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BROWARD COUNTY CONVENTION CENTER EXPANSION

AND HEADQUARTERS HOTEL

MASTER DEVELOPMENT AGREEMENT

(RFP/RLI # N1337414R3)

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THIS MASTER DEVELOPMENT AGREEMENT (this "**Agreement"**) is made and entered into effective as of _____, 2019 (the "**Effective Date"**), by and between BROWARD COUNTY, FLORIDA, a political subdivision of the State of Florida ("**County"**) and MATTHEWS HOLDINGS SOUTHWEST, INC., a Texas corporation ("**Developer"**). County and the Developer are herein collectively referred to as the "**Parties**" and individually as a "**Party**". Terms not otherwise defined herein shall have the meaning set forth in **Exhibit A**.

RECITALS

A. County issued Request for Letters of Interest No. N1337414R3 dated October 29, 2015 ("**RLI**") seeking a final proposal from the short-listed qualified developer interested in entering into an arrangement with County for the purpose of redeveloping County-owned property with a Convention Center Expansion and Headquarters Hotel Project as defined in the RLI and comprised of (i) an approximately 800-room Omni convention center hotel the "**Hotel Project**"), (ii) an approximately ___ square foot expansion of the western end of the Convention Center (as hereinafter defined; such expansion being referred to herein as the "**West Expansion Project**"), (iii) an approximately ____ square foot expansion of the eastern portion of the Convention Center, the Plaza Improvements, and the CVB Office (the "**East Expansion Project**"), (iv) the Enabling Projects (as hereinafter defined; collectively with the Hotel Project, West Expansion Project, and East Expansion Project, the "**Projects**" and each individual component of the Project being a "**Project**"), all on real property owned by County legally described on **Schedule 1** attached hereto (the "**Site**") and as shown on the site plan attached hereto as **Schedule 2** (the "**Site Plan**"); and

B. The Broward County Board of County Commissioners ("**Board**"), acting as a Direct Procurement Authority, authorized County staff to enter into negotiations with Developer to implement the Projects in accordance with the parameters set forth in the RLI process, including, without limitation, through entry into a Comprehensive Agreement (as defined in the Predevelopment Agreement (as hereinafter defined)); and

C. County approved a Pre-Development Agreement on August 16, 2016 (the "**Predevelopment Agreement**") which authorized Developer to commence certain design activities and other tasks related to the Projects; and

D. County approved a Design Services Agreement on November 21, 2017, as amended by that certain First Amendment dated February 26, 2018, as amended and restated in its entirety on May 7, 2018, and further amended by that certain First Amendment to Amended and Restated Design Services Agreement dated November 14, 2018 (the **"Design Services Agreement"**), which authorized Developer to commence design and certain pre-development, pre-construction, and demolition activities in connection with the Projects; and

E. County and the Developer are executing and entering into this Agreement to set forth certain obligations of County and the Developer, including the terms, conditions and provisions pursuant to which the Developer shall permit, design, develop, construct, equip, furnish, and complete the Projects for the benefit of County.

For and in consideration of the respective covenants and agreements of the Parties herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, County and the Developer, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
GENERAL TERMS

SECTION 1.1 Definitions and Usage. Unless the context shall otherwise require, capitalized terms used in this Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto as **Exhibit A**, which also contains rules as to usage that shall be applicable herein.

SECTION 1.2 Exhibits. The Recitals, Schedules, and Exhibits listed below are hereby made a part of this Agreement and incorporated herein by reference. The Schedules and Exhibits are as follows:

Schedule 1	Legal Description of Site
Schedule 2	Site Plan
Schedule 3	Master Project Schedule
Schedule 4	Project Cost Limitations
Exhibit A	Rules of Usage and Glossary of Defined Terms
Exhibit B	Program Requirements
Exhibit C	Developer Services
Exhibit D	Schedule of Developer Consultants
Exhibit E	Developer Staffing Plan
Exhibit F	Developer Salary Costs
Exhibit G	Form of GMP Contract Amendment
Exhibit H	Dispute Resolution Procedure
Exhibit I	Insurance Requirements
Exhibit J	Form of MSW Guaranty
Exhibit K	List of County Authorities
Exhibit L	Site Reports and Documentation
Exhibit M	Direct County Purchase of Materials Program
Exhibit N	Schedule of Forms

N-1: Performance Bond

N-2: Payment Bond

N-3: Monthly (CBE) Utilization Report

N-4: Final (CBE) Utilization Report

N-5: Statement of Compliance (Prevailing Wage)

N-6: Certification of Payment to Subcontractors

N-7: Final Certificate of Payment

N-8: Developer Certification of Substantial Completion

N-9: Developer Certification of Final Completion

N-10: Final List of Non-Certified Subcontractors and Suppliers

SECTION 1.3 Correlation and Intent of Development Documents. The Development Documents form the entire Development Agreement, and all are as fully a part of this Agreement as if attached hereto or repeated herein. Except as specified in any qualifications or exclusions to a GMP Contract Amendment, Developer shall supply any services, materials, or equipment that may reasonably be inferred from the Development Documents, including, but not limited to, all necessary, incidental, and related activities, as being required to produce the intended result, whether or not specifically called for in the Development Documents. Developer shall cause each Project to achieve Final Completion and to be designed, constructed, furnished and equipped in accordance with the Development Documents and the Legal Requirements. Unless otherwise provided in Section 16.1 or 16.2 and in accordance with Section 14.2, Developer shall be responsible for obtaining all approvals and permits from all Governmental Authorities and Developer shall arrange for access to and make all provisions for Developer and Design Builder to enter onto non-County public and private property as required for Developer's performance hereunder. Developer shall arrange for access to and make all provisions for Developer and Design Builder to enter onto non-County public and private property as required for performance of the Project. Unless otherwise stated in the Development Documents, words which have well-known technical or construction industry meanings are used in the Development Documents in accordance with such recognized meanings. If a conflict, ambiguity or inconsistency among the Development Documents arises, then Developer shall promptly bring such inconsistency to the attention of County for resolution. Unless otherwise instructed by Contract Administrator or as specified otherwise in any qualifications or exclusions to a GMP Contract Amendment, Developer shall provide the better quality or greater quantity and comply with the more stringent requirement. Requests for interpretation shall not become a reason for an extension of time unless otherwise provided in Article 9. If Developer proceeds with Project Work involving an inconsistency or conflict in the Development Documents prior to receipt of a clarification thereof requested from the Contract Administrator, or proceeds with Project Work without requesting such interpretation, Developer shall, at no additional cost to County, cause the correction of any Project Work performed, and/or furnish and install Project Work that may be required in accordance with the Development Documents as reasonably determined by the Contract Administrator. The foregoing notwithstanding, the Development Documents are complementary and are intended to include all items required for the proper execution and completion of the Projects as well as all preliminary considerations

and prerequisites, and all labor, materials, equipment, and tasks that are such an inseparable part of the Project Work described that exclusion would render performance by Developer impractical. For clarity, nothing in this Agreement will be construed to modify any term of the Design Services Agreement and the Parties hereby acknowledge and confirm that the Design Services Agreement remains in full force and effect in accordance with its terms.

ARTICLE 2
APPOINTMENT OF DEVELOPER; STANDARD OF CARE; REPRESENTATIVES OF THE PARTIES

SECTION 2.1 Appointment of Developer. Subject to the terms and conditions of this Agreement, County hereby engages and appoints Developer to perform the Developer Services and Developer accepts the engagement, each pursuant to the terms and conditions of this Agreement. Subject to the terms and conditions of this Agreement, Developer shall act as the developer in connection with the permitting, design, development, construction, equipping and furnishing the Projects in accordance with the Development Documents in order to achieve Final Completion of each of the Projects for an aggregate amount not to exceed the Project Cost Limitation for each Project and the amounts identified in each GMP Contract Amendment (subject to adjustments as permitted in this Agreement and such GMP Contract Amendment) for each Project and not later than (i) the Hotel Project Substantial Completion Deadline for the Hotel Project, (ii) the West Expansion Project Substantial Completion Deadline for the West Expansion Project, and (iii) the East Expansion Project Substantial Completion Deadline for the East Expansion Project, subject to extensions for performance permitted hereunder and CPEAMs, Change Directives, and Change Orders Approved by County.

SECTION 2.2 Standard of Care. Notwithstanding anything to the contrary contained in this Agreement, Developer shall employ and exercise the professional skill and judgment of a Reasonable and Prudent Developer and utilize Reasonable Best Efforts in the performance of the Developer Services. County acknowledges and agrees that in connection with this Agreement, Developer is not and shall not be construed as a fiduciary of County.

SECTION 2.3 Relationship; Authority. Developer is an independent contractor retained by County to perform the Developer Services. Developer has no power or authority to enter into, execute, make or acknowledge any contract, covenant, agreement or representation pertaining to the Project in the name of or on behalf of County except with respect to those matters for which County has expressly authorized Developer to enter into and execute pursuant to the terms hereof.

SECTION 2.4 Qualified Staff. Developer shall at all times supply sufficient experienced personnel, organization and management which are necessary to carry out the requirements of this Agreement. Attached hereto as **Exhibit E** is a staffing chart for the Developer listing the personal and professional details of such personnel and designation of which personnel are considered "key persons" for the purposes of providing the Developer Services. Developer will endeavor to give the Contract Administrator not less than seven (7) Business Days prior written notice of any staffing changes and shall provide Contract Administrator with such information as is considered by Contract Administrator to be reasonably necessary to determine the suitability of any proposed new key persons. In the event the Contract Administrator desires to replace any staff members on Developer's team, the Contract Administrator shall provide written notice of the same to Developer and Developer and Contract Administrator shall meet and confer to determine whether such removal and replacement is reasonable under the given circumstances. All persons employed or engaged by Developer in connection with the Developer Services to be rendered by Developer to County hereunder shall be Developer's employees or

independent contractors, as applicable, and shall not be the employees or agents of County, and Developer shall be solely responsible for the salaries and any employee benefits of Developer's employees.

SECTION 2.5 Developer Consultants and Design Builder Subcontractors. Developer covenants to use Reasonable Best Efforts to cooperate with County and Hotel Operator as necessary in order to further the interests of County with respect to the Projects and shall ensure the efficient administration of the Projects and supervision of the Developer Consultants and Design Builder in their performance of the required work and services, and shall cause all work on the Projects to be performed in an expeditious and economical manner in accordance with the requirements of this Agreement and in all respects consistent with the best interests of County. Developer shall not utilize any employee or independent contractor on the Project not otherwise approved by County under the terms of this Agreement. A list of the Developer Consultants approved by County is attached hereto as **Exhibit D**. In performing Developer's duties and obligations under this Agreement, Developer agrees it will comply and use Reasonable Best Efforts to cause the Design Builder and all Developer Consultants to comply with all Legal Requirements applicable to the Projects and this Agreement.

SECTION 2.6 Contract Administrator. The Contract Administrator is hereby appointed the representative for County for the term of this Agreement. County shall have the right, from time to time, to change the Person who is the Contract Administrator by giving Notice to the Developer thereof. With respect to any such action, decision or determination which is to be taken or made by County under this Agreement, the Contract Administrator is authorized to (a) interpret the intent and meaning of the Development Documents, (b) inspect the Project Work and require special testing to verify the Project Work's compliance with the Development Documents, (c) issue Field Orders to Developer that do not modify a Project Budget or Project Construction Schedule, (d) organize and conduct inspections related to the Substantial Completion and Final Completion of a Project, (e) serve as the point of contact between County and Developer for correspondence and other communication as required under this Agreement, and (f) assign or delegate the performance of administrative duties required for County's performance under this Agreement to other County employees. The Contract Administrator shall not have any right to modify, amend or terminate this Agreement or take any action that would require the approval of the Board.

SECTION 2.7 Developer Representative. The Developer hereby designates Jack Matthews or his designee to be the Developer Representative (the "**Developer Representative**") for the term of this Agreement, who shall be authorized to act on behalf of the Developer under this Agreement. The Developer shall have the right, from time to time, to change the Person (including the designee of Jack Matthews) who is the Developer Representative by giving Notice thereof to County. With respect to any such action, decision or determination to be taken or made by the Developer under this Agreement, the Developer Representative shall take such action or make such decision or determination or shall notify County in writing of the Person(s) responsible for such action, decision or determination pursuant to the Developer's organizational documents or otherwise, and shall forward any communications and documentation to such Person(s) for response or action. Any written Approval, decision, confirmation or determination hereunder by the Developer Representative shall be binding on the Developer.

SECTION 2.8 Design Builder. Develop has contracted with Design Builder in connection with certain pre-construction and design services related to the services required by Developer under the Design Services Agreement and will contract with Design Builder for the design and construction of the Projects under the terms of the Design Build Agreement, such Design Build Agreement which shall be consistent with the terms and conditions of this Agreement. Developer represents that the Design Build Agreement

will (i) obligate the Design Builder to perform all of the obligations which the Developer has agreed to perform herein with regard to the design and construction of the Project in a manner that is consistent with the terms of the Development Documents; (ii) provide that the Design Builder is bound to Developer to the same extent Developer is bound to County with respect to the design and construction of the Project; (iii) provide that Design Builder is subject to the terms and conditions of this Agreement and that to the extent there are conflicting or inconsistent terms, this Agreement shall control; (iv) provide that should this Agreement be terminated for any reason, Design Builder shall, at County's option, perform the Design Build Agreement for County, or another party designated by County, without any additional or increased cost to County; and (v) name County as a third party beneficiary with the rights to enforce all obligations of Design Builder thereunder. Developer shall cause Design Builder recognize the rights of County with respect to the Design Build Agreement by separate written agreement or acknowledgement in the Design Building Agreement, the form and substance of which shall be subject to the Approval of the County, which shall not be unreasonable withheld. Nothing contained herein or in the Design Build Agreement imposes on County any obligation to assume the Design Build Agreement, make any payments to Design Builder or any Design Builder Subcontractor, or to enforce the terms of the Design Build Agreement. The Developer shall be responsible for causing the Design Builder to perform in a manner consistent with the terms hereof, including causing the Design Builder to take such actions as may be necessary to ensure completion of the Projects in accordance with the Development Documents, as may be modified or extended as permitted herein. Developer's execution of the Design Build Agreement shall not relieve Developer of any of its obligations under this Agreement or constitute a waiver by County of its right to enforce any obligation of Developer under this Agreement. At all times, Developer is the party responsible for the delivery to County of a fully functional, equipped, and furnished complete Project. Prior to the execution of the Design Build Agreement, the Developer shall provide the same to the County for its review and Approval and Developer shall use Reasonable Best Efforts to incorporate modifications reasonably requested by County. Any Approval of the Design Build Agreement by County does not relieve the Developer from performing its obligations and enforcing its rights thereunder in a manner that is consistent with the terms hereof. Except as permitted herein, Developer shall not remove, replace, otherwise terminate the Design Builder without the prior Approval of County.

SECTION 2.9 Design Consultant. Design Builder has contracted with Design Consultants for the design of the Project. Developer shall cause the Design Builder to require the Design Consultant to perform in a manner consistent with the terms hereof. Except as permitted herein, Developer shall not cause Design Builder to remove, replace, otherwise terminate the Design Consultant or otherwise permit the Design Builder to remove, replace or otherwise terminate the Design Consultant without the prior Approval of the County.

SECTION 2.10Single Point of Contact. The Parties agree that in order to facilitate an efficient working relationship, the Developer will be the single point-of-contact to Design Builder and Developer Consultants, in connection with the design, development, construction, equipping, furnishing, and completion of the Projects. Developer will actively involve and make available Design Builder and Developer Consultants to participate in regularly scheduled planning and progress meetings with the Contract Administrator, County Consultants and other representatives of County, to be held at least every two weeks through the Term. The Developer will and will cause Design Builder and Developer Consultants to present ideas, concepts, and ultimately plans, specifications, budget and other proposals to the Contract Administrator in an effort to provide updates on progress and to solicit input, feedback, and when appropriate, decisions and/or Approvals on material matters pertaining to the development and delivery of the Projects.

ARTICLE 3
TERM

SECTION 3.1 Term. The term of this Agreement shall commence on the Effective Date and, except as otherwise expressly provided herein, shall expire (i) as to a Project on the later of the date of completion of the one-year warranty period for any Project (as such period may be extended to complete any corrective warranty Project Work as described in Article 8) or compliance with the obligations hereunder with respect to such Project, and (ii) with respect to the Projects as of the date Developer's obligations with respect to the last Project under paragraph (i) above has been fully completed, unless sooner terminated in accordance with the applicable provisions hereof (the "**Term**"), but no such expiration shall negate or impair (a) the obligation of the Parties to make all payments to each other as required pursuant to the terms of this Agreement, (b) the indemnification obligations of the Developer, or (c) any other covenant herein that survives expiration or termination.

ARTICLE 4
COUNTY'S REPRESENTATIONS

SECTION 4.1 County's Representations. As an inducement to the Developer to enter into this Agreement, County represents and warrants to the Developer that, notwithstanding anything herein to the contrary, as of the Effective Date (collectively, the "**County's Representations**"):

4.1.1 Organization. County is a political subdivision of the State of Florida and validly existing under the laws of the State of Florida, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated.

4.1.2 Authority. Upon execution of this Agreement by County, County will have caused all governmental proceedings required to be taken by or on behalf of County to authorize County to execute and deliver this Agreement and to perform the covenants, obligations and agreements of County hereunder. Each individual executing this Agreement on behalf of County has the full power and authority to execute and deliver this Agreement.

4.1.3 No Conflict. The execution and delivery hereof and the performance by County of its obligations under this Agreement do not violate, conflict with or result in a breach of or constitute an event of default under, and are not inconsistent with any material terms or material provisions of any contract, agreement, instrument or Legal Requirements to which County is a party or is subject or any judgment, order or decree applicable to County.

4.1.4 Litigation. There are no Actions or Proceedings, at law or in equity, before any court, mediator or arbitrator, which directly relate to the Project and which, if adversely determined, would materially and adversely affect the validity or enforceability of, or the ability of County to fulfill its obligations under, this Agreement.

4.1.5 Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of County, enforceable against County in accordance with its terms.

4.1.6 Ownership of Site. County is the holder of fee simple title to the real property comprising the Site.

4.1.7 County Authorities. Except for the agencies and/or departments of the County

identified as "County Authorities" on **Exhibit K** (the "**County Authorities**"), there are no other agencies and/or departments within the County whose Approval is required to achieve Substantial Completion or Final Completion of the Projects in the exercise of the County's Governmental Function.

4.1.8 Environmental Matters. To the best of County's knowledge and except as disclosed in the Site Investigation Reports: (i) County has not used or operated the Site in any manner for the storage use, treatment, manufacture or disposal of any Hazardous Materials except for the storage of petroleum products used for on-site generators; and (ii) County has no knowledge of the existence of, and has not received any notices of violation, actions or proceedings, or advisory action taken or contemplated under any federal, state or local laws regulating the discharge of any Hazardous Materials into the environment or any violation of any Environmental Laws.

4.1.9 Competitive Bidding. County has complied with any and all competitive bidding and procurement statutes which are applicable to the Project, including, without limitation, Section 287.055, Florida Statutes, and has selected Developer in accordance with the procedures required under Applicable Law.

4.1.10 Design Services Agreement. As of the Effective Date, to County's knowledge, there are no events of default beyond any applicable notice and cure period by Developer under the Design Services Agreement remains in full force and effect.

County's Representations are made exclusively to the Developer and its permitted assigns and shall not inure into the benefit of the Design Builder or any other Person or run with the ownership of any rights under the Development Documents.

ARTICLE 5
DEVELOPER'S REPRESENTATIONS

SECTION 5.1 Developer's Representations. The Developer hereby makes each of the following representations to County as of the Effective Date (collectively, "**Developer's Representations**"):

5.1.1 Organization, Existence, Etc. The Developer is a corporation duly formed, validly existing and in good standing under the laws of the State of Texas. The Developer has the lawful authority to carry on the development of the Project under the terms of and in accordance with this Agreement. The Developer is duly authorized to conduct business in the State of Florida and each other jurisdiction in which the nature of its properties or its activities requires such authorization.

5.1.2 Power and Authority. The Developer has all necessary corporate power and authority to carry on its present business, to enter into this Agreement, to consummate the transactions herein contemplated and to perform its obligations hereunder in the State of Florida. The execution, delivery and performance of this Agreement by the Developer are within the Developer's powers and have been duly authorized by all necessary action of the Developer and the Developer's board of directors.

5.1.3 No Conflict. None of (i) the execution and delivery of this Agreement, (ii) the consummation of any of the transactions herein contemplated, (iii) compliance with the terms and provisions hereof or (iv) performance hereunder will contravene the organizational documents of the Developer or any Legal Requirements to which the Developer is subject or any judgment, decree, license, order or permit applicable to the Developer, or will conflict or be inconsistent with, or will result in any breach of any of the material terms of the covenants, conditions or provisions of, or constitute a default

under, or result in the creation or imposition of a Lien upon any of the Property or assets of Developer pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to which the Developer is a party or by which the Developer is bound, or to which the Developer is subject.

5.1.4 No Approvals; No Defaults. All proceedings required to be taken by or on behalf of the Developer to authorize the Developer to make and deliver this Agreement and to perform the covenants, obligations and agreements of the Developer hereunder have been duly taken. No Approval, order, authorization, filing, notice or other action to the execution and delivery of this Agreement by the Developer or the performance by the Developer of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, Governmental Authority or other Person, other than any such Approval, order, authorization, filing, notice or other action which already has been taken or unconditionally given. Developer is not in default (nor are there any known circumstances that with notice or lapse of time or both would become a default) under any covenant or obligation pursuant to this Agreement.

5.1.5 Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms and all applicable Legal Requirements.

5.1.6 No Pending Litigation, Investigation or Inquiry. There is no Action or Proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of the Developer, threatened against or affecting the Developer, which the management of the Developer in good faith believe that the outcome of which would (a) materially and adversely affect the validity or enforceability of or the authority or ability of the Developer to perform its obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the construction of the Hotel Project Improvements).

5.1.7 Financial Ability. Developer is financially solvent and possesses or is able to engage sufficient working capital to complete the Project Work as required by this Agreement.

5.1.8 Qualifications of Developer's Personnel. Developer presently employs or is able to engage sufficiently qualified and experienced personnel as required by this Agreement. Developer's personnel who perform Services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations to perform the Services.

5.1.9 No Contingency Fee. Developer has not employed or retained any company or person, other than a bona fide employee working solely for Developer, to solicit or secure this Agreement and has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Developer, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, the Board shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

5.1.10 Experience. Developer represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide the Developer Services and that each

person and entity that will provide Developer Services under this Agreement is duly qualified to perform such services by all appropriate Governmental Authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Developer Services.

5.1.11 Discriminatory Vendor and Scrutinized Companies List. Developer has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. Developer further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

5.1.12 Truth-In-Negotiation Representation. Developer's compensation under this Agreement is based upon its representations to County, and Developer certifies that the wage rates, factual unit costs, and other information supplied to substantiate Developer's compensation, including without limitation in the negotiation of this Agreement, are accurate, complete, and current as of the date Developer executes this Agreement. Developer's compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

5.1.13 Public Entity Crime Act. Developer is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that (i) its entry into this Agreement will not violate that Act, (ii) there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and (iii) it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Developer has been placed on the convicted vendor list.

5.1.14 Performance of the Project Work. The Project Work shall be performed in a competent, safe, qualified, and professional manner, free from defects in materials and workmanship, and constructed in accordance with manufacturers' recommendations and that all materials are new and approved by, or acceptable to, the Contract Administrator, except as otherwise expressly provided for in the Development Documents**.**

5.1.15 Procurement Documents. All statements and representations made in Developer's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were materially true and correct when made and are materially true and correct as of the Effective Date, unless otherwise expressly disclosed in writing by Developer.

5.1.16 Design Services Agreement. As of the Effective Date, to Developer's knowledge, there are no events of default beyond any applicable notice and cure period by County under the Design Services Agreement remains in full force and effect.

5.1.17 Plans and Specifications. Upon the execution of a GMP Contract Amendment for a Project, Developer shall represent and warrant to County that (i) the plans and specifications contained in the Enhanced Design Package such Project meet or exceed all Legal Requirements, (ii) all materials and equipment utilized or procured will be new unless otherwise specified, and (iii) that all the Project Work, FF&E, and OS&E will be of good quality, free from faults and material defects and in conformance with the Development Documents. All Project Work not conforming to these requirements, including substitutions not Approved by the Contract Administrator in accordance with the terms hereof, may be considered defective by the Contract Administrator and subject to remediation in accordance with Section 8.1. If required by the Contract Administrator, Developer shall furnish satisfactory evidence as to the kind

and quality of materials and equipment

The Developer's Representations are made exclusively to County and its permitted assigns (including, without limitation, the Trustee) and shall not inure into the benefit of any other Person or run with the ownership of any rights under the Development Documents.

ARTICLE 6
ASSIGNMENT; DEVELOPER ENTITY

SECTION 6.1 No Assignment, Transfer or Mortgage by the Developer. Except with prior Approval of County, which may be withheld in its sole discretion, the Developer shall not (i) sell, assign, transfer, or otherwise dispose of this Agreement, or any interest herein or hereunder, (ii) mortgage, pledge, encumber or otherwise hypothecate this Agreement or any interest herein or hereunder, or (iii) in any other manner transfer or convey any right, title, interest or estate in or under this Agreement, including but not limited to by Change In Control, consolidation, dissolution, or operation of law (each of the foregoing in (i), (ii), and (iii) referred to herein as a "**Transfer**"). Any attempted or purported Transfer without such prior Approval shall be void and shall confer no rights upon any third parties. In the event Developer is in default of this provision, County, in additional to any other rights County may have at low or in equity, shall have the right to terminate this Agreement upon delivery of written notice to Developer. In the event Developer desires to consummate a Transfer, Developer shall provide (or cause the transferee/assignee to provide) the financial records, litigation history, performance history, and references of such transferee/assignee to County for its review and a fee equal to $10,000 to compensate County for its administrative and legal costs associated with the review of the same (provided, however, Developer shall not be required to pay the foregoing fee for any Transfer Approved by the County concurrently with the execution of this Agreement). County shall review such materials and provide a response approving or rejecting such proposed Transfer within ten (10) Business Days after receipt of such request; provided, however, that County's failure to timely respond to such request shall not operate as Approval. In the event County Approves such Transfer, Developer shall provide County with a evidence of the effectuation of such Transfer promptly upon consummation of the same and in the event such Transfer is to an Affiliate of Developer, Developer shall execute a guaranty of Developer's obligations and performance under this Agreement in the form attached hereto as **Exhibit J** (the "**Parent Guaranty**") as a condition to receipt of County's Approval of such Transfer. No Approval of any Transfer shall release Developer from its obligations under this Agreement except as expressly approved by County and subject to written evidence that the transferee/assignee has agreed to assume all obligations of the Developer under this Agreement.

SECTION 6.2 Developer Entity. The Developer shall be and remain a business entity chartered in, or qualified to do business in, the State of Florida during the period of designing, developing, constructing, equipping, furnishing, and fully completing the Project pursuant to the terms hereof.

SECTION 6.3 Assignment by County. Except with the prior Approval of Developer, County shall not (i) sell, assign, transfer, sublease, license or otherwise dispose of this Agreement, or any Interest herein or hereunder, (ii) mortgage, pledge, encumber or otherwise hypothecate this Agreement or any interest herein or hereunder, or (iii) in any other manner transfer or convey any right, title, interest or estate in or under this Agreement; *provided, however,* County may assign this Agreement, in whole or in part, and assign its interest in the Design Build Agreement, in whole or in part, for the benefit of the holders of bonds or other indebtedness issued by County for the purpose of financing one or more Projects ("**Bonds**"), including to any one or more applicable bond trustees (each a "**Trustee**") as, or in furtherance of, the security for County's obligations regarding the repayment of the Bonds without Approval of

Developer. Developer shall execute and shall cause the Design Builder to execute and deliver, to any Trustee, such documents as are reasonably necessary to Approve and effectuate the collateral assignment of County's rights under this Agreement and the Design Build Agreement, in whole or in part in connection with the issuance of the Bonds and shall reasonably cooperate in providing information related to one or more Projects requested in connection with the issuance of the Bonds; provided, however, that County shall be responsible for paying for Developer and Design Builder's actual out-of-pocket expenses (including without limitation legal fees) in connection with cooperating with County in connection with the issuance of Bonds to finance one or more Projects, such fees not to exceed $20,000 per Bond issuance without the written Approval of the Contract Administrator, not to be unreasonably withheld.

SECTION 6.4 Right to Encumber Projects. County shall have the absolute and unrestricted right from time to time in its sole and absolute discretion to encumber all of the assets that comprise the Projects, any part thereof, or any interest therein, including the real estate on which any Project is constructed, the building and all improvements comprising a Project, all FF&E, OS&E and other personal property placed in or used in connection with the operation of the Projects, and all accounts, receivables and other personal property relating to the Projects and to assign to any holders of such Bonds as collateral security for any loan secured by the mortgage, all of County's or its successor-in-interest's right, title, and interest in and to this Agreement.

SECTION 6.5 Transfers by Trustee. The rights in favor of a Trustee provided for in this Agreement shall inure to the benefit of, and bind the Parties hereto and their respective successors and assigns, and is the complete agreement of the parties with respect to the subject matter hereof. In the event of transfer or assignment of the interest of Trustee (whether by direct assignment, through foreclosure or otherwise), all continuing and then-existing obligations and liabilities shall be the responsibility of the Party to whom such Trustee's interest is assigned or transferred.

ARTICLE 7
SCOPE OF DEVELOPMENT

SECTION 7.1 General.

7.1.1 Project. The Developer shall design, develop, permit, construct, equip, furnish, and complete the Projects in accordance with this Agreement, the Development Documents and all applicable Legal Requirements. The Substantial Completion date and Guaranteed Maximum Price for each individual Project is to be established after the Effective Date through execution of GMP Contract Amendments. Unless otherwise adjusted thereafter by Change Order, the Developer's delivery of each Project shall occur by no later than each such applicable Substantial Completion date at a cost no greater than each such applicable Guaranteed Maximum Price.

7.1.2 Developer Services. To the extent not delineated elsewhere in this Agreement, the Developer shall provide, or cause to be provided, the services listed on **Exhibit C**.

7.1.3 Program Requirements; Design Development. Developer shall cause the design and construction of the Projects in accordance with the Program Requirements attached hereto as **Exhibit B**. County and Developer acknowledge and agree that the Program Requirements and Schematic Design are the subject of the Design Services Agreement and Developer and County shall continue to further refine the Program Requirements and Schematic Design under the terms of the Design Services Agreement up and until County has approved an FGMP as provided in Section 7.2. Developer will submit designs for review by the County at the stages of design development set forth in the Design

Services Agreement and by the dates set forth in the Master Project Schedule and as further required under the terms of the Design Services Agreement. In order to progress the Project Work, the Contract Administrator will provide comments to such design submissions within fourteen (14) days of each submission and each submission will be deemed Approved by the Contract Administrator as noted so that such design may continue unless County has issued a stop work order under the terms of the Design Services Agreement.

SECTION 7.2 Establishment of Cost Limitations and Guaranteed Maximum Prices

7.2.1 Establishment of Cost Limitations. County has established a Cost Limitation for each Project (referred to herein as a "**Project Cost Limitation**") in the maximum amount set forth below, as further itemized and described in **Schedule 4:**

Enabling Projects Cost Limitation	
Hotel Project Cost Limitation	
East Expansion Project Cost Limitation	
West Expansion Project Cost Limitation	

Each Project Cost Limitation is based on the applicable Program Requirements and state of design for a Project under the Design Services Agreement as of the Effective Date. County agrees it will not increase or change the scope of a Project, such as would cause the Developer's overall costs to develop, design, permit, construct, furnish, equip and complete a Project to exceed the applicable Project Cost Limitation. Developer agrees to use Reasonable Best Efforts to submit IGMPs and FGMPs for each of the Projects by the dates set forth for the same in the Master Project Schedule and upon submittal of a full package supporting an IGMP or FGMP, as applicable, to use Reasonable Best Efforts to obtain Approval from the County of the FGMP by the dates set forth in the Master Project Schedule. Each Project Cost Limitation is intended to stand alone and in no event shall Developer reallocate estimated or projected savings from one Project Cost Limitation to another Project Cost Limitation without the prior Approval of the Contract Administrator.

7.2.2 Establishment of Guaranteed Maximum Prices. Each Project shall be managed by the establishment of an IGMP and FGMP which shall set forth a Guaranteed Maximum Price for a Projects or portion thereof to be developed for such Project, each such IGMP and FMGP which shall be submitted for timely Approval by County in accordance with the Master Project Schedule and which may not exceed the Project Cost Limitation established for such Project unless otherwise Approved by the County. To the extent an IGMP exceeds a Project Cost Limitation, Developer shall use Reasonable Best Efforts to reduce such IGMP and provide Value Analysis to the County to reduce the IGMP to at or below the Project Cost Limitation for such Project. Notwithstanding the foregoing, the County acknowledges and agrees that Developer may exceed a Project Cost Limitation to the extent an Unknown Site Condition is discovered or a Force Majeure Event occurs prior to the issuance of an IGMP and/or FGMP for County Approval.

(a) **Submission and Review of IGMPs**.

(i) When the Project Construction Documents for a Project are sufficiently complete to comprise one or more Enhanced Design Packages with respect to a Project or when Developer deems it reasonably necessary to avoid delay to a Critical Path Item but in no event later than as shown in the Master Project Schedule (as may be adjusted by the Contract Administrator), Developer shall submit a an IGMP to County to perform the Project Work described in such Enhanced Design Package(s). The IGMP shall outline (i) the Project Development Costs for the Enhanced Design Package(s), including without limitation the Design Builder IGMP, (ii) a proposed Project Construction Schedule for such Enhanced Design Package, including the proposed dates for Substantial Completion and Final Completion for the applicable Project Work (such dates which shall not deviate from the Master Project Schedule without the Approval of the Contract Administrator), (iii) the basis upon which the Developer's IGMP is formulated, (iv) the amount of the County Contingency, Developer Contingency and Design Builder Contingency, and (v) such other items as County, at its sole option and discretion, may require to address particular requirements for the Project Work as it relates to a particular Enhanced Design Package. Except as provided in Section 7.2.2, in no event shall the IGMP exceed the applicable Project Cost Limitation without the prior Approval of the Contract Administrator; provided, however, that there is no obligation created hereby to construct any part of a Project for a Guaranteed Maximum Price equal to a Project Cost Limitation. In formulating the IGMP for a Project, Developer shall (a) calculate all elements of the Project Development Costs for a Project according to the budget form approved by the Contract Administrator, (ii) not include in the calculation of the Project Development Costs any items that have already been covered in the Design Services Agreement or by Construction Change Directive, Change Order, CPEAM or other GMP Contract Amendment for another Project unless Approved by the Contract Administrator, and (iii) describe in narrative "prose statement" form how the Design Builder IGMP was derived, which description shall also include, at a minimum, a list of the Project Construction Documents terms used in the preparation of the Design Builder IGMP, as well as any allowances, clarifications, qualification and assumptions made by the Design Builder or Developer due to the incompleteness of the Enhanced Design Package upon which the IGMP was based.

(ii) After Developer's submission of an IGMP and in accordance with the Master Project Schedule, the Developer, Design Builder, and the Contract Administrator shall meet to review the IGMP and Value Analysis items described by the Developer and Design Builder in the IGMP and to identify additional Value Analysis items for the scope of the Project Work included in such FGMP. Developer and County shall work in a commercially reasonable and cooperative manner and Developer shall use Reasonable Best Efforts to cause the Design Builder and Developer Consultants to work in a commercially reasonable and cooperative manner to resolve the Value Analysis items to County's reasonable satisfaction and produce a Guaranteed Maximum Price for such Project acceptable to County. Value Analysis items, Add Alternates (including a schedule for including the same into a Project at a particular price) and any other modifications Approved by County, along with the related cost savings for each item, are to be included in the FGMP for the Enhanced Design Package under consideration and shall be documented by an addendum to the IGMP Approved in writing by the Contract Administrator. Developer and County shall endeavor to complete the Value Analysis and review of the IGMP no later than thirty (30) days after Developer's submittal of the IGMP, as such period may be extended by mutual written agreement between Developer and County but in no event longer the time period permitted for Approval by County as set forth in the Master Project Schedule.

(b) **Submission and Acceptance of FGMPs**. If County desires to accept the Developer's proposed IGMP for an Enhanced Design Package after completion of the Value Analysis, both parties shall sign a GMP Contract Amendment in substantially the form attached hereto as **Exhibit G** establishing the FGMP and the Project Construction Schedule for the Project Work described in the Enhanced Design Package under consideration, along with any allowances, clarifications,

qualifications and assumptions. Upon execution of GMP Contract Amendment, Developer assumes the risk of any Project Development Cost in excess of such accepted FGMP, as adjusted by County-Approved Change Orders, Construction Change Directive, or CPEAMs, to the extent such additional Project Development Costs should have been included in the FGMP in Developer's exercise of its Reasonable Best Efforts hereunder, and (ii) shall execute an amendment to the Design Build Contract consistent with the GMP Contract Amendment. For the sake of clarity, nothing contained herein shall be construed to guaranty any single line item of any item or component contained within any IGMP or FGMP adopted by a GMP Contract Amendment.

(c) **Rejection of FGMP**. County, at its sole option and discretion, may reject any IGMP. Developer shall not withdraw its IGMP, which shall be irrevocable and open to acceptance by County, for a period of ninety (90) days after County's receipt thereof; provided, however, that if the IGMP is not accepted and a GMP Contract Amendment establishing the FGMP is not Approved by the County by the dates set forth in the Master Project Schedule for the West Expansion, then the Delay Liquidated Damages shall be subject to a reduction as set forth in Section 12.5.2. If County rejects an IGMP, the IGMP shall be deemed withdrawn and of no effect. In such event, County and Developer shall meet and confer as to how the Project will proceed, with County having the following options: (i) County may suggest modifications to the IGMP, whereupon, if such modifications are accepted in writing by Developer, the Parties may execute a GMP Contract Amendment establishing the agreed upon FGMP; or (ii) County may terminate this Agreement for convenience in accordance with Section 18.5.

SECTION 7.3 Project Subcontractor Procurement Plan. Prior to the presentation of an IGMP for an Enhanced Design Package and/or establishment of an FGMP under a GMP Contract Amendment, Developer shall develop or cause Design Builder to develop a plan for procuring Developer Consultants and Design Builder Subcontractors for the Project Work related to such Project (the "**Project Subcontractor Procurement Plan**"). The Project Subcontractor Procurement Plan shall include sufficient information regarding the bid solicitation process, qualifications (including whether such work will be performed on a design-assist basis), CBE status, and such other items as the Contract Administrator may require in connection with procuring Subcontractor's for the Project Work for such Enhanced Design Package; provided, however, that such Project Subcontractor Procurement Plan shall at all times comply with any applicable Legal Requirements, including without limitation the County Procurement Code, and Section 15.3. Contract Administrator shall have thirty (30) days to review the Project Subcontractor Procurement Plan and upon receipt of Approval from the Contract Administrator, the Developer shall cause the Design Builder to comply with the Project Subcontractor Procurement Plan for such Project.

SECTION 7.4 No Self-Performed Project Work. Except for incidental work that customarily performed by the project managers for Developer and Design Builder, no portion of any Project Work may be performed by a company or other entity which is owned or controlled by the Developer or Design Builder without the Approval of the Contract Administrator.

SECTION 7.5 Salary Costs. Developer shall be paid for Salary Costs on the basis of agreed-upon rates reviewed and Approved by County and attached hereto as **Exhibit F**. Developer's rates for Salary Costs shall conform to the requirements of this Section 7.5. County shall be entitled to audit such rates to ensure conformance to the requirements of this Section.

SECTION 7.6 Notice to Proceed. After execution of a GMP Contract Amendment establishing a FGMP for all or a portion of a Project, County shall issue a Notice to Proceed to Developer following the satisfaction of the following conditions: (i) County has closed on any and all financings necessary to fund

the Project Work that is the subject of such Notice to Proceed and provided reasonable evidence to Developer of the same or provide Developer with evidence that the County has appropriate sufficient funds to fully pay for the Project Work authorized by the Notice to Proceed; (ii) all Governmental Authorizations then required for the Project Work to be authorized by such Notice to Proceed have been procured by Developer (provided, however, that it is understood and agreed that, to the extent permitted by Legal Requirements, such Governmental Authorizations may be procured in stages during the Project Work and Developer shall not be responsible for obtaining the DRI Approval); (iii) Developer has executed an amendment to Design Build Agreement consistent with the GMP Contract Amendment establishing the Design Builder's Guaranteed Maximum Price for the Project Construction Work that is the subject of the Notice to Proceed; and (iv) County has received evidence that Developer and Design Builder are both in compliance with all insurance requirements set forth in this Agreement and any applicable GMP Contract Amendment. Subject to the foregoing, upon issuance of a Notice to Proceed from County, Developer shall cause Design Builder to promptly commence Project Work authorized by County and thereafter diligently and continuously pursue completion of the Project Work so authorized pursuant to the terms of this Agreement.

SECTION 7.7 Adjacent Property and Ongoing Operations. Developer acknowledges that during the course of its performance of the Project Work conventions and other events will continue to be held at the Convention Center and activities and business will continue at the adjacent Port Everglades. Developer shall use Reasonable Best Efforts to manage and coordinate the Project Work so as not to disrupt the operations of the Convention Center and Port Everglades to the extent such facilities are not scheduled to be temporarily shutdown or interrupted to accommodate the Project as set forth in the Master Project Schedule or any Project Construction Schedule. Developer shall incorporate modifications or disruptions to the Project Work arising from the continued operations of the Convention Center and Port Everglades in preparing the Master Project Schedule and any Project Construction Schedule and the overall management and coordination of the Project Work. Developer shall use Reasonable Best Efforts to manage and coordinate the Design Builder and Developer Consultants in order that the continued operations of the Convention Center and Port Everglades do not become the basis for claims for damages or time extensions to the extent such facilities are not scheduled to be temporarily shutdown or interrupted as set forth in the Master Project Schedule or a Project Construction Schedule. To the extent the Developer is adhering to the Construction Management Plan established for any Project and has utilized Reasonable Best Efforts with respect to its obligations under this Section 7.7, the County shall not hold Developer responsible for disruptions of the operations of the Convention Center and/or Port Everglades.

SECTION 7.8 Project Safety Plan. Developer shall be responsible for Project safety during the course of performance of this Agreement and shall create (or cause Design Builder to create), no less than thirty (30) days prior to the commencement of construction, a written project safety plan for the Projects that will be in effect for the duration of the Term (the "**Project Safety Plan**"). The Project Safety Plan which shall be prepared in accordance with the Legal Requirements. Developer shall provide County with a copy of the Project Safety Plan promptly after its creation and shall cause Design Builder to comply with the Project Safety Plan for the duration of the performance of its obligations under the Design Build Agreement.

SECTION 7.9 Site Access. All persons acting, by, though, under, or at the direction of Developer, including Developer Consultants, Design Builder, and the Design Builder Subcontractors, shall have access to any portion of the Site upon which Project Work has been authorized by County by a Notice to Proceed on a twenty-four (24) hour per day, seven (7) day per week basis, beginning on the date of the applicable Notice to Proceed and continuing through the Final Completion of the Project Work authorized under such Notice to Proceed, subject to any restrictions under any Legal Requirements. In the event the

Developer desires out of necessity to perform Project Work during non- business hours, the Developer shall provide County with at least 12 business hours' notice in writing of the general work to be performed, the need for the work during non- business hours, and the estimated number of persons performing such work, such work which shall be subject at all times to any applicable Legal Requirements. Notwithstanding the foregoing, the County shall use commercially reasonable efforts to provide at least 48 hours prior notice to Developer of any County representative, commission member, or other public official desiring to visit the site who is not otherwise an Inspecting Party.

SECTION 7.10Construction Management Plan. The GMP Contract Amendment for each portion of the Project Work shall include a construction management plan for the Project, including, without limitation, demolition, construction, construction areas, laydown areas, contractor employee parking areas and transportation plans to the Site, construction trailer locations, staging and material storage areas, noise restrictions, ingress and egress plans, permitted days and hours for construction activities and the terms, restrictions and conditions for certain other development and construction activities (the "**Construction Management Plan**"). The Construction Management Plan may not be amended, restated, modified, supplemented and/or waived without the prior written Approval of the Contract Administrator, which shall not be unreasonably withheld. The failure of Developer and/or County to perform its obligations hereunder in accordance with the Construction Management Plan will be subject to the default, cure, Developer Excused Delay, remedies and termination provisions of this Agreement, in each case if and to the extent applicable. Developer shall cause Design Builder to adhere to the policy, procedures and requirements set forth in the Construction Management Plan for the duration of the Term.

SECTION 7.11Site Visits; Construction Monitors. Developer shall and shall cause the Design Builder to permit an Inspecting Party to enter upon the Site during the Project Work to inspect, measure, and test, as applicable, the property, work and improvements and all equipment and materials to be used in the construction a Project and to examine all Project Construction Documents which are or may be kept at the Site and which shall be accessible electronically, to examine and make copies and abstracts from the records and books of account, wherever located, in respect of the Project, and to directly contact Developer and Developer Consultants, Design Builder, and any Design Builder Subcontractors to determine the status and progress of construction and compliance with the provisions of the Design Build Agreement and related terms and conditions set forth herein. Developer shall use Reasonable Best Efforts to cause Design Builder and Design Builder Subcontractors to cooperate with the Inspecting Party to enable such Inspecting Party to perform its functions to the party to whom it reports.

SECTION 7.12Mechanics' Liens and Claims. If any Lien or Claim of Lien, whether choate or inchoate, shall be filed against the Site, a Project, County's interest in the Site or a Project, by reason of any work, labor, services or materials supplied or claimed to have been supplied on or to the Site or any Project (collectively, any "**Mechanics' Lien**") and provided that such Mechanic's Lien is not the result of County's failure to comply with its payment obligations hereunder, the Developer shall, after Notice of the filing thereof from County but in no event more than thirty (30) days after such Notice, cause the same to be released, satisfied or discharged of record, or effectively prevent, by bond, order of court, law or otherwise, the enforcement or foreclosure thereof against the Site, the Hotel Project, the West Expansion Project, East Expansion Project, Enabling Project, County, or any property of County. IT IS THE INTENT OF COUNTY AND DEVELOPER THAT NOTHING CONTAINED IN THIS AGREEMENT SHALL (A) BE CONSTRUED AS A WAIVER OF COUNTY'S LEGAL IMMUNITY AGAINST MECHANICS' LIENS ON ITS PROPERTY OR ITS CONSTITUTIONAL AND STATUTORY RIGHTS AGAINST MECHANICS' LIENS ON ITS PROPERTY, INCLUDING THE PREMISES OR (B) BE CONSTRUED AS CONSTITUTING THE EXPRESS OR IMPLIED CONSENT OR PERMISSION OF COUNTY FOR THE PERFORMANCE OF ANY LABOR OR SERVICES FOR,

OR THE FURNISHING OF ANY MATERIALS TO DEVELOPER THAT WOULD GIVE RISE TO ANY SUCH MECHANICS' LIEN AGAINST COUNTY'S INTEREST IN THE SITE, THE HOTEL PROJECT, THE WEST EXPANSION PROJECT, EAST EXPANSION PROJECT, ENABLING PROJECT, COUNTY, OR ANY PROPERTY OF COUNTY, OR IMPOSING ANY LIABILITY ON COUNTY FOR ANY LABOR OR MATERIALS FURNISHED TO OR TO BE FURNISHED TO DEVELOPER UPON CREDIT. COUNTY SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES DURING ANY CONSTRUCTION ACTIVITY AT THE SITE TO POST AND KEEP POSTED AT THE SITE SUCH NOTICES OF NON-RESPONSIBILITY AS COUNTY MAY DEEM NECESSARY FOR THE PROTECTION OF COUNTY, AND THE FEE OF THE PREMISES FROM MECHANICS' LIENS.

ARTICLE 8 WORK WARRANTIES.

SECTION 8.1 Defective Project Work. The Contract Administrator may reject or disapprove Project Work that he or she reasonably finds defective. If required by the Contract Administrator, Developer shall promptly either correct, or cause the correction of, all defective Project Work, or remove, or cause the removal of, such defective Project Work and its replacement with non-defective Project Work. Developer shall be responsible for all direct, indirect, and consequential costs needed to cause the removal or correction defective Project Work including cost of testing laboratories and personnel. County will not be liable or responsible for the payment of the cost of any corrective work. If Developer fails or refuses to remove or correct, or cause the removal or correction of, any defective Project Work or to make any necessary repairs in accordance with the requirements of the Development Documents within the time indicated in writing by the Contract Administrator, County shall have the authority, but not the obligation, to cause the defective work to be removed or corrected, or make such repairs as may be necessary at Developer's expense. Any expense incurred by County in making such removals, corrections, or repairs, shall be paid for out of any monies due or that may become due to Developer, or may be charged against the Payment or Performance Bond. If Developer fails to make or cause all necessary repairs to be made promptly and fully, County may declare a default. If, within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by the terms of any applicable special warranty of Developer required by the Development Documents, any of the Project Work is found to be defective or not in accordance with the Development Documents, Developer, after receipt of written notice from County, shall promptly correct, or cause the correction of, such defective or nonconforming Project Work within the time specified by County without cost to County to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation that Developer might have under the Development Documents including but not limited to any warranties and any claim regarding latent defects. Any failure by County to reject any defective Project Work or material shall not in any way prevent later rejection when such defect is discovered, or obligate County to final acceptance. Developer shall, at no cost or expense to County: (i) replace any non-conforming part of the Project Work discovered during the Project; (ii) remedy any defects in the Project Work due to faulty materials or quality of work that appear within one (1) year from the time of Substantial Completion of the Project Work or portions thereof hereunder or within such longer period of time as may be set forth in the Development Documents or as may be required by law; and (iii) replace, repair, or restore any parts of the Projects, or furniture, fixtures, equipment, or other items placed therein (whether by County or any other party) that are injured or damaged by any such parts of the Project Work that do not conform to this Agreement or are due to defects in the Project Work. Developer's responsibility to make or cause repairs and redo work under this Section 8.1 is in addition to Developer's responsibility to County for any other damages of any kind for which Developer would be legally responsible, subject to Section 18.4.3.

SECTION 8.2 Project Work Warranty. Developer warrants to County for one (1) year from the date from Substantial Completion of a Project that all materials, furnishings, fixtures, and equipment provided under this Agreement will be new unless otherwise specified and that all of the Work will be of good quality, free from faults and material defects and in conformance with the Development Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized by the Contract Administrator, may be considered defective. If required by the Contract Administrator, Developer shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by any other provisions of this Agreement; PROVIDED, HOWEVER, THAT DEVELOPER DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PROJECT WORK OR THE IMPROVEMENTS OTHER THAN AS EXPRESSLY CONTAINED OR REFERENCED HEREIN AND DEVELOPER HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. At the option of County, in its sole discretion, County may require that Developer assign any and all warranties in favor of Developer contained in the Design Build Agreement with respect to the Design Builder and/or any agreement with a Development Consultant and effective upon such assignment, Developer shall have no further liability under this Section 8.1 solely with respect to such assigned warranty.

SECTION 8.3 Warranty Inspection. Developer shall or shall cause Design Builder and/or Developer Consultant, as applicable, to assist County in conducting a warranty inspection of not less than one (1) month prior to the expiration of the 1-year warranty period set forth in Section 8.1 for a Project. The Developer shall be entitled to reimbursement from County as a Project expense for all reasonable costs incurred in conducting such warranty inspections, including without limitation, reasonable travel, lodging, professional fees incurred to third parties, subject to the restrictions set forth on Developer Reimbursable Expenses as set forth herein. All costs incurred by Developer in enforcing warranties from the Design Builder or any Development Consultant shall be the responsibility of the Developer.

ARTICLE 9 CHANGES TO THE PROJECT

SECTION 9.1 General. Changes to the Project Work may be accomplished after establishment of the applicable FGMP only by Change Order, Construction Change Directive, CPEAM or a Field Order. With respect to the Project Work, the Developer's compensation and/or the Project Construction Schedule may be adjusted only if one of the three following conditions are met:

(a) County has issued a Construction Change Directive for such changed Project Construction Work under Section 9.2; or

(b) An order for an Immaterial Modification (hereinafter referred to as a "**Field Order**") may be issued by the Contract Administrator or by Developer under Section 9.4. By acceptance of such Field Order, the Developer acknowledges that the minor change requested will not result in a change in the Guaranteed Maximum Price or Scheduled Date of Substantial Completion; or

(c) Developer has provided County or County has presented Developer a written proposal to accomplish the changed Project Work by submitting a Change Proposal in a form acceptable to County (hereinafter referred to as a "**Change Proposal**") and County has subsequently executed a CPEAM or a Change Order for the changed Project Work.

9.1.2 Change Proposal. Any claim for a change in the Project Construction Schedule or GMP shall be made by written notice stating the general nature of the claim delivered by Developer to the

Contract Administrator, within five (5) days after the later of the commencement of the event giving rise to the claim. Further notice of the nature and elements of the claim shall be delivered within ten (10) days after the date the first written notice. Thereafter, within ten (10) days after the termination of the event giving rise to the claim, written notice of the full extent of the claim in the form of Change Proposal, with supporting data, shall be delivered to the Contract Administrator, unless the Contract Administrator allows an additional period of time to ascertain more accurate data in support of the claim. This notice and Change Proposal must be accompanied by Developer's written statement that the adjusted claim is the entire adjustment to which Developer believes it is entitled because of the said event. All claims for adjustment in the Construction Project Schedule or GMP shall be determined by and in accordance with Article x herein. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE PROJECT CONSTRUCTION SCHEDULE OR GMP SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION**. Developer, on its own or upon receipt of written notification by County, shall prepare a Change Proposal in such form or forms as directed by County in accordance with the following requirements:

(a) Each separate Change Proposal shall be numbered consecutively and shall delineate materials, costs, labor costs, fees, overhead and profit. The Change Proposal shall specify all cost related to the proposed Change in the Project Work, including any disruption or impact on performance;

(b) The Design Builder's itemized estimate shall be included with the Change Proposal;

(c) The Developer shall request extensions of Project Construction Schedule due to changes in the Project Work only at the time of submitting the Change Proposal applicable to such changed Project Work ;

(d) If a Change Proposal is returned to the Developer for additional information or if the scope of the proposed change in the Project Work is modified by additions, deletions or other revisions, the Developer shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to County;

(e) A revised Change Proposal shall bear the original Change Proposal number suffixed by the letter "R" to designate a revision in the original Change Proposal. If additional revisions to a revised Change Proposal are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following the "R" suffix;

(f) Upon written approval of a Change Proposal by County, Developer will prepare a Change Order authorizing such change in the Project Work and adjusting the Hotel Project Substantial Completion Deadline, West Expansion Project Substantial Completion Deadline, East Expansion Project Substantial Completion Deadline and/or a Guaranteed Maximum Price, as appropriate.

Any Change Proposal shall be delivered by Developer to the Contract Administrator within twenty (20) days after the commencement of the event giving rise to the claim or Developer's knowledge of the occurrence of such claim. Thereafter, within ten (10) days after the termination of the event giving rise to the claim, written notice of the full extent of the claim, with supporting data, shall be delivered to the Contract Administrator, unless the Contract Administrator allows an additional period of time to ascertain more accurate data in support of the claim. This notice must be accompanied by Developer's written

statement that the adjusted claim is the entire adjustment to which Developer believes it is entitled because of the said event. All claims for adjustment in the Construction Project Schedule or GMP shall be determined by and in accordance with Article x herein.

SECTION 9.2 Change Orders.

9.2.1 A Change Order is a written instrument signed by County and Developer stating their agreement upon all of the following, in the:

(a) Change in the Project Work;

(b) The amount of the adjustment, if any, in a FGMP due to such change in the Project Work; and

(c) The extent of the adjustment, if any, in a Scheduled Date of Substantial Completion.

9.2.2 Methods used in determining adjustment to a Guaranteed Maximum Price may include those listed below:

(a) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. Sufficient substantiating data shall include a proposal itemized for the various components of Project Work added or deleted, segregated by labor, material and equipment. Details to be submitted will include detailed line item estimates showing detailed material quantity take-offs, material prices by item and of related labor hour pricing information and extension (by line item by drawings as applicable);

(b) Unit prices stated in the Development Documents or subsequently agreed upon and supported by sufficient substantiating data to permit evaluation, provided an estimated total cost is included in the original change order, which shall be superseded by a subsequent change order reconciling the total actual cost with the estimated cost included in the original estimate; or

(c) Cost to be determined in a manner agreed upon by the parties in writing.

9.2.3 Payments to Developer, Design Builder, Subcontractors, Sub-subcontractors and Suppliers as fee for profit and overhead on any Change Order shall be limited to the following amounts:

(a) No more than an amount equal to the applicable Developer Fee for a Project multiplied by the Developer Managed Costs within the Change Order for the Developer to the extent such Change Order involves a Developer Managed Cost.

(b) No more than an amount equal to the applicable Design Builder Fee for a Project multiplied by the Design Builder Managed Costs within the Change Order for the Design Builder to the extent such Change Order involves a Design Builder Managed Cost.

(c) No more than 5% for the Subcontractor who oversees a Sub-subcontractor or lower-tier Supplier who directly self-performs with its own forces the labor or installation of supplies, materials or equipment necessary for the Project Work required by the Change Order, to be applied only to the agreed estimated Project Development Costs for the Change Order; and

(d) No more than 15% for a Subcontractor, Sub-subcontractor or Supplier who directly self-performs with its own forces the labor or the furnishing of supplies, materials or equipment necessary for the Project Work required by the Change Order, to be applied only to the agreed estimated Project Development Costs performed or furnished by such Sub-subcontractor for the Change Order.

9.2.4 Unless Developer's rights are otherwise reserved in a Change Order, agreement on a Change Order shall constitute a final settlement of all claims by the Developer directly or indirectly arising out of or relating to the change in the Project Work which is the subject of the Change Order, including all adjustments to the applicable Guaranteed Maximum Price and/or Project Construction Schedule.

SECTION 9.3 Construction Change Directives.

9.3.1 A "**Construction Change Directive**" is a written order prepared by the Contract Administrator directing a change in the Project Work prior to or in the absence of an agreement on adjustment, if any, in the Guaranteed Maximum Price and/or Project Construction Schedule. County may by Construction Change Directive, and without invalidating this Agreement, order changes in the Project Work. A Construction Change Directive to change the Project Work will be used when County determines that the change must be implemented before the Parties will be able to agree on a Change Order for the changed Project Work.

9.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. The Construction Change Directive shall include a unilateral change in the Guaranteed Maximum Price, and/or Project Construction Schedule reflecting County's reasonable view of the appropriate adjustment in the Guaranteed Maximum Price and/or Project Construction Schedule for the change in the Project Work covered by the Construction Change Directive. Until agreement is reached by County and Developer on these issues, the changes in the Guaranteed Maximum Price, and/or Project Construction Schedule set out in the Construction Change Directive shall be used for payment and scheduling purposes.

9.3.3 Upon receipt of a Construction Change Directive, the Developer shall promptly proceed with the change in the Project Work involved and advise County of the Developer's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Guaranteed Maximum Price and/or Project Construction Schedule.

9.3.4 A Construction Change Directive signed by the Developer indicates only that the Developer will proceed therewith, pending later resolution of any adjustment in the Guaranteed Maximum Price and/or Project Construction Schedule. Such Construction Change Directive shall be effective immediately.

9.3.5 In the event that performance of the changed Project Work is the sole cause for extension of the Date of Substantial Completion and the Date for Final Completion, Developer shall be entitled to an equitable time extension.

9.3.6 County will pay the reasonable County agreed increase, if any, in the Guaranteed Maximum Price to perform a Construction Change Directive. The Developer shall separately record the performance of the Project Work under the Construction Change Directive according to cost accounting codes specific to such Construction Change Directive, on a time and materials basis for the actual cost of performing such Project Work. Such documentation of costs, including labor time cards, shall be

submitted with Developer's Application for Payment in a form identifiable to such Construction Change Directive.

9.3.7 County shall be entitled to a reduction in the Guaranteed Maximum Price if County issues a Construction Change Directive for a decrease in the scope of the Project Work that results in a net decrease in the estimated Project Development Costs, if any. Such reduction in the Guaranteed Maximum Price shall be calculated in direct proportion to and based upon the net decrease in the estimated Project Development Costs for such scope decrease, reflected in the original Guaranteed Maximum Price.

SECTION 9.4 CPEAM. Developer may initiate a CPEAM for Approval by the Contract Administrator to reallocate (i) Project Savings to the County Contingency as provided in Section 11.__, (ii) allocate County Contingency or Design Builder Contingency subject to the limitations set forth in Sections 11.__ and 11.___, as applicable, or (iii) otherwise reallocate component lines within a FGMP for a Project with the Approval of the Contract Administrator. In no event may a CPEAM be utilized to increase the total amount of an FGMP and/or extend a Scheduled Date of Substantial Completion.

SECTION 9.5 Field Orders. Contract Administrator has authority to issue a Field Order to implement Immaterial Modifications. Such changes shall be effected by written Field Order and shall be binding on County and Developer and the Developer shall carry out such written Field Orders promptly. By acceptance of such Field Order, the Developer acknowledges that the Immaterial Modification will not result in a change in the Guaranteed Maximum Price or a scheduled date of Substantial Completion. If the Developer receives a Field Order that the Developer considers a substantial change requiring an increase to the Guaranteed Maximum Price and/or change to a scheduled date of Substantial Completion, the Developer shall not proceed with the Project Work that is the subject of the Field Order, but within five (5) days after the date of such Field Order, shall submit to County a written notice stating the reasons why the Developer believes a change is involved, together with a preliminary estimate of the cost and the impact to the Project Construction Schedule and a Scheduled Date of Substantial Completion, that Developer believes will be required to implement such change, and complete the pricing of such a Change Proposal in accordance with Section 9.1.2 above, as soon as reasonably practicable, but in no event later than 30 days after the date of the Field Order. Developer shall submit with its Change Proposal a detailed schedule analysis, if Developer intends to seek a time extension as a result of the Construction Change Directive, unless otherwise agreed to by the Parties. If Developer fails to submit such Change Proposal and any schedule analysis within ten (10) Business Days after the date of the Field Order, any claim for adjustment shall be waived unless County has agreed in writing, in advance to extend the time for such submission. Pending final pricing and approval of a Change Order, County may issue a Construction Change Directive to Developer proceed in accordance with the Field Order, and Developer shall thereafter proceed with the work in accordance with the Construction Change Directive, as required under Section 9.1.2, above. Under no circumstances shall a change in the Guaranteed Maximum Price and/or Project Construction Schedule be allowed unless, prior to performing the changed Project Work, the Developer has provided County in writing with a Change Proposal for any increase in the Guaranteed Maximum Price and/or Project Construction Schedule caused by the change in Work, and County has either approved a Change Order therefor, in accordance with Section 9.1.3, below or issued Developer a Construction Change Directive.

ARTICLE 10 PAYMENT AND PERFORMANCE BONDS.

SECTION 10.1General. Prior to commencing any Project Work contemplated in a GMP Contract Amendment for a Project, Developer shall cause Design Builder to furnish a payment bond and a

performance bond as required under Section 255.05, Florida Statutes, and in substantially the forms attached hereto as **Exhibits N-1** and **N-2** in a penal sum of no less than the full amount of the Design Builder GMP for the Project Construction Work to be performed under the Design Build Agreement with respect to such Project (each being "**Payment and Performance Bonds**"). The Payment and Performance Bonds shall guarantee to County the completion and performance of Design Builder's Project Construction Work to be performed under a GMP Contract Amendment and full payment of all suppliers, material providers, laborers, and Design Builder Subcontractors of all tiers employed under this Project. County shall be named as an obligee on each Payment and Performance Bond and at the request of County, the Trustee for the Bonds shall also be named as an obligee. Each bond shall be with a surety company that is qualified under Section 10.2. The Performance Bond and Payment Bond shall continue in effect for one (1) year after Substantial Completion of the Project Work, or an additional bond shall be obtained by Developer and conditioned that Developer will, upon notification by County, correct any defective or faulty work or materials that appear within one (1) year after Substantial Completion of the Project Work. Under the requirements of Section 255.05(1)(a), Florida Statutes, as may be amended, Developer shall ensure that the Payment and Performance Bonds are recorded in the public records of Broward County and provide County with evidence of such recording as a precondition to commencing any Project Work.

SECTION 10.2Qualifications of Surety. Each Payment Bond and Performance Bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety company shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Payment and Performance Bond exceeds the underwriting limitation set forth in the circular, to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 CFR Section 223.10, Section 223.111). The surety company shall provide County with evidence satisfactory to County that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum ratings. A surety company that is rejected by County may be substituted by Design Builder with a surety company acceptable to County, provided the applicable FGMP established under a GMP Contract Amendment does not increase. The following sets forth, in general, the acceptable parameters for bonds:

Amount of Bond	Policy Holder's Ratings	Financial Size Category

500,001 to 1,000,000	A-	Class I
1,000,001 to 2,000,000	A-	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

SECTION 10.3 Enforcement of Payment and Performance Bond. The Developer shall assist County in causing proceeds received under any Payment and Performance Bond to be applied in satisfaction of Design Builder's obligations under the Design Build Agreement.

ARTICLE 11
PROJECT COSTS, DISBURSEMENTS

SECTION 11.1 Funding Sources. County shall be responsible for the payment, in accordance with this Article 11, for all Project set forth in each Project Budget that is Approved by County as evidenced by the GMP Contract Amendment authorizing Developer to incur such Project Costs.

11.1.1 Enabling Projects Funding. County shall pay for the Enabling Project from funds appropriated by the Board upon approval of the GMP Contract Amendment for the same.

11.1.2 Hotel Construction Fund. Prior to the commencement of Project Work on the Hotel Project, County shall provide evidence reasonably satisfactory to the Developer that County has issued Bonds and has received funds necessary to pay for the Project Development Costs for the Hotel Project and deposited the same into a construction fund for the Hotel Project with the Trustee or other depository (the "**Hotel Construction Fund**"). The Hotel Construction Fund shall be used for funding the payment of the Project Development Costs that are included in the FGMP for the Hotel Project.

11.1.3 Convention Center Project Construction Fund. Prior to the commencement of the Project Work on the West Expansion Project or the East Expansion Project, County shall provide evidence reasonably satisfactory to the Developer that County has issued Bonds and has received funds necessary to pay for the Project Development Costs for the West Expansion Project and East Expansion Project and deposited the same into a construction fund for the West Expansion Project and East Expansion Project with the Trustee or other depository (the "**CCE Projects Construction Fund**"). The CCE Projects Construction Fund shall be used for funding the payment of Project Development Costs that are included in the FGMPs for the West Expansion Project and East Expansion Project.

SECTION 11.2 Project Savings. The FGMP for a particular Project is a guaranty of overall costs and not of any single line item contained within such FGMP. If upon the Final Completion of a Project and full payment of all Project Development Costs and sums due under this Agreement to the Developer there

are any final realized savings or funds remaining in the County Contingency (including any Developer Contingency) and/or Design Builder Contingency line item of a FGMP for a Project, then such funds shall thereafter be the exclusive property of County and Developer shall not be entitled to request disbursement of such funds except to satisfy any County obligations under this Agreement and/or to fully pay any final and unpaid Project Development Costs.

SECTION 11.3 Developer Contingency.

11.3.1 Each FGMP for a Project will include a category for "**Developer Contingency**" in an initial amount not to exceed two percent (2%) of the Project Development Costs unless otherwise specified in a GMP Contract Amendment. The Developer Contingency shall be reduced as follows unless otherwise specified in a GMP Contract Amendment:

Initial Developer Contingency	2% of Developer Managed Costs
(i) Buy-out of Enhanced Design Packages representing 80% of the estimated value of all Developer Consultants and Design Builder Subcontractors, (ii) County and Hotel Operator Approval (as applicable) of 100% Project Construction Documents, and (iii) substantial completion of the foundations and first floor slab for the Project	1.75% of Developer Managed Costs plus Identified Claims
Hotel Project: (i) enclosure of the buildings comprising the Hotel Project, (ii) installation of and ability to use HVAC systems, and (iii) approval of room mockups *West Expansion or East Expansion*: (i) enclosure of the buildings comprising the Project, and (ii) installation of and ability to use HVAC systems *Enabling Project*: Not applicable	1.5% of Developer Managed Costs plus Identified Claims
Substantial Completion	1.0% of Developer Managed Costs plus Identified Claims

At the applicable times set forth above, any Developer Contingency greater than the amounts set forth above shall be promptly released to the County and reallocated to County Contingency by a CPEAM reducing the Developer Contingency and permitting the County to utilize such funds. The Developer Contingency may be used for a Developer Contingency Event as set forth in Section 11.3.2. Notwithstanding the foregoing, in the event a Developer Contingency Event occurs and Developer does not have a sufficient amount in the Developer Contingency as a result of the reduction of the Developer

Contingency set forth above, Developer shall be permitted to make request by CPEAM to utilize County Contingency to fund such Developer Contingency Event up to the amount of the reduction of the Developer Contingency subject to the Approval of the Contract Administrator, not to be unreasonably withheld. Notwithstanding the foregoing, Developer shall use Reasonable Best Efforts to advise County of any opportunities to utilize Developer Contingency for Add Alternates or other Value Analysis items prior to the reduction milestones set forth above but in no event shall Developer be obligated to reduce the Developer Contingency in advance of the milestones set forth above.

11.3.2 Developer may expend funds from the Developer Contingency to pay for (1) the costs of accelerating the schedule and minimizing delays to Critical Path Items in the Master Project Schedule or any Project Schedule; (2) Developer Consultant, Design Builder, or Design Builder Subcontractor breach or negligence provided that Developer demonstrates to the Contract Administrator's reasonable satisfaction that Developer has in good faith used Reasonable Best Efforts to obtain performance from the defaulting or negligent party and any recoveries shall be used to replenish the Developer Contingency; (3) scope gaps, buy-out losses, bid-busts and other circumstances where the actual demonstrable costs of buying out the Project (including general conditions, Design Builder Fee, Developer Fee, and Developer Reimbursable Expenses) exceed the FGMP; (4) mitigating Unknown Site Conditions or Force Majeure Events for which relief is not otherwise available under this Agreement; (5) incorporating Immaterial Modifications that are the subject of a Field Order; or (6) addressing emergency conditions on the Site that threaten to cause harm to health and human safety or to the improvements comprising a Project (individually and collectively referred to as "**Developer Contingency Event**"). With each CPEAM initiated for use of the Developer Contingency, Developer shall state, as applicable, whether the event or claim underlying Developer's use of the Developer Contingency is an insured claim under any policy of insurance required to be carried under this Agreement or carried by Design Builder under the Design Build Agreement. Notwithstanding the foregoing, Developer shall obtain Approval from the Contract Administrator for (i) any single or aggregate expenditure in exceeding $250,000 (such threshold which shall reset after receipt of Approval by the Contract Administrator), or (ii) if Developer desires to use the Developer Contingency for item (2) in the definition of Developer Contingency Event, such Approval which shall be made in good faith, shall not be unreasonably withheld, and shall be made within one (1) Business Day of receipt of a written request for the same.

11.3.3 Any funds remaining in the Developer Contingency at Final Completion of a Project shall inure to the benefit and remain the sole property of the County and shall not be shared with the Developer or Design Builder.

11.3.4 Each use of Developer Contingency, regardless of whether it requires Approval by the Contract Administrator, shall be accomplished by a CPEAM and shall identify whether such use is to be allocated toward the Developer Contingency and the amount of any remaining Developer Contingency after application of such CPEAM. If Approval by the County is required, such CPEAM shall be Approved by the Contract Administrator, such Approval not to be unreasonably withheld.

SECTION 11.4 Design Builder Contingency.

11.4.1 Each Guaranteed Maximum Price for a Project will include a category for "**Design Builder Contingency**" in an initial amount not to exceed 5% of Design Builder Managed Costs and reduced as follows unless otherwise specified in a GMP Contract Amendment:

Initial Amount	5% of Design Builder Managed Costs

(i) Buy-out of Enhanced Design Packages representing 80% of the estimated value of all Developer Consultants and Design Builder Subconsultants, (ii) County and Hotel Operator Approval (as applicable) of 100% Project Construction Documents, and (iii) substantial completion of the foundations and first floor slab for the Project	3% of Design Builder Manager Costs, plus Identified Claims, less any buy-out savings
Hotel Project: (i) enclosure of the buildings comprising the Hotel Project, (ii) installation of and ability to use HVAC systems, and (iii) approval of room mockups *West Expansion or East Expansion*: (i) enclosure of the buildings comprising the Project, and (ii) installation of and ability to use HVAC systems *Enabling Project*: Not applicable	2% of Design Builder Managed Costs plus Identified Claims
Substantial Completion	1% of Design Builder Managed Costs plus Identified Claims

At each applicable time set forth above, any Design Builder Contingency greater than the amount set forth above shall be promptly released to the County and reallocated to County Contingency by a CPEAM reducing the Design Builder Contingency and permitting the County to utilize such funds in accordance with Section 11.3. Notwithstanding the foregoing, in the event a Developer Contingency Event occurs and there is insufficient Design Builder Contingency as a result of the reduction of the Design Builder Contingency set forth above, Developer shall be permitted to make request by CPEAM to utilize County Contingency to fund such Developer Contingency Event up to the amount of the reduction of the Design Builder Contingency subject to the Approval of the Contract Administrator, not to be unreasonably withheld. The Design Builder Contingency may be used for Developer Contingency Events and any purpose set forth in Section 11.4.2. Notwithstanding the foregoing, Developer shall use Reasonable Best Efforts to advise County of any opportunities to utilize Design Builder Contingency for Add Alternates or other Value Analysis items prior to the reduction milestones set forth above but in no event shall Developer or Design Builder be obligated to reduce the Design Builder Contingency in advance of the milestones set forth above.

11.4.2 Provided that Developer obtains the Contract Administrator's prior Approval for authorizing Design Builder to incur any expenditures from the Design Builder Contingency in excess of $250,000 in aggregate (such threshold which shall reset after receipt of Approval by the County), Developer may authorize Design Builder expend funds from the Design Builder Contingency in accordance with the terms of the Design Build Agreement. With each CPEAM initiated for use of the Design Builder Contingency, Developer shall state, as applicable, whether the event or claim underlying Design Builder's use of the Design Builder Contingency is an insured claim under any policy of insurance required to be carried under this Agreement. In no event shall Developer permit Design Builder

to use the Design Builder Contingency for any additional costs or expenses caused by (a) breach of the Design Build Agreement by Design Builder, or (b) the negligence of a Design Builder Subcontractor; provided, however, that upon Developer's demonstration, to the County's reasonable satisfaction, that Design Builder has in good faith used Reasonable Best Efforts to obtain performance from such Design Builder Subcontractor, Developer shall be permitted to authorize Design Builder to utilize amounts in the Design Builder Contingency with the Approval of the Contract Administrator and any recoveries shall be used to replenish the Design Builder Contingency. Any Approvals required by the Contract Administrator with respect to use of the Developer Contingency shall be made in good faith, shall not be unreasonably withheld, and shall be made within one (1) Business Day of receipt of a written request for the same.

11.4.3 Any funds remaining in the Design Builder Contingency at Final Completion of a Project shall inure to the benefit and remain the sole property of the County and shall not be shared with the Developer or Design Builder.

11.4.4 Each use of Design Builder Contingency, regardless of which it requires Approval by the County or is initiated by the County, Developer, or Design Builder, shall be accomplished by a CPEAM. In the event Approval by the County is required, such CPEAM shall be Approved by the Contract Administrator, such Approval not to be unreasonably withheld.

SECTION 11.5 County Contingency. Each FGMP for a Project will include a category for "**County Contingency**" in an initial amount of not less than three percent (3%) of the Project Development Costs unless otherwise specified in a GMP Contract Amendment or as may be increased in County's sole discretion. The County Contingency may be used to pay for Project Development Costs upon the Approval of the Contract Administrator and shall not be used for costs other than Project Development Costs unless and until Final Completion for a Project has occurred without the Approval of Developer. Each use of County Contingency shall be accomplished by CPEAM.

SECTION 11.6 Allowances. County agrees that in the event a GMP Contract Amendment contains any allowances and County requires the Developer to cause Design Builder to perform and/or incur a cost in excess of such allowance, then County agrees that Developer shall have no obligation to incur such excess cost unless and until a Change Order, Construction Change Directive, or CPEAM Approved by the Contract Administrator and Developer has been executed with respect to such allowance that provides additional funding for such excess cost and accounts for any impacts on schedule, phasing or timing arising from the same.

SECTION 11.7Applications for Payment. Developer may make Applications for Payment only for completed Project Work at intervals of not more than once per month. Developer shall submit to County Applications for Payment for Developer Services and Project Work in triplicate, using a form of Application for Payment acceptable to County. Separate Applications for Payment shall be required for the Enabling Project, Hotel Project, West Expansion Project, and East Expansion Project. Each Application for Payment shall be notarized to certify that the payment sought is properly due and payable, and supported by such data substantiating the Developer's right to payment as County may reasonably require, including copies of requisitions from Design Builder, Development Consultants, and Design Builder Subcontractors and shall reflect the withholding of retainage as required under Section 11.7. Applications for Payment shall include all evidence that County shall deem reasonably necessary to support the amount requested to pay for the Project Work and/or Developer Services, and/or to reimburse the Developer for Developer Reimbursable Expenses. County shall have the right, at its discretion, to periodically audit and require supporting documentation with expanded detail for Applications for

Payment.

11.7.1 Applications for Payment for reimbursable costs shall include all receipts, invoices with check vouchers, or other evidence of payment, petty cash account information, payrolls, all supporting documentation with expanded detail, and any and all other proof of reimbursable costs which County shall deem reasonably necessary to support the amount requested for reimbursement by the Developer.

11.7.2 Applications for Payment for Project Work shall (a) show separate line items for (i) the applicable portion of the Developer Fee that is properly allocable to the Project Work actually completed, according to the Construction Schedule of Values, as adjusted for approved Change Orders, and (ii) all other amounts due for the Project Work actually completed, including the completed Project Work of each Subcontractor, (b) an updated progress schedule acceptable to Contract Administrator as required by the Development Documents, (c) an executed Certification of Payments to Subcontractors Form (007500-9), (d) a statement indicating the cumulative amount of CBE participation to date, (e) a release of claims for the Project Work that was the subject of previous applications or Approval of surety for the Project Work that is the subject of the current application, and (f) when applicable, an application for payment shall be accompanied by a completed Statement of Wage Compliance Form (007500-8). The total amount of payment sought by an Application for Payment for Project Work shall be limited to payment for the Project Work actually completed, and shall not exceed the amount of the applicable Guaranteed Maximum Price allocable to such Construction, based on the approved schedule of values within a GMP Contract Amendment.

11.7.3 Applications for Payment may include requests for payment on account of changes in the Project Work which have been properly authorized by Construction Change Directives and is otherwise undisputed, but not yet included in Change Orders or CPEAMs.

11.7.4 Such Applications may not include requests to pay for portions of the Project Work for which the Developer does not intend to pay Design Builder or a Developer Consultant. If the Project Work of Design Builder, a Design Builder Subcontractor and/or a Developer Consultant was performed by others in lieu of Design Builder or such Design Builder Subcontractor and/or Developer Consultant, and the Developer intends to pay such others, this shall be clearly indicated on the Application for Payment.

11.7.5 Notwithstanding anything contained herein to the contrary, County will not be liable, and Developer shall remain liable for Design Builder's, Design Builder Subcontractor's, and Developer Consultant's work and for any unpaid laborers, material suppliers, or subcontractors of Design Builder or a Developer Consultant if it is later discovered that said work is deficient or that any of said laborers, material suppliers, or Design Builder, Design Builder Subcontractors and/or Developer Consultants did not receive payments due them on the Project.

11.7.6 Payments will be made on account of materials and equipment delivered and suitably stored for subsequent incorporation in the Project Work only if such materials and equipment have been properly identified to this Agreement (as provided below), and only if Approved by Contract Administrator, such Approval not to be unreasonably withheld. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Developer with procedures satisfactory to Contract Administrator to establish County's title to such materials and equipment or otherwise protect County's interest, and shall include the costs of applicable insurance and warehouse bonding, storage and transportation. Title to all such materials and equipment shall irrevocably pass to County upon County's tender of payment of the invoiced cost. No Project Work, material or equipment

covered by an Application for Payment shall be subject to an agreement under which an interest is retained or an encumbrance is attached by the seller thereof, the Developer, or any other person or entity. Unless otherwise agreed in writing, all goods, materials, and equipment shall, upon Application for Payment therefore, be identified to this Agreement by marking, and causing the same to be marked by Developer, Design Builder, a Design Builder Subcontractor, or a Developer Consultant, as applicable, with a conspicuous and prominent label or tag affixed thereto, or in the case of fungible goods, posting thereon a sign or placard indicating the lot or portion thereof, dedicated to this Agreement, stating:

> "THESE GOODS ARE SUBJECT TO COUNTY'S SPECIAL PROPERTY INTEREST UNDER CONTRACT BETWEEN MATTHEWS HOLDINGS SOUTHWEST, INC. AND _____, DATED _____."

An Application for Payment for such goods, materials, and equipment shall constitute Developer's representation and warranty that such identification has occurred. The foregoing notwithstanding, unless otherwise specified in a GMP Contract Amendment, County shall not be required to approve payment for any goods, materials and equipment unless the same has been delivered to the Site or a bonded warehouse approved by County in writing.

11.7.7 Each Application for Payment shall be stamped as received on the date on which it is received by the Contract Administrator. Once an Application for Payment is approved by Contract Administrator, County shall pay the approved amounts twenty-five (25) business days after the date on which the Application for Payment is received. After twenty-five (25) business days, the Developer may send the Contract Administrator an overdue notice. If the Application for Payment is not rejected in whole or in part within four (4) business days after receipt of the overdue notice, the Application for Payment shall be deemed accepted, except for any portion of the Application for Payment that is fraudulent or misleading. If the Application for Payment, or any part of the Application for Payment, does not meet the requirements of this Agreement, County through its Contract Administrator shall reject the invoice within twenty-five (25) Business Days after the receipt of the Application for Payment and said rejection shall specify the deficiency and the action necessary to make the Application for Payment proper. If Developer corrects the deficiency, County must pay or reject the corrected Application for Payment within ten (10) Business Days after the corrected Application for Payment is received. If the dispute between County and the Developer cannot be resolved as set forth above, and the dispute directly relates to the promptness of payment, the dispute shall be resolved in accordance the Prompt Payment Ordinance (Section 1-51.6 of the Broward County Code of Ordinances). Any other dispute related to payment must be resolved under the dispute resolution procedure set forth in Section 19.21. In no event shall County be required to make payment for items of Developer's costs for which the Contract Administrator reasonably takes exception.

11.7.8 The Contract Administrator shall conduct an inspection within ten (10) days after receipt of written notice from Contractor that the Project Work is ready for final inspection and acceptance. Within thirty (30) days after Final Completion of the Project Work and acceptance thereof by County, Developer shall submit a final application for payment setting forth all amounts due to Developer (including the unpaid portion of Developer's fee). Once the Contract Administrator approves the final application for payment, the requisite documents have been submitted, the requirements of the Development Documents fully satisfied, and all conditions of the permits and regulatory agencies have been met, the Contract Administrator will issue a final Certificate of Payment in the form attached hereto as Form 007600-2. Developer shall then deliver to Contract Administrator the completed Form of Final Receipt, Form 007600-3 attached hereto. County shall pay the final payment only after County's Director of Purchasing or Board, as applicable, has reviewed a written evaluation of the performance of Developer

prepared by the Contract Administrator, and approved the final payment.

11.7.9 Developer shall pay Design Builder and Developer Consultants and require Design Builder to pay Design Build Subcontractors within ten (10) days following receipt of payment from County for such Project Work. If Developer or Design Builder withholds an amount as retainage from a Developer Consultant or a Design Builders Subcontractor, the Party holding retained amounts shall release such retainage and pay same within ten (10) days following receipt of payment of retained amounts from County. The Contract Administrator may, at its option, increase allowable retainage or withhold progress payments unless and until Developer demonstrates timely payments of sums due to all Developer Consultants and Design Builder Subcontractors. Developer shall include requirements substantially similar to those set forth in this Section 11.6.9, in the Design Build Agreement, and shall require Design Builder and Design Build Subcontractors to comply with the payment requirements of the Florida Prompt Payment Act, Section 218.70, Florida Statutes, as may be amended, and any successor statute.

SECTION 11.8 Retainage. County shall retain ten percent (10%) of all monies earned by Developer until Final Completion and acceptance by County, except that County shall pay Developer for Developer Reimbursable Expenses, Payment and Performance Bonds, insurance, and self-performed work on a cost reimbursement basis, if any. After fifty percent (50%) of the Project Work has been completed, the Contract Administrator shall reduce the retainage to five percent (5%) of all monies previously earned and all monies earned thereafter. After ninety percent (90%) of the Project Work has been completed, the Contract Administrator may, within his or her sole discretion, reduce the retainage to two and one-half percent (2-1/2%) percent of all monies previously earned and all monies earned thereafter. After Final Completion and before final payment, the Contract Administrator, in his or her sole discretion, may reduce retainage to a nominal amount. Any reduction in retainage shall be in the sole discretion of the Contract Administrator. Developer is not automatically entitled to a reduction. Any interest earned on retainage shall accrue to County's benefit. Notwithstanding the foregoing, the Contract Administrator, in his or her reasonable discretion, shall be permitted to release retainage for early and completed trades to the extent such work has achieved final completion based on the recommendation of Developer.

SECTION 11.9 Withholding Payment. County may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

(a) Defective Project Work not remedied.

(b) Claims filed, or reasonable evidence indicating probable filing of claims, by other parties against Developer because of Developer's, Design Builder's, Development Consultant, or a Design Builder Subcontractor's performance.

(c) Damage to third parties no remedied.

(d) Failure of Developer to make payments properly to Design Builder or Developer Consultants for material or labor.

(e) Failure of Developer to provide any and all documents required by the Development Documents.

(f) Delay Liquidated Damages, CBE Liquidated Damages, and costs incurred for extended construction administration on the Project.

Except for items described in (e) above, when the above grounds are removed or resolved satisfactorily to the Contract Administrator, any withheld payment shall be made in whole or in part.

SECTION 11.10 Right to Stop Work. If County fails to timely pay sums due hereunder that were Approved by County in Applications for Payment properly submitted by Developer, as and when due after expiration of the cure periods set forth herein, Developer may, on a temporary basis, stop the affected Project Work without terminating the Agreement and any delay arising from such action shall be added to the applicable Scheduled Date of Substantial Completion; however, Developer shall retain its rights and remedies, including, without limitation, the right to terminate this Development Agreement at any time prior to County's cure.

ARTICLE 12
TIME FOR PERFORMANCE; DEVELOPER DAMAGES; AND LIQUIDATED DAMAGES

SECTION 12.1Master Project Schedule. Attached hereto as Schedule 3 is the Master Project Schedule, which is intended to be a comprehensive schedule for the Project Work for all Projects. Except for the Hotel Project Substantial Completion Deadline, West Expansion Project Substantial Completion Deadline, and the East Expansion Project Substantial Completion Deadline, the Master Project Schedule is advisory only and the dates set forth on the Master Project Schedule shall be target dates and any failure by Developer to meeting such target dates shall not constitute a default hereunder. The Master Project Schedule shall be updated at the culmination of each phase of design, with the submission of the an IGMP, when a FGMP is issued, and when GMP Contract Amendment is executed and a Notice to Proceed issued in connection with the same, or at other appropriate intervals as reasonably required by County, to determine the progress of the Projects.

SECTION 12.2 Project Construction Schedules. The Project Construction Schedule for each Enhanced Design Package Approved by County as a part of a GMP Contract Amendment shall reasonably define a plan for completing the Project Work identified in such GMP Contract Amendment within appropriate commencement and ending dates for all phases of the construction of such Project Work, including a Scheduled Date of Substantial Completion. The Project Construction Schedule is a subset of the Master Project Schedule, and therefore some changes to the Project Construction Schedule and/or Scheduled Date of Substantial Completion may necessitate changes to the Master Project Schedule. If deemed necessary and appropriate by County and Developer, such changes to the Master Project Schedule will be made at the time the changes to the Project Construction Schedule are made. The Project Construction Schedule for an Enhanced Design Package shall be updated at the culmination of each phase of design, with the submission of the IGMP and FGMP, or at other appropriate intervals as reasonably required by County, shall be related to the entire Project, and shall provide for expeditious and practicable execution of the Project Work. Each Project Construction Schedule shall identify the Developer Contingency and Design Builder Contingency milestones as set forth in Sections 11.3.1 and 11.4.1 and shall identify the timeframes by which County identified Add Alternates or Value Analysis items need to be purchased or incorporated into a Project. Except as otherwise revised under a Change Order, or in any pending request to grant a time extension for Developer Excused Delays under Section 9.1.2, the Project Construction Schedule and any updates (including granted time extensions) shall not exceed the time limits permitted under this Agreement. All updates to the Project Construction Schedule shall address the subject of how the Developer intends to overcome any Unexcused Delays previously encountered for which it is responsible, or upon written request from the County, for delays that are Developer Excused Delays hereunder but from which the County may elect to accelerate. The Project

Construction Schedule shall be in a detailed format reasonably satisfactory to County. The Developer shall monitor the progress of the Project Work for conformance with the requirements of the approved Project Construction Schedule, and shall promptly advise County of any delays or potential delays in the progress of the Project Work. The approved Project Construction Schedule shall be updated to reflect actual conditions if requested by County. In no event shall any progress report constitute an adjustment in the Project Construction Schedule, any Critical Path Item or the Developer's compensation unless County has agreed to such adjustment pursuant to Change Order.

SECTION 12.3 Substantial Completion.

12.3.1 Substantial Completion. For purposes of this Agreement, each building or improvement within a Project shall be deemed to have achieved substantial completion ("**Substantial Completion**") when such building improvement has met the following requirements:

(a) the building or improvements has been completed in accordance with the Development Documents (subject to Immaterial Modifications);

(b) all fixtures, furniture and equipment for such Project have been installed and, with respect to the Hotel Project, are in accordance with the Brand Standards;

(c) all life safety and building mechanical systems corresponding to such Project Work have been installed in accordance with the Development Documents (subject to Immaterial Modifications) and commissioning has commenced for such systems;

(d) a temporary certificate of occupancy for each building within the Project has been issued by the City permitting such building to be utilized for beneficial use or occupancy;

(e) Developer delivers a certificate of substantial completion for such Project Work in substantially the form attached hereto as **Exhibit N-8**;

(f) a punch list of "minor" unfinished items with respect to such Project Work has been prepared by Developer and provided to County and, with respect to the Hotel Project, the Hotel Operator.

County or the Hotel Operator may occupy and use any part, phase or system of the Project when such part, phase or system has achieved Substantial Completion, but such partial use or occupancy of such Project shall not result in the Project being deemed to have achieved Substantial Completion, and such partial use or occupancy shall not be evidence of Substantial Completion.

12.3.2 Substantial Completion - Timing. Each Project must achieve Substantial Completion on or before such Project's Scheduled Date of Substantial Completion as may be extended for a Developer Excused Delay; provided however, if one or more of the above conditions to Substantial Completion is unfulfilled ten (10) days after written notice thereof from Developer to County because of any County Default (which was not cured within any applicable cure period), then Developer may disregard that condition and declare such Project to have achieved Substantial Completion.

SECTION 12.4 Final Completion

12.4.1 Final Completion. For purposes of this Agreement, a Project shall be deemed to have

achieved final completion ("**Final Completion**") when such building improvement has met the following requirements:

(a) Completion of all punch list items to the County's and, with respect to the Hotel Project, Hotel Operator's reasonable satisfaction;

(b) Fully complete, furnished and equipped in accordance with the Development Documents (subject to Immaterial Modifications) and all Legal Requirements and, with respect to the Hotel Project, the Brand Standards; and

(c) Fully paid for and free from all liens of Developer, Consultants, Suppliers, and laborers as evidenced by (i) an Affidavit of Payment of Debts and Claims, (ii) a fully completed and signed affidavit of release of liens from Developer and Design Builder, (iii) a Approval of surety approving final payment to the Design Builder, and (iv) a certificate of completion executed by the Design Consultant, all on forms acceptable to County; and

(d) All warranties, training materials, manuals, contractor marked as-built drawings, as-built survey, CADD drawings, equipment cuts, operating guides and any other documents necessary for full operation of the Project are delivered to County; and

(e) Completion of all video-taped and in-person training of County or Hotel Operator personnel on mechanical systems and equipment installed in the Project; and

(f) Developer delivers a certificate of substantial completion for such Project Work in substantially the form attached hereto as **Exhibit N-9**.

12.4.2 Final Completion – Timing. Developer shall use Reasonable Beast Efforts to cause Final Completion of a Project to occur within one hundred twenty (120) days of when Substantial Completion is achieved with respect to a Project as may be extended for a Developer Excused Delay; provided however, if one or more of the above conditions to Final Completion is unfulfilled ten (10) days after written notice thereof from Developer to County because of any County Default (which was not cured within any applicable cure period), then Developer may disregard that condition and declare such Project to have achieved Final Completion.

SECTION 12.5 Delay Liquidated Damages

12.5.1 If Hotel Project Substantial Completion has not occurred by the Hotel Project Substantial Completion Deadline (as may be extended for Developer Excused Delays), then Developer shall pay to County (by direct payment or set off, at the County's sole discretion) Delay Liquidated Damages subject to the LD Cap as follows:

(a) Five Hundred Thousand Dollars ($500,000) as a one-time lump sum payment on the day after the Hotel Project Substantial Completion Deadline if Hotel Project Substantial Completion has not been achieved; provided, however, that in the event Hotel Project Substantial Completion occurs within ten (10) days after the Hotel Project Substantial Completion Deadline, as adjusted, then the Delay Liquidated Damages levied under this Section 12.5.1 shall be reduced by seventy five percent (75%) to One Hundred Twenty Five Thousand Dollars ($125,000);

(b) (i) Fifteen Thousand Dollars ($15,000) per day for each day after the Hotel

Project Substantial Completion Deadline through the tenth (10th) day after the Hotel Project Substantial Completion Deadline, as adjusted; (ii) Twenty Five Thousand Dollars ($25,000) per day for each day after the tenth (10th) day after the Hotel Project Substantial Completion Deadline, as adjusted, through the thirtieth (30th) days after the Hotel Project Substantial Completion Deadline, as adjusted; and (iii) Thirty Thousand Dollars ($30,000) per day for each day after the thirtieth (30th) day after the Hotel Project Substantial Completion Deadline, as adjusted, through and including the date when Hotel Project Substantial Completion actually occurs;

(c) if Hotel Project Substantial Completion has occurred but there are Unfinished Floors, then Developer shall be required to cause Substantial Completion of the Unfinished Floors in accordance with the following schedule:

Fifteen (15) days after the date of Hotel Project Substantial Completion	At least one (1) Unfinished Floor
Thirty (30) days after the date of Hotel Project Substantial Completion	At least two (2) Unfinished Floors
Forty five (45) days after the date of Hotel Project Substantial Completion	All Unfinished Floors

If Developer fails to cause Substantial Completion of the Unfinished Floors, Developer shall pay an amount equal to Five Thousand Dollars ($5,000) per Unfinished Floor per day for each day after the required delivery date, as such dates may be extended for Developer Excused Delay. By way of example and for clarification purposes only, in the event Developer achieves Hotel Project Substantial Completion and there are three (3) Unfinished Floors, then Developer shall be required to deliver the first Unfinished Floor within fifteen (15) days after the date of Hotel Project Substantial Completion, the second Unfinished Floor within thirty (30) days after the date of Hotel Project Substantial Completion, and the final Unfinished Floor within forty five (45) days after the date of Hotel Project Substantial Completion; in the event Developer fails to timely achieve Substantial Completion of the first Unfinished Floor, then Developer will pay $5,000 per day for each day after the fifteenth (15th) day after the date of Hotel Project Substantial Completion until the first Unfinished Floor achieves Substantial Completion; in the event Developer fails to timely complete the first and second Unfinished Floor, then Developer will pay $10,000 per day for each day after the thirtieth (30th) day after the date of Hotel Project Substantial Completion until the first Unfinished Floor achieves Substantial Completion at which point the liquidated damages will be reduced to $5,000 per day for the second Unfinished Floor until the second Unfinished Floor achieves Substantial Completion; in the event Developer fails to timely achieve Substantial Completion of the first, second, and third Unfinished Floor after the forty fifth (45th) day after the date of Hotel Project Substantial Completion, then Developer will pay $15,000 per day for each day thereafter until the first Unfinished Floor achieves Substantial Completion, $10,000 per day for each day thereafter until the second Unfinished Floor achieves Substantial Completion, and $5,000 per day for each thereafter until the final Unfinished Floor achieves Substantial Completion.

12.5.2 West Expansion Project Delay Liquidated Damages. If the date of Substantial Completion of the Project Work for the West Expansion Project occurs after the West Expansion Project Substantial Completion Deadline (as may be extended for Developer Excused Delays), then Developer shall pay to the County (by direct payment or set off, at the County's sole discretion) Delay Liquidated

Damages subject to the LD Cap as follows:

(a) Six Hundred Thousand Dollars ($600,000) as a lump sum payment on the day after the West Expansion Project Substantial Completion Deadline; provided, however, that in the event the date of Substantial Completion of the Project Work for the West Expansion Project occurs within ten (10) days after the West Expansion Project Substantial Completion Deadline, then the Delay Liquidated Damages levied under this Section 12.5.2(a) shall be reduced by seventy five percent (75%) to One Hundred Thousand Dollars ($150,000); and provided, however, further, that in the event the County does not deliver a Notice to Proceed to Developer the date set forth in the Master Project Schedule for the commencement of the Project Work for the West Expansion Project as a result of (A) the occurrence of a Developer Excused Delay prior to the delivery of such Notice to Proceed for the West Expansion Project, and (B) with respect to such Developer Excused Delay, (i) the County provides written notice to Developer directing Developer to accelerate at County's expense any Critical Path Item necessary to achieve Substantial Completion of the West Expansion Project by the date set forth in the Master Project Schedule ("**County West Expansion Acceleration Notice**") and (ii) Developer delivers written notice to County that, in Developer's after due inquiry and in exercising Reasonable Best Efforts to accommodate the County's written request, Developer determines that such acceleration will not permit Substantial Completion of the West Expansion Project to occur the date set forth in the Master Project Schedule within ten (10) days of receipt of a County West Expansion Acceleration Notice (the "**Developer West Expansion Non-Acceleration Notice**"), then the Developer shall have no obligation to make the lump sum payment set forth in this Section 12.5.2(a) and the GMP Contract Amendment for the West Expansion Project shall reflect a date of Substantial Completion Approved by the County; provided, however, that in the event the Developer does not deliver the West Expansion Non-Acceleration Notice after receipt of a County West Expansion Acceleration Notice within such 10-day period or accepts County's compensation for acceleration of the Project Construction Schedule, Developer shall have been deemed to have assumed the risk related to such Developer Excused Delay and the one-time payment under this Section 12.5.2(a) shall remain in full force and effect; and

(b) Fifteen Thousand Dollars ($15,000) per day for each day after the West Expansion Project Substantial Completion Deadline, as adjusted, through the tenth (10^{th}) day after the West Expansion Project Substantial Completion Deadline, that Substantial Completion of the Project Work for the West Expansion Project has not occurred; and

(c) Twenty Five Thousand Dollars ($25,000) per day for each day after the tenth (10^{th}) day after the West Expansion Project Substantial Completion Deadline through and including the date when Substantial Completion of the Project Work for the West Expansion Project actually occurs.

12.5.3 East Expansion Project Delay Liquidated Damages. If the date of Substantial Completion of the Project Work for the East Expansion Project occurs after the East Expansion Project Substantial Completion Deadline (as may be extended for Developer Excused Delays), then Developer shall pay to the County (by direct payment or set off, at the County's sole discretion) Delay Liquidated Damages in the amount of Twenty Thousand Dollars ($20,000) per day for each day after the tenth (10^{th}) day after the East Expansion Project Substantial Completion Deadline through and including the date when Substantial Completion of the Project Work for the East Expansion Project actually occurs, subject to the LD Cap.

12.5.4 Plaza Improvements Delay Liquidated Damages. If the date of Substantial Completion of the Project Work for the Plaza Improvements does not occur on or before thirty (30) days after the Hotel Project Substantial Completion Deadline (the "**Plaza Improvements Substantial Completion**

Deadline"), then Developer shall pay to the County (by direct payment or set off, at the County's sole discretion) Delay Liquidated Damages in the amount of Five Thousand Dollars ($5,000) per day for each day after the Plaza Improvements Substantial Completion Deadline through and including the date when Substantial Completion of the Project Work for the Plaza Improvements actually occurs, subject to the LD Cap.

12.5.5 No Delay Liquidated Damages for Enabling Projects or CVB Office. County and Developer agree that there shall be no Delay Liquidated Damages if the date of Substantial Completion of the Project Work for the Enabling Projects or the CVB Office occurs after the Scheduled Date of Substantial Completion as shown in the Master Project Schedule or any Project Construction Schedule for such Projects or portions thereof. In the event of a delay (whether such delay an Unexcused Delay or a Developer Excused Delay), Developer shall continue to exercise Reasonable Best Efforts to achieve Substantial Completion of the Enabling Project and the CVB Office by the dates set forth in the Master Project Schedule or such Project's or portion of a Project's Project Construction Schedule. County hereby waives and released Developer from any and all direct or indirect consequential damages related to the late delivery of the Enabling Projects and the CVB Office.

12.5.6 Delay Liquidated Damages Cap. All liquidated damages referenced in this Section 12.5 are collectively referred to herein as the "**Delay Liquidated Damages**." The Delay Liquidated Damages shall be payable upon demand at the time they accrue. The Delay Liquidated Damages set forth in this Section 12.5 shall be the sole remedy for delay by the County and shall not exceed (i) fifty percent (50%) of the Design Builder's Fee with respect to the permitting, design and construction of a Project, and (ii) fifty percent (50%) of the Developer's Fee with respect to all other Developer's obligations hereunder for a Project except for permitting, design and construction (including, without limitation, commissioning, furnishing, and equipping of a Project) (the "**LD Cap**"). Developer shall continue to exercise Reasonable Best Efforts to achieve Substantial Completion notwithstanding that Delay Liquidated Damages are no longer payable because the LD Cap has been reached.

12.5.7 Delay Liquidated Damages as Sole Remedy for Unexcused Delay. The parties acknowledge and agree that because of the unique nature of the Projects and the expense involved in delayed opening of any of the Projects, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by the County as a result of Developer's failure to achieve Substantial Completion of a Project (or portion thereof) on or before the Scheduled Dates of Substantial Completion. It is understood and agreed by the Parties that: (a) County shall be damaged by failure of Developer to meet such obligations; (b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom; (c) any sums that would be payable under Sections 12.5.1, 12.5.2, 12.5.3, and/or 12.5.4 are in the nature of liquidated damages, and not a penalty, and are fair and reasonable; and (d) such payment represents a reasonable estimate of fair compensation for all losses that may reasonably be anticipated from such failure, and shall, without duplication, be the sole and exclusive measure of damages with respect to any failure by Developer to achieve Substantial Completion of a Project (or portion thereof) on or before its Scheduled Date of Substantial Completion. The Delay Liquidated Damages are intended only to cover damages suffered by County as a result of delay and shall not be deemed to cover the cost of completion of the Project Work, damages resulting from defective Project Work, or CBE Liquidated Damages.

SECTION 12.6 Developer Excused Delays.

12.6.1 Developer Excused Delays. The Parties agree that if performance of any obligations of Developer under this Agreement (including the construction of the Project) is actually prevented,

hindered, or delayed for more than one (1) full work day (a "**Material Delay**") with respect to a critical path item designed in a Project Construction Schedule (or such item becomes a critical path item during the course of a Material Delay) (a "**Critical Path Item**") as a result of (i) a Force Majeure Event, (ii) Unknown Site Conditions, (iii) Abnormal Weather Conditions, (iv) the occurrence of a County Default or the failure of County to perform its material obligations under and in accordance with the terms of this Agreement, within the periods of time provided for such performance in said documents, (v) changes in Legal Requirements or County Codes affecting the Project after the establishment of a Guaranteed Maximum Price for such Project (County acknowledges that with respect to the West Expansion Project and East Expansion Project that in the event the City requires that such Projects are required to achieve a "Level 3" code compliance standard, any delays resulting therefrom shall be considered a Material Delay to a Critical Path Item), (vi) delays in County obtaining the DRI Approval for the Project or delays caused by Governmental Authorities with respect to the Project, and such delays are not the result of a late submittal by Developer or failure by Developer to follow the promulgated procedures of such governmental authority, (vii) other excused delays as permitted under this Agreement not caused by the negligent or intentional acts of Developer, (viii) failure of the County to issue Bonds for the Projects in accordance with the time periods set forth in the Master Project Schedule, or (ix) other delays for events or circumstances which are beyond the reasonable control of the Developer or its Subcontractors which event, act, condition or circumstance (a) shall be beyond the reasonable control of the party relying thereon despite such party's reasonable diligent efforts, (b) shall not be the result of any acts, omissions, delays, fault or negligence of such party (or any person over whom such party has control), (c) shall not be an act, event or condition, the risks or consequences of which such party has expressly agreed to assume hereunder, and (d) cannot be cured, remedied, avoided, offset, mitigated, negotiated or otherwise overcome by the prompt exercise of due diligence of the party relying thereon (each, a "**Developer Excused Delay**"), then, subject to provisions of this Section 12.6.1, (I) Developer shall not be in default hereunder to the extent and as a result of such Developer Excused Delay; (II) Developer shall not be financially responsible for the Developer Excused Delay; (III) all time lines or deadlines for performance that Developer fails to meet solely to the extent and as a result of such Developer Excused Delay shall be extended for such reasonable period of time as County may reasonably determine not to exceed the period of such Developer Excused Delay (and in the case of delays relating to construction obligations, such additional time as may be required for mobilization and demobilization of affected contractors and subcontractors in an amount of time not to exceed the amount of time agreed to by the Parties); (IV) the Scheduled Date of Substantial Completion and date of Final Completion, as applicable, shall be extended upon the written notice and claim of Developer to County in accordance with this Section 9.1.2 for such reasonable period of time as the parties may mutually determine not to exceed the period of such Developer Excused Delay; and (V) all Developer shall use Reasonable Best Efforts, including, without limitation accelerating the Project Construction Schedule, to minimize any delay period. If Developer claims an extension of the Scheduled Date of Substantial Completion for a Developer Excused Delay, Developer shall give County written notice of the occurrence of the event giving rise to such claim in accordance with Section 9.1.2and failure to deliver such notice in strict accordance with the requirements of Section9.1.2 shall be deemed a waiver of such delay claim. Developer's notice shall include a description of the facts and copies of all relevant documentary information and, to the extent reasonably available, evidence showing, with reasonable certainty, (a) the length of the delay caused by the event, and (b) to the extent known to Developer, the impact of such delay on the Scheduled Date of Substantial Completion. Upon receipt of the information from Developer, County shall review and evaluate the proffered information and County covenants that shall diligently and in good faith seek to determine if the requested extension is a result of a Developer Excused Delay within ten (10) Business days after receipt of the information. If, after good faith consideration of the requested extension, County confirms that the requested extension is a result of a Developer Excused Delay, then County shall execute the appropriate CPEAM or Change Order within thirty (30) days after the decision (subject to additional time necessary

to obtain Board approval to the extent required for the County to Approve a Change Order). If, however, County concludes that the requested extension is not a result of a Developer Excused Delay, it shall promptly notify Developer of its conclusion and shall, at Developer's request, within five (5) Business days, meet with Developer and both Developer and County shall diligently and in good faith attempt to resolve their inconsistent positions on the requested extension. If, after discussions, they are unable to resolve the status of the requested extension, either party may seek to resolve the dispute pursuant to the process set forth in **Exhibit H**. For clarification purposes, delays a Material Delay to a Critical Path Item that are caused concurrently by a Developer Excused Delay and an Unexcused Delay are treated as Developer Excused Delays under this Section 12.6.1.

12.6.2 No Right to Stop Work for Developer Excused Delay. Neither the occurrence of an event giving rise to a delay nor the pendency of a claim for extension of time shall constitute grounds for the suspension of performance by Developer, in whole or in part, absent failure of County to satisfy its payment obligations under this Agreement as set forth in Section 11.9.

SECTION 12.7Compensable Developer Excused Delay; No Damages for Delay. A Developer Excused Delay is only compensable when the delay (i) is solely due to an event specified in subparts (ii) and (iv) through (vi) in Section 12.3.2 or (ii) is caused by the fraudulent, bad faith, or active interference by County, Contract Administrator, County Consultant, or other agents or representatives of County ("**Compensable Developer Excused Delay**"). In the event of a Compensable Developer Excused Delay, Developer shall be entitled to an equitable adjustment of the FGMP for a Project. Increases to an approved GMP for a Compensable Developer Excused Delays are limited to reasonable and demonstrated Project site and other "direct" costs attributable to the delays and do not include home office overhead, "Eichleay" or similar damages, nor lost profits or consequential damages of any kind. Except for a Compensable Developer Excused Delay, no claim for damages or any claim, other than for an extension of time, shall be made or asserted against County by reason of any delays by Developer, Design Builder or a Developer Consultant or Design Builder Subcontractor, whether joint or concurrent with delays caused by County. Developer shall not be entitled to an increase in the Project Development Costs, GMP, or payment or compensation of any kind from County for direct, indirect, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of any Unexcused Delays and associated disruption, interference or hindrance. If and only if County improperly refuses to act upon or grant a properly-requested time extension for a Developer Excused Delay, and as a result Developer and Design Builder accelerate the Work, Developer will be entitled to an adjustment to the GMP for reasonable and demonstrated costs of acceleration. Otherwise, Developer shall be entitled only to extensions of related to the time of performance as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

ARTICLE 13
DEVELOPER FEE; DEVELOPER REIMBURSABLE EXPENSES; DESIGN BUILDER FEE; HOTEL EARLY COMPLETION INCENTIVE

SECTION 13.1Developer Fee. Unless otherwise specified in a GMP Contract Amendment, Developer shall be paid a fee equal to (i) 3.1% on Developer Managed Costs for the Hotel Project, (ii) 3.1% of Developer Managed Costs for the East Expansion Project, and (iii) 3.2% of Developer Managed Costs for the West Expansion (each being a "**Developer Fee**" and collectively being the "**Developer Fees**"). The Developer Fee shall be paid on a percentage completion basis over the construction term of each Project and shall not be subject to any retainage requirements.

SECTION 13.2Developer Reimbursable Expenses. County shall pay to Developer all Developer Reimburseable Expenses in an amount up to 1.5% of Developer Managed Costs based on the actual Developer Reimburseable Expenses incurred by Developer in the performance of the Developer Services. The not to exceed amount of the Developer Reimburseable Expenses shall be as set forth in each GMP Contract Amendment Approved by County. For reimbursement of any travel costs, travel-related expenses, or other direct nonsalary expenses directly attributable to the Project permitted under this Agreement, Developer agrees to adhere to Section 112.061, Florida Statutes. County shall not be liable for any such expenses that have not been approved in advance, in writing, by the Contract Administrator. The Developer Reimbursable Expanses shall not be subject to any retainage requirements.

SECTION 13.3 Design Builder Fees. Unless otherwise specified in a GMP Contract Amendment, Developer shall be permitted to pay a fee to the Design Builder in connect with the Project Work performed under the Design Build Agreement equal to (i) 4.975% of Design Builder Managed Costs for the Hotel Project, (ii) 4.95% of Design Builder Managed Costs for the East Expansion Project, and (iii) 5.25% of Design Builder Managed Costs for the West Expansion (each being a "**Design Builder Fee**" and collectively being the "**Design Builder Fees**"). The Design Builder Fee shall be paid on a percentage completion basis over the construction term of each Project and shall not be subject to any retainage requirements. County agrees that Design Builder's Benefits for its Salary Costs each Project shall be 63.29% of actual cost of salaries or wages of Design Builder's employees.

SECTION 13.4 Hotel Early Completion Incentive.

13.4.1 New Hotel Project Substantial Completion Deadline. The Developer may deliver to County not later than six (6) months prior to the anticipated date of Substantial Completion for the Hotel Project notice that the Hotel Project will achieve Substantial Completion prior to the Hotel Project Substantial Completion Deadline (the "**New SC Notice**"). The New SC Notice shall identify the new date of Substantial Completion for the Hotel (the "**New Hotel Project Substantial Completion Deadline**") and upon receipt of the New SC Notice, such date shall be the new Hotel Project Substantial Completion Deadline for the purposes of assessing per diem liquidated damages under Sections 12.5.1(b) and 12.5.1(c); provided, however, that one-time payment required under Section 12.5.1(a) shall only apply in the event Hotel Project Substantial Completion is not achieved by the original Hotel Project Substantial Completion Deadline (as extended for Developer Excused Delay). In the event Developer elects not to deliver the New SC Notice on or before six (6) months prior to the original Hotel Project Substantial Completion Deadline, Developer will be deemed to have elected not to achieve Substantial Completion of the Hotel Project prior to the Hotel Substantial Completion Deadline, as adjusted, and shall not be eligible for the Hotel Early Completion Incentive set forth in Section 13.4.2.

13.4.2 Hotel Early Completion Incentive. In the event Developer delivers the New SC Notice establishing the New Hotel Project Substantial Completion Deadline and the Hotel Project achieves Substantial Completion (i.e. full Substantial Completion and no Unfinished Floors), then, in addition to the Developer Fee for the Hotel Project in Section 13.1, Developer shall receive a lump sum payment in an amount equal to the sums set forth below (the "**Hotel Early Completion Incentive**"):

Every day in the months of April and March 2023	$15,000
Every day in the months of February and January 2023	$25,000

Every day in any month prior to January 1, 2023	$30,000

The Hotel Early Completion Incentive shall be calculated and paid to Developer within thirty (30) days of the Final Completion of the Hotel Project.

ARTICLE 14
COUNTY APPROVALS AND RELATED MATTERS

SECTION 14.1Items and Matters to be Reviewed and Confirmed or Approved by County. Without limiting any other matters to which County has Approval rights pursuant to the express terms of this Agreement, the Developer shall deliver or make available to County or the Contract Administrator, as applicable, the items below, with the Developer's recommendation, for the Approval purposes set forth therein and the Developer must obtain prior written confirmation or Approval of County or the Contract Administrator, as applicable, (and, on behalf of County, obtain Hotel Operator's confirmation of compliance with Physical Standards as defined in the Technical and Pre-Opening Services Agreement) of the following:

SECTION 14.2Legal Requirements; Developer Obligation to Obtain Permits. Nothing contained herein shall relieve or release the Developer or any other Person (including, but not limited to, the Design Builder) from any Legal Requirements relating to the design, development, construction, equipping, furnishing, full completion and opening of the Projects (including Legal Requirements that are procedural, as well as or rather than, substantive in nature). The Developer acknowledges that County is a municipal corporation operating pursuant to state law, exercising certain police powers, taxation powers and other Governmental Functions of general application which affect the Projects. Before commencement of the construction of any of the Projects but except for the permits, licenses, approvals and Governmental Authorizations required to be delivered by the County under Sections 16.1 or 16.2, the Developer shall secure or cause to be secured any and all appropriate permits, licenses, approvals or Governmental Authorizations, which may be required by all Governmental Authorities having jurisdiction over such construction. Notwithstanding the foregoing, and without compromising its Governmental Function, the Contract Administrator shall serve as an "expediter" for all matters related to the development of the Projects including, particularly, for all matters related to obtaining all appropriate permits, licenses, approvals or from the County Authorities. The Approval by County or the Contract Administrator of any matter submitted to County or the Contract Administrator pursuant to this Agreement, which matter is specifically provided herein to be Approved to by County or the Contract Administrator in its capacity as a Party to this Agreement and not in the exercise of a Governmental Function, shall not constitute a replacement or substitute for, or otherwise excuse the Developer from, such permitting, licensing, approval or other Governmental Authorization processes required by a County Authority or any other Legal Requirements; and, conversely, no permit, license or Governmental Authorization so obtained shall constitute a replacement or substitute for, or otherwise excuse the Developer from, any requirement hereunder for the Approval of County or the Contract Administrator.

SECTION 14.3Approvals; Standards for Review.

14.3.1 Review and Approvals Rights. The provisions of this Section 14.3 shall be applicable with respect to all instances in which it is provided under this Agreement that County, the Contract

Administrator, the Developer or the Developer Representative exercises Review and Approval Rights; provided, however, that if the provisions of this Section 14.3 specifying time periods for exercise of Review and Approval Rights shall conflict with other express provisions of this Agreement providing for time periods for exercise of designated Review and Approval Rights, then the provisions of such other provisions of this Agreement shall control. As used herein, the term "**Review and Approval Rights**" shall include, without limiting the generality of that term, all instances in which one Party or its representative (the "**Submitting Party**") is permitted or required to submit to the other Party or to the representative of that other Party any document, Notice or determination of the Submitting Party and with respect to which the other Party or its representative (the "**Reviewing Party**") has a right or duty hereunder to review, comment, Approve, disapprove, dispute, confirm or challenge the submission or determination of the Submitting Party. Reviews and approvals by the Hotel Operator shall be in accordance with the terms of the Technical and Pre-Opening Services Agreement.

14.3.2 Standard for Review. Unless this Agreement specifically provides that a Party's Review and Approval Rights shall not be unreasonably withheld, all of such Review and Approval Rights under this Agreement may be exercised in such Party's sole and absolute discretion. The Submitting Party shall use reasonable efforts to cause any matter submitted to the Reviewing Party by the Submitting Party and with respect to which the Reviewing Party has Review and Approval Rights under this Agreement to be submitted under cover of a request which (i) contains the heading or caption "TIME SENSITIVE - REQUEST FOR REVIEW/APPROVAL" (or similar phrase), (ii) states the date of submission to the Reviewing Party by the Submitting Party (but which date shall ultimately be determined in accordance with Section 19.6), (iii) states the date by which a response is required under the terms of this Agreement (to the extent a specific response time is required pursuant to the terms hereof as opposed to the general requirements of this Section 14.3.2), (iv) identifies the provision of this Agreement pursuant to which such Review and Approval is sought and (v) identifies (by document or drawing title, identifying number and revision date. or other clear descriptor) all enclosures to such request with respect to which Review and Approval is then being sought. The Reviewing Party shall review the same and shall use its reasonable efforts to approve or inform the Submitting Party in writing of the need for additional review time and/or materials within fourteen (14) calendar days of receipt unless an earlier time period is specified herein. Further, the Reviewing Party will make reasonable efforts to accommodate urgent or emergency requests during construction.

14.3.3 Disputes. County and Developer shall attempt in good faith to resolve expeditiously any disputes concerning the Approval of any matter submitted to either Party for Approval hereunder. In the event County and Developer cannot resolve the matter submitted for Approval, the Parties agree to resolve such disputed matter in accordance with the dispute resolution procedure required under Section 19.21.

14.3.4 Duties, Obligations and Responsibilities Not Affected. Approval by the Reviewing Party of or to a matter submitted to such Party by the Submitting Party shall neither, unless specifically otherwise provided (i) relieve the Submitting Party of its duties, obligations or responsibilities under this Agreement with respect to the matter so submitted, nor (ii) shift the duties, obligations or responsibilities of the Submitting Party with respect to the submitted matter to the Reviewing Party.

ARTICLE 15
COUNTY CONTRACT REQUIREMENTS

SECTION 15.1Prevailing Wage Ordinance. County acknowledges that the Project is not federally funded; provided, however, pursuant to Broward County Prevailing Wage Ordinance No. 26-5 (the

"**Prevailing Wage Ordinance**"), since this Agreement is in excess of $250,000, the following are applicable to the Project:

15.1.1 The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as published in the Federal Register effective as of the date of a GMP Contract Amendment (the "**Prevailing Wage Rate**").

15.1.2 All mechanics, laborers, and apprentices, employed or working directly on the site of the Project Work shall be paid in accordance with the Prevailing Wage Rate. Developer shall cause Design Builder to post notice of these provisions at the Site in a prominent place where it can easily be seen by the workers.

15.1.3 If the parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, the Contract Administrator shall submit the question, together with its recommendation, to Contract Administrator for final determination.

15.1.4 If it is found by the Contract Administrator that any laborer or mechanic or apprentice employed by Developer or Design Builder directly at the Site has been or is being paid at a rate of wages less than the rate of wages required by the Prevailing Wage Ordinance, the Contract Administrator may (1) by written notice to Developer, terminate its right to proceed with the Project Work or such part of the Project Work for which there has been a failure to pay said required wages; and/or (2) prosecute the Project Work or portion thereof to completion by contract or otherwise, whereupon, Developer and its sureties shall be liable to County for any excess costs occasioned to County thereby.

15.1.5 Developer shall maintain, and cause the Design Builder and Developer Consultants to maintain, payrolls and basic records relating thereto during the course of the Project Work and shall preserve such records for three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the Project Work. Such records shall contain the name and address of each such employee; its current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.

15.1.6 Developer shall submit, with each requisition for payment, a signed and sworn "Statement of Compliance" attesting to compliance with Prevailing Wage Ordinance in the form attached hereto as **Exhibit N-5**.

15.1.7 The Contract Administrator may withhold or cause to be withheld from Developer so much of the payments requisitioned, as may be reasonably considered necessary to pay laborers and mechanics, including apprentices, trainees, watchpersons, and guards employed by Developer or any Subcontractor on the Project Work, the full amount of wages required by this Agreement.

15.1.8 If Developer or any of Design Builder, a Developer Consultant, or a Design Builder Subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the Project Work all or part of the wages required by this Section 15.1, the Contract Administrator may, after written notice to Developer, take such action as may be necessary to cause suspension of all or a portion of the payments or advances until such violations have ceased or been resolved to the reasonable satisfaction of the Contract Administrator.

SECTION 15.2 Nondiscrimination, Equal Employment Opportunity, and Americans with

Disabilities Act.

15.2.1 No party to this Agreement may discriminate on the basis of race, religion, age, color, sex, gender, national origin, pregnancy, or gender identity and expression in the performance of this Agreement. Developer shall include the foregoing or similar language in the Design Build Agreement and its contracts with any Developer Consultants.

15.2.2 Developer shall affirmatively comply with all provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Developer shall take affirmative steps to ensure nondiscrimination against disabled persons in employment.

Failure by Developer to comply with the foregoing requirements in this Section 15.2 is a material breach of this Agreement, that shall permit County to exercise the remedies set forth in Section 18.2.

SECTION 15.3 Community Business Enterprise Requirements.

15.3.1 Developer shall comply, and shall ensure that Design Builder complies , with all applicable requirements of Section 1-81, Broward County Code of Ordinances (the "**CBE Ordinance**"), in the award and administration of this Agreement. Developer's or Design Builder's failure to carry out any of the requirements of this article shall constitute a material breach of this Agreement, that shall permit County to exercises the remedies set forth in Section 18.2, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

15.3.2 Developer shall and shall cause Design Builder to use Good Faith Efforts to utilize the CBE firms for thirty percent (30%) of total Project Work excluding (i) costs assigned with design and engineering work performed by the Design Consultants, (ii) the procurement of FF&E and OS&E for the Projects, (iii) the Project Work to be formed in connection with the Enabling Projects, (iv) (the "**CBE Commitment**"). The list of CBEs to be utilized for each portion of the Project shall be identified and included as an exhibit to the GMP Contract Amendment executed in connection with any Project Work granted a Notice to Proceed under this Agreement. For clarify the CBE Commitment is the commitment to use Good Faith Efforts to meeting the stated percentage goals.

15.3.3 In performing the Project Work and upon execution of a GMP Contract Amendment , and except for good cause shown, Developer shall utilize and cause Design Builder to utilize the CBE firms listed in the GMP Contract Amendment, , for the scope of work and the percentage of work amounts identified in the GMP Contract Amendment. Promptly upon execution of a GMP Contract Amendment by County, Developer shall or shall cause Design Builder and its subcontractors or suppliers to enter into formal contracts with the CBE firms listed in such GMP Contract Amendment and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

15.3.4 Each CBE firm utilized by Developer and/or Design Builder to meet the CBE goal must be certified by OESBD. Developer shall inform County promptly when a CBE firm is not able to perform or if Developer believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify the Good Faith Efforts of Developer to substitute the CBE firm with another CBE firm. Whenever a CBE firm is terminated for any reason, Developer shall provide written notice to OESBD and, upon written approval of the Director of OESBD, shall use Good Faith Efforts to substitute

another CBE firm to the extent required to satisfy the CBE Commitment. Such substitution shall not be required in the event the termination results from modification of the Project Work and no CBE firm is available to perform the modified Project Work; in which event, Developer shall notify County, and OESBD may adjust the CBE Commitment by written notice to Developer. Developer shall not terminate a CBE firm for convenience without County's Approval, which Approval shall not be unreasonably withheld, conditioned or delayed.

15.3.5 The Parties stipulate that if Developer fails to meet the CBE Commitment, the damages to County arising from such failure are not readily ascertainable at the time of contracting. If the OESBD Program Director determines, in his/her sole discretion, that Developer has failed to make Good Faith Efforts (as defined in CBE Ordinance) to meet the CBE Commitment, then County shall deliver written notice to Developer of such failure and Developer and the OESBD Program Director shall meet and confer regarding such failure within thirty (30) days of Developer's receipt of such notice and discuss a remediation plan regarding compliance with the CBE Commitment. In the event the OESBD Program Director determines that the Developer has failed to make Good Faith Efforts to meet the CBE Commitment after implementation of the remedial plan, Developer shall pay County liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Developer failed to achieve the CBE Commitment, up to a maximum amount of ten percent (10%) of the Project Development Costs for such Project, excluding Developer Reimbursable Expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by County, such liquidated damages amount shall be either credited against any amounts due from County or must be paid to County within thirty (30) days after written demand. These liquidated damages shall be County's sole contractual remedy for Developer's breach of the CBE Commitment, but shall not affect the availability of administrative remedies under Section 1-81. Developer acknowledges that the Board, acting through OESBD, may make minor administrative modifications to CBE Ordinance that shall become applicable to this Agreement if implementation of the administrative modifications (i) do not affect a Critical Path Item, (ii) increase the obligations of Good Faith Efforts or the stated goals of the CBE Commitment, (iii) increase the Project Development Costs, or (iv) otherwise unreasonably impact the prosecution of the Project Work. Written notice of any such modification shall be provided to Developer and Developer shall have forty five (45) days to notify County in writing if Developer concludes that the modification exceeds the authority under this Section 15.3. Failure of Developer to timely notify County of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Developer.

15.3.6 Developer shall provide written monthly reports to the Contract Administrator attesting to Developer's compliance with the CBE goal stated in this article. In addition, Developer shall allow County to engage in onsite reviews to monitor Developer's progress in achieving and maintaining Developer's contractual and CBE obligations. The Contract Administrator in conjunction with OESBD shall perform such review and monitoring, unless otherwise determined by County Administrator.

15.3.7 The Contract Administrator may increase allowable retainage or withhold progress payments if Developer fails to demonstrate timely payments of sums due to all Subcontractors and suppliers. The presence of a "pay when paid" provision in a Developer's contract with a CBE firm shall not preclude County or its representatives from inquiring into allegations of nonpayment.

15.3.8 Developer shall expressly include the requirements of this Section 15.3 in the Design Build Agreement. The inclusion of the requirements in the Design Build Agreement will not relieve Developer of its obligation to comply with the requirements of this Section 15.3, nor act as a waiver of County's right to enforce its rights.

SECTION 15.4 Public Records, Audit Rights, and Retention of Records.

15.4.1 Public Records. County is a public agency subject to Chapter 119, Florida Statutes (the "**Public Records Law**"). Developer and all its Subcontractors shall comply with Florida's Public Records Law in connection providing the Developer Services. To the extent Developer is acting for County as stated in Section 119.0701, Florida Statutes, Developer shall:

(a) Keep and maintain public records required by County to perform the services under this Agreement;

(b) Upon request from County, provide the public with access to such public records on the same terms and conditions that County would provide the records and at a cost that does not exceed that provided in the Public Records Law or as otherwise provided by law;

(c) Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and

(d) Meet all requirements for retaining public records and transfer to County, at no cost, all public records in its possession upon termination of the applicable contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to County in a format that is compatible with the information technology systems of County.

(e) A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Developer will provide any requested records to County to enable County to respond to the public records request. Any material submitted to County that Developer contends constitutes or contains trade secrets or is otherwise exempt from production under the Public Records Law ("**Trade Secret Materials**") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT – TRADE SECRET." In addition, Developer must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. If a third party submits a request to County for records designated by Developer as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Developer. Developer shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, on the non-disclosure of any Trade Secret Materials in response to a records request by a third party.

(f) **IF DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES CHAPTER 119 TO DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-7762, SHAMMOND@BROWARD.ORG, 115 S. ANDREWS AVENUE, FORT LAUDERDALE, FL 33301.**

15.4.2 Audit Rights and Retention of Records.

(a) Developer shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Contract Records shall, upon reasonable notice, be open to County inspection and subject to audit and reproduction during normal business hours. County audits and inspections pursuant to this Section may be performed by any County representative (including any outside representative engaged by County). County may conduct audits or inspections at any time during the term of this Agreement and for a period of three (3) years after the expiration or termination of this Agreement (or longer if required by law). County may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with Developer's employees, the Design Builder, Subcontractors, vendors, or other labor.

(b) County shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County. County reserves the right to conduct such audit or review at Developer's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. Developer agrees to provide adequate and appropriate work space. Developer shall provide County with reasonable access to the Developer's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recover of any payment upon such entry.

(c) "**Contract Records**" include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers and memoranda, and any and all other documents that pertain to rights, duties, obligations, or performance under this Agreement. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations or performance under this Agreement, whether by Developer, Design Builder, Developer Consultants, or Design Builder Subcontractors, or otherwise necessary to adequately permit evaluation and verification of any or all of the following:

(i) Compliance with this Agreement;

(ii) Compliance with County's code of ethics

(iii) Compliance with the provisions of this Agreement regarding the pricing of Change Orders or CPEAMs;

(iv) Accuracy of Developer representations regarding the pricing of invoices; and

(v) Accuracy of Developer representations related to claims submitted by the Developer including subcontractors, or any of its other payees.

(d) In addition to the normal documentation Developer typically furnishes to County, in order to facilitate efficient use of County resources when reviewing or auditing the Developer's billings and related reimbursable cost records, the Developer agrees to furnish (upon request) the following types of information in the specified computer readable file format(s):

Type of Record	ile format
Monthly Job Cost Detail	pdf and Excel
Detailed Job Cost History To Date	pdf and Excel
Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)	pdf and Excel
Total Job to date Labor Distribution detail (if not already included in the detailed Job Cost History to date)	pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	pdf
Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	pdf
Daily Superintendent Reports	pdf
Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to Subcontractors, etc.	pdf and Excel
Copies of Executed Subcontracts with all Subcontractors	pdf
Copies of all executed Change Orders issued to Subcontractors	pdf
Copies of all documentation supporting all reimbursable job costs (Subcontractor payment applications, vendor invoices, internal cost charges, etc.)	pdf

(e) Developer shall ensure that any agreements with Developer Consultants and the Design Build Agreement and all other subcontracts with the Design Builder will provide that Developer Consultants, Design Builder and Design Builder Subcontractors agree to the requirements and obligations of this Section 15.4.2.

(f) Any incomplete or incorrect entry in Contract Records, and accounts shall be a basis for County's disallowance and recovery of any payment reliant upon such entry.

(g) If an audit inspection or examination in accordance with this article discloses overpricing or overcharges to County of any nature by Developer, its Developer Consultants, Design Builder, or Design Builder Subcontractors in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by Developer in addition to making adjustments for the overcharges. Any adjustments or payments due because of any such audit or inspection shall be made within thirty (30) days from presentation of County's findings to Developer.

(h) The Hotel Project, West Expansion Project, East Expansion Project, and portions of the Enabling Projects are being funded from different sources by County. Developer must keep and maintain, and shall require Design Build Firm and all Subcontractors to keep and maintain separate books, Contract Records, and accounts for each portion of the Project.

SECTION 15.5Drug-Free Workplace. It is a requirement of County that it enter into contracts only with firms that certify the establishment of a drug-free work place in accordance with Chapter 21.31(a) of the County Code. Execution of this Agreement by Developer shall also serve as Developer's required certification that it either has or that it will establish a drug-free work place in accordance with Chapter 21.31(a) of the Broward County Procurement Code.

SECTION 15.6 Conflicts of Interest. Neither Developer nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Developer's loyal and conscientious exercise of judgment related to its performance under this Agreement. None of Developer's officers or employees shall, during the term of this Agreement, serve as an expert witness against County in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, that is adverse or prejudicial to the interests of County or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this Section 15.6 shall not preclude such persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. Developer shall require each of Design Builder the Development Consultants, and shall cause Design Builder to cause the Design Builder Subcontractors, by written contract, to comply with the provisions of this Section 15.6 to the same extent as Developer.

SECTION 15.7 Workforce Investment Program. Developer shall participate in the Broward County Workforce Investment Program ("**Workforce Investment Program**"), designed to increase employment opportunities locally, and for hard-to-hire and disadvantaged individuals.

15.7.1 First Source Referral Goal. Developer agrees to publicly post all Vacancies for the Projects through CareerSource for a period of at least five (5) business days, which shall be calculated from the date of written notice by the Developer to the County and CareerSource of the placement of the job order form with CareerSource. During this period, Developer shall not utilize other recruitment methods or advertisements to attempt to fill any Vacancies, except that internal-only job postings by the Developer and consideration of any Qualified Referrals are permitted during this period. CareerSource will provide to the Developer a list of Qualified Referrals that meet the requirements of the Vacancies. Promptly upon receipt thereof, and in connection with each Vacancy, the Developer agrees to review the qualifications of the Qualified Referrals and use good faith efforts to interview Qualified Referrals that appear to meet the required qualifications. Upon completion of the review of the Qualified Referrals' qualifications and good faith efforts to interview qualified candidates for each Vacancy, Developer shall be deemed to have demonstrated good faith efforts to comply with this Section regardless of whether the Developer offers employment or actually hires any of the Qualified Referrals.

15.7.2 Qualifying New Hires Goal. Developer agrees to use good faith efforts to hire Qualifying New Hires for at least fifty percent (50%) of the Vacancies resulting from the Projects.

(a) The Qualifying New Hires goal shall be calculated as follows: (a) The total number of Vacancies for the Covered Contract, minus the number of Vacancies actually filled by workers who are not residents of the State of Florida at the time of hire, divided by two (2) and rounded up to the nearest whole number, constitutes the Qualifying New Hires Goal; and (b) Each Economically Disadvantaged Worker or Hard-to-Hire Worker who is hired by Developer for the Covered Contract shall count as two (2) Qualifying New Hires for purposes of meeting the Qualifying New Hires Goal.

(b) Developer shall be deemed to have demonstrated good faith efforts to meet the

Qualifying New Hires goal if: (a) Developer complies with the requirements of Section 15.7.1 but is unable to meet the Qualifying New Hires Goal due to a documented lack of Qualified Referrals or due to special skills, experience, or expertise required to fill the Vacancies; (b) Developer demonstrates that least fifty percent (50%) of Developer's current workforce consists of workers who met the definition of Qualifying New Hires on the date of hire; (c) Identified collective bargaining agreement provisions prevent Developer from meeting the Qualifying New Hires goal; or (d) Documented other circumstances (including, without limitation, voluntary terminations or employee illnesses) that prevent Developer from meeting the Qualifying new Hires goal despite documented reasonable efforts.

(c) A written sworn statement or other notarized certification by a person that he or she qualifies as a Qualifying New Hire, Economically Disadvantaged Worker, or Hard-to-Hire Worker, which certification identifies the specific factual basis for the person's qualification, shall constitute sufficient evidence that the person meets the qualification.

15.7.3 Qualifying New Hires may be terminated by Developer as otherwise permitted under applicable law or contract, provided that any Vacancy created during the Term by the termination of a Qualifying New Hire shall be filled either in accordance with the procedures for the First Source Referral Goal or by hiring another Qualifying New Hire.

15.7.4 Developer shall, by January 31 of each year during the Term and within thirty (30) days following completion of the Agreement, or at any time requested by the Contract Administrator in writing, submit reports ("Workforce Investment Reports") to County and to CareerSource summarizing documents and records sufficient to demonstrate Developer's compliance with WIP, as well as any good faith efforts to comply, and the following:

(a) The name and address of each employee hired to fill a Vacancy;

(b) That employee's application for employment;

(c) The job title and classification of the employee;

(d) The beginning and ending date (if applicable) of employment for each employee hired during the Term; and

(e) Sworn certifications or other documentation sufficient to evidence the qualifications of all Qualifying New Hires under the applicable standard(s) at the time of hire, and documentation of the good faith efforts undertaken in connection with the Qualifying New Hires Goal.

SECTION 15.8 Local Labor Requirement. Developer shall use good faith efforts and shall cause Design Builder to use good faith efforts to have forty percent (40%) of the labor comprising the Project Work for a Project to be residents of Broward County (the "**Local Labor Requirement**"). Developer, either itself or through Design Builder or a Developer Consultant, shall conduct at least six (6) workshops or job fairs with at least three (3) in low-income census tracts identified by County. At least two (2) workshops or job fairs are to be scheduled during evening hours and at least one (1) workshop or job fair is to be held on a Saturday. The workshops and job fairs shall be held at differing times of the day and days of the week, including weekends and evenings, to accommodate potential applicants who are already working but do not work traditional business hours or have other barriers to attendance at a single event. These job fairs shall include information regarding immediate and upcoming employment opportunities, education and training requirements and resources for obtaining these requirements. Developer shall

utilize community media partners to promote the opportunities through comprehensive outreach and marketing including print, multimedia, and social media multi-lingual efforts, focusing on Spanish, Creole, and other languages as appropriate. In the event Developer holds the workshops set forth in this Section 15.8, such activities shall constitute "good faith efforts" for the purpose of satisfying the Local Labor Requirement.

SECTION 15.9Payable Interest.

15.9.1 Payment of Interest. Except as required by the Broward County Prompt Payment Ordinance, County shall not be liable for interest for any reason, whether prejudgment interest or for any other purpose, and in furtherance thereof Developer waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with this Agreement.

15.9.2 Rate of Interest. In any instances when the prohibition or limitations of Section 20.26.1 are inapplicable or are determined to be invalid or unenforceable, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, .025 percent (one quarter of one percent) simple interest (uncompounded).

SECTION 15.10 Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a Party to this Agreement. In the event County exercises its regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a Party to this Agreement.

SECTION 15.11 Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as Approval by County to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

SECTION 15.12 Public Art and Design. Developer acknowledges that County adopted Ordinance No. 95-20 establishing a Public Art and Design Program. The purpose of Ordinance No. 95-20 is to integrate art into capital projects and to integrate artists' design concepts into the overall project design. Artist(s) are selected by County through an independent process and artist(s) will be funded by the Public Art and Design Program administered by the Broward County Cultural Affairs Division at the direction of the Broward Cultural Affairs Council through its Public Art and Design Committee. Developer shall use commercially reasonable efforts to cooperate with the artist(s) and include the artist(s) in the preliminary design and design phases of the Project for the purpose of properly incorporating the artist's design(s) into the design of the Project. Developer shall notify the artist(s), in writing, of all design meetings and shall provide the artist(s) with a schedule of milestone dates. Developer may be requested to provide work space for the artist(s) during the preliminary design and design phases. The artist's design as properly incorporated into the design of the Project shall be permitted as part of the master site or facility plan. County acknowledges that any additional costs related to incorporating public art within the Project shall be subject to a Change Order to the extent such public art is not incorporated within a GMP Contract Amendment. Developer shall ensure that the Design Builder will be made aware of Broward County's Public Art and Design Program and the possible

requirement of working with the artist(s) to the extent the such artist(s) have been identified by the Broward County Cultural Affairs Division.

SECTION 15.13 Domestic Partnership Act. Developer will comply with County's Domestic Partnership Act (Section 16½-157 of the Broward County Code of Ordinances) during the entire term of the Agreement. The failure of Developer to comply shall be a material breach of the Agreement, entitling County to pursue any and all remedies provided under applicable law including, but not limited to (1) retaining all monies due or to become due Developer until Developer complies; (2) termination of the Agreement; and (3) suspension or debarment of Developer from doing business with County.

SECTION 15.14 Living Wage Ordinance. Developer shall comply with the Broward County Living Wage Ordinance, Sections 26-100 through 26-105, Broward County Code of Ordinances, Developer agrees to and shall pay to all of its employees providing "covered services," as defined in the ordinance, a living wage as required by such ordinance, and Developer shall fully comply with the requirements of such ordinance. Developer shall ensure all of its subcontractors that qualify as "covered employers", and that Design Builder and its Subcontractors, fully comply with the requirements of such ordinance.

ARTICLE 16
COUNTY OBLIGATIONS

SECTION 16.1 Governmental Authority Coordination. The County shall use commercially reasonable efforts to assist the Developer in obtaining any and all permits, licenses, permissions, or other approvals from any Governmental Authority with jurisdiction over one or more Projects. Notwithstanding the foregoing, nothing contained in this Section 16.1 shall make County responsible or liable to Developer for obtaining such permits, licenses, permissions, or other approvals and Developer shall remain fully responsible for obtaining the same in accordance with the terms of this Agreement.

SECTION 16.2 DRI Application Approval. County has submitted an application to the City for an amendment to the development of regional impact as is required under the City's Unified Land Development Regulations in connection with the development of the Projects and other County projects that are not related to but are within the vicinity of the Site (the "**DRI Application**"). County and Developer acknowledge that the Developer has engaged the law firm of [_____] (the "**DRI Consultant**") for the purpose of submitting the DRI Application and has permitted the County to work directly with the DRI Consultant to obtain approval from the City of the DRI Application. County shall be responsible for obtaining the City's approval of the DRI Application from the City regardless of the fact that Developer has engaged the DRI Consultant and in the event there is a Material Delay to a Critical Path Item as a result of a delay in the City's approval of the DRI Application, such Developer shall be deemed a Developer Excused Delay.

SECTION 16.3 Direct County Purchase of Materials. County, being exempt from sales tax under Florida law, may at its sole discretion, elect to directly purchase materials for the Project Work for the purpose of realizing sales tax savings. A non-exclusive list of the materials under consideration by the County for direct purchase is included in Schedule 1 to **Exhibit M** attached hereto. Developer shall use Commercially Reasonable Efforts to assist the County in realizing sales tax savings in connection with procurement of materials for the Projects and shall follow the policies and procedures set forth in **Exhibit M** (the "**County Direct Purchase Procedures**"); provided, however, that (i) in no event shall Developer's assistance to the County guarantee the realization of sales tax savings and to the extent County purchased materials are deemed subject to sales tax, the County shall be responsible for paying

any such sales tax; and (ii) in the event the Developer timely follows the policies and procedures set forth in the County Direct Purchase Procedures, in the event the County fails to issue purchase orders and/or make payments in the timeframes set forth in the County Direct Purchase Procedures and such failure creates a Material Delay to a Critical Path Item, such Developer shall be deemed a Developer Excused Delay.

ARTICLE 17
INSURANCE

SECTION 17.1 Policies Required. Developer shall acquire and maintain or cause to be acquired and maintained in force the insurance policies with the coverages as listed in **Exhibit I** (the "Insurance Requirements"). County reserves the right to review the insurance required hereunder and to make reasonable adjustments to the insurance coverages and their limits when deemed necessary and prudent by County. The reasonable additional premium cost of additional insurance to be borne by Developer, Design Builder, or any Subcontractors to make such adjustments shall be addressed by Change Order.

SECTION 17.2 Waiver of Right of Recovery. TO THE EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, AND WITHOUT AFFECTING THE INSURANCE COVERAGE REQUIRED TO BE MAINTAINED HEREUNDER, COUNTY AND DEVELOPER EACH WAIVE ANY RIGHT TO RECOVER AGAINST THE OTHER (A) DAMAGE TO THE PREMISES, (B) DAMAGE TO THE HOTEL PROJECT IMPROVEMENTS, THE PERSONALTY, ANY OTHER PROPERTY OR ANY PART THEREOF OR (C) CLAIMS ARISING BY REASON OF ANY OF THE FOREGOING, TO THE EXTENT THAT SUCH DAMAGES OR CLAIMS (I) ARE COVERED (AND ONLY TO THE EXTENT OF SUCH COVERAGE) BY INSURANCE ACTUALLY CARRIED BY EITHER COUNTY OR DEVELOPER OR (II) WOULD BE INSURED AGAINST UNDER THE TERMS OF ANY INSURANCE REQUIRED TO BE CARRIED UNDER THIS AGREEMENT BY THE PARTY HOLDING OR ASSERTING SUCH CLAIM, WHETHER OR NOT SUCH INSURANCE IS ACTUALLY CARRIED. THIS PROVISION IS INTENDED TO RESTRICT EACH PARTY (IF AND TO THE EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS) TO RECOVERY AGAINST INSURANCE CARRIERS TO THE EXTENT OF SUCH COVERAGE AND TO WAIVE (TO THE EXTENT OF SUCH COVERAGE), FOR THE BENEFIT OF EACH PARTY, RIGHTS OR CLAIMS WHICH MIGHT GIVE RISE TO A RIGHT OF SUBROGATION IN ANY INSURANCE CARRIER. THE PROVISIONS OF THIS SECTION 17.2 ARE NOT INTENDED TO LIMIT THE CLAIMS OF COUNTY OR DEVELOPER TO THE FACE AMOUNT OR COVERAGE OF THE INSURANCE POLICIES HEREIN PROVIDED FOR OR TO EVIDENCE THE WAIVER BY EITHER PARTY HERETO OF ANY CLAIM FOR DAMAGES IN EXCESS OF THE FACE AMOUNT OR COVERAGE OF ANY OF SUCH INSURANCE POLICIES OR THE DEDUCTIBLES THEREFOR. NEITHER THE ISSUANCE OF ANY INSURANCE POLICY REQUIRED HEREUNDER, OR THE MINIMUM LIMITS SPECIFIED HEREIN WITH RESPECT TO DEVELOPER'S INSURANCE COVERAGE SHALL BE DEEMED TO LIMIT OR RESTRICT IN ANY WAY DEVELOPER'S LIABILITY ARISING UNDER OR OUT OF THIS AGREEMENT. DEVELOPER SHALL BE LIABLE FOR ANY LOSSES, DAMAGES OR LIABILITIES SUFFERED OR INCURRED BY COUNTY INSURED AS A RESULT OF DEVELOPER'S FAILURE TO OBTAIN, KEEP AND MAINTAIN OR CAUSE TO BE OBTAINED, KEPT AND MAINTAINED, THE TYPES OR AMOUNTS OF INSURANCE REQUIRED UNDER THE

TERMS OF THIS AGREEMENT.

ARTICLE 18
DEFAULTS AND REMEDIES; INDEMNITY; TERMINATION

SECTION 18.1 Events of Default.

18.1.1 Developer Default. The occurrence of any of the following shall be an "**Event of Default**" by the Developer or a "**Developer Default**":

(i) The failure of the Developer to comply, or cause the Design Builder to comply, with the insurance requirements set forth if such failure is not remedied within ten (10) calendar days after County gives Notice to the Developer of such failure;

(ii) Any breach by the Developer of the terms or provisions of Section 6.1 if such breach continues for fifteen (15) calendar days after County gives Notice to the Developer of such breach;

(iii) The failure of the Developer to keep, observe or perform any of the material terms, covenants or agreements contained in this Agreement on the Developer's part to be kept, performed or observed (other than those referred to in Sections 13.1.1(a)-(b) above) if: (i) such failure is not remedied by the Developer within thirty (30) calendar days after Notice from County of such default; or (ii) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) calendar days, the Developer fails to commence to cure such default within thirty (30) calendar days after such default, or the Developer fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) calendar days but is otherwise reasonably susceptible to cure, the time within which the Developer is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith;

(iv) Any representation or warranty confirmed or made in this Agreement or in any other Project Document by the Developer shall be found to have been incorrect in any material respect when made or deemed to have been made and the same is not corrected within thirty (30) calendar days after County gives Notice to the Developer of the same; or

(v) The occurrence of any one or more of the following: (1) filing by the Developer of a voluntary petition in bankruptcy; (2) adjudication of the Developer as a bankrupt; (3) approval as properly filed by a court of competent jurisdiction of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment or composition of, or in respect of the Developer under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors' rights generally; (4) any material portion of the Developer's assets are levied upon by virtue of a writ of court of competent jurisdiction involving a judgment in excess of One Million Dollars ($1,000,000.00); (5) insolvency of the Developer; (6) assignment by the Developer of all or substantially of its assets for the benefit of creditors; (7) initiation of procedures for involuntary dissolution of the Developer, unless within ninety (90) calendar days after such filing, the Developer causes such filing to be stayed or discharged; (8) the Developer ceases to do business as an ongoing enterprise; and (9) appointment of a receiver, trustee or other similar official for the Developer, or the Developer's Property, unless within ninety (90) calendar days after such appointment, the Developer causes such appointment to be stayed or

discharged;

(vi) Upon (i) disqualification of Developer by the Director of OESBD due to fraud, misrepresentation, or material misstatement while obtaining this Agreement or attempting to meet the CBE Commitment; (ii) the disqualification by the Director of OESBD of one or more of Developer's CBE participants if any such participant's status as a CBE was a factor in the award of this Agreement and such status was misrepresented by Developer or such participant; (iii) disqualification by the Director of the OESBD of one or more of Developer's CBE participants if such CBE participant attempted to meet its CBE contractual obligations through fraud, misrepresentation, or material misstatement and it is determined by Director of the OESBD that Developer committed fraud, misrepresentation, or material misstatement concerning the CBE status of its disqualified CBE participant.

18.1.2 County Default. The failure of County to (i) pay to the Developer undisputed amounts due in accordance with the Broward County Prompt Payment Ordinance, or (ii) perform or observe any of the obligations, covenants or agreements to be performed or observed by County under this Agreement in any material respect within thirty (30) calendar days after Notice from the Developer of such failure shall be an "**Event of Default**" by County or an "**County Default**" hereunder; provided, however, that if such performance or observance described in subsection (ii) cannot reasonably be accomplished within such thirty (30) calendar day period, then no Event of Default shall occur unless County fails to commence such performance or observance within such thirty (30) calendar day period and fails to diligently prosecute such performance or observance to conclusion thereafter; provided further, that if such performance or observance has not been accomplished within ninety (90) calendar days after Notice from the Developer to County of such failure (notwithstanding County's diligent prosecution of its curative efforts), then same shall constitute an Event of Default hereunder.

SECTION 18.2 Remedies of County.

18.2.1 Termination. Upon the occurrence of a Developer Default, County, in addition to its other remedies at law or in equity, shall have the right to give the Developer notice (a "**Final Notice**") of County's intention to terminate this Agreement after the expiration of a period of thirty (30) calendar days from the date such Final Notice is delivered (a "**Final Notice Cure Period**") unless the Event of Default is cured, and upon expiration of the Final Notice Cure Period, if the Event of Default is not cured, this Agreement and the other Project Documents shall terminate without liability to County. If, however, within the Final Notice Cure Period the Developer cures such Event of Default, then this Agreement and the other Project Documents shall not terminate by reason of such Final Notice. If this Agreement is terminated as a result of a Developer Default, Developer shall not be entitled to any Developer Fees from the date of the Developer Default.

18.2.2 Additional Remedies. Upon the occurrence of a Developer Default, County shall also be entitled to, in its sole and absolute discretion, may exercise any and all remedies available to County at law or in equity (to the extent not otherwise specified or listed in this Section 18.2.2), including enforcing specific performance of the Developer's obligations and County's remedies under the Guaranty and shall be entitled to recover its costs and damages resulting from the Developer Default, subject to the limitations set forth in Section 18.4.3.

18.2.3 Cumulative Remedies of County. Subject to the provisions of this Article 13, each right or remedy of County provided for in this Agreement or any other Development Document shall be cumulative of and shall be in addition to every other right or remedy of County provided for in this

Agreement, any other Development Document, or at law or in equity, and the exercise or the beginning of the exercise by County of any one or more of its rights or remedies shall not preclude the simultaneous or later exercise by County of any or all other rights or remedies.

SECTION 18.3Termination by Developer. Upon the occurrence of a County Default, the Developer, in addition to its other remedies at law or in equity, shall have the right to give County a Final Notice of the Developer's intention to terminate this Agreement after the expiration of the Final Notice Cure Period unless County Default is cured, and upon expiration of the Final Notice Cure Period, if County Default is not cured, this Agreement and the other Development Documents shall terminate without liability to County. If, however, within the Final Notice Cure Period County cures such County Default, then this Agreement and the other Development Documents shall not terminate by reason of such Final Notice. If this Agreement is terminated as a result of a County Default, then Developer shall be entitled to any Developer Fees from the date of County Default through expiration of the Final Notice Cure Period.

SECTION 18.4 Indemnification.

18.4.1 Developer Indemnification. The Developer (the "**Indemnitor**") hereby agrees to indemnify, defend, and hold County Insureds (the "**Indemnitees**", which term includes their officers, agents, and employees) harmless against any and all claims, liabilities, damages, lawsuits, judgments, costs and expenses (including reasonable attorneys' fees) for injuries (including death), property damage, or other harm for which recovery of damages is sought, suffered by any Person or Persons, that may arise out of or be occasioned by the Indemnitor's breach of, or failure to perform, its obligations under this Agreement (including any insurance obligation), or by any other negligent or strictly liable act or omission of the Indemnitor, its officers, agents, employees or separate contractors, in the performance of this Agreement; except that the indemnity and obligation to defend provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the Indemnitees or their separate contractors, and in the event of joint and concurring negligence of the Indemnitor and the Indemnitees, responsibility and liability, if any, shall be apportioned comparatively in accordance with the laws of the State of Florida, without waiving any governmental immunity available to the Indemnitees under Florida law and without waiving any defenses of the Indemnitor or Indemnitees under Florida law. The provisions of this paragraph are solely for the benefit of the Indemnitor and Indemnitees, and not intended to create or grant any rights, contractual or otherwise, to any other Person, and shall survive termination or expiration of this Agreement. **PURSUANT TO FLORIDA STATUTES CHAPTER 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTS FROM NEGLIGENCE. THIS SECTION 18.3.1 SHALL BE FURTHER CONSTRUED IN COMPLIANCE WITH FLORIDA STATUTES SECTION 725.06.**

18.4.2 Survival. The defense and indemnity provisions in this Agreement survive termination of this Agreement, Final Completion of the Project, and all services and other activities contemplated by this Agreement.

18.4.3 Consequential Damages. EXCEPT FOR LIQUIDATED DAMAGES PROVIDED FOR IN SECTION ___ ARISING FROM OR RELATING TO A DELAYS IN COMPLETION OF THE PROJECT AND PROVIDED IN SECTION __ RELATING TO FAILURE TO COMPLY WITH THE CBE ORDINANCE, THE PARTIES SHALL NOT BE LIABLE TO EACH OTHER HEREUNDER FOR LOST PROFITS, PUNITIVE DAMAGES AND CONSEQUENTIAL DAMAGES, AND ANY LIABILITY OF A PARTY HERETO TO THE OTHER PARTY FOR LOST PROFITS, PUNITIVE DAMAGES AND CONSEQUENTIAL DAMAGES IS HEREBY WAIVED BY EACH PARTY HERETO.

18.4.4 Limitation Of Professional Liability. County and Developer agree that in performing this Agreement the possible risks and liabilities for Developer as compared to the potential financial rewards for Developer are such that Developer and County hereby agree, notwithstanding any other provision of this Agreement or any other Development Document, Developer's (including its affiliates', employees' and sureties') aggregate risk and liability to County under this Agreement, in connection with any claim, demand, cause of action, damages, suit or other liability arising from the performance of professional services in connection with this Agreement or the Projects ("**Professional Liability Claim(s)**") shall be limited to a total amount of $_____. Provided, however, the Parties expressly agree the foregoing limitation of liability shall not apply to limit: (i) the obligations of any of Developer's liability insurance carriers; (ii) the available proceeds of any insurance policies covering all or a portion of any Professional Liability Claim; (iii) any obligation of Developer, contractual or otherwise, to defend, indemnify or hold County Insureds harmless from or against liability arising from a third-party bodily injury or property damage claim, even if such third-party claim arises from a Professional Liability Claim; or (iv) Developer's liability arising in connection with Claims other than Professional Liability Claims.

SECTION 18.5Declaratory or Injunctive Relief. In addition to the remedies set forth in this Article 13, County shall be entitled, in any circumstances it may deem appropriate, to seek injunctive relief prohibiting (rather than mandating) action by the Developer for any Event of Default or declaratory relief with respect to any matter under this Agreement for which such remedy is available hereunder or at law or in equity.

SECTION 18.6Termination for Convenience by County. Nothing in this Agreement shall prohibit or restrict County's absolute right, herein reserved, to terminate this Agreement, in whole or in part, upon thirty (30) days' notice to the Developer. In such event, the Developer shall cease work to the extent required by such notice, follow the instructions of County regarding assignment to County of the Design Build Agreement, as well as any or all other contracts and agreements relating to the Project Work as County may elect. The Developer shall be entitled to payment for (a) Project Work properly executed in accordance with the Development Documents prior to the effective date of termination ,including amounts owned to Design Builder under the Design Build Agreement; (b) unpaid Developer Fee earned prior to the effective date of termination; (c) all Developer Reimbursable Expenses (including Salary Costs for Developer employees and any unpaid bonuses for such employees) incurred or earned through the effective date of the termination; (d) reasonable out-of-pocket costs actually incurred by Developer, Design Builder, and/or a Developer Consultant for field demobilization; and (e) , in the event Developer is replaced with another developer or the County elects to pursue the Projects directly with Design Builder or with a new construction manager or design builder, an amount equal to ten percent (10%) of (i) the remaining unpaid Developer Fee under any GMP Contract Amendment , less any amounts otherwise owed to County, as determined in good faith by County. The payment shall not include any amounts for the Developer's lost or anticipated profits. Notwithstanding anything contained hereto to the contrary, (i) County shall not be permitted to exercise its rights under this Section 18.6 once the Hotel Project and East Expansion Project achieve twenty five percent (25%) completion based on the total costs paid for by the County on the Hotel Project and East Expansion Project, and (ii) in no event shall County be permitted to replace Developer with any County Consultant (or any Affiliates thereof) providing services to the County in connection with the Projects.

SECTION 18.7Effect of Termination. If County elects to terminate this Agreement as provided in Section 18.2.1 or any other provision hereof, this Agreement shall, on the effective date of such termination, terminate with respect to all future rights and obligations of performance hereunder by the Parties hereto (except for the rights and obligations herein that expressly are to survive termination

hereof). Except as otherwise provided herein, termination of this Agreement shall not alter the then existing claims, if any, of County or the Developer for breaches of this Agreement occurring prior to such termination and the obligations of the Parties hereto with respect thereto shall survive termination.

ARTICLE 19
MISCELLANEOUS TERMS AND CONDITIONS

SECTION 19.1 Issuance of Bonds. Notwithstanding anything to the contrary set forth in this Agreement, the Developer recognizes and agrees that any contracts, agreements or amendments contemplated to be entered into by County under the terms of this Agreement, which are entered into after the Effective Date of this Agreement, as well as this Agreement, will be subject to the issuance of Bonds in an amount sufficient to fund the Hotel Project, West Expansion Project, and East Expansion Project. Developer shall not be required to commence Project Work on the Hotel Project, West Expansion Project, and/or the East Expansion Project unless and until County provides evidence reasonably satisfactory to Developer the that Bonds for such Projects have been issued and there are sufficient proceeds from such Bonds to fund the Project Development Costs for such Projects. Developer understands and agrees that this Agreement and any contracts, agreements or amendments contemplated under the terms of this Agreement may need to be amended in connection with the issuance of the Bonds and agrees to enter into all such amendments as may be necessary provided that such amendments relate solely to the security for the Bonds and do not other materially modify the terms of this Agreement. Developer further agrees to deliver such certificates and cause to be delivered by its counsel such opinions as may be necessary in connection with the issuance of the Bonds.

SECTION 19.2 Employment of County Consultants. County may employ such consultants as County may deem necessary to assist the County in in the administration of this Agreement ("**County Consultants**"). The Developer covenants and agrees to cooperate with such consultants in the same manner as the Developer is required to cooperate with County pursuant to the terms of this Agreement; provided, however, that Developer shall not be responsible or the performance of such consultants and to the extent the fees for such consultants are reflected in a Guaranteed Maximum Price, Developer's sole obligation shall be to report the amount due to such consultant and request funds to the pay for the same and Developer shall have no financial or other obligation to such consultant other than to pay such consultant the sums due on such invoice upon receipt of funds from County for the same.

SECTION 19.3 Accounting Terms and Determinations. Unless otherwise specified in this Agreement, all accounting terms used in this Agreement shall be interpreted, all determinations with respect to accounting matters thereunder shall be made and all financial statements and certificates and reports as to financial matters required to be furnished hereunder shall be prepared in accordance with GAAP.

SECTION 19.4 Survival. The representations, warranties, covenants, obligations and agreements of the Parties contained or provided for herein shall survive the expiration or earlier termination of the term of this Agreement and shall continue until the date which is two (2) years following (i) the expiration of the term of this Agreement as provided herein or (ii) any such earlier date on which this Agreement is terminated; provided, however, that it is understood and agreed that the representations, warranties, covenants and agreements of the Parties contained in this Agreement shall continue in full force and effect with respect to all Claims made in writing by either Party on or before such date with respect to such provisions until such Claims are paid in full.

SECTION 19.5 Liabilities. No Party to this Agreement shall have any obligation or duty to the other

Party hereto or any other Person with respect to the transactions contemplated hereby except the obligations or duties expressly of such Party set forth in this Agreement or in any other Project Document to which the Party in question is a signatory.

SECTION 19.6 Notices. Each provision of this Agreement and other requirements with reference to the sending. mailing or delivery of any notice, direction, Approval, instructions, request, request, reply, advice, confirmation and other communications (hereinafter severally and collectively called "**Notice**"), or with reference to the making of any payment by Developer to County, shall have been complied with when and if the procedures described in this Section 19.6 have been complied with by the Party giving such Notice. Subject to Section 19.6 below, all Notices must be in writing and given to a Party under this Agreement, to such Party at the address set forth in below or at such other address as such Party shall designate by written Notice to the other Party:

If to County:

_____

_____

Attn: _____
Phone: _____
Email: _____

With a copy to (such copy which shall not constitute Notice):

_____

_____

Attn: _____
Phone: _____
Email: _____

If to Developer: Matthews Holdings Southwest, Inc.
320 W. Main Street
Lewisville, Texas 75067
Attn: David Snell
Phone: (214) 221-1199
Email: dsnell@matthewssouthwest.com

With a copy to (such copy which shall not constitute Notice):

Munsch Hardt Kopf & Harr, P.C.
500 N. Akard Street, Suite 3800
Dallas, Texas 75201
Attn: Phillip J.F. Geheb
Phone: (214) 855-7560
Email: pgeheb@munsch.com

In all cases Notice shall be (i) sent by pre-paid, registered or certified U.S. Mail with return receipt requested, (ii) delivered personally with receipt of delivery, (iii) sent by nationally recognized overnight courier (such as Federal Express) with electronic tracking, (iv) sent by electronic mail with acknowledgment of receipt by the recipient, or (v) sent by facsimile (with confirmation of receipt by the

sending machine and a copy to follow by U.S. Mail, first class postage prepaid) to the Party entitled thereto. Such Notices shall be deemed to be duly given or made (i) in the case of U.S. mail in the manner provided above, three (3) Business Days after posting, (ii) if delivered personally with receipt of delivery, when actually delivered by hand and receipted unless such day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day, (iii) if sent by nationally recognized overnight courier with electronic tracking service, the next Business Day after depositing same with such overnight courier before the overnight deadline. and if deposited with such overnight courier after such deadline, then the next succeeding Business Day, (iv) in the case of electronic mail with acknowledgment of receipt by the recipient, when sent so long as it was received during normal Business Hours of the receiving Party on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day, or (v) in the case of facsimile (with confirmation of receipt by the sending machine and a copy to follow by U.S. Mail, first class postage prepaid), when sent so long as it was received during normal Business Hours of the receiving Party on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day. Each Party hereto shall have the right at any time and from time to time to specify additional parties ("**Additional Addressees**") to whom notice thereunder must be given, by delivering to the other Party five (5) calendar days' Notice thereof setting forth a single address for each such Additional Addressee; provided, however, that no Party shall have the right to designate more than two (2) such Additional Addressees.

SECTION 19.7 Severability. If any term or provision of this Agreement, or the application thereof to any Person, shall to any extent be invalid or unenforceable in any jurisdiction, the remainder of this Agreement, or the application of such term or provision to the Persons or circumstances other than those as to which such term or provision is held invalid or 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 any Legal Requirements, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 19.8 Entire Agreement; Amendment. This Agreement, together with the other applicable Project Documents, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Neither this Agreement nor any of the terms thereof may be terminated, amended, supplemented, waived or modified orally. but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought, and, in the case of County.

SECTION 19.9 No Waivers.

19.9.1 General. Unless expressly agreed to by such Party in writing, the failure of a Party hereto to insist, in any one or more instances, upon the strict performance by the other Party of any of such other Party's covenants, obligations or agreements under this Agreement, or to exercise any right or remedy given the first Party upon a default by the other Party, shall not be construed as a discharge or invalidation of such covenant, obligation or agreement or as a waiver or relinquishment thereof for the future, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy.

19.9.2 No Accord and Satisfaction. Without limiting the generality of clause (a) above, the receipt by either Party of any payment of any money due to it hereunder with knowledge of a breach by

the other Party of any covenant, obligation or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach (other than as such payment received). No acceptance by County or Developer of a lesser sum than then due shall be deemed to be other than on account of the earliest installment of the amounts due under this Agreement, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. County and Developer may accept a check, wire transfer or other payment without prejudice to its right to recover the balance of such installment or pursue any other remedy provided in this Agreement.

19.9.3 No Waiver of Termination Notice. Without limiting the generality of clause (a) above, the receipt by either Party of any monies paid by the other Party after the termination in any manner of the term of this Agreement, or after the giving of any Notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Agreement, reinstate, continue or extend the term of this Agreement, or destroy, or in any manner impair the efficacy of, any such Notice of termination as may have been given hereunder by either Party prior to the receipt of any such monies or other consideration, unless so agreed to in writing by both Parties.

SECTION 19.10 Table of Contents; Headings; Exhibits. The table of contents, if any, and headings, if any, of the various articles. sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof. All schedules and Exhibits attached to this Agreement are incorporated herein by reference in their entirety and made a part hereof for all purposes.

SECTION 19.11 Parties in Interest; Limitation on Rights of Others. The terms of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein or any standing or authority to enforce the terms and provisions of this Agreement.

SECTION 19.12 Counterparts. This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Development Agreement. All Signatures need not be on the same counterpart.

SECTION 19.13 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Developer and County acknowledge and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, DEVELOPER AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE**

LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

SECTION 19.14 Time. Times set forth in this Agreement for the performance of obligations shall be strictly construed, time being of the essence of this Agreement. All provisions in such instrument which specify or provide a method to compute a number of days for the performance, delivery, completion or observance by a Party hereto of any action, covenant, agreement, obligation, Approval or Notice hereunder shall mean and refer to calendar days, unless otherwise expressly provided. However, in the event the date specified or computed under such instrument for the performance, delivery, completion or observance of a covenant, agreement, obligation, Approval or Notice by either Party, or for the occurrence of any event provided for herein, shall be a day other than a Business Day, then the date for such performance, delivery, completion, observance or occurrence shall automatically be extended to the next calendar day that is a Business Day. All references in this Agreement to times or hours of the day shall refer to Eastern Standard Time or Eastern Daylight Savings Time, as applicable.

SECTION 19.15 Interpretation and Reliance. No presumption will apply in favor of any Party in the interpretation of this Agreement or in the resolution of any ambiguity of any provision thereof.

SECTION 19.16 Relationship of the Parties; No Partnership. The relationship of County and Developer under this Agreement is that of independent parties, and notwithstanding anything in this Agreement to the contrary, no aspect of this Agreement shall create or evidence, nor is it intended to create or evidence, a partnership, joint venture or other business relationship or enterprise between County and Developer. As such, County shall have no direct supervision of or obligation to the employees of Developer and any communication of employee matters shall be through the Developer Representative.

SECTION 19.17 Ownership of Materials; Return of Information. On termination of this Agreement and upon and subject to receipt of any payment due Developer by County with respect to such termination, Developer shall deliver to County the information set forth below; provided, however, Developer shall, for the purposes of Developer's post-termination obligations and dispute resolution, be permitted to retain copies of the written data and information generated by or for Developer in connection with the Project. All such data and information are County's property, but subject to Developer's continued rights herein set forth. This includes: (i) data and information supplied to Developer by County or County's contractors or agents; (ii) All drawings, plans, logs, photographs, books, records, contracts, and agreements relating to the Project and to which Developer has an unrestricted right, title and interest; and (iii) Plans, specifications, and drawings (including as-built Construction Drawings, if any) for the Project or any other element of the Project to which Developer has an unrestricted right, title and interest.

SECTION 19.18 Work Product. All Plans and Specifications, drawings, and other documents and electronic data furnished by Design Consultant to Developer ("**Work Product**") are deemed to be instruments of service and Design Consultant retains the ownership and property interests therein, including the copyrights thereto. Upon County's payment to Developer for all amounts owed under this Agreement with respect to the Project, Developer will cause the Design Consultant to grant Developer and County, a perpetual, royalty-free license to use the Work Product for any use that is solely for its benefit including future renovations and repairs of the Project on the condition that use of the Work Product is at Developer's and County's sole risk without liability or legal exposure to Design Consultant or anyone working by or through the Design Consultant of any tier. If the Design Contract is terminated

for any reason, provided the Developer has been paid all amounts owed under this Agreement, Developer will cause Design Consultant to grant Developer and County a perpetual, royalty-free license to use the Work Product to complete the Project and subsequently any other use that is solely for its benefit, including to maintain and occupy the Project (including future renovations and repairs), on the condition that use of the Work Product is at Developer's and County's sole risk without liability or legal exposure to Design Consultant or anyone working by or though Design Consultant of any tier. If County or Developer uses the Work Product in a manner not authorized hereby, the unauthorized user shall defend, indemnify and hold harmless the Design Consultant from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use of the Work Product. Notwithstanding anything herein to the contrary, Developer and County will be permitted to make copies of the Work Product and distribute any such copies to its representatives in connection with the Project. The Developer's obligation to cause the licenses to be granted herein and the licenses themselves shall survive the expiration or termination of this Agreement.

SECTION 19.19 Re-Use of Project. If Developer has been paid in full all sums due hereunder, including any retainage, for work satisfactorily performed under this Agreement, County may, at its option, re use (in whole or in part) the resulting end-product or deliverables resulting from Developer's professional services (including, but not limited to, Drawings, Specifications, Plans, other documents, and services as described herein and in Developer Services) and Developer agrees to such re use in accordance with this Section 19.19. If the Contract Administrator elects to re-use the services, drawings, specifications, and other documents, in whole or in part, prepared for Project A for other projects on other sites, Developer will be paid a re-use fee to be negotiated between Developer and the Contract Administrator, subject to approval by the proper awarding authority. Each re-use shall include all Developer Services and modifications to the Drawings, Specifications, Plans and other documents normally required to adapt the design documents to a new site. This re-use may include preparation of reverse plans, changes to the program, provision for exceptional site conditions, preparation of documents for off-site improvements, provisions for revised solar orientation, provisions for revised vehicular and pedestrian access, and modifications to building elevations, ornament, or other aesthetic features. In all re-use assignments, the design documents shall be revised to comply with building codes and other jurisdictional requirements current at the time of re-use for the new site location. None of Developer, Design Builder, or any Consultants shall be held liable for any re-use of drawings, specifications, and other documents, in whole or in part, unless agreed by Developer, Design Builder, or such Consultant.

SECTION 19.20 Advertisement. For no additional fee or consideration, County hereby grants to Developer a perpetual, non-revocable (unless Developer defaults under this Agreement and its rights and duties are terminated pursuant to the terms hereof) license to identify itself as the developer of the Project on any sign, advertisement, promotional publication, commercial, or other dissemination of any information about the Project; provided, however, that in no event shall Developer be permitted to utilize the logo for County without the Approval of County.

SECTION 19.21 Dispute Resolution. Except for disputes which are required to be resolved under the Prompt Payment Ordinance (Section 1-51.6 of the Broward County Code of Ordinances) as set forth in Section 11.6.7, the Parties will resolve all disputes as provided in **Exhibit H**. In any lawsuit between the Parties concerning any part of this Agreement or the rights and duties of either Party, each Party shall bear their own respective attorneys' fees and costs.

SECTION 19.22 Hazardous Substances.

19.22.1 The Developer and Design Builder are responsible for compliance with any

requirements included in the Development Documents regarding Hazardous Substances. If Developer or Design Builder encounter a Hazardous Substance not addressed in the Development Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a Hazardous Substance encountered on the Site by the Design Builder, the Developer shall cause the Design Builder, upon recognizing the condition, to stop Project Work in the Affected Area as soon as is reasonably practicable and report the condition to the County in writing. The term "Affected Area," as used herein, means any area of the Site affected by (or reasonably believed by Developer or Design Builder to be affected by) a Hazardous Substance.

19.22.2 Upon receipt of the Developer's or Design Builder's written notice, County shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Developer or Design Builder and, in the event such material or substance is found to be present and determined to be a Hazardous Substance, to cause it to be rendered harmless. County shall furnish in writing to the Developer the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such Hazardous Substance or who are to perform the task of removal or safe containment of such Hazardous Substance. County shall coordinate and manage the testing and remediation of the Hazardous Substance. When the Hazardous Substance has been rendered harmless, Work in the Affected Area shall resume upon written agreement of County and Developer.

19.22.3 By Change Order, the Substantial Completion date established under the applicable Guaranteed Maximum Price Amendment shall be extended appropriately and the applicable Guaranteed Maximum Price shall be increased in the amount of Developer's and Design Builder's additional costs of shut-down, stand-by time, delay, inefficiency, demobilization, re-mobilization and start-up arising in connection with a stoppage of the Work in the Affected Area.

19.22.4 Developer represents that Design Builder shall not transport to, use, generate, dispose of, or install at the Project Site any Hazardous Substance, except in accordance with applicable Environmental Laws. Further, in performing the Work, Developer represents that Design Builder shall not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws.

19.22.5 To the fullest extent permitted by law, County shall reimburse Developer by Change Order or otherwise for the costs of Developer and Design Builder resulting from claims, damages, losses and expenses (including but not limited to claims attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, and further including attorneys' fees, expert fees and litigation expenses) to the extent arising out of, incidental to, or resulting from performance of the Work in an Affected Area if in fact the Hazardous Substance was present at the Site prior to execution of the Agreement or was not introduced to the Site by or on behalf of Developer or Design Builder, provided Developer and Design Builder complied with Section 19.23.2.

19.22.6 In the event Design Builder fails to stop the Work in accordance with Section 19.23.2 upon encountering a known Hazardous Substance at the Project Site, to the fullest extent permitted by law, Develop shall indemnify and hold County Insureds harmless from and against any and all claims damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, and attorneys' fees, arising out of, incidental to or resulting from Design Builder's failure to stop the Work.

19.22.7 County, Developer and Design Builder may enter into a separate agreement and/or

Change Order for Design Builder to remediate and/or render harmless the Hazardous Substance, but Developer and Design Builder shall not be required to remediate and/or render harmless a Hazardous Substance absent such agreement. Design Builder shall not be required to resume work in any Affected Area until such time as the Hazardous Substance has been remediated and/or rendered harmless.

19.22.8 If, without negligence on the part of the Developer or Design Builder, the Developer or Design Builder is held liable by a government agency for the cost of remediation of a Hazardous Substance by reason of performing Work as required by the Development Documents, County shall reimburse Developer for all such costs and expenses incurred by Developer and Design Builder.

SECTION 19.23 Subsurface and Physical Conditions. **Exhibit L** identifies (a) those reports of explorations and tests of subsurface conditions at or adjacent to the Site; (b) those drawings of physical conditions relating to existing surface or subsurface structures at the Site; and (c) technical data contained in such reports and drawings. Developer may rely upon the accuracy of the reports and documentation included in **Exhibit L**. County acknowledges that the subsurface and physical conditions identified in the Site Investigation Reports are currently being investigated and that the Developer's analysis and Project Cost Limitation is based on the current drafts of such reports and that the Project Cost Limitations do not reflect the final analysis to be contained in such reports.

SECTION 19.24 Differing Subsurface or Physical Conditions.

19.24.1 Notice by Developer: If Developer believes that any subsurface or physical condition that is uncovered or revealed at the Site either:

(a) is of such a nature as to establish that any Site information on which Developer is entitled to rely as provided in Section 19.24 is materially inaccurate; or

(b) is of such a nature as to require a change in the Development Documents; or

(c) differs materially from that shown or indicated in the Development Documents; or

(d) is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Development Documents;

then Developer shall, promptly and in no event more than seven (7) days after becoming aware thereof and before further disturbance by Design Builder of the subsurface or physical conditions or Design Builder's further performance of any Work in connection therewith (except in an emergency), notify County in writing about such condition. Developer shall cause Design Builder to refrain from further disturbing such condition or performing any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Design Builder to do so.

19.24.2 County's Review and Issuance of Written Statement: After receipt of written notice as required by the preceding paragraph, County will, within fourteen (14) days after receipt thereof, review the subsurface or physical condition in question; determine the necessity of County obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Section 19.25.1 above; obtain any pertinent

cost or schedule information from Developer; prepare recommendations regarding the Design Builder's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and issue a written statement to Developer in writing advising of County's findings, conclusions, and recommendations.

19.24.3 Possible Price and Times Adjustments:

(a) Provided such condition falls within any one or more of the categories described in Section 19.24.1, Developer shall be entitled to an equitable adjustment in the applicable Guaranteed Maximum Price and applicable date of Substantial Completion, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Developer's cost of, or time required for, performance of the Services or Work.

(b) Developer shall not be entitled to any adjustment in the applicable Guaranteed Maximum Price and applicable date of Substantial Completion with respect to a subsurface or physical condition if Developer knew of the existence of such condition at the time Developer submitted its applicable Guaranteed Maximum Price Proposal or Developer failed to give the written notice as required by Section 19.24.1.

(c) If County and Developer agree regarding Developer's entitlement to and the amount or extent of any adjustment in the applicable Guaranteed Maximum Price or applicable date of Substantial Completion, or both, then any such adjustment shall be set forth in a Change Order.

(d) Developer shall submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in an applicable Guaranteed Maximum Price or applicable date of Substantial Completion, or both, no later than thirty (30) days after Developer's receipt of County's written statement required by Section 19.24.2.

[Signature Page Follows]

IN WITNESS WHEREOF, the duly authorized representatives of the Developer have executed this Agreement as of the Effective Date.

DEVELOPER:

MATTHEWS HOLDINGS SOUTHWEST, INC.
a Texas corporation

By: _____
Name: John H. Matthews
Its: President

MHKH DRAFT 5.30.19

IN WITNESS WHEREOF, the duly authorized representatives of County, acting by and through the Board of County Commissioners, signing through its County Administrator, authorized to execute same by Board action on ___ day of _____, 2019, has executed this Agreement as of the Effective Date.

COUNTY:

ATTEST:

By: _____

Name: _____

By: _____

Name: _____

Insurance requirement approved by the Broward County Risk Management Division

By: _____

Name: _____

Its: _____

Date:_____

BROWARD COUNTY, by and though its County Administrator

By: _____
Berth Henry
County Administrator

This ___ day of _____, 2019

Approved as form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By: _____
Michael J. Kerr
Deputy County Attorney

Date: _____

By: _____
Jeffrey S. Siniawsky
Senior Assistant County Attorney

Date:_____

SCHEDULE 1

LEGAL DESCRIPTION OF SITE

SCHEDULE 2

SITE PLAN

SCHEDULE 3

MASTER PROJECT SCHEDULE

SCHEDULE 4

PROJECT COST LIMITATIONS

EXHIBIT A

RULES OF USAGE AND GLOSSARY OF DEFINED TERMS

Rules of Usage

1. The terms defined below have the meanings set forth below for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

2. "Include", "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import.

3. Any agreement, instrument or Legal Requirement defined or referred to below or in any agreement or instrument that is governed by this Appendix means such agreement or instrument or Legal Requirement as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Legal Requirements) by succession of comparable successor Legal Requirement and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

4. References to a Person are also to its permitted successors and assigns.

5. "Hereof", "herein", "hereunder" and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to "Article", "Section", "Subsection" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an attachment to such agreement or instrument. All references to schedules, exhibits or appendices in any agreement or instrument that is governed by this Appendix are to schedules, exhibits or appendices attached to such instrument or agreement.

6. Pronouns, whenever used in any agreement or instrument that is governed by this Appendix and of whatever gender, shall include natural persons, corporations, limited liability companies, partnerships, and associations of every kind and character.

7. References to any gender include, unless the context otherwise requires, references to all genders.

8. The word "or" will have the inclusive meaning represented by the phrase "and/or."

9. The phrase "and/or", when used in a conjunctive phrase, shall mean any one or more of the Persons specified in or the existence or occurrence of anyone or more of the events, conditions or circumstances set forth in that phrase; *provided, however,* that, when used to describe the obligation of one or more Persons to do any act, it shall mean that the obligation is the obligation of each of the Persons but that it may be satisfied by performance by anyone or more of them.

10. "Shall" and "will" have equal force and effect.

11. Unless otherwise specified, all references to a specific time of day in any agreement or instrument that is governed by this Appendix shall be based upon Central Standard Time or Central Daylight Savings Time, as applicable on the date in question, in Ft. Lauderdale, Florida.

12. References to "$" or to "dollars" shall mean the lawful currency of the United States of America.

13. "Not to be unreasonably withheld" when used herein with respect to any Approval shall be deemed to be followed by "conditioned or delayed" whether or not it is in fact followed by such words or words of like import.

14. References in this Development Agreement to another document, instrument or agreement, the incorporation herein of another document, instrument or agreement or the incorporation herein of a provision or defined term from another document, instrument or agreement shall not be affected by the termination, expiration, amendment or modification of such document, instrument or agreement, unless expressly stated herein otherwise or as a result of an amendment to or modification of this Development Agreement pursuant to the terms hereof. Additionally, any term defined below by reference to any Legal Requirement has such meaning whether or not such Legal Requirement is in effect.

Glossary of Defined Terms

1. "18th Street Modification" means the modifications to 18th Street on the eastern side of the Convention Center necessary for the construction of the Hotel Project, East Expansion Project, and West Expansion Project as depicted on the Site Plan.

2. "Abnormal Weather Conditions" means weather conditions that deviate from the average of the preceding five (5) year climatic range during the same time interval based on National Oceanic and Atmospheric Administration National Weather Service statistics for the locality of the Site and based on weather logs kept at the Site, if any, reflecting the effect of the weather on the progress in completing the Project.

3. "Actions or Proceedings" means any legal action, lawsuit, proceeding, arbitration or other alternative dispute resolution process, Governmental Authority investigation, hearing, audit, appeal, administrative proceeding or judicial proceeding.

4. "Additional Addressees" has the meaning set forth in Section 19.6.

5. "Affiliate" of any Person means any other Person directly or indirectly controlling, directly or indirectly controlled by or under direct or indirect common control with such Person. As used in this definition, the term "control", "controlling" or "controlled by" shall mean the possession, directly or indirectly, of the power either to (a) vote more than fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (b) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests by contract or otherwise, excluding in each case, any lender of such Person or any Affiliate of such lender.

6. "Agreement" has the meaning set forth in the opening paragraph.

7. "Approval," "Approve" or "Approved" means (a) with respect to any item or matter for which the approval or consent of the County or the Contract Administrator is required under the terms of the Development Agreement, the specific approval of such item or matter by the County or the Contract Administrator, as applicable, pursuant to a written instrument executed by the County or the Contract Administrator, as applicable, delivered to Developer, and shall not include any implied or imputed approval, and no approval by the County or the Contract Administrator pursuant to the Agreement shall be deemed to constitute or include any approval required under any County Code or in connection with any Governmental Functions of the County, unless such written approval shall so specifically state; (b) with respect to any item or matter for which the approval or consent of Developer is required under the terms of the Agreement, the specific approval of such item or matter by Developer pursuant to a written instrument executed by the Developer Representative and delivered to the Contract Administrator, and shall not include any implied or imputed approval; and (c) with respect to any item or matter for which the approval or consent of any other Person is required under the terms of this Development Agreement, the specific approval of such item or matter by such Person pursuant to a written instrument executed by a duly authorized representative of such Person and delivered to the County or Developer, as applicable, and shall not include any implied or imputed approval.

8. "Benefits" means the actual cost of all employer paid benefits and payroll taxes for Developer's employees to the extent they are performing Developer Services for one or more Projects, including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law or paid under Developer's standard personnel policy, but solely to the extent that such cost categories and costs have been reviewed and approved by County prior to finalization of agreed-upon rates. The foregoing notwithstanding, for every $1.00 of actual cost of salaries or wages of Developer's employees, there shall be no greater than $.50 of associated "Benefits" that may be included in Salary Costs.

9. "Board" shall have the meaning set forth in Recital B.

10. "Bonds" has the meaning set forth in Section 6.3.

11. "Brand Standards" means the brand standards promulgated by the Hotel Operator as set forth in the Omni Architectural and Design Standards attached to the Technical Services Agreement, as may be amended, modified, or partially or completely waived for the Hotel Project from time to time by the Hotel Operator as evidenced by acceptance of the Project Construction Drawings for the Hotel Project as contemplated in the Technical Services Agreement.

12. "Business Day" shall mean Monday through Friday except for federal holidays and holidays in the State of Florida.

13. "Business Hours" means 9:00 a.m. through 5:00 p.m. on Business Days.

14. "CareerSource" means CareerSource Broward, the administrative entity of the Broward Workforce Development Board, or any successor entity.

15. "CBE Commitment" has the meaning set forth in Section 15.3.2.

16. "CBE Ordinance" has the meaning set forth in Section 15.3.1.

17. "CBE" means "County Business Enterprise" as defined in the CBE Ordinance.

18. "CCE Projects Construction Fund" has the meaning set forth in Section 11.1.3.

19. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq, as amended. NOT FOUND IN DOC

20. "Change in Control" means the transfer, whether directly or indirectly, beneficially or of record, by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended) of 50% or more of the shares of the outstanding common stock, whether by merger (whether the surviving or disappearing entity), consolidation, sale or other transfer of shares of common stock (other than a merger or consolidation where the stockholders prior to the merger or consolidation are the holders of a majority of the voting securities of the entity that survives such merger or consolidation), or (ii) a sale of all or substantially all of the assets of the corporation. Notwithstanding the foregoing, the following transfers shall not be considered a "Change in Control" as used herein: (i) any transfer by a natural person for estate planning purposes made to such person's immediate family members or to a trust having such person as a trustee; (ii) transfers of any by the existing shareholders within the Developer; and (iii) transfers which do not convey voting rights or authority over the management and policies of the Developer.

21. "Change Order" is a written instrument executed by the Developer and Owner to document (i) a Material Modification, (ii) an increase to a Guaranteed Maximum Price under a GMP Contract Amendment, or (iii) an extension of a Scheduled Date of Substantial Completion.

22. "Change Proposal" has the meaning set forth in Section 9.1(c).

23. "Claims" shall mean and include any and all disputes, controversies, claims, debts, sums of money, losses, damages and demands of whatsoever nature.

24. "Compensable Developer Excused Delay" has the meaning set forth in Section 12.7.

25. "Construction Change Directive" has the meaning set forth in Section 9.3.1.

26. "Construction Management Plan" has the meaning set forth in Section 7.10.

27. "Contract Administrator" means the Assistant Director of the Public Works Department, who is the representative of the County for the Project. In the administration of this Agreement, as contrasted with matters of policy, Developer may rely upon instructions or determinations made by the Contract Administrator.

28. "Contract Records" has the meaning set forth in Section 15.4.2(c).

29. "Convention Center" shall mean the Greater Ft. Lauderdale / Broward County Convention Center located at 1950 Eisenhower Blvd., Ft. Lauderdale, Florida 33316.

30. "County Authorities" has the meaning set forth in Section 4.1.7 and as listed on **Exhibit K**.

31. "County Codes" means all ordinances and codes from time to time adopted by the County, including any building codes, fire or life safety codes, development codes and zoning ordinances, as same may be amended from time to time.

32. "County Consultants" has the meaning set forth in Section 19.2.

33. "County Contingency" has the meaning set forth in Section 11.5.

34. "County Default" has the meaning set forth in Section 18.1.2.

35. "County Direct Purchase Procedures" has the meaning set forth in Section 16.2 and as further listed in **Exhibit M**.

36. "County Insured" means the County and its elected and appointed officials and employees, agents, auditors, advisors, consultants, servants, counsel, lessees, sublessees (of any tier), licensees, sublicensees (of any tier), lenders, successors, assigns and legal representatives.

37. "County West Expansion Acceleration Notice" has the meaning set forth in Section 12.5.2(a).

38. "County's Representations" has the meaning set forth in Section 4.1.

39. "County" has the meaning set forth in the first paragraph, its permitted successors and assigns.

40. "CPEAM" means a contract price element adjustment memorandum issued by the Contract Administrator to memorialize the reallocation of County Contingency, Developer Contingency, or Design Builder Contingency to other elements within a Guaranteed Maximum Price in accordance with Sections 11.3, 11.4, or 11.5 and as otherwise specified in the Agreement.

41. "Critical Path Item" has the meaning set forth in Section 12.6.1.

42. "CVB Office" means a new office for the Greater Fort Lauderdale Convention Centers Bureau construction within the area depicted on the Site Plan, which is intended to be funded as a part of the East Expansion Project.

43. "Delay Liquidated Damages" has the meaning set forth in Section 12.5.5.

44. "Design Build Agreement" means the design/build agreement to be entered into by Developer and Design Builder for the Project Construction Work for the Projects and excluding any FF&E, OS&E and additional equipment required provided by Developer, County, or Hotel Operator.

45. "Design Builder Contingency" has the meaning set forth in Section 11.4.1.

46. "Design Builder Fee" and "Design Builder Fees" have the meanings set forth in Section 13.3.

47. "Design Builder IGMP" means the portion of the Guaranteed Maximum Price for a Project which consists of Design Builder Managed Costs and is subject to a guaranteed maximum price under the terms of the Design Build Agreement.

48. "Design Builder Managed Costs" means the total amount of the Project Construction Work, including Design Builder's general conditions, Payment and Performance Bonds, and insurance costs, for any portion of the Project excluding (i) Design Builder Contingency and (ii) the Design Builder Fee, as more particularly set forth in the a GMP Contract Amendment.

49. "Design Builder Subcontractors" means the consultants and subcontractors of any tier engaged directly or indirectly by the Design Builder in connection with performing its obligations under the terms of the Design Build Agreement.

50. "Design Builder" means Balfour Beatty Construction, LLC or such other Qualified Design Builder as may be Approved by the County.

51. "Design Consultant" means (i) Nunzio Marc Desantis Architects (solely with respect to the concept and schematic design of the Hotel Project) and (ii) Stantec Architecture, Inc.

52. "Design Services Agreement" has the meaning set forth in the Recitals.

53. "Developer Consultant" is any company, entity, person, individual, or advisor (other than County and their employees) that contracts with and is paid by or charges a fee to Developer perform any duties or services relating to a Project's design, development, demolition, or construction. A list of the Developer Consultants Approved by the County is attached here to as **Exhibit D**.

54. "Developer Consultants" means the consultants and subcontractors directly engaged by the Developer in connection with performing its obligations under the terms of this Agreement.

55. "Developer Contingency Event" has the meaning set forth in Section 11.3.2.

56. "Developer Contingency" has the meaning set forth in Section 11.3.1.

57. "Developer Default" has the meaning set forth in Section 18.1.1.

58. "Developer Excused Delay" has the meaning set forth in Section 12.6.1.

59. "Developer Fee" and "Developer Fees" have the meanings set forth in Section 13.1.

60. "Developer Managed Costs" means the total Project Development Costs for any portion of the Project excluding (i) Developer Contingency and County Contingency unless and until the same are utilized, and (ii) the Developer Fee.

61. "Developer Reimbursable Expenses" means actual costs and expenses reasonably incurred by the Developer in performing its obligations under the Development Agreement with respect to the Projects, including, without limitation, (i) Salary Costs for employees of Developer, (ii) on-site or nearby office space and office supplies, computers, and phones for the same, (iii) placement agency fees, (iv) travel and lodging, (v) Developer's professional and general liability insurance required hereunder, and (vi) legal fees related to obtaining permits and entitlements for the Projects or assisting the County with a financing related to a Project.

62. "Developer Representative" has the meaning set forth in Section 2.7.

63. "Developer Representative" has the meaning set forth in Section 2.7.

64. "Developer Services" means, collectively, the services to be performed by Developer in connection with the Projects as described in **Exhibit C**.

65. "Developer West Expansion Non-Acceleration Notice" has the meaning set forth in Section 12.5.2(a).

66. "Developer's Representations" has the meaning set forth in Section 5.1.

67. "Developer" has the meaning set forth in the opening paragraph or any successor that is Approved by the County in accordance with the terms hereof.

68. "Development Documents" means, collectively, this Agreement and all exhibits, attachments, and forms attached hereto or delivered in connection herewith, including all Guaranteed Maximum Prices, Master Project Schedule, Project Construction Schedules, Payment and Performance Bonds, and any Change Orders, Change Directives, CPEAMs, and Field Orders, and solely with respect to the Hotel Project, the Technical Services Agreement and the Brand Standards.

69. "DRI Application" has the meaning set forth in Section 16.1.

70. "DRI Consultant" has the meaning set forth in Section 16.1.

71. "East Expansion Project Substantial Completion Deadline" means the date of Substantial Completion set forth in the Project Construction Schedule for the East Expansion Project as Approved by the County in the GMP Contract Amendment for the same, subject to extensions for Developer Excused Delay.

72. "East Expansion Project" has the meaning set forth in Recital A and as further defined in the Program Requirements attached as **Exhibit B**.

73. "Economically Disadvantaged Worker" means a person who (a) prior to hire had an annual household income for the last full calendar year equal to or less than the most recently-published "Low-Income" income limits for the Fort Lauderdale, FL HUD Metro Fair Market Rents Area for Section 8 of the Housing Act of 1937, as amended; (b) had been unemployed but seeking employment for more than six (6) consecutive months prior to hire; or (c) had received federal or state public assistance through Temporary Assistance for Needy Families (TANF) or Supplemental Nutrition Assistance (SNAP) within ninety (90) days prior to hire.

74. "Effective Date" has the meaning set forth in the opening paragraph.

75. "Enabling Projects" means, collectively, the (i) Parking Facility Modifications and (ii) general site preparation, demolition, and utility relocation work required to achieve Substantial Completion of the Hotel Project, West Expansion Project, and East Expansion Project.

76. "Enhanced Design Package(s)" means, whether one or more, a part of the Project Construction Documents, including all drawings, specifications and other Project Construction Documents issued by the Design Builder at a designated point in time as required for bidding, procurement and construction for a specific portion of the Project Work for all or a portion of the Project, which

shall be at 100% completion of design development drawings and 50% of Project Construction Documents, unless otherwise specified by the Contract Administrator.

77. "Environmental Law(s)" means any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Contaminated Materials, (ii) the storage, handling, emission, discharge, release and use of chemicals and other Contaminated Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind. and (iv) the protection of environmentally sensitive areas, including CERCLA; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 5101 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Endangered Species Act, as amended, 16. U.S.C. § 1531 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001.

78. "Event of Default" means Developer Default or County Default.

79. "Existing Site Conditions" are any and all conditions of the Site as of the Effective Date, including, but not limited to, geological, geotechnical, archeological, paleontological, ecological, and environmental, including the presence or absence of any Hazardous Materials and compliance or non-compliance with Environmental Laws.

80. "FF&E" means all furniture, fixtures, equipment, furnishings, machinery and other personal property located on or in a Project and all such other items of Personalty as are necessary for operation of the Hotel Project at the Brand Standard or the West Expansion Project or the East Expansion Project, as applicable.

81. "FGMP" shall mean the final Guaranteed Maximum Price for a Project Approved by the County in accordance with Section 7.2.

82. "Field Order" has the meaning set forth in Section 9.1(b).

83. "Final Completion" has the meaning set forth in Section 12.4.1.

84. "Final Notice Cure Period" has the meaning set forth in Section 18.2.1.

85. "Final Notice" has the meaning set forth in Section 18.2.1.

86. "Force Majeure" means fire, storm, earthquakes, flood, terrorist attacks, strikes that are not directly related to acts or labor relations of Design Builder or its Affiliates, riots, or a combination of any of the foregoing, beyond a Party's reasonable control that materially adversely affects the ability

of a Party to perform, but not in any event market or economic conditions except to the extent caused by one of the foregoing.

87. "GAAP" means generally accepted accounting principles, applied on a consistent basis. as set forth in Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants or in statements of the Financial Accounting Standards Board or their respective successors and which are applicable in the circumstances as of the date in question. Accounting principles are applied on a "consistent basis" when the accounting principles observed in a current period are comparable in all material respects to those accounting principles applied in a preceding period.

88. "GMP Contract Amendment" means an amendment to this Development Agreement in substantially the form attached hereto as **Exhibit G**, establishing a Guaranteed Maximum Price for a Project, a Project Construction Schedule, and such other items as the County and Developer may agree to in connection with the County's Approval of a Guaranteed Maximum Price Proposal for Design Package for the Project Work for all or a portion of a Project.

89. "Good Faith Efforts" has the meaning set forth in the CBE Ordinance.

90. "Governmental Authority" means any Federal, state or local governmental entity (not the County unless the County is exercising a Governmental Function), authority (including a taxing authority) or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) and any arbitrator to whom a dispute has been presented under Legal Requirements, pursuant to the terms of this Development Agreement or by agreement of the Parties.

91. "Governmental Authorizations" means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right-of-ways, and similar items from any Governmental Authority, but not including a liquor license from the [INSERT FLORIDA LICENSING AUTHORITY].

92. "Governmental Function" means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which the County is authorized or required to perform in its capacity as a Governmental Authority in accordance with Legal Requirements. The entering into this Development Agreement and the performance by the County of its obligations under this Development Agreement shall not be considered a "Governmental Function."

93. "Guaranteed Maximum Price" or "GMP" means the sum for all services to accomplish the procurement, design, construction, permitting, development, equipping and furnishing of a Project, which includes, without limitation, (i) the guaranteed maximum price established under the Design Build Agreement the cost of the design and construction for such Project, (ii) the cost of any Government Authorizations, (iii) the cost of procuring and installing FF&E and OS&E, to the extent applicable, (iv) the Developer Fee, (v) the Developer Reimbursable Expenses, (vi) the County Contingency, Developer Contingency, the Design Builder Contingency, and (vii) such other costs and expenses related to the Project Construction Work for such Project as set forth in a GMP Contract Amendment.

94. "Hard-to-Hire Worker" means a person who, at the time of hire, (a) has a criminal felony record; (b) has a record of a physical or mental impairment that substantially limits one (1) or more major life activities; (c) has neither a high school diploma nor a GED; or (d) has been homeless for at least six (6) of the last twelve (12) months.

95. "Hazardous Substance" means (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls. lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants" or "pollutants", or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is regulated because of its adverse effect or potential adverse effect on health and the environment, including soil and construction debris that may contain any of the materials described in this definition.

96. "Home Office Overhead" means services and related expenses of any non-Project-related home office overhead and general expenses of Developer, including without limitation the wages and salaries and related benefits associated with or paid to officers or corporate office supervisory personnel of Developer, personnel in Developer's human resources, accounting (other than Project accounting services), labor relations, insurance and tax departments, and all other costs of doing business, services and related expenses required to maintain and operate Developer's corporate offices and any established branch offices.

97. "Hotel Construction Fund" has the meaning set forth in Section 11.1.2.

98. "Hotel Early Completion Incentive" has the meaning set forth in Section 13.4.2.

99. "Hotel Management Agreement" means a binding operating agreement between the County and the Hotel Operator governing the management and operation of the Hotel by the Hotel Operator in accordance with the Brand Standard.

100. "Hotel Operator" means Omni Hotels Management Corporation, a Delaware corporation, which will manage and operate the Hotel for an initial period set forth in the Hotel Management Agreement, together with any permitted successors and assigns.

101. "Hotel Project Substantial Completion Deadline" means the date of Substantial Completion set forth in the Hotel Project Construction Schedule for the Hotel Project as Approved by the County in the GMP Contract Amendment for the same, subject to extensions for Developer Excused Delay.

102. "Hotel Project Substantial Completion" means (i) at least fifteen (15) floors comprising in the Hotel Project are fully furnished, equipped, and ready to be occupied in accordance with the Brand Standards and are subject only to minor "punch list" items; (ii) all public spaces (i.e., public lobby, restaurants, retail, pool areas, meetings rooms, and other guest amenities) within the Hotel Project have been substantially completed, are fully furnished and equipped in accordance with the Brand Standards, and are ready to be occupied for their intended purpose and are subject only to minor

"punch list" items; (iii) all back of house areas necessary to operate the Hotel Project for the number of floors that satisfy items (i) and (ii) above have been substantially completed, are fully furnished and equipped in accordance with the Brand Standards and are subject only to minor "punch list" items; (iv) a temporary certificate(s) of occupancy or equivalent permit for each floor satisfying items (i), (ii), and (iii) above have been issued by the City permitting beneficial use of the same; and (v) the Hotel Project has otherwise achieved Substantial Completion.

103. "Hotel Project" has the meaning set forth in Recital A.

104. "Identified Claims" means Claims that (a) have been asserted against County, Developer, Design Builder, or the Project and (b) have been identified in writing (both in terms of the nature and potential amount of the Claim) and supported with reasonable documentation detailing the underlying Claim.

105. "IGMP" shall mean an interim Guaranteed Maximum Price for a Project proposed by the Developer in accordance with Section 7.2. The IGMP shall not exceed the Project Cost Limitation for a Project without the prior written Approval of the Contract Administrator.

106. "Immaterial Modification" means any modification or alteration to the Construction Documents that (a)(i) involves a substitution using an equal or better component or material (based on quality and specifications), (ii) does not modify or alter any mechanical, aesthetic, elevation or structural components of a Project, (iii) does not adversely impact the services, amenities and programmatic benefits afforded by a Project; (iv) could not be reasonably expected to have an adverse impact on the financial performance of a Project, (b) does not delay a Scheduled Date of Substantial Completion; and (c) does not increase a Guaranteed Maximum Price set forth in a GMP Contract Amendment.

107. "Improvements" means all structures or other improvements of any kind whatsoever, whether above or below grade, whether now existing or hereafter constructed. and including buildings, the foundations and footings thereof, utility installations, storage, loading and parking facilities, walkways, driveways, landscaping signs, site lighting, site grading and earth movement and all fixtures, plants, apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts and equipment of every kind and description now or hereafter affixed or attached to any of such buildings, structures or improvements and used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilating or general operation of any of such buildings.

108. "Indemnitee" has the meaning set forth in Section 18.4.1.

109. "Indemnitor" has the meaning set forth in Section 18.4.1.

110. "Indenture" means that certain Indenture of Trust between the County and the Trustee relating to the issuance(s) of Bonds, and all exhibits thereto, as the same may be amended, supplemented, modified, renewed or extended from time to time in accordance with the terms thereof.

111. "Inspecting Party" means the Contract Administrator, County Consultants, or any other representative of the County inspecting or monitoring the construction of the Project.

112. "Insurance Covenant" means all of the covenants and agreements of Developer with respect to insurance policies and coverages to be maintained by Developer pursuant to and in accordance with Article 12.

113. "Insurance Proceeds" means proceeds paid pursuant to insurance policies required under Article 12 for loss or damage to a Project.

114. "LD Cap" has the meaning set forth in Section 12.5.5.

115. "Legal Requirements" means all federal, state, and local laws, statutes, acts (including, without limitation, the ordinances, rules, regulations, permits, licenses, authorizations, directives, orders and requirements of all governments, quasi-governmental or regulatory authorities, that now or hereafter may be applicable to (i) the Hotel and the construction, maintenance and operation thereof, including those relating to employees, zoning, building, health, safety and environmental matters, and accessibility of public facilities, (ii) the Developer and Design Builder, and/or (iii) the County, including without limitation Environmental Laws and the County Codes.

116. "Lien" means, with respect to any Property, any mortgage, lien, pledge, charge or security interest, and with respect to the Premises, the term Lien shall also include any liens for taxes or assessments, builder, mechanic, warehouseman, materialman, contractor, workman, repairman or carrier lien or other similar liens, including Mechanics' Liens and Claims.

117. "Local Labor Requirement" has the meaning set forth in Section 15.8.

118. "Master Project Schedule" means a schedule of Critical Path Items relating to the Projects (which dates may be described or set forth as intervals of time from or after the completion or occurrence of the preceding task or event), which schedule shall contain, but shall not be limited to, the estimated dates for (i) ordering and delivering of technical delivery items, such as construction components or Items requiring long lead time for purchase or manufacture, or items which by their nature affect the basic structure or systems of the Projects, (ii) completion of Project Plans in detail sufficient for satisfaction of all Legal Requirements (including issuance of necessary Governmental Authorizations), (iii) issuance of all Governmental Authorizations and satisfaction of all Legal Requirements prerequisite to commencement of the any Project Construction Work, (iv) schedule dates of Substantial Completion and Final Completion of the West Expansion Project, East Expansion Project, and Hotel Project, and (v) such items as the County may request in connection with the issuance of Bonds to finance the Projects.

119. "Material Delay" has the meaning set forth in Section 12.6.1.

120. "Mechanics' Lien" has the meaning set forth in Section 7.12.

121. "MHSW Guaranty" has the meaning set forth in Section 6.2.

122. "MHSW" means Matthews Holdings Southwest, Inc., a Texas corporation.

123. "New Hotel Project Substantial Completion Deadline" has the meaning set forth in Section 13.4.1.

124. "New SC Notice" has the meaning set forth in Section 13.4.1.

125. "Notice to Proceed" means written notice to the Developer to proceed with the applicable portion of the Developer Services under this Development Agreement.

126. "Notice" has the meaning set forth in 19.6.

127. "OESBD" means the Office of Small Business and Economic Development for the County.

128. "OS&E" means all operating supplies and equipment for the Hotel Project necessary for operation of the Hotel Project at the Brand Standard.

129. "Parking Facility Modifications" means the modifications to the northern portion of the parking garage to the west of the Convention Center necessary for the construction of the West Expansion Project as depicted on the Site Plan.

130. "Parties" or "Party" has the meaning set forth in the opening paragraph.

131. "Payment and Performance Bonds" means the payment and performance bonds required for each Project under Section 10.1.

132. "Person" shall mean any individual, public or private corporation, partnership, limited liability company, county, district, authority, municipality, political subdivision or other entity of the State of Florida or the United States of America, and any partnership, association, firm, trust, estate or any other entity or organization whatsoever.

133. "Personalty" shall mean all equipment, fixtures, machinery, furniture, furnishings and other personal property erected, constructed, installed or placed in or affixed to a Project.

134. "Plaza Improvements Substantial Completion Deadline" has the meaning set forth in in Section 12.5.4.

135. "Plaza Improvements" means improvements to the existing entrance plaza and construction of retail buildings within such area as depicted on the Site Plan, which is intended to be funded as a part of the East Expansion Project.

136. "Predevelopment Agreement" has the meaning set forth in the Recitals.

137. "Prevailing Wage Ordinance" has the meaning set forth in Section 15.1.

138. "Prevailing Wage Rate" has the meaning set forth in Section 15.1.1.

139. "Professional Liability Claims" has the meaning set forth in Section 18.4.4.

140. "Program Requirements" means the basic program requirements for the Projects as set forth in and as modified under the Design Services Agreement, including, without limitation the narrative set forth on **Exhibit B**.

141. "Project Construction Documents" means the Design Consultant's final approved-for-construction plans, drawings, and specifications for a Project, setting forth in detail the requirements for design and construction of a Project and the levels of quality and functionality for the materials and systems to be incorporated into such Project, as Approved by the County.

142. "Project Construction Schedule" means a schedule of Critical Path Items relating to the Project Work (which dates may be described or set forth as intervals of time from or after the completion or occurrence of the preceding task or event), which schedule shall contain, but shall not be limited to, the estimated dates for (i) ordering and delivering of technical delivery items, such as construction components or Items requiring long lead time for purchase or manufacture, or items which by their nature affect the basic structure or systems of a Project, (ii) completion of the Project Construction Documents in detail sufficient for satisfaction of all Legal Requirements (including issuance of necessary Governmental Authorizations), (iii) issuance of all Governmental Authorizations and satisfaction of all Legal Requirements prerequisite to commencement of the Project Work, (iv) Substantial Completion and Final Completion of the Project..

143. "Project Construction Work" means design and construction of a Project in accordance with the Development Agreement and as performed by Design Builder or Design Builder Subcontractors under the terms of the Design Build Agreement, including applicable Legal Requirements, the Project Construction Documents, and all other work and preparations required to achieve substantial completion under the Design Builder Agreement.

144. "Project Cost Limitation" has the meaning set forth in Section 7.2.1

145. "Project Development Costs" means with respect to any Project (a) all costs payable to the Design Builder under the Design Build Agreement; (b) all amounts payable under any of the Project Development Documents; (c) costs to obtain necessary easements or rights of way for a Project; (d) the Developer Fee and Developer Reimbursable Expenses with respect to the a Project; (e) impact fees, tap fees, permitting fees, inspection fees, and other costs and expenses required to be paid to a Governmental Authority in connection with a Projet; and (f) all other eligible costs Approved by the County within the Guaranteed Maximum Price to permit, design, develop, construct, equip, furnish and fully complete a Project, including fees and expenses of architects, engineers, accountants and attorneys to complete the permitting, design, development, construction, equipping, and furnishing of a Project.

146. "Project Development Documents" means any and all contracts, documents or other instruments entered into by or on behalf of County, Developer, Design Builder or any other Developer Consultant or Design Builder Subcontractor for the development, design, construction, and furnishing of a Project, including without limitation such Project's GMP Contract Amendment.

147. "Project Safety Plan" has the meaning set forth in Section 7.8.

148. "Project Subcontractor Procurement Plan" has the meaning set forth in Section 7.3.

149. "Project Work" means the design, development, construction and furnishing of a Project in accordance with this Development Agreement and such Project's Project Development Documents, including applicable Legal Requirements, the Project Construction Documents, and the Design Build Agreement, and all other work and preparations required to achieve Substantial Completion, including all FF&E, OS&E, systems and landscape improvements contemplated by the Project Construction Documents, or inferable therefrom and necessary in order to fully operate the Project.

150. "Project" and "Projects" has the meaning set forth in Recital A.

151. "Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

152. "Public Records Law" has the meaning set forth in Section 15.4.1.

153. "Qualified Design Builder" means a design builder that, on the date its name and qualifications are submitted to the County, and if such design builder thereafter becomes (or replaces the prior) the Design Builder, at all times until Final Completion, satisfies all of the following criteria: (a) licensed and otherwise in compliance with all applicable Legal Requirements to do business and act as a general contractor in the State of Florida and the County for the type of work proposed to be performed by such contractor; (b) possessed of the capacity to obtain payment and performance bonds in the full amount of the pertinent construction contract, including a Payment and Performance Bond from a Qualified Surety; (c) well experienced as a design builder in comparable work; and (d) neither such design builder nor its Affiliate is in default under any material obligation to the County under any other contract between such design builder or any of its Affiliates and the County.

154. "Qualified Design Professional" means an architect that, on the date its name and qualifications are submitted to the County, and if such architect thereafter becomes a Design Consultant, at all times until Final Completion, satisfies all of the following criteria: (a) licensed and otherwise in compliance with all applicable Legal Requirements to do business and act as an architect in the State of Florida for the type of work proposed to be performed by such architect; (b) well experienced as an architect in comparable work; and (c) neither such architect nor any of its Affiliates is in default under any material obligation to the County under any other contract between such architect or any of its Affiliates and the County.

155. "Qualified Referrals" means workers who are identified by CareerSource, the Florida Department of Vocational Rehabilitation, or any of their contract partners as candidates for employment in response to a job order form submitted by Developer to CareerSource.

156. "Qualifying New Hires" means (a) who are Qualified Referrals; (b) who are military veterans or served in the Peace Corps; (c) who are currently serving at the time of hire as apprentices through existing government-, school-, or Florida-registered apprenticeship programs; (d) lacking the required skills, experience, or qualifications for the position but who are hired by Developer and provided training by CareerSource, Florida Department of Vocational Rehabilitation, or one of their contract partners; (e) who are Economically Disadvantaged Workers; or (f) who are Hard-to-Hire Workers.

157. "Reasonable and Prudent Developer" means a developer of hotel and convention center projects similar in scope, size and complexity to the Projects seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertakings, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced developer of convention center hotels similar to the Projects complying with all Legal Requirements and engaged in the same type of undertaking.

158. "Reasonable Best Efforts" means at least those efforts that a Reasonable and Prudent Developer would generally regard as sufficient to constitute reasonable best efforts given the relevant circumstances taking into consideration (i) the information reasonably available at the time an

action is to be taken, (ii) the likely costs and time necessary to execute of a particular course of action, (iii) the safety, health, and welfare of human individuals or need to take action to preserve or maintain the Projects, and (iv) the best interests of the County. An assessment of Reasonable Best Efforts does not require (i) an assessment of all conceivable courses of action or expectation that all possibilities are to be exhausted, (ii) Developer to put itself in a position of undue hardship, or (iii) Developer to act as a fiduciary to the County.

159. "Review and Approval Rights" has the meaning set forth in Section 14.3.1.

160. "Reviewing Party" has the meaning set forth in Section 14.3.1.

161. "RLI" has the meaning set forth in Recital A.

162. "Salary Costs" means (i) the actual cost of salaries or wages of the Developer's employees to the extent they are performing Developer Services for one or more Projects, plus (ii) Benefits, but excluding Home Office Overhead.

163. "Scheduled Date of Substantial Completion" means the date Substantial Completion is scheduled for a Project as shown on a Project Construction Schedule, which includes the Hotel Project Substantial Completion Deadline, the West Expansion Project Substantial Completion Deadline, the East Expansion Project Substantial Completion Deadline, and the Plaza Improvements Substantial Completion Deadline.

164. "Site Plan" means the site plan for the Project attached hereto as **Schedule 2**, as may be subsequently amended or modified by a GMP Contract Amendment or other amendment to this Development Agreement.

165. "Site" means the approximately ___ (__) acre site upon which the Convention Center is located and which will be reconfigured and developed as shown on the Site Plan.

166. "Submitting Party" has the meaning set forth in Section 14.3.1.

167. "Substantial Completion" has the meaning set forth in Section 12.3.1.

168. "Technical Services Agreement" means that certain Technical Services Agreement dated as of _____, 2019 by and among County, Hotel Operator, and Developer, as may be amended from time to time.

169. "Term" has the meaning set forth in Section 3.1.

170. "Trade Secret Materials" has the meaning set forth in Section 15.4.1(e)

171. "Transfer" has the meaning set forth in Section 6.1.

172. "Trustee" has the meaning set forth in Section 6.3.

173. "Unexcused Delay" means any delay regardless of the cause other than a Developer Excused Delay.

174. **"**Unfinished Floor" means any floor of the Hotel Project in (i) all of the rooms on such floor are not are fully furnished, equipped, and ready to be occupied in accordance with the Brand Standards or contain defective Project Work other than minor "punch list" items; (ii) all back of house areas necessary to operate such floor are not substantially completed, are fully equipped and furnished in accordance with the Brand Standards or contain defective Project Work other than minor "punch list" items; and/or (iii) has not received a temporary certificate of occupancy or equivalent permit permitting beneficial use and occupancy of such floor.

175. "Unknown Site Conditions" are the Existing Site Conditions of which the Developer: (i) does not have actual knowledge as of the Effective Date; (ii) are not identified in the Site Investigation Reports, and (iii) could not have been discovered through the use of commercially reasonable observations, inspections, investigations or testing by the Developer on the execution of a GMP Contract Amendment.

176. "Vacancies" means all full- and part-time job openings of the Developer that are the direct result of the Agreement. Vacancies include job openings at the time contractual performance commences and any job openings that develop at any time during the contract term.

177. "Value Analysis" means the continuing evaluation by the Developer and Design Builder of the Drawings, Specifications, related design concepts, and design documents, throughout the design and construction phases of the Project, whereby the Developer and Design Builder propose and the Project Team determines the most advantageous value added design substitutions or solutions, with the goal of an integrated design that encompasses life cycle cost analysis and functional analysis according to evaluation criteria established by the guidelines of the Society of American Value Engineers (SAVE).

178. "West Expansion Completion Deadline" means the date of Substantial Completion set forth in the Project Construction Schedule for the West Expansion Project as Approved by the County in the GMP Contract Amendment for the same, subject to extensions for Developer Excused Delay.

179. "West Expansion Project" has the meaning set forth in Recital A.

180. "Work Product" has the meaning set forth in Section 19.18.

181. "Workforce Investment Program" has the meaning set forth in Section 15.7.

DISPUTE RESOLUTION

Questions, claims, difficulties, and disputes of whatever nature that may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Agreement as to the character, quality, amount, and value of any work done and materials furnished, or proposed to be done or furnished under or, by reason of, the Contract Documents that cannot be resolved by mutual agreement of the Contract Administrator and Developer shall be submitted to the County Administrator, or designee, for resolution. When either party has determined that a disputed question, claim, difficulty or dispute is at an impasse that party shall, within five (5) days from the date of impasse, notify the other party in writing and submit the question, claim, difficulty, or dispute to the County Administrator, or designee, for resolution. The parties may agree to a proposed resolution at any time without the involvement and determination of the County Administrator, or designee.

The County Administrator, or designee, shall notify the Contract Administrator and Developer in writing of the County Administrator's, or designee's, decision within twenty-one (21) days from the date of the submission of the question, claim, difficulty, or dispute, unless the County Administrator, or designee, requires additional time to gather information or allow the parties to provide additional information. The County Administrator's, or designee's, estimates and decisions upon all questions, claims, difficulties, and disputes shall be final and binding to the extent provided in Section 16.4.

During the pendency of any dispute and after a determination thereof, Developer and the Contract Administrator shall act in good faith, and Developer shall ensure that Design/Build Firm is required to act in good faith, to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. During the pendency of any dispute arising under this Agreement, other than termination herein, Developer shall proceed diligently with performance of this Agreement and County shall continue to make payments for undisputed amounts in accordance with the Contract Documents.

In the event the determination of a dispute by the County Administrator, or designee, under this article is unacceptable to any of the parties hereto, the party objecting to the determination must notify the other party, in writing within ten (10) days from receipt of the written determination. The notice must state the basis of the objection and the objecting party's proposed resolution. If notice is given by Developer, it must be accompanied by a statement that any GMP or Contract Time adjustment claimed is the entire adjustment to which Developer has reason to believe it is entitled to because of the question, claim, difficulty, or dispute. Resolution of such dispute shall be made by the County Administrator or designee. The County Administrator's or designee's decision shall be final and binding on the parties and subject to judicial review.

For any disputes that remain unresolved, the parties shall participate in mediation within sixty (60) days after Final Completion of the Work with a mediator mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under the laws of Florida. **A PARTY SPECIFICALLY WAIVES ALL ITS RIGHTS,**

INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR CONTRACT TIME AND CONTRACT PRICE ADJUSTMENTS PROVIDED IN THE CONTRACT, INCLUDING ITS RIGHTS AND REMEDIES UNDER STATE LAW, IF SAID PARTY FAILS TO COMPLY IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS ARTICLE.