all terms, conditions and requirements, applicable to Related and Developer contained in (a) the West Palm Beach Agreement a copy of which is attached as Exhibit 17 and (b) the Declaration of Covenants and Restrictions (Hotel Site) (which affects the Hotel Land (as defined in the West Palm Beach Agreement)), recorded in Official Records Book 12422, Page 76, Public Records of Palm Beach County, Florida, as amended by Amendment to Declaration of Covenants and Restrictions (Hotel Site), recorded in Official Records Book 15621, Page 1697, Public Records of Palm Beach County, Florida, and as further amended by Second Amendment to Declaration of Covenants and Restrictions (Hotel Site), recorded in Official Records Book 18513, Page 1077, Public Records of Palm Beach County, Florida (collectively, the "Restrictive Covenant"). Developer agrees that an event of default beyond all applicable notice and cure periods under the West Palm Beach Agreement shall constitute an Event of Default hereunder.

#### EXECUTION

IN WITNESS WHEREOF, County, Related, and Developer, intending to be legally bound, have executed this Agreement as of the day and year first above written.

PALM BEACH COUNTY, a political  
Subdivision of the State of Florida

ATTEST:  
SHARON R. BOCK, Clerk & Comptroller

By its BOARD OF COUNTY  
COMMISSIONERS

\_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Shelley Vana, Chair

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

By: \_\_\_\_\_  
Assistant County Attorney

By: \_\_\_\_\_  
Department Director

THE RELATED COMPANIES, L.P., a New  
York limited partnership

CITYPLACE HOTEL, LLC, a Delaware  
limited liability company

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

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

## Exhibits

- 1 County's Areas of Interest
- 2 Development Team (Exh 6 to Response to RFQ)
- 3 Exterior Elevations
- 4 Garage Land Legal Description
- 5 Garage Easement
- 6 (deleted)
- 7 Hotel Accessory Uses (Exh 5 to Response to RFQ)
- 8 Hotel Land Legal Description
- 9 Site Plan
- 10 Insurance Requirements
- 11 Notice to Proceed form
- 12 Certificate of Substantial Completion form
- 13 Developer and General Contractor Final Payment Affidavit  
(Conditional Final Waiver and Release of Claim) form
- 14 Certificate of Final Completion form
- 15 Payment and Performance Bond form
- 16 Pay Application form
- 17 West Palm Beach Agreement

## Exhibit 1

### COUNTY'S AREAS OF INTEREST

#### HOTEL

1. Exterior – Exterior design shall be substantially as depicted on the Exterior Elevations and any changes thereto shall be evaluated by the County to determine whether or not such changes will negatively impact either the function or operation of the Convention Center, which determination shall be made by the County, acting reasonably. In accordance with the provisions of Article 3, County shall have the right to review all aspects of the design through the acceptance of the Preliminary Plans and Specifications.

2. Physical Interfaces – physical connections and entrances between Hotel and Convention Center should be substantially as depicted on the Site Plan and any changes thereto shall be evaluated by the County to determine whether or not such changes will negatively impact either the function or operation of the Convention Center, which determination shall be made by the County, acting reasonably. In accordance with the provisions of Article 3, County shall have the right to review all aspects of the design through the acceptance of the Preliminary Plans and Specifications.

3. Interior design, décor, quality, fit, and finish shall be in conformity with the Hilton Standards.

4. Landscape - Shall compliment and be of a quality equal to or exceeding that maintained at the Convention Center.

5. Access - Access to the Convention Center shall be as depicted on the Site Plan and any changes thereto shall be evaluated by the County to determine whether or not such changes will negatively impact either the function or operation of the Convention Center, which determination shall be made by the County, acting reasonably.