

---

---

**GRANT AGREEMENT**

by and among

**MIAMI BEACH REDEVELOPMENT AGENCY,**

**MB MIXED USE INVESTMENT HOLDINGS, LLC,**

and

**PUBLIC FINANCE AUTHORITY**

for

**MIAMI BEACH CONVENTION CENTER HOTEL**

Dated as of \_\_\_\_\_, 2024

## ARTICLE I

DEFINITIONS.....	3
------------------	---

## ARTICLE II

### GRANT

Section 2.01.	Grants.....	6
Section 2.02.	Condition Precedent to Release of Grant Funds .....	7

## ARTICLE III

### CONVENTION CENTER HOTEL

Section 3.01.	Compliance with Lease Agreement .....	7
Section 3.02.	Public Benefit Commitments.....	7
Section 3.03.	No Warranty by Agency .....	7

## ARTICLE IV

### AUTHORIZATION FOR GRANT; AGENCY PAYMENTS

Section 4.01.	Agency Authorization of Grant; Potential Reduction to Grant Amount .....	7
Section 4.02.	Payment Obligations of Agency .....	8
Section 4.03.	Security for Payments .....	8
Section 4.04.	Issuance of Additional Parity Obligations or Additional Agency Bonds .....	8
Section 4.05.	Issuance of Refunding Bonds .....	9
Section 4.06.	Further Disclaimer .....	9
Section 4.07	Semi-Annual Installment Payment Schedule.....	9

## ARTICLE V

REPORTING .....	9
-----------------	---

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

Section 6.01.	[RESERVED] .....	9
Section 6.02.	The Parent's Representations, Warranties and Covenants .....	9
Section 6.03.	The Issuer's Representations, Warranties and Covenants .....	12
Section 6.04.	The Agency's Representations, Warranties and Covenants .....	13

## ARTICLE VII

### INDEMNIFICATION OF ISSUER; LIMITED OBLIGATION OF ISSUER

Section 7.01.	Indemnification .....	15
Section 7.02.	Non-Liability of Issuer.....	17
Section 7.03.	Issuer's Performance.....	18

## ARTICLE VIII

### DEFAULTS AND REMEDIES

Section 8.01.	Event of Default.....	19
---------------	-----------------------	----

Section 8.02.	Remedies .....	19
Section 8.03.	Liens, Security Interests.....	19

## ARTICLE IX GENERAL PROVISIONS

Section 9.01.	Non-liability of Agency Officials .....	19
Section 9.02.	Force Majeure .....	20
Section 9.03.	Notices .....	20
Section 9.04.	Time .....	20
Section 9.05.	Entire Agreement .....	20
Section 9.06.	Amendment.....	20
Section 9.07.	Waivers .....	21
Section 9.08.	Indemnification of Agency .....	21
Section 9.09.	Additional Indemnification of Agency, City and County.....	21
Section 9.10.	Severability .....	21
Section 9.11.	Compliance With State and Other Laws.....	22
Section 9.12.	[RESERVED] .....	22
Section 9.13.	Public Entity Crimes Notice .....	22
Section 9.14.	Incorporation by Reference.....	22
Section 9.15.	Order of Precedence.....	22
Section 9.16.	Counterparts .....	22
Section 9.17.	Independent Contractor.....	22
Section 9.18.	Retention of Records/Audit .....	23
Section 9.19.	Non-Merger.....	24
Section 9.20.	Exemption of City.....	24
Section 9.21.	Parties to Agreement; Successors and Assigns.....	24
Section 9.22.	Venue; Applicable Law .....	24
Section 9.23.	Recordation .....	24
Section 9.24.	Further Assurances.....	24
Section 9.25.	Construction.....	25
Section 9.26.	Headings .....	25
Section 9.27.	Further Authorizations .....	25
Section 9.28.	[RESERVED] .....	25
Section 9.29.	Survival .....	25
Section 9.30.....	Estoppel	25
Certificate.....		25
EXHIBIT A	LEGAL DESCRIPTION OF HOTEL PARCEL	
EXHIBIT B	IN-KIND PUBLIC BENEFIT COMMITMENTS	

## GRANT AGREEMENT

**THIS GRANT AGREEMENT** (this “Agreement”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”), among the **MIAMI BEACH REDEVELOPMENT AGENCY**, a public agency and body corporate created pursuant to Section 163.356, Florida Statutes (the “Agency”), **MB MIXED USE INVESTMENT HOLDINGS, LLC**, a Florida limited liability company (the “Parent”) and **PUBLIC FINANCE AUTHORITY**, a unit of

government and a body corporate and politic of the State of Wisconsin (the “Issuer”), pursuant to the authority of Section 66.0301, 66.0303 and 66.0304, Wisconsin Statutes, as amended (the “Act”).

W I T N E S S E T H :

WHEREAS, the Issuer is authorized by the Act to issue revenue bonds to finance a project, including but not limited to, any capital project; and

WHEREAS, the Act further authorizes the Issuer to expend the proceeds of such revenue bonds to make grants for the purpose of supporting economic activities; and

WHEREAS, the Agency has been duly created and established to transact business and exercise powers under and pursuant to Community Redevelopment Act of 1969, as amended, being Chapter 163, Part III, Florida Statutes, as amended (together with other applicable provisions of law, the “Redevelopment Act”), in order to achieve the purposes of redevelopment under the Redevelopment Act; and

WHEREAS, all requirements of law have been complied with in the creation of the Agency, the adoption and amendment of a redevelopment plan (the “Redevelopment Plan”) under the Redevelopment Act for that portion of the City of Miami Beach (the “City”) described in the Redevelopment Plan and known as the “City Center/Historic Convention Village Redevelopment and Revitalization Area” (the “Redevelopment Area”) and the creation and funding of the “City Center/Historic Convention Village Redevelopment and Revitalization Trust Fund” (the “Trust Fund”) in accordance with the Redevelopment Act; and

WHEREAS, Miami-Dade County, a political subdivision of the State of Florida, whose address is 111 NW 1st Street, Miami, Florida 33128, Attention: County Mayor (the “County”) and the City adopted Resolutions R-1110-14 and 2014-28835, respectively, approving an amendment to the Redevelopment Plan to define the Convention Center Renovation and Expansion Project (the “Convention Center Project”) for the Miami Beach Convention Center (the “Convention Center”), which includes the construction of a convention center headquarters hotel (the “Convention Center Hotel”), and to authorize the use of Agency Trust Fund revenues as a funding source for the Convention Center Project; and

WHEREAS, the Agency has served as a prominent funding mechanism for the transformative renovation of the Convention Center, which is an important economic asset of the entire County and the City; and

WHEREAS, completion of the Convention Center Hotel as part of the Convention Center Project is essential to ensuring the viability of the Convention Center as a destination for high-profile and high-economic-impact events and to ensuring the success of the Redevelopment Area and implementation of the Redevelopment Plan; and

WHEREAS, the City, through Resolution 2018-30425, approved a development and ground lease agreement (the “Lease Agreement”) between the City and MB Mixed Use

Investment, LLC, a Florida limited liability company [owned and controlled by]<sup>1</sup> Parent (the “Developer”) for the development and operation of the Convention Center Hotel contemplated by the Redevelopment Plan at the location defined in the Lease Agreement (the “Hotel Parcel”); and

WHEREAS, the Developer has timely completed the design of the Convention Center Hotel in accordance with the Lease Agreement, and the Developer has also timely completed the preparation of the Hotel Parcel for vertical construction, including the demolition and reconfiguration of existing buildings, at a total cost of more than \$25 Million funded by Developer equity, which amount exceeds, by more than two-and-a-half times, the Initial Lessee Minimum Equity Contribution required by the Lease Agreement; and

WHEREAS, the Hotel Parcel is ready for the commencement of construction of the Convention Center Hotel upon the closing of construction financing; and

WHEREAS, due to widespread market conditions, the cost to construct the Convention Center Hotel has increased by more than \$200 Million since the award of the Lease Agreement; and

WHEREAS, upon closing of all debt and equity for the construction of the Convention Center Hotel, there will remain a funding gap of approximately \$75 Million in present value that cannot be met reasonably by current debt and equity markets; and

WHEREAS, Section 163.370(2)(c)(3) of the Redevelopment Act authorizes the Agency to support the construction of “public areas of major hotels that are constructed in support of convention centers, including meeting rooms, banquet facilities, parking garages, lobbies, and passageways” (collectively, “Public Areas”); and

WHEREAS, the Convention Center Hotel will include Public Areas, such as, without limitation, more than 100,000 square feet of meeting space, and the cost to construct the Public Areas is budgeted to exceed \$75 Million in present value; and

WHEREAS, the Issuer will finance a grant (the “Grant”) to be made by the Issuer to the Parent to finance the portion of the costs of the Convention Center Hotel attributable to the Public Areas, through the issuance of tax exempt and/or taxable revenue bonds to be issued by the Issuer (the “Series 2024 Bonds”); and

WHEREAS, in order to secure the repayment of the Series 2024 Bonds, the Agency shall be obligated to pay to the Issuer from revenues deposited into the Trust Fund (the “Trust Fund Revenues”) in the manner and subject to the priority of payment and availability of Trust Fund Revenues set forth herein, the amounts set forth in the Semi-Annual Installment Payment Schedule, as described herein; and

---

<sup>1</sup> To be revised prior to execution to reflect final organizational structure reflective of financing arrangements and tax considerations (e.g., indirect ownership as a result of new intermediate entities for preferred equity or mezzanine financing) in accordance with the Lease Agreement.

WHEREAS, the Convention Center Hotel is located within the territorial boundaries of the City, the County, and the Redevelopment Area; and

WHEREAS, the Issuer, based on the representations of the Agency and the Parent, but without independent investigation, has found and determined that the financing of the Convention Center Hotel will promote significant economic, cultural and community development opportunities, including the creation and retention of employment, the stimulation of economic activity, and the promotion of the Convention Center and businesses within the Redevelopment Area; and

WHEREAS, the execution and delivery of this Agreement, and the issuance of the Series 2024 Bonds pursuant to a Trust Indenture dated as of \_\_\_\_, 2024 (the “Bond Indenture”) by and between the Issuer and [TRUSTEE]<sup>2</sup>, as trustee (the “Bond Trustee”), pursuant to the provisions of the Act, have been in all respects duly and validly authorized by a resolution (the “Bond Resolution”) duly adopted and approved by the governing board of the Issuer; and

WHEREAS, the execution and delivery of this Agreement has been approved by the Agency pursuant to its Resolution No. \_\_\_\_-2024 (the “Agency Resolution”) adopted on \_\_\_\_, 2024; and

WHEREAS, the Agency, City, and County entered into an interlocal cooperation agreement on November 16, 1993, as subsequently amended (the “Interlocal Agreement”), which, among other matters, authorizes the Agency to issue new Agency Indebtedness (as defined by the Interlocal Agreement) subject to the approval of the Board of County Commissioners of the County; and

WHEREAS, the obligation of the Agency to make the Payments (as defined below) pursuant to this Agreement constitutes “Agency Indebtedness” under the Interlocal Agreement, and the execution and delivery of this Agreement has been approved by the County pursuant to its Resolution R-\_\_-24 (the “County Resolution”) adopted on \_\_\_\_, 2024 and by the City pursuant to its Resolution No. 2024-\_\_\_\_, adopted on \_\_\_\_, 2024.

NOW, THEREFORE, in consideration of the mutual undertakings and agreements herein, and for \$10.00 and other valuable consideration, the receipt and sufficiency of which are acknowledged, the Agency, the Parent and the Issuer represent, warrant, covenant and agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

As used in this Agreement, the following terms shall have the meaning set opposite each:

“*Act*” means Section 66.0301, 66.0303 and 66.0304, Wisconsin Statutes, as amended.

---

<sup>2</sup> Bond Trustee to be identified prior to this Agreement’s execution.

“*Affiliates*” means, regarding any Person, any other Person directly or indirectly Controlling, Controlled by or under common Control with such Person. When used in reference to Developer, for so long as Parent (or any of its Affiliates) holds an interest, directly or indirectly, in Developer, “Affiliate” shall include any Person Controlling, Controlled by, or under common Control with Parent.

“*Agency*” has the meaning set forth in the first paragraph of this Agreement. Upon the expiration (sunset) of the Miami Beach Redevelopment Agency, the term “Agency” as used in this Agreement shall refer to the successor(s)-in-interest of the Agency; provided, however, that any obligation of Parent to indemnify the City as a successor in interest to the Agency (including, without limitation, the obligations set forth in Section 7.01) after the expiration of the Agency shall apply only to the extent that the Agency is sued or suffers a Liability in its own name (and shall not apply to suits or other Liabilities suffered by the City in its own name).

“*Agency Bonds*” means the tax increment revenue bonds heretofore and hereafter issued by the Agency pursuant to the Agency Bonds Resolution from time to time payable from and secured by Trust Fund Revenues, as may be outstanding from time to time, including the Agency’s Tax Increment Revenue and Revenue Refunding Bonds, Series 2015A (City Center/Historic Convention Village) outstanding as of the Effective Date.

“*Agency Bonds Resolution*” means Resolution No. 619-2015 adopted by the Board on October 14, 2015, as such resolution may be amended or supplemented from time to time, together with any resolutions that may hereafter be adopted by the Board for the issuance of Agency Bonds.

“*Agency Resolution*” means Resolution No. \_\_\_\_ - \_\_\_\_ adopted by the Board on [DATE], 2024, as such resolution may be amended or supplemented from time to time.

“*Agreement*” means this Grant Agreement dated \_\_\_\_, 2024, by and among the Issuer, the Parent and the Agency, as may be amended or supplemented from time to time pursuant to this Agreement.

“*Annual Fee*” shall have the meaning as defined in Section 3.02(a) of this Agreement.

“*Annual Fee Commencement Date*” shall have the meaning as defined in Section 3.02(a) of this Agreement.

“*Anticipated Total Payment Amount*” shall have the meaning as defined in Section 4.02 of this Agreement.

“*Authorized Signatory*” means any officer, director or other Person designated by resolution of the Board of Directors of the Issuer (whether such resolution is adopted in connection with the issuance of the Series 2024 Bonds or otherwise) or by the Issuer’s Bylaws as an ‘Authorized Signatory’ empowered to, among other things, execute and deliver on behalf of the Issuer this Agreement, the Indenture, and the Series 2024 Bonds.

“*Available Cash Flow*” shall have the meaning as defined in Section 3.02(b) of this Agreement.

“*Board*” means the board of the Agency, being the chairperson and the other members of the board.

“*Bond Indenture*” means the Trust Indenture dated as of \_\_\_\_\_, 2024, by and between the Bond Trustee and the Issuer, as may be amended or supplemented from time to time as permitted by the provisions of the Bond Indenture.

“*Bond Trustee*” means [to come]<sup>3</sup>, as trustee for the Bonds.

“*Bonds*” means the Series 2024 Bonds and any refunding bonds that may be issued from time to time pursuant to the terms of the Bond Indenture.

“*City*” means the City of Miami Beach, Florida.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

“*Completion of Construction*” shall have the meaning set forth in the Lease Agreement.

“*Control*,” “*Controlling*” or “*Controlled*” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, by governmental requirements or otherwise, or the power to elect in excess of fifty percent (50%) of the directors, managers, general partners or other Persons exercising similar authority with respect to such Person (it being acknowledged that a Person shall not be deemed to lack Control of another Person even though certain decisions may be subject to "major decision" consent or approval rights of limited partners, shareholders or members, as applicable). For avoidance of doubt, if a Person (for purposes of this definition, “Person A”) cannot elect in excess of fifty percent (50%) of the directors, managers, general partners or other Persons exercising similar authority with respect to a Person (for purposes of this definition, “Person B”) without the consent or approval of another Person or Persons, then Person A shall not be deemed to Control Person B.

“*Convention Center Hotel*” shall have the meaning set forth in the recitals.

“*Convention Center Hotel Project*” shall mean the construction of an approximately 800-room convention center hotel, inclusive of Public Areas, on the Hotel Parcel within the Redevelopment Area being financed in part with the Grant and more particularly described in the Lease Agreement.

“*County*” means Miami-Dade County, Florida.

“*Debt Service*” means, as of any applicable date of determination, the sum of all scheduled interest payments on any then-existing secured financing obtained by Parent or its direct or indirect subsidiaries, including, without limitation, Developer, in respect of the Convention Center Hotel Project, calculated at the non-default rate.

---

<sup>3</sup> Bond trustee to be identified prior to this Agreement’s execution.



*“Debt Service Coverage Ratio”* means, as of any applicable date of determination, the meaning assigned such term (or equivalent term) in any then-applicable secured financing(s) (and if more than one, the seniormost) obtained by Parent or its direct or indirect subsidiaries, including, without limitation, Developer, in respect of the Convention Center Hotel Project, and if there is no such term (or equivalent term) in any such financing, then such term shall mean, as of any applicable date of determination, a ratio in which (a) the numerator is Net Operating Income as of the applicable date of determination, and (b) the denominator is the aggregate amount of Debt Service that would be payable during the succeeding twelve (12)-month period.

*“Debt Service Requirement”* shall have the meaning set forth in the Agency Bonds Resolution.

*“Deferred Fee Amount”* shall have the meaning as defined in Section 3.02(b) of this Agreement.

*“Developer”* means MB Mixed Use Investment, LLC, a Florida limited liability company. Upon the assignment of the Lease Agreement to a successor tenant under the terms thereof, the term “Developer” as used in this Agreement shall mean such successor tenant.

*“Direct Grant”* means the grant made by the Agency, if any, directly to the Parent in accordance with Section 2.01 hereof.

*“DSC Threshold”* shall have the meaning as defined in Section 3.02(a) of this Agreement.

*“Effective Date”* shall have the meaning as defined on the first page hereof.

*“Emergency Equity”* shall have the meaning as defined in Section 3.02(a) of this Agreement.

*“Equity Participant”* shall have the meaning as defined in Section 3.02(a) of this Agreement.

*“Executive Director”* means the Executive Director of the Agency.

*“Fee Payment Period”* shall have the meaning as defined in Section 3.02(a) of this Agreement.

*“Fiscal Year”* means the period commencing on October 1, and continuing to and including the next September 30, or such other annual period as may be prescribed by law or by the Agency in accordance with law.

*“Funded Grant Amount”* shall have the meaning as defined in Section 4.01 of this Agreement.

*“Grant”* means the grant of the portion of the Series 2024 Bond proceeds by the Issuer to the Parent applied for the costs related to the Public Areas of the Convention Center Hotel as authorized pursuant to the terms of this Agreement.

*“Grant Funds Holdback”* shall have the meaning as defined in Section 4.01 of this Agreement.

*“Grant Funds Reserve”* shall have the meaning as defined in Section 4.01 of this Agreement.

*“Hotel Distributions”* shall have the meaning as defined in Section 3.02(a) of this Agreement.

*“Hotel Operator”* shall have the meaning set forth in the Lease Agreement.

*“Hotel Parcel”* shall mean the real property described on Exhibit A attached hereto.

*“In-Kind Public Benefits”* shall have the meaning as defined in Section 3.02(e) of this Agreement.

*“Issuer”* shall have the meaning set forth on the first page hereof.

*“Issuer Indemnified Persons”* means collectively, (i) the Sponsors, (ii) the Members and (iii) each and all of Issuer’s, the Sponsors’ and the Members’ respective past, present and future directors, board members, governing members, trustees, commissioners, elected or appointed officials, officers, employees, Authorized Signatory, attorneys, contractors, subcontractors, agents and advisers (including, without limitation, counsel and financial advisers) and each of their respective heirs, successors and assigns.

*“Joint Exercise Agreement”* means the Amended and Restated Joint Exercise of Powers Agreement Relating to the Public Finance Authority, dated September 28, 2010 by and among Adams County, Wisconsin, Bayfield County, Wisconsin, Marathon County, Wisconsin, Waupaca County, Wisconsin and the City of Lancaster, Wisconsin, as such agreement may be amended from time to time.

*“Lease Agreement”* means the Development and Ground Lease Agreement dated July 31, 2018, by and between the City, as lessor, and the Developer, as lessee, pursuant to which the City is leasing the Hotel Parcel to the Developer.

*“Loan to Value Ratio”* means, as of any applicable date of determination, the meaning assigned such term (or equivalent term) in any then-applicable secured financing (and if more than one, the seniormost) obtained by Parent or its direct or indirect subsidiaries, including, without limitation, Developer, and if there is no such term (or equivalent term) in any such financing, then such term shall mean, as of any applicable date of determination, a ratio in which (a) the numerator is equal to the outstanding principal amount of then-existing secured financing obtained by Parent or its direct or indirect subsidiaries, including, without limitation, Developer, and (b) the denominator is the fair market value of the Convention Center Hotel (for avoidance of doubt, including, without limitation, the value of Developer’s leasehold estate under the Lease Agreement), as determined by an appraisal reasonably acceptable to the Agency, plus any cash collateral or letter of credit provided to the applicable lender as additional security for the financing.

*“LTV Threshold”* shall have the meaning as defined in Section 3.02(a) of this Agreement.

*“Management Agreement”* shall have the meaning set forth in the Lease Agreement.

*“Maximum Annual Debt Service”* shall mean, at any time and with respect to all of the Agency Bonds, the greatest Debt Service Requirement in the then current or any succeeding Fiscal Year.

*“Maximum Annual Payments”* means, at any time and with respect to the Payments and Parity Obligations, the greatest amount of payments required to be made by the Agency in the then current or any future Fiscal Year.

*“Maximum Total Payment Amount”* shall have the meaning as defined in Section 4.02 of this Agreement.

*“Member”* means the parties to the Joint Exercise Agreement and any political subdivision that has been designated in the past, or from time to time in the future is designated, as a member of the Issuer pursuant to the Joint Exercise Agreement.

*“Net Operating Income”* means, as of any date of determination, all income and revenues Developer receives or that is due to Developer of any nature, including, but not limited to, rents, additional rents (including, without limitation any common area maintenance charges), room rents, parking revenues, proceeds of rent loss and/or business interruption insurance, performance test cure payments under the Management Agreement, and vending machine receipts, all on a trailing twelve (12) month period, less the customary and necessary expenses incurred of operating the Convention Center Hotel during the trailing twelve (12) month period which are paid by or on behalf of Developer or accrued by Developer (for avoidance of doubt, excluding capital expenses, Debt Service, any payment or expense which is reimbursable by insurance or by any third party, any non-cash charges such as depreciation and amortization, and federal, state or local income or similar taxes).

*“Opening of the Convention Center Hotel”* means the date that the Hotel is actually opened to the public for paying guests after the issuance of all licenses, permits, certificates, approvals, and/or permissions required for the operation of the Convention Center Hotel under applicable laws; provided, however, that such date shall be no later than one hundred twenty (120) days after the date that the Convention Center Hotel receives its certificate of occupancy. Parent shall provide the Agency and the County with written notice of the date of the Opening of the Convention Center Hotel within fifteen (15) days of the date thereof.

*“Operating Expenses”* means:

(a) operating expenses of the Convention Center Hotel Project other than payments made to Developer, Parent or Affiliates of either;

(b) wages and benefits paid and payable to the Hotel Operator's full time or part-time on-site or off-site management employees and full or part-time non-management employees; and

(c) management fees, at prevailing market rates, provided, any management fees payable to Developer, Parent or Affiliates of Developer or Parent shall not be included for purposes of calculating Operating Expenses in the event Available Cash Flow is insufficient to cover Operating Expenses and pay amounts due to the Agency hereunder at any time; provided, further, however, that the management fees payment to the Hotel Operator shall in no event be excluded from such calculation of Operating Expenses except to the extent that such fees exceed market fees for the applicable brand.

“*Parent*” shall have the meaning as defined on the first page hereof. Upon the assignment of this Agreement to a Successor by Parent or by any Successor, the term “Parent” as used in this Agreement shall be deemed to include any Successor to whom such assignment is made.

“*Parent Representative*” means David Martin or Aly-khan Merali, or any other person authorized by Parent to act on behalf of the Parent with respect to this Agreement.

“*Parity Obligations*” means additional obligations of the Agency hereafter incurred by the Agency which are payable from Trust Fund Revenues on a parity with the obligation of the Agency to make the Payments.

“*Payments*” means the payments that the Agency is obligated to make to the Issuer hereunder from the Trust Fund Revenues as provided in Section 4.02 of this Agreement.

“*Person*” means any corporation, unincorporated association or business, limited liability company; business trust, real estate investment trust, common law trust, or other trust, general partnership, limited partnership, limited liability limited partnership, limited liability partnership, joint venture, or two or more persons having a joint or common economic interest, nominee, or other entity, or any individual (or estate of such individual); and shall include any governmental authority.

“*Pledged Funds*” shall have the meaning set forth in the Agency Bonds Resolution.

“*Priority Debt*” shall have the meaning as defined in Section 3.02(a) of this Agreement.

“*Project Budget*” shall mean \$589,372,907.00, which represents the total estimated cost to develop and construct the Convention Center Hotel Project, inclusive all soft costs, hard costs, and financing costs.

“*Public Areas Factor*” shall have the meaning as defined in Section 4.01(a) of this Agreement.

“*Public Benefits*” shall have the meaning as defined in Section 3.02 of this Agreement.

“*Redevelopment Act*” means the Community Redevelopment Act of 1969, as amended, being Chapter 163, Part III, Florida Statutes, as amended, and other applicable provisions of law.

“*Redevelopment Area*” means the “City Center/Historic Convention Village Redevelopment and Revitalization Area” located within the City and found by the City to be a

“blighted area” within the meaning of the Act and as described in the Redevelopment Plan, which geographic boundaries may be changed from time to time as permitted by the Redevelopment Act.

“*Redevelopment Plan*” means the redevelopment plan for the Redevelopment Area originally adopted by the Agency by Resolution No. 128-93 adopted on February 12, 1993 and approved by the City by Resolution No. 93-20721 adopted on February 12, 1993 and by the County by Resolution No. 317-93 adopted on March 30, 1993, as the same has been and may be amended from time to time.

“*Redevelopment Projects*” means the particular community redevelopment projects undertaken by the Agency pursuant to the Redevelopment Plan within the Redevelopment Area in accordance with the Redevelopment Act, including the Convention Center Hotel Project.

“*Semi-Annual Installment*” shall have the meaning as defined in Section 4.02 and scheduled as set forth in Exhibit C of this Agreement.

“*Semi-Annual Installment Due Date*” shall have the meaning as defined in Section 4.02 of this Agreement.

“*Series 2024 Bonds*” means the Public Finance Authority [BOND CAPTION] Series 2024, being issued pursuant to the terms of the Bond Indenture.

“*Sponsor*” means the National League of Cities, the National Association of Counties, the Wisconsin Counties Association, the League of Wisconsin Municipalities, and any other Person that holds itself out, or is identified by the Issuer, as an organization sponsoring the Issuer.

“*Subordinate Debt*” shall have the meaning as defined in Section 3.02(a) of this Agreement.

“*Successor*” shall mean any assignee of Parent and any successor to such assignee.

“*Transfer*” shall have the meaning set forth in the Lease Agreement.

“*Transfer Fee*” shall have the meaning as defined in Section 3.02(d) of this Agreement.

“*Trust Fund*” means the “City Center/Historic Convention Village Redevelopment and Revitalization Trust Fund” established by Ordinance No. 93-2836 adopted by the City on February 24, 1993, and by Ordinance No. 93-28 enacted by the County on April 27, 1993, in accordance with the Redevelopment Act.

“*Trust Fund Revenues*” means the revenues derived from the Redevelopment Area and received by the Agency for deposit into the Trust Fund pursuant to Section 163.387, Florida Statutes, as amended, Ordinance No. 93-2836 adopted by the City on February 24, 1993, as amended from time to time, including Ordinance No. 2014-3901 adopted by the City on November 8, 2014, and Ordinance No. 93-28 enacted by the County on April 27, 1993, as amended from time to time, including Ordinance No. 14-133 enacted by the County on December 16, 2014.

“*Underbudget Amount*” shall have the meaning as defined in Section 4.01(b) of this Agreement.

Other capitalized terms not defined in this Article shall have the meanings assigned to them elsewhere in this Agreement.

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

## ARTICLE II

### GRANT; TERM OF AGREEMENT; ASSIGNMENT TO PURCHASERS OF HOTEL

**Section 2.01. Grants.** Subject to the terms and conditions set forth herein, the Issuer hereby agrees to pay to the Parent, solely from the proceeds of the Series 2024 Bonds, the Grant in the amount of \$75 Million, which shall be disbursed to Parent by Bond Trustee as contemplated in Section 4.01 and used by the Parent solely for the purpose of financing a portion of the costs of constructing the Public Areas of the Convention Center Hotel. The remaining proceeds of the Series 2024 Bonds in excess of the amount required to fund the Grant shall be applied to pay the costs of issuance for the Series 2024 Bonds. Notwithstanding the foregoing, prior to the sale of the Series 2024 Bonds, the Agency, at its sole option, may elect to fund a portion of the Grant from legally available funds then held by it by providing a written notice to the Issuer and the Parent of such amount. Such amount shall be paid by the Agency directly to the Trustee or another financial institution acceptable to the Parent prior to the issuance of the Series 2024 Bonds to be held in escrow until the Series 2024 Bonds are issued, at which time such amount shall be disbursed to the Parent as contemplated in Section 4.01 (and for the avoidance of doubt, shall be included in the Grant Funds Holdback in the same manner as the bond proceeds). The amount paid by the Agency (“Direct Grant”) shall reduce, dollar for dollar, the amount of the Grant to be funded from the Series 2024 Bonds. For example, in the event that the Direct Grant is \$7,000,000.00, then the amount funded from the Series 2024 Bonds would be reduced to \$68,000,000, as further described in Section 4.01.

**Section 2.02. Condition Precedent to Release of Grant Funds and to Agency’s Obligation to make the Payments.** Prior to the release of the Grant proceeds by the Issuer to the Developer, Agency shall have confirmed that the “Possession Date” as described in Section 4.1(b) of the Lease Agreement has occurred, or is occurring simultaneously, as evidenced in writing by the City to the Developer. Furthermore, notwithstanding any other provision herein to the contrary, Agency’s obligation to make the Payments shall not become effective until (a) Agency shall have confirmed that the Possession Date has occurred or is occurring simultaneously with the effectiveness of such obligation and (b) the Series 2024 Bonds have been issued and delivered.

**Section 2.03. Term of Agreement; Construction Commencement.** The term of this Agreement shall run from its execution until the date all obligations of Parent to the Agency pursuant this Agreement shall have been fully satisfied. On or before the date that is nine (9) months from the Effective Date, the Parent or the Developer, as appropriate, shall: (a) obtain all development approvals and building permits needed for construction of the Convention Center Hotel and submit the same to the County; and (b) shall commence construction of the Convention Center Hotel and thereafter diligently pursue the construction of the Convention Center Hotel until completion thereof. For purposes of this Agreement, “commence construction” shall mean the later of: (i) the filing of the notice of commencement under Florida Statutes, Section 713.13; or (ii) the visible start of construction work on the Convention Center Hotel, including on-site utility, excavation of soil stabilization work (but specifically excluding any necessary testing, environmental remediation or ceremonial groundbreaking). In order to meet the definition of “commence construction” the filing of the notice of commencement and visible start of work must occur after the Parent or Developer has secured the necessary building permits for the work and issued the notice to proceed to its prime contractor for the improvements.

**Section 2.04. Required Assignment of this Agreement.** For so long as any obligations of Parent to the Agency, the City, and the County expressly set forth in this Agreement remain unsatisfied, in connection with any Transfer of the Convention Center Hotel Project (i.e., the leasehold estate under the Lease Agreement), or any Transfer of Parent’s interests in Developer, (i) the Parent shall provide written notice to the Agency, the City, and the County of the Transfer and (ii) the Parent and/or Developer shall cause the transferee(s) to assume all obligations of Parent under this Agreement (or, in the case of a Transfer of less than 100% of Parent’s interests, shall cause the transferee(s) to execute a joinder to this Agreement in form and substance reasonably acceptable to the Agency) in accordance with the provisions of Section 9.21 of this Agreement. Any failure to comply with the provisions of this Section 2.04 shall constitute a default under the Lease Agreement, and if such failure continues for a period of forty-five (45) days after written notice thereof by City to Developer specifying such failure, such default shall be an Event of Default under the Lease Agreement, but, for avoidance of doubt, shall be subject to all rights of lenders under the Lease Agreement, including, without limitation, the rights to receive notice of default, opportunity to cure and new lease rights.

### **ARTICLE III**

#### **CONVENTION CENTER HOTEL**

**Section 3.01. Compliance with Lease Agreement.** The Parent hereby agrees that it shall cause the Developer (a) to comply with all provisions of the Lease Agreement; and (b) to take all other actions necessary so that Parent is in full compliance with all provisions of this Agreement.

**Section 3.02. Public Benefit Commitments.** As an inducement to the Agency to enter into this Agreement for the benefit of the Convention Center Hotel, and to further the goals of the Agency, the Parent shall provide, or cause the Developer or Hotel Operator, as applicable, to provide, the following public benefits (the “Public Benefits”) with respect to the Convention Center Hotel:

(a) Commencing on the fifth (5<sup>th</sup>) anniversary of the Opening of the Convention Center Hotel (the “Annual Fee Commencement Date”) and continuing for a period of fifty (50) years (the “Fee Payment Period”) thereafter, the Parent shall pay to the Agency and the County an annual participation fee in the amount of \$500,000.00 (the “Annual Fee”) with fifty percent (50%) of the Annual Fee being paid to the Agency<sup>4</sup> and fifty percent (50%) of the Annual Fee being paid to the County. The Annual Fee will escalate by three percent (3%) on the first anniversary of the Annual Fee Commencement Date (i.e., the sixth (6<sup>th</sup>) anniversary of the Opening of the Convention Center Hotel) and annually thereafter. Parent shall pay the Annual Fee in equal monthly installments, in advance, with the amount of the monthly installment to be determined by dividing the applicable Annual Fee into twelve (12). Payment of the Annual Fee shall not be subordinate to, and, for the avoidance of doubt, the Agency’s and County’s right to receive the Annual Fee shall be superior to, the rights of any equity participants in Developer, Parent, any Affiliate of either, any other so-called “equity participant” or “capital participant” in the Convention Center Hotel or any successors in interest of any of the foregoing (collectively, “Equity Participants”) to receive distributions of earnings, capital or otherwise out of, or associated with, the Convention Center Hotel (collectively, “Hotel Distributions”); provided, however, that payment of the Annual Fee shall remain subordinate to the payment of management fees to the Hotel Operator even in the event that the Hotel Operator or Affiliate thereof is or becomes an Equity Participant, except to the extent that such management fees exceed market fees for the applicable brand. Parent shall cause all Equity Participants with direct ownership of Parent (and, in the event of a partial assignment of ownership of Parent’s interest in Developer, shall cause all Equity Participants with direct ownership of such assignee) to execute a written agreement with Parent acknowledging the terms of this Agreement, including without limitation, the subordination of such Equity Participants’ rights to receive Hotel Distributions in accordance with the provisions of this Section 3.02(a), and shall provide a true and correct copy of each such written agreement to Agency and County. In addition, the Agency’s and County’s right to receive the Annual Fee shall not be subordinate to debt other than secured debt (subject to the limitations set forth in the next sentence). The Parent, the County, and the Agency acknowledge and agree that should secured financing obtained by Parent or any of its direct or indirect subsidiaries, including, without limitation, Developer, that is closed on or after the Annual Fee Commencement Date exceed an aggregate Loan to Value Ratio of 75% (the “LTV Threshold”) or cause the aggregate Debt Service Coverage Ratio to be less than 1.2x (the “DSC Threshold”) as of the date of closing of any such secured financing, then the portion of the aggregate Debt Service allocable to the amount of such financing that exceeds the LTV Threshold or that causes the Debt Service Coverage Ratio to fall below the DSC Threshold, as applicable (such portion, the “Subordinate Debt,” and the balance of such financing, the “Priority Debt”), shall be subordinate to the payments of the Annual Fee to the Agency and County. For the avoidance of doubt, the Annual Fee paid to the Agency and County is independent of, and supplemental to, the lease payments made by the Developer to the City under the Lease Agreement.

---

<sup>4</sup> Agreement to be revised prior to execution to reflect the Agency’s portion of the Annual Fee may be made payable to the City, at the City’s request.



(b) In the event that the Parent fails to pay any installment of the Annual Fee in any year after the Annual Fee Commencement Date due to insufficient cash flow after payment of all Operating Expenses including Debt Service (other than allocable to any Subordinate Debt) and after payment of all amounts payable to the City under the Lease Agreement, but specifically excluding any payments to Parent, Developer, or their Affiliates (such available funds after payment of all such costs and expenses, the “Available Cash Flow”), such unpaid installments of the Annual Fee shall be deferred (as such amount may increase or decrease from time to time, the “Deferred Fee Amount”). Payment of the Deferred Fee Amount shall be made from Available Cash Flow. Such Deferred Fee Amount shall be and continue to remain superior to any Hotel Distributions to any Equity Participants at any time when a Deferred Fee Amount balance exists. Notwithstanding the foregoing, the Agency and County acknowledge and agree in the event that Debt Service (other than allocable to any Subordinate Debt) cannot be covered from Available Cash Flow as payments become due as a result of a Force Majeure Event (as defined in the Lease Agreement), and an existing subordinated Equity Participant at the time of such shortfall funds such shortfall with a contribution of equity (as opposed to a loan) (“Emergency Equity”), the Emergency Equity shall be returned to such subordinated Equity Participant(s) with priority over the Annual Fee and any Deferred Fee Amount then existing until such time as such equity is repaid in full. Any installment(s) of the Annual Fee that are not paid as a result of the preference for the return of Emergency Equity shall be added to the Deferred Fee Amount. Once the Emergency Equity has been returned, payments of installments of the Annual Fee and of the Deferred Fee Amount shall be paid from Available Cash Flow with priority over any distributions to any Equity Participants. The entire outstanding Deferred Fee Amount then existing shall be paid upon the closing of any sale, assignment or transfer of the Convention Center Hotel (i.e., the leasehold estate under the Lease Agreement), directly or indirectly to a third party that results in a change of Control; provided, however, that in the event of any Transfer of the Convention Center Hotel (i.e., the leasehold estate under the Lease Agreement), and/or of direct or indirect ownership interests in Developer, in each case directly or indirectly resulting from foreclosure and/or deed/assignment-in-lieu of foreclosure, all obligations with respect to the payments of the Annual Fee (including the payment of any Deferred Fee Amounts) shall be extinguished, this clause (b) shall no longer be applicable. To the extent any foreclosure proceeds exceed the aggregate of the corresponding foreclosure judgment, any and all accrued interest thereon, and any and all other Priority Debt, including, without limitation, outstanding principal balances, accrued and unpaid interest, and all other accrued amounts due thereunder, then such excess shall be paid according to the following order of priority: first, to the Agency and County up to the amount of the sum of (i) any accrued and unpaid Deferred Fee Amount, (ii) any other amounts due to the Agency and/or County under this Agreement, and (iii) an amount equal to the net present value of the remaining payments of the Annual Fee that would have accrued after the date of the foreclosure sale utilizing the 10-year Treasury rate in effect as of such date; second, to any outstanding principal balances, accrued and unpaid interest, and all other accrued amounts due under any Subordinate Debt obtained by Parent or any of its direct or indirect subsidiaries (including, without limitation, Developer); third, to any preferred equity investor in Parent or any of its direct or indirect subsidiaries, including, without limitation, Developer, up to the amount of any outstanding preferred equity investment, including,

without limitation, accrued and unpaid interest thereon; and fourth, the balance to the Parent or its applicable direct or indirect subsidiaries, including, without limitation, Developer, that was foreclosed upon (including the repayment of any Emergency Equity contributed by Parent or its applicable direct or indirect subsidiary). Notwithstanding the foregoing, the Agency and/or County may, in their sole discretion, agree to subordinate its interest to a lender providing Subordinate Debt.

(c) The Parent and/or Developer and/or any of its affiliates shall have the right to buy out payments of the Annual Fee by providing a lump-sum payment equal to the net present value of the remaining payments of the Annual Fee utilizing the 10-year Treasury rate in effect at the time of the buyout; provided, however, that no such buyout may occur prior to tenth (10<sup>th</sup>) anniversary of the Annual Fee Commencement Date, and, provided, further, no such buyout may occur prior to the fifteenth (15<sup>th</sup>) anniversary of the Annual Fee Commencement Date unless it in connection with the sale, assignment or transfer of the Convention Center Hotel, directly or indirectly to a third party that results in a change of Control.

(d) In the event of an arm's length sale, assignment or transfer of (i) the Convention Center Hotel (i.e., the leasehold estate under the Lease Agreement) to a third party or (ii) direct or indirect ownership interests in Developer to a third party that results in a change of Control of Developer, the seller in such transaction (whether the seller is Parent or an Affiliate of Parent) shall pay to the Agency and County a one-time transfer fee which shall be divided fifty percent (50%) to the Agency<sup>5</sup> and fifty percent (50%) to the County (the "Transfer Fee") in an amount equal to two percent (2%) of the gross sale proceeds of the sale, assignment or transfer less (i) the outstanding balance to payoff in full any existing Priority Debt and (ii) all transaction costs. Notwithstanding the foregoing, the Transfer of the Convention Center Hotel and/or of direct or indirect ownership interests in Developer, in each case directly or indirectly, resulting from a foreclosure and/or deed/assignment-in-lieu of foreclosure shall not be deemed a Transfer subject to the Transfer Fee, and upon any such Transfer all obligations with respect to the Transfer Fee shall be extinguished and this clause (d) shall no longer be applicable, and the In-Kind Public Benefits (as defined below) set forth on Exhibit B shall be extended for an additional period of five (5) years. For avoidance of doubt, the Transfer Fee shall be applicable only to the Transfer, directly or indirectly, of the first to occur of the leasehold estate under the Lease Agreement or of a Controlling interest in Developer, and once paid, this clause (d) shall no longer be applicable. In the event of a Transfer that results in a change of Control of Developer, but such Transfer is less than 100% of the ownership interests, the Transfer Fee shall be adjusted to reflect the amount the Transfer Fee would have been if such Transfer had been for 100% of the ownership interests (by way of example, in the event of a Transfer of 75% of the ownership interests, the sales price shall be grossed up 33.33% for purposes of calculating the Transfer Fee).

(e) For the time period commencing upon the Opening of the Convention Center Hotel and during each year of the twenty-two (22) years following the Opening of

---

<sup>5</sup> Agreement to be revised prior to execution to reflect the Agency's portion of the Transfer Fee will be made payable to the City.

the Convention Center Hotel, unless extended in accordance with Section 3.02(b) or Section 4.02 of this Agreement (the “Public Benefit Period”), the Parent shall provide, or shall cause the Developer to provide, the additional in-kind public benefits described in the attached Exhibit B (the “In-Kind Public Benefits”), in each case subject to availability and force majeure. In the event that the Agency or County, in any calendar year, is unable to utilize any portion of the reimbursable room nights, junior ballroom rentals or conference rooms as a result of unavailability or force majeure, then such unused portion (but no more than 50% of the then remaining room nights, junior ballroom and conference room rentals) may be utilized by the Agency and County only in the following calendar year. The City and/or County are intended beneficiaries of some of the In-Kind Public Benefits as set forth in Exhibit B, attached hereto and incorporated herein by this reference. Notwithstanding anything to the contrary stated herein, the parties hereto irrevocably and expressly agree that the County and the City are intended third party beneficiaries of this Agreement for the limited purpose(s) outlined in this Section 3.02(e), and that the County and City shall have the right to seek to enforce the provisions of Section 2.03, Section 2.04, Section 3.02, Section 4.02, Section 4.07, and Exhibit B all hereof in their absolute discretion (collectively, “Beneficiary Rights”). For the avoidance of doubt, the County and the City (i) are entitled to enforce any rights and/or obligations in conformity with this Section, and (ii) may commence an appropriate legal or equitable action to enforce performance of this Agreement in the manner outlined in this Section. The parties hereto acknowledge that the provisions of this section are the basis for the bargain for the transaction contemplated in this Agreement. Notwithstanding anything to the contrary contained herein, the parties hereto agree that the Beneficiary Rights will not be amended, revised, or altered without the County’s prior written consent. It is expressly agreed and by this statement specifically intended by the parties hereto that nothing within this Agreement shall be construed as indicating any intent by either party to benefit any other entity or person not a party signatory to this Agreement by any provision or to entitle any such third party to any right of action on account hereof except for the County and the City.

(f) For purposes of this subparagraph 3.02(e), the term “force majeure” shall be interpreted by reference to the definition of “Force Majeure Event” in the Lease Agreement. For the avoidance of doubt, if there is a weather event that would otherwise constitute force majeure, for so long as the hotel remains in a physical and operational state (and is legally permitted) to accommodate guests, the Agency shall nevertheless be entitled to use its “weather emergency” room allotment, immediately before, during, and immediately following the weather event subject to availability.

(g) Upon the termination of the Agency, all rights of the Agency pursuant to this Agreement (including the right to receive the Public Benefits described in this Section 3.02) will be transferred fifty percent (50%) to the City and fifty percent (50%) to the County in accordance with applicable law.

(h) For the avoidance of doubt, neither the Parent nor the Developer nor any other person or entity shall be required to provide or maintain the Public Benefits in any manner that would violate applicable laws or regulations.

**Section 3.03. No Warranty by Agency.** Nothing contained in this Agreement or any other document attached hereto or contemplated hereby shall constitute or create any duty on or warranty by the Agency regarding: (a) the accuracy or reasonableness of the Convention Center Hotel Project budgets; (b) the feasibility or quality of the construction documents for the Convention Center Hotel Project; (c) the quality or condition of the work; or (d) the competence or qualifications of any third party furnishing services, labor or materials in connection with the construction of the Convention Center Hotel. The Parent and the Issuer acknowledge that they have not relied and will not rely upon any experience, awareness or expertise of the Agency, or any City or Agency inspector, regarding the aforesaid matters.

## **ARTICLE IV**

### **ACKNOWLEDGMENT OF GRANT; AGENCY PAYMENTS**

**Section 4.01. Acknowledgment of Grant; Potential Reduction to Funded Grant Amount; Disbursements by Bond Trustee.** The Agency acknowledges that the Issuer will issue the Series 2024 Bonds in order to fund the Grant to the Parent in an amount equal to \$75,000,000.00 (the "Funded Grant Amount"), less the amount of the Direct Grant, if any. The Parent acknowledges that, as of the Effective Date of this Agreement, it is anticipated that the cost to construct the Convention Center Hotel will equal or exceed the amount of the Project Budget, and the cost to construct the Public Areas will equal or exceed the Funded Grant Amount. The Underbudget Amount (as defined below) shall reduce the final amount of the Grant (and Direct Grant, if applicable) in accordance with the below provisions of this Section 4.01. The Bond Trustee shall disburse to Parent or Developer the full amount of the Funded Grant Amount upon submission of a requisition in the manner established under the Bond Indenture in order to fund the amount of actual hard and soft costs (including, without limitation, financing costs) of development and construction solely of the Public Areas. Parent shall deliver, or cause Developer to deliver, to one or more lender(s) providing secured financing to Parent or its direct or indirect subsidiaries (including, without limitation, Developer) the Funded Grant Amount (inclusive of the amount of the Direct Grant, if any) to hold in one or more reserves (collectively, the "Grant Funds Reserve") for further disbursement for payment of costs of developing and constructing the Convention Center Hotel Project, including, without limitation, hard and soft costs thereof. One or more such lenders shall restrict loan availability in an aggregate amount equal initially to the Funded Grant Amount (such restricted loan funds, the "Grant Funds Holdback"). The Grant Funds Holdback shall reduce by a percentage equal to the Public Areas Factor of each dollar disbursed from the Grant Funds Reserve and of each dollar disbursed from unrestricted loan funds and of each dollar of equity investment disbursed by the provider of any preferred equity investment, in each case in connection with the development and construction of the Convention Center Hotel Project. The Bond Indenture shall include provisions consistent with the foregoing. By way of example, if the Public Areas Factor is equal to 25%, then after the first \$100 Million has been spent on the construction of the Convention Center Hotel Project, the Grant Funds Holdback shall have been reduced from \$75 Million to \$50 Million, and the Grant Funds Holdback may be released upon the expenditure of \$300 Million towards the construction of the Convention Center Hotel Project.

(a) Within sixty (60) days after issuance of a final certificate of occupancy for the Convention Center Hotel, the Parent shall submit to the Agency a final reconciliation

of the actual hard and soft costs (including, without limitation, financing costs) to develop and construct the Convention Center Hotel and Public Areas of the Convention Center Hotel (inclusive of all hard and soft costs, financing costs, and other costs incorporated into the Project Budget) in the form required by the construction lender for the Convention Center Hotel or in a different form reasonably satisfactory to the Agency as required to reasonably verify that such actual costs of the Convention Center Hotel Project and the Public Areas equal or exceed the amounts of the Project Budget and of the Funded Grant Amount, respectively. The Agency acknowledges and agrees that the Public Areas will be constructed as part of the larger Convention Center Hotel Project, and the methodology for verifying the actual costs of construction of the Public Areas shall be to multiply the actual costs of construction of the Convention Center Hotel Project by the percentage of such construction costs that are attributable to Public Areas (such percentage, the "Public Areas Factor"). The Parent and Agency agree that, based on the approved plans for the Convention Center Hotel Project as of the Effective Date, the Public Areas Factor is [28.62%], and the Public Areas Factor shall not be subject to revision except to the extent the plans for the Convention Center Hotel Project are revised after the Effective Date and the Agency reasonably concludes that such revisions are likely to reduce the cost to construct the Public Areas relative to the cost to construct the balance of the Convention Center Hotel Project. For the avoidance of doubt, the Parent may request that any such documentation provided to the Agency in accordance with this paragraph be treated as confidential, and exempt from public disclosure, to the extent that a valid exemption exists pursuant to Chapter 119, Florida Statutes, and the Agency shall honor such claim to the extent authorized by applicable law.

(b) Within ninety (90) days after issuance of a final certificate of occupancy for the Convention Center Hotel, the Parent shall pay to the Agency an amount equal to the Underbudget Amount, as a repayment of a portion of the Funded Grant Amount not required by the Parent for its intended purpose (i.e., to facilitate the expeditious development of the Convention Center Hotel) due to cost savings (whether or not anticipated), the amount calculated as the greater of the following: (a) the amount of the Project Budget minus the actual hard and soft costs (including, without limitation, financing costs during construction) to develop and construct the Convention Center Hotel or (b) the Funded Grant Amount minus the actual hard and soft costs (including, without limitation, financing costs during construction) to develop construct the Public Areas of the Convention Center Hotel (the amount so calculated, the "Underbudget Amount"). Any such calculation resulting in a negative number shall be equal to zero. The Parent shall provide written notice to the Agency advising of the Underbudget Amount and confirming payment of the Underbudget Amount to the Agency. Parent's failure to pay the Underbudget Amount, if any, as required by this subsection 4.01(b) shall constitute a default under the Lease Agreement, and if such failure continues for a period of thirty (30) days after written notice thereof by City to Developer specifying such failure, such default shall be an Event of Default under the Lease Agreement, but, for avoidance of doubt, shall be subject to all rights of lenders under the Lease Agreement, including, without limitation, the rights to receive notice of default, opportunity to cure and new lease rights.

**Section 4.02. Payment Obligations of Agency.** The Agency hereby agrees to pay to the Bond Trustee by federal funds wire, in semi-annual installments (each, a "Semi-Annual

Installment”), due and payable on or before \_\_\_\_ and \_\_\_\_ of each calendar year (the due date of such Semi-Annual Installment, the “Semi-Annual Installment Due Date”), commencing \_\_\_\_\_, 2025 and ending on \_\_\_\_\_, 20\_\_\_\_, the amount due in accordance with the payment schedule set forth in the Semi-Annual Installment Payment Schedule, as described herein, from available Trust Fund Revenues as set forth in Section 4.03 hereof. The Parent and the Agency acknowledge that, as of the Effective Date, the sum of the Payments, which include the Funded Grant Amount plus the cost of issuance and interest accruing during the scheduled repayment term is anticipated to equal the amount of \$86,200,000.00 (the “Anticipated Total Payment Amount”), but in any event shall not exceed the amount of \$92,500,000.00 (the “Maximum Total Payment Amount”). The Agency shall not have any liability for the Payments in excess of the Maximum Total Payment Amount, payable in the Semi-Annual Installments stated in the Semi-Annual Installment Payment Schedule, as described herein, due on each Semi-Annual Installment Due Date, and, except as expressly provided in this Agreement, the Semi-Annual Installments as set forth in the Semi-Annual Installment Payment Schedule, as described herein, shall not be subject to reduction, offset or repayment. The Parent and the Agency acknowledge that the total Payments due from the Agency pursuant to this Agreement may vary from the Anticipated Total Payment Amount (but will not exceed the Maximum Total Payment Amount) based on changes in the interest rate and other applicable financing costs between the Effective Date and the date that the Issuer issues the Bonds. In the event the actual sum of the Payments exceeds the Anticipated Total Payment Amount, then for each \$3,000,000.00 paid by the Agency above the Anticipated Total Payment Amount, the Public Benefits required to be provided by the Parent and/or the Developer pursuant to Section 3.02 above, including the Annual Fee and the In-Kind Public Benefits, shall be extended for a period of five (5) years. The County may require and all parties hereto agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of the immediately preceding sentence. At the earlier of (i) such time as the Bonds shall have been retired and all principal amounts paid in full or (ii) the Payments have been paid in full by the Agency (taking into account any credit for any Underbudget Amount), the obligation of the Agency to pay the Payments shall terminate. Each Semi-Annual Installment shall be applied by the Bond Trustee to pay the principal of and interest on the Bonds when due, the annual fees of the Issuer and the Bond Trustee when due, and for such other purposes as shall be authorized pursuant to the Bond Indenture.

The Issuer and the Parent hereby certify that the interest rate on the Series 2024 Bonds shall not exceed the maximum interest rate permitted under Section 215.84, Florida Statutes, as amended.

**Section 4.03. Security for Payments.** The obligation of the Agency to make the Payments as set forth in Section 4.02 shall be secured by and payable exclusively from available Trust Fund Revenues, on a basis subordinate to the Agency Bonds, in the order of priority as set forth in Section 3.04D(4) of the Agency Bond Resolution. Such obligation to pay the Payments shall constitute a “subordinated obligation” of the Agency as described in Section 304G of the Agency Bond Resolution and shall be junior, inferior and subordinate in all respects to Agency Bonds as to lien and source and security for payment from the Pledged Funds and in all other respects.

**Section 4.04. Issuance of Additional Parity Obligations or Additional Agency Bonds.**

The Agency covenants and agrees that it will not issue or incur any additional Parity Obligations or additional Agency Bonds except as provided in this Section 4.04. Additional Parity Obligations or Agency Bonds may be issued or incurred by the Agency if the aggregate of the Trust Fund Revenues (not including any portion thereof which may be attributable to investment earnings) received by the Agency during the immediately preceding Fiscal Year were at least equal to (1) one hundred fifty percent (150%) of the Maximum Annual Debt Service on the Agency Bonds issued and then outstanding and the additional Agency Bonds then proposed to be issued, plus (2) one hundred percent (100%) of the Maximum Annual Payments with respect to (A) the Payments, (B) any Parity Obligations then outstanding or otherwise due and payable and (C) the additional Parity Obligations then proposed to be issued or incurred.

The Agency need not comply with the above paragraph in the issuance of additional Agency Bonds if and to the extent the Agency Bonds to be issued are refunding Agency Bonds, that is, delivered in lieu of, in substitution for or for the redemption of Agency Bonds previously issued under the Agency Bond Resolution, if the Agency shall cause to be delivered a certificate of the Executive Director of the Agency setting forth (i) the Maximum Annual Debt Service (X) with respect to the Agency Bonds outstanding immediately prior to the date of authentication and delivery of such refunding Additional Agency Bonds, and (Y) with respect to the Agency Bonds to be outstanding immediately thereafter, and (ii) that the Maximum Annual Debt Service set forth pursuant to (Y) above is no greater than that set forth pursuant to (X) above.

**Section 4.05. Issuance of Refunding Bonds.** The Issuer may issue bonds to refund all or a portion of the Series 2024 Bonds or any Bonds issued to refund all or a portion of the Series 2024 Bonds or other series of Bonds pursuant to the terms of the Bond Indenture only upon the written agreement of all parties hereto to the issuance of such refunding bonds. As a condition for the issuance of any such refunding bonds, the parties hereto shall enter into an amendment to the Semi-Annual Installment Payment Schedule to reflect the semi-annual debt service payments with respect to the Bonds outstanding, but in no event shall the revised payments exceed the payments set forth in the Semi-Annual Installment Payment Schedule (as the same maybe have been amended) immediately prior to the issuance of any such refunding bonds.

**Section 4.06. Further Disclaimer.** The Payments shall not be deemed to constitute a debt, liability, or obligation of the City, the County, the Agency, or of the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City, the County, the Agency, or of the State of Florida or any political subdivision thereof. The Agency shall not be obligated to pay the Payments or any installments except from available Trust Fund Revenues provided for that purpose as set forth herein, and neither the faith and credit nor the taxing power of the City, the County, the Agency or of the State of Florida or any political subdivision thereof is pledged to the payment of the Payments or any Semi-Annual Installment thereof. The Issuer, the Developer or any person, firm or entity claiming by, through or under the Issuer or the Developer, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power, or any other taxing power, of the City, the County, the Agency, or of the State of Florida or any political subdivision thereof for the Payments or any Semi-Annual Installment thereof. For the avoidance of doubt, the Agency has no taxing power.

**Section 4.07. Semi-Annual Installment Payment Schedule.** The Agency and County shall reasonably approve the form of Semi-Annual Installment Payment Schedule prior to the execution of the bond purchase agreement. Following the issuance of the Bonds, Issuer, Parent, and Agency shall deliver the Semi-Annual Installment Payment Schedule to County substantially in the form previously approved by County; provided, however, for the avoidance of doubt, County shall have no approval rights with respect to the Semi-Annual Installment Payment Schedule following the issuance of the Bonds.

## **ARTICLE V**

### **REPORTING**

The Agency hereby covenants and agrees that it will comply with and carry out all of the provisions of the Disclosure Dissemination Agent Agreement dated as of December 15, 2015 between the Agency and Digital Assurance Certification LLC, and any Disclosure Dissemination Agent Agreement subsequently entered into by the Agency with respect to the Agency Bonds (collectively, the “Disclosure Agreement”) while any Payments are due and payable. Notwithstanding any other provision of this Agreement, failure of the Agency to comply with the Disclosure Agreement does not constitute a default by the Agency hereunder or with respect to the Series 2024 Bonds.

## **ARTICLE VI**

### **REPRESENTATIONS AND WARRANTIES**

#### **Section 6.01. [RESERVED]**

**Section 6.02. The Parent’s Representations, Warranties and Covenants.** The Parent’s representations, warranties and covenants are made as of the date of this Agreement and as of the date of delivery of the Series 2024 Bonds to the Agency and initial purchasers and survive the issuance of the Bonds. The Parent’s representations, warranties and covenants remain operative and in full force and effect until termination of this Agreement pursuant to this Agreement’s terms. The Parent hereby makes the following representations, warranties and covenants, as the basis for the undertakings on the part of the Parent herein contained:

(a) [The Parent is a limited liability company duly organized and validly existing under the laws of the State of Florida, is authorized to do business and is in good standing under the laws of the State of Florida, and is not in violation of any provisions of its Articles of Organization, its operating agreement, or any laws of the State of Florida or the Constitution of the State of Florida relevant to the transactions contemplated hereby or in connection with the issuance of the Bonds.]<sup>6</sup>

(b) The Parent has full legal power and authority to execute and deliver this Agreement and full company power and authority to approve the execution and delivery

---

<sup>6</sup> Parent’s representations in Section 6.02(a) to be updated prior to execution to reflect any changes to the corporate structure due to financing and tax considerations (e.g., changing domicile to Delaware or changing tax classification).



of the Series 2024 Bonds and of the Bond Indenture, and has, by proper company action, duly authorized the execution and delivery of such instruments.

(c) Neither the execution and delivery of this Agreement or the execution and delivery by the Developer of the Lease Agreement, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement or the Lease Agreement conflict with or result in a breach of the terms, conditions, or provisions of any company restriction or any agreement or instrument to which the Parent or the Developer is now a party or by which either is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge, or encumbrance whatsoever upon any of the property or assets of the Parent or the Developer under the terms of any instrument or agreement.

(d) Any certificate with respect to any material factual or financial matters signed by a Parent Representative and delivered to the Issuer or the Agency in connection with this Agreement or the Lease Agreement shall be deemed a representation and warranty by the Parent as to the statements made therein.

(e) Neither the Parent nor the Developer is in breach of or in default under any constitutional provision, applicable law (including, without limitation, the Redevelopment Act) or administrative rule or regulation of the State of Florida, the United States, or of any department, division, agency or instrumentality of either thereof or any applicable court or administrative decree or order, or the Lease Agreement, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the Parent or the Developer, as applicable, is a party or to which the Parent or the Developer, as applicable, or any property or assets of the Parent or the Developer, as applicable, is otherwise subject or bound which in any material way, directly or indirectly, affects the Parent's entering into this Agreement or the Developer entering into the Lease Agreement, or the validity thereof, the validity or adoption of the resolution authorizing Parent to enter into this Agreement or the Developer to enter into the Lease Agreement, the execution and delivery of this Agreement, the Lease Agreement or other instruments contemplated thereby to which the Parent or the Developer, as applicable, is a party, and compliance with the provisions of each thereof will not conflict with or constitute a breach of or default under any constitutional provision, applicable law (including, without limitation, the Redevelopment Act) or administrative rule or regulation of the State of Florida, the United States, or of any department, division, agency or instrumentality of either thereof, or any applicable court or administrative decree or order, or any agreement, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the Parent or the Developer, as applicable, is a party or to which the Parent or the Developer, as applicable, or any of the property or assets of the Parent or Developer is otherwise subject or bound.

(f) The conduct of the Parent's operations and the condition of any property it owns does not and will not cause a violation of any federal laws, rules or ordinances or environmental protection regulations of the Environmental Protection Agency and any applicable local or State of Florida law, rule or regulation of common law or any judicial interpretation thereof relating primarily to environment or hazardous materials.

(g) The Parent shall not amend, supplement, or restate or permit this Agreement to be amended excepted as permitted in the Bond Indenture.

(h) This Agreement will constitute the legal, valid and binding agreement of the Parent enforceable against the Parent in accordance with its terms, including, without limitation, by the Bond Trustee for the benefit of the owners of the Bonds, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(i) No written information, exhibit or report prepared by the Parent or the Developer in connection with this Agreement and the issuance of the Series 2024 Bonds (including, without limitation, any financial statements, whether audited or unaudited, and any other financial information provided in connection therewith) contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(j) There are no actions, suits or proceedings of any type whatsoever pending or, to its knowledge, threatened in writing against or affecting it or its assets, properties or operations which, if determined adversely to it or its interests, would have an adverse effect in any material respect upon its financial condition, assets, properties or operations, or upon its ability to perform its obligations under this Agreement, or upon the validity or enforceability of any or all of this Agreement or the Lease Agreement, and to its best knowledge, after reasonable diligence, it is not in default with respect to any order or decree of any court or any order, regulation or decree of any federal, state, municipal or other governmental agency, which default would adversely affect in any material respect its operations or its properties or its ability to perform its obligations under this Agreement.

(k) Neither the representations of the Parent contained herein nor any written statement, furnished by or on behalf of the Parent to the Issuer, the Agency or the purchasers of the Bonds in connection with the transactions contemplated hereby, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading.

(l) The Parent (i) understands the nature of the structure of the transactions related to this Agreement, and (ii) is familiar with all the provisions of the documents and instruments related to the Convention Center Hotel, the Convention Center Hotel Project and any financing to which the Parent, the Developer or the Issuer is a party or of which the Parent or the Developer is a beneficiary.

(m) All representations of the Parent contained herein and all representations of the Developer contained in the Lease Agreement, or in connection with the transactions contemplated hereby or thereby, shall survive the expiration or termination of this Agreement as representations of facts existing as of the date of the execution and delivery of the instrument containing such representation.

(n) The Parent shall not take any action to prevent, and shall cause the Developer to diligently take all steps necessary to achieve, the Completion of Construction in a timely manner and in accordance with all applicable requirements of law, including requirements of any federal, state, county, city or other governmental authority having jurisdiction over the Convention Center Hotel or its ownership, use and operation.

(o) Neither the developer fee for any other line item included in the Project Budget includes any direct or indirect profit to the Developer, the Parent, or any Affiliate of either and represents only actual overhead costs without any additional mark-up of any kind.

(p) The Parent shall comply with all terms and conditions herein, including any restrictions on the use of the proceeds of the Grant (and Direct Grant, if applicable).

**Section 6.03. The Issuer's Representations, Warranties and Covenants.** The Issuer's representations, warranties and covenants are made as of the date of this Agreement and as of the date of delivery of the Series 2024 Bonds to the Agency and initial purchasers and survive the issuance of the Bonds. The Issuer's representations, warranties and covenants remain operative and in full force and effect until termination of this Agreement pursuant to this Agreement's terms. The Issuer hereby makes the following representations, warranties and covenants, as the basis for the undertakings on the part of the Issuer herein contained:

(a) The Issuer is a unit of government and a body corporate and politic of the State of Wisconsin, is authorized to do business and is in good standing under the laws of the State of Florida, and is not in violation of any provisions of the Act, or any laws of the State of Florida or the Constitution of the State of Florida relevant to the transactions contemplated hereby or in connection with the issuance of the Bonds.

(b) The Issuer has full corporate power and authority to execute and deliver the Bond Indenture and the Series 2024 Bonds, and has, by proper corporate action, duly authorized the execution and delivery of such instruments.

(c) Neither the execution and delivery of this Agreement, the Series 2024 Bonds or the Bond Indenture, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement or the Bond Indenture conflict with or result in a breach of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Issuer is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge, or encumbrance whatsoever upon any of the property or assets of the Issuer under the terms of any instrument or agreement.

(d) Any certificate with respect to any material factual or financial matters signed by an Authorized Signatory and delivered to the Parent or the Agency in connection with this Agreement or the Bond Indenture shall be deemed a representation and warranty by the Issuer as to the statements made therein.

(e) The Issuer is not in breach of or in default under any constitutional provision, applicable law (including, without limitation, the Act) or administrative rule or regulation of the State of Florida, the United States, or of any department, division, agency or instrumentality of either thereof or any applicable court or administrative decree or order, or any agreement, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the Issuer is a party or to which the Issuer or any property or assets of the Issuer is otherwise subject or bound which in any material way, directly or indirectly, affects the Issuer's entering into this Agreement or the Bond Indenture, or the validity thereof, the validity or adoption of the resolution authorizing Issuer to enter into this Agreement and the Bond Indenture, the execution and delivery of this Agreement, the Bond Indenture, the Series 2024 Bonds or other instruments contemplated thereby to which the Issuer is a party, and compliance with the provisions of each thereof will not conflict with or constitute a breach of or default under any constitutional provision, applicable law (including, without limitation, the Act) or administrative rule or regulation of the State of Florida, the United States, or of any department, division, agency or instrumentality of either thereof, or any applicable court or administrative decree or order, or any Agreement, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the Issuer is a party or to which the Issuer or any of the property or assets of the Issuer is otherwise subject or bound.

(f) The Issuer shall not amend, supplement, or restate or permit this Agreement to be amended excepted as permitted in the Bond Indenture.

(g) This Agreement, the Bond Indenture and the Series 2024 Bonds will constitute the legal, valid and binding agreements of the Issuer enforceable against the Issuer in accordance with their terms, including, without limitation, by the Bond Trustee for the benefit of the owners of the Bonds, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

**Section 6.04. The Agency's Representations, Warranties and Covenants.** The Agency's representations, warranties and covenants are made as of the date of this Agreement and as of the date of delivery of the Series 2024 Bonds to the Parent and the Issuer and survive the issuance of the Bonds. The Agency's representations, warranties and covenants remain operative and in full force and effect until expiration or termination of this Agreement pursuant to this Agreement's terms. The Agency hereby makes the following representations, warranties and covenants, as the basis for the undertakings on the part of the Agency herein contained:

(a) The Agency is a community redevelopment agency duly organized and validly existing under the laws of the State of Florida, is authorized to do business and is in good standing under the laws of the State of Florida, and is not in violation of any provisions of any laws of the State of Florida or the Constitution of the State of Florida relevant to the transactions contemplated hereby.

(b) The Agency has full corporate power and authority to execute and deliver this Agreement, and has, by proper corporate action, duly authorized the execution and delivery of this Agreement.

(c) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or result in a breach of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Agency is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge, or encumbrance whatsoever upon any of the property or assets of the Agency under the terms of any instrument or agreement.

(d) Any certificate with respect to any material factual or financial matters signed by the Executive Director and delivered to the Issuer or the Parent in connection with this Agreement shall be deemed a representation and warranty by the Agency as to the statements made therein.

(e) The Agency is not in breach of or in default under any constitutional provision, applicable law (including, without limitation, the Redevelopment Act) or administrative rule or regulation of the State of Florida, the United States, or of any department, division, agency or instrumentality of either thereof or any applicable court or administrative decree or order, or any agreement, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the Agency is a party or to which the Agency or any property or assets of the Agency is otherwise subject or bound which in any material way, directly or indirectly, affects the Agency's entering into this Agreement, or the validity thereof, the validity or adoption of the resolution authorizing Agency to enter into this Agreement, the execution and delivery of this Agreement or other instruments contemplated thereby to which the Agency is a party, and compliance with the provisions of each thereof will not conflict with or constitute a breach of or default under any constitutional provision, applicable law (including, without limitation, the Redevelopment Act) or administrative rule or regulation of the State of Florida, the United States, or of any department, division, agency or instrumentality of either thereof, or any applicable court or administrative decree or order, or any agreement, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the Agency is a party or to which the Agency or any of the property or assets of the Agency is otherwise subject or bound.

(f) This Agreement constitutes the legal, valid and binding agreement of the Agency enforceable against the Agency in accordance with their terms, including, without limitation, by the Bond Trustee for the benefit of the owners of the Bonds, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

For the avoidance of doubt, the Agency makes no representations or warranties with respect to the Bonds or the Bond Indenture, including, without limitation, the exclusion from gross

income for federal income tax purposes of interest on the Bonds or any state or local tax exemption related to the Bonds or interest thereon.

## ARTICLE VII

### INDEMNIFICATION OF ISSUER; LIMITED OBLIGATION OF ISSUER

**Section 7.01. Indemnification.** The Parent hereby fully and forever and irrevocably releases and, to the fullest extent permitted by law, agrees to defend, indemnify and hold harmless the Issuer, each Issuer Indemnified Person, the Agency, and the Bond Trustee (collectively, the “Indemnified Persons”), against any and all reasonable fees, costs and charges, losses, damages, claims, actions, liabilities and expenses of any conceivable nature, kind or character (including, without limitation, reasonable fees and expenses of attorneys, accountants, consultants and other experts, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Persons, or any of them, become subject under any statutory law or regulation (including federal or state securities laws and regulations and federal tax laws and regulations) or at common law or otherwise (collectively, “Liabilities”), arising out of or based upon or in any way relating to any of the following, except to the extent caused by such Indemnified Person’s gross negligence or willful misconduct:

(a) the Bonds, the Bond Indenture, or this Agreement or the execution or amendment hereof or thereof or in connection with transactions contemplated hereby or thereby, including the issuance, sale or resale of the Bonds;

(b) the performance or observance by or on behalf of the Issuer of those things on the part of the Issuer agreed to be performed or observed hereunder and under the Bond Indenture;

(c) any act or omission (to the extent there is an affirmative duty to act) of the Parent or the Developer or any of their respective affiliates or affiliated persons, agents, contractors, servants, employees, tenants or licensees in connection with the Convention Center Hotel Project, the operation of the Convention Center Hotel, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or construction of, the Convention Center Hotel or any part thereof;

(d) any lien or charge upon payments by the Parent or the Developer to the Issuer or the Bond Trustee hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer or the Bond Trustee in respect of any portion of the Convention Center Hotel;

(e) any violation of any environmental laws with respect to, or the release of any hazardous substances from, the Convention Center Hotel or any part thereof;

(f) the defeasance and/or redemption, in whole or in part, of the Bonds;

(g) to the extent attributable to or provided by the Parent or the Developer, any untrue statement or misleading statement or alleged untrue statement or alleged misleading

statement of a material fact contained in any offering or disclosure document or disclosure or continuing disclosure document for the Bonds or any of the documents relating to the Bonds, or any omission or alleged omission from any offering or disclosure document or disclosure or continuing disclosure document for the Bonds of any material fact necessary to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(h) any investigation or formal or informal inquiry by any federal, state, or local governmental or regulatory agency (including, but not limited to, the U.S. Securities & Exchange Commission) with respect to the Bonds or the transactions contemplated by this Agreement or in connection therewith;

(i) any third-party request to the Issuer for documents or information regarding the Bonds, this Agreement or related documents or transactions pursuant to the Federal Freedom of Information Act ("FOIA") or any applicable public records act, in each case to the extent not paid by the requesting party;

(j) the Bond Trustee's acceptance or administration of the trust of the Bond Indenture, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Bonds to which it is a party;

(k) any audit, inquiry, investigation, or proceeding instituted or threatened by any state or federal governmental entity, agency, board, commission, or regulatory body, relating in any way to or arising in any way from the matters referred to in this Section 7.01; or

(l) any injury to or death of any Person or damage to property in or upon the Convention Center Hotel or growing out of or connected with the use, nonuse, condition or occupancy of the Convention Center Hotel, except in the case of the foregoing indemnification of the Issuer and the Indemnified Persons, to the extent such Liabilities are caused by the willful misconduct of the Person(s) seeking indemnification.

The Parent will also pay and discharge and will indemnify and hold harmless the Indemnified Persons from any lien or charge upon payments by the Parent to the Indemnified Persons hereunder. If any such lien or charge upon payments, taxes, assessments, impositions, or other charges are sought to be imposed, the Issuer will give or cause to be given prompt notice to the Parent, and the Parent shall have the sole right and duty to assume, and will assume, the defense thereof, with full power to litigate, compromise, or settle the same in its sole discretion.

In the event that any action or proceeding is brought against any Indemnified Persons with respect to which indemnity may be sought hereunder, the Parent, upon written notice from the Indemnified Persons, shall assume the investigation and defense thereof, including the employment of counsel selected by the Parent with the consent of the Indemnified Persons, which consent shall not be unreasonably withheld, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Persons shall have the right to review and approve or disapprove any such compromise or settlement, which shall not be unreasonably withheld. Each Indemnified Person

shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof. The Parent shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Persons may only employ separate counsel at the expense of the Parent if in the judgment of such Indemnified Person a conflict of interest exists by reason of common representation.

In no event shall Parent be liable for any special, consequential, treble or punitive damages (but expressly excluding any consequential, punitive, special or other indirect damages if any third party makes any claim or demand upon Indemnified Persons for damages on account of consequential, punitive, special or other indirect damages).

The rights of any Indemnified Persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses shall survive the expiration or termination of this Agreement. The provisions of this Section shall remain valid and in effect notwithstanding termination of this Agreement.

**INSOFAR AS ANY DOCUMENT OR INSTRUMENT ISSUED OR DELIVERED IN CONNECTION WITH THE GRANT PURPORTS TO CONSTITUTE AN UNDERTAKING BY, OR IMPOSE AN OBLIGATION UPON, THE PARENT TO PROVIDE INDEMNIFICATION TO THE INDEMNIFIED PERSONS, THE INDEMNIFICATION PROVISION OR PROVISIONS OF SUCH DOCUMENT SHALL NOT BE DEEMED, INTERPRETED OR CONSTRUED IN ANY WAY AS A MODIFICATION OF OR LIMITATION UPON THE PARENT'S OBLIGATIONS OR THE RIGHTS OF THE INDEMNIFIED PERSONS UNDER THIS SECTION 7.01 AND THE PROVISIONS OF THIS SECTION 7.01 SHALL IN EVERY RESPECT SUPERSEDE THE INDEMNIFICATION PROVISIONS OF ANY SUCH OTHER DOCUMENT AND SHALL APPLY THERETO AS IF FULLY SET FORTH THEREIN.**

**Section 7.02. Non-Liability of Issuer.** Notwithstanding anything to the contrary in this Agreement or any other document or instrument to which Issuer is a party, whether express or by implication or construction or interpretation or otherwise, Developer, Parent and Agency each acknowledges and agrees that NEITHER ISSUER NOR ANY ISSUER INDEMNIFIED PERSON SHALL BE liable or obligated in any manner under this Agreement or otherwise to pay or cause to be paid any fees, expenses or reimbursements or to make any other payments or advance funds under this Agreement or otherwise, or incur or cause to be incurred any expense in pursuing any course of action, in connection with the Convention Center Hotel Project or any other matter within the scope of or contemplated by this Agreement or be liable (directly or indirectly) for any claims, proceedings, costs or expenses of any kind for any reason in connection with or in any way related to this Agreement or any other document or instrument to which Issuer is a party related to the Convention Center Hotel Project, its financing, development, operation, management or otherwise, EXCEPT ONLY TO THE EXTENT that moneys are held by the Bond Trustee and available therefor as expressly set forth hereunder and in accordance with the Bond Indenture, and provided, that Issuer shall not be required to incur any expense or liability in pursuing any claim against such moneys for the benefit of Parent or any other Person. Parent further acknowledges and agrees that it must adhere to the provisions hereof and of the Bond Indenture in requesting disbursements from Funded Grant Amount held by the Bond Trustee for the Grant and to the extent that funds are available therefor under the priority of payments set forth in the Bond Indenture.



### **Section 7.03. Issuer's Performance.**

(a) None of the provisions of this Agreement or the Bond Indenture shall require Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder or thereunder, unless payable from the Trust Estate (as defined in the Bond Indenture), or unless Issuer shall first have been adequately indemnified to its satisfaction against the cost, expense, and liability which may be incurred thereby. Issuer shall not be under any obligation hereunder or under the Bond Indenture to perform any administrative service with respect to the Bonds, the Grant, or the Convention Center Hotel (including, without limitation, record keeping and legal services), it being understood that such services shall be performed or provided by the Bond Trustee or the Parent. Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions expressly contained in this Agreement, the Bond Indenture, and any and every Bond executed, authenticated and delivered under the Bond Indenture; provided, however, that Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof unless and until it shall have (i) been directed to do so in writing by the Parent, the Bond Trustee, or the Agency having the authority to so direct; (ii) received from the Person requesting such action or execution assurance satisfactory to Issuer that Issuer's expenses incurred or to be incurred in connection with taking such action or executing such instrument have been or will be paid or reimbursed to Issuer; and (iii) if applicable, received in a timely manner the instrument or document to be executed, in form and substance satisfactory to Issuer.

(b) In complying with any provision herein or in the Bond Indenture, including but not limited to any provision requiring Issuer to "cause" another Person to take or omit any action, Issuer shall be entitled to rely conclusively (and without independent investigation or verification) (i) on the faithful performance by the Bond Trustee, the Agency, or the Parent, as the case may be, of their respective obligations hereunder and, with respect to the Bond Trustee or the Parent, as the case may be, under the Bond Indenture; and (ii) upon any written certification or opinion furnished to Issuer by the Bond Trustee, Agency, or the Parent, as the case may be. In acting, or in refraining from acting, under this Agreement, Issuer may conclusively rely on the advice of its counsel. Issuer shall not be required to take any action hereunder or under the Bond Indenture that it reasonably believes to be unlawful or in contravention hereof or thereof.

(c) Issuer acknowledges the limitations of the Bond Indenture and hereby covenants and agrees, to the extent reasonably within its control, to comply with all terms and conditions herein and therein, including any restrictions on the use of the proceeds of the Bonds or the Grant.

## **ARTICLE VIII**

### **DEFAULTS AND REMEDIES**

**Section 8.01. Event of Default.** An "Event of Default" under this Agreement shall consist of the breach of any covenant, agreement, representation, provision, or warranty (that has not been

cured prior to the expiration of any applicable grace period or notice and cure period contained in this Agreement or such other documents, as applicable) contained in this Agreement; provided, however, that it is expressly agreed by the parties that no failure by the Developer to comply with the Lease Agreement shall constitute or give rise to an “Event of Default” hereunder, it being acknowledged by each party hereto that the sole remedy for any such failure shall be as set forth in the Lease Agreement.

**Section 8.02. Remedies.** Upon the occurrence of any Event of Default by or with respect to one of the parties hereto (the “Defaulting Party”), each of the other parties hereto (the “Non-Defaulting Party”) shall have the right (exercisable by the giving of written notice to the Defaulting Party) to pursue all remedies available to the Non-Defaulting Party under applicable law as a result of such Event of Default (provided however that so long as any Bonds are outstanding under the Bond Indenture, termination of this Agreement shall not be a remedy available to the Non-Defaulting Party), if the Defaulting Party fails to remedy such Event of Default within five (5) days after its receipt of notice to remedy if such default relates to the payment of a sum of money and, in all other cases, within thirty (30) days after its receipt of notice to remedy; provided, however, that if such Event of Default be of a non-monetary nature and if it cannot reasonably be remedied within said thirty (30) day period, then such thirty (30) day period shall be deemed to be extended for such additional period as may reasonably be required to remedy the same if the Defaulting Party shall promptly commence to remedy upon receipt of notice from the Non-Defaulting Party and shall continue therewith with due diligence. Notwithstanding the foregoing, upon the occurrence and continuance of an Event of Default by the Parent or the Issuer, the Agency shall not have available as a remedy withholding or reducing the Semi-Annual Installment Payments. The Agency hereby acknowledges that the Agency shall continue to have the obligation to timely pay the Semi-Annual Installment Payments in full to the Bond Trustee regardless of the occurrence or continuance of any Event of Default hereunder. Notwithstanding the foregoing, if the Issuer or the Bond Trustee fails to make the Grant available to Parent as contemplated herein and in the Bond Indenture, the Agency shall have the right to refrain from making the Semi-Annual Installment Payments.

**Section 8.03. No Acceleration.** In no event shall the Payments be subject to acceleration for any reason.

**Section 8.04. Liens, Security Interests.** The Agency and the Bond Trustee agree and acknowledge that this Agreement does not create any lien on or security interest in the Convention Center Hotel, including, without limitation, the leasehold estate under the Lease Agreement.

## ARTICLE IX

### GENERAL PROVISIONS

**Section 9.01. Non-liability of Agency Officials.** No member, official or employee of the Agency shall be personally liable to the Parent, the Developer, to the Issuer or to any person or entity with whom the Parent, the Developer or the Issuer shall have entered into any contract, or to any other Person, in the event of any default or breach by the Agency, or for any amount which may become due to the Parent, the Developer, the Issuer or any other person or entity under the terms of this Agreement.

**Section 9.02. Force Majeure.** No party, to this Agreement shall be deemed in default hereunder where such a default is based on a delay in performance as a result of a “Force Majeure Event” as such term is defined in the Lease Agreement; provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay.

**Section 9.03. Notices.** All notices to be given hereunder shall be in writing and personally delivered or delivered by an air courier service utilizing return receipts to the parties at the following addresses (or to such other or further addresses as the parties may designate by like notice similarly sent) and such notices shall be deemed given and received for all purposes under this Agreement on the date actually received if sent by personal delivery or air courier service, except that notice of a change in address shall be effective only upon receipt.

to Agency: Miami Beach Redevelopment Agency  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Telephone: [(\_\_\_\_) \_\_\_\_ - \_\_\_\_]  
E-mail: [ericcarpenter@miamibeachfl.gov](mailto:ericcarpenter@miamibeachfl.gov)  
Attention: Executive Director  
with copy to:

Miami Beach Redevelopment Agency  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Tel: (305) 673-7470  
E-mail: [RicardoDopico@miamibeachfl.gov](mailto:RicardoDopico@miamibeachfl.gov)  
Attention: General Counsel

to Parent: [\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Telephone: [(\_\_\_\_) \_\_\_\_ - \_\_\_\_]  
E-mail: [\_\_\_\_\_  
Attention: [\_\_\_\_\_]

to Issuer: [\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Telephone: [(\_\_\_\_) \_\_\_\_ - \_\_\_\_]  
E-mail: [\_\_\_\_\_  
Attention: [\_\_\_\_\_]

to County: Miami-Dade County  
111 NW 1st Street, 22nd Floor  
Miami, FL 33128  
Telephone: [305-375-5143](tel:305-375-5143)

Email: [David.Clodfelter@miamidade.gov](mailto:David.Clodfelter@miamidade.gov)  
Attention: Chief Budget Officer & Director,  
Office of Management & Budget

To City: City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139  
Attention: City Manager

**Section 9.04. Time.** Time is of the essence in the performance by any party of its obligations hereunder.

**Section 9.05. Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

**Section 9.06. Amendment.** This Agreement may be amended by the parties hereto only upon the execution of a written amendment or modification signed by the parties. Notwithstanding the foregoing, the Executive Director of the Agency is authorized to approve, in his or her sole discretion, any “technical” changes to this Agreement. Such “technical” changes include without limitation non-material modifications to legal descriptions and surveys, ingress and egress, and easements and rights of way, as long as such modifications do not involve any financial obligation or liability to the Agency or the City. For the avoidance of doubt, nothing herein shall preclude the Executive Director, in his or her reasonable discretion, from seeking direction from the Board, or electing to have the Board determine, any matter arising out of or related to this Agreement, including, without limitation, the approval of any proposed “technical” changes to this Agreement.

**Section 9.07. Waivers.** Except as otherwise provided herein, all waivers, amendments or modifications of this Agreement must be in writing and signed by all parties. Any failures or delays by any party in insisting upon strict performance of the provisions hereof or asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any other party.

**Section 9.08. Indemnification of Agency.** The indemnification in this Section 9.08, shall not apply to any loss, claim, action, damage, injury, liability, cost and expense of whatsoever kind or nature (including without limitation attorneys’ fees and costs) related to any demands, suits and actions covered in Section 7.01 herein.

The Parent shall indemnify, hold harmless and defend the Agency from and against any loss, claim, action, damage, injury, liability, cost, and expense of whatsoever kind or nature (including without limitation attorneys’ fees and costs) related to any demands, suits and actions of any kind brought against the Agency or other damages or losses incurred or sustained, or claimed to have been incurred or sustained, by any person or entity arising out of or in connection

with any negligent act or omission or willful misconduct by the Developer or the Parent, or either of their respective contractors, subcontractors, agents, officers, employees, representatives, successors or assigns in connection with the Convention Center Hotel. The term “Agency” as used in this Section 9.08 shall include all officers, Board members, employees, representatives, agents, successors and assigns of the Agency, as applicable. These indemnification obligations shall survive the expiration or termination of this Agreement. The term “Parent,” “Developer” and “Issuer” as used in this Section 9.08 shall include all officers, board members, members, employees, representatives, agents, successors and assigns of the Parent, the Developer and the Issuer, as applicable.

**Section 9.09. Additional Indemnification of Agency, City, and County.** The Parent agrees to defend, indemnify and hold the Agency, the County, and the City, as well as their respective officers, employees, agents and representatives (the “Agency Indemnified Parties”) harmless from and against any and all damage, liability, lien, loss, cost or expense (“Loss”) arising or accruing from or resulting by reason of any and all claims of any person or entity relating to the validity of this Agreement or of any action taken by the Agency Indemnified Parties with respect to the negotiation or approval of (a) this Agreement or the Grant (and Direct Grant, if applicable) and (b) any other document or legal instrument related in any way to this Agreement or the Grant or Direct Grant, if applicable (but only to the extent such claim arises out of this Agreement or the Grant or Direct Grant and specifically excluding any future documents or legal instruments pertaining to the Lease Agreement, including, without limitation, estoppel certificates and recognition agreements), except to the extent such Loss is caused by a breach of any contractual obligation of any of the Indemnified Parties (including, without limitation, a breach by the Agency of any funding obligation hereunder). The indemnity set forth in this Section 9.09 includes all costs and expenses, including reasonable attorneys’ and paralegals’ fees and costs (including reasonable fees and costs of the Agency’s, the City’s and the County’s internal legal staff), at trial, appellate and post-judgment proceedings, whether by judgment, settlement or otherwise. The foregoing indemnity obligations of Parent shall survive the expiration, full performance, or termination of this Agreement.

**Section 9.10. Severability.** The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect any other provisions of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**Section 9.11. Compliance With State and Other Laws.** In the performance of this Agreement, the Parent must comply with any and all applicable federal, state and local laws, rules and regulations, as the same exist and may be amended from time to time. Such laws, rules and regulations include, but are not limited to, Chapter 119, Florida Statutes (the Public Records Act) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

**Section 9.12. [RESERVED].**

**Section 9.13. Public Entity Crimes Notice.** In conformity with the requirements of Section 287.133, Florida Statutes, the parties agree as follows:

The parties are aware and understand that a person or affiliate who has been placed on the State of Florida Convicted Vendor List, following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity, in excess of \$35,000.00, for a period of 36 months from the date of being placed on the Convicted Vendor List.

**Section 9.14. Incorporation by Reference.** All exhibits and other attachments to this Agreement that are referenced in this Agreement are by this reference made a part hereof and are incorporated herein.

**Section 9.15. Order of Precedence.** In the event of any conflict between or among the provisions of this Agreement and those of any exhibit attached hereto or of any amendment, the priority, in decreasing order of precedence shall be: first, any fully executed amendment; second, provisions in this Agreement; and third, exhibits to this Agreement.

**Section 9.16. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. Facsimiled, scanned or photocopied signatures shall be deemed equivalent to original signatures.

**Section 9.17. Independent Contractor.** In the performance of this Agreement, the Parent will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer, or association of the Agency. The Parent, the Developer and their respective employees or agents shall be solely responsible for the means, method, technique, sequences and procedures utilized by the Parent and the Developer, as the case may be, in the performance of this Agreement and the Lease Agreement.

**Section 9.18. Retention of Records/Audit.** The Parent and the Issuer agree:

(a) to establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by the Agency under this Agreement;

(b) to retain, with respect to the Convention Center Hotel, all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of six years after the date of final Payment by the Agency under this Agreement. If an audit has been initiated and audit findings have not been resolved at the end of six years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement, at no additional cost to the Agency;

(c) upon demand, at no additional cost to the Agency, to facilitate the duplication and transfer of any records or documents during the required retention period;

(d) to assure that these records shall be subject at all reasonable times to inspection, review, copying, or audit by personnel duly authorized by the Agency, including but not limited to its auditors;

(e) at all reasonable times for as long as records are maintained, to allow persons duly authorized by the Agency, including but not limited to its auditors, full access to and the right to examine any of the Parent's, Developer's and/or the Issuer's contracts and related records and documents, regardless of the form in which kept;

(f) to ensure that all related party transactions are disclosed to the Agency;

(g) to include the aforementioned audit, inspections, investigations and record keeping requirements in all subcontracts and assignments of this Agreement and the Interlocal Agreement;

(h) upon reasonable prior notice and during regular business hours, to permit persons duly authorized by the Agency, including but not limited to its auditors, to inspect and copy any records, papers, documents, facilities, goods and services of the Parent, Developer and Issuer that are relevant to this Agreement, and to interview any employees and subcontractor employees of the Parent or the Developer to assure the Agency of the satisfactory performance of the terms and conditions of this Agreement. Following such review, the Agency will deliver to the Parent, the Developer or the Issuer, as applicable, a written report of its findings and request for development by the Parent, the Developer or the Issuer, as applicable, of a corrective action plan where appropriate. The Parent and the Issuer hereby agree to timely correct, or cause to be timely corrected, all deficiencies identified in the corrective action plan;

(i) additional monies due as a result of any audit or annual reconciliation shall be paid within 30 days of date of the Agency's invoice; and

(j) should the annual reconciliation or any audit reveal that the Parent, the Developer or the Issuer owe the Agency additional monies, and the Parent, the Developer or the Issuer, as applicable, do not make restitution within 30 days from the date of receipt of written notice from the Agency, the Agency shall be entitled to pursue any remedies available to the Agency; provided however that the Agency shall in no event have the right to terminate this Agreement or to reduce the amount or otherwise stop payment of the Semi-Annual Installment Payments. No payment made by the Parent, the Developer or the Issuer under this Section 9.18 shall constitute a waiver by the Parent, the Developer or the Issuer of their right to later contest the validity or correctness of such payment.

**Section 9.19. Non-Merger.** None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Hotel Parcel, if applicable.

**Section 9.20. Exemption of City and County.** Neither this Agreement nor the obligations imposed upon the Agency hereunder shall be or constitute an indebtedness of the City or County within the meaning of any constitutional, statutory, or charter provisions related thereto,

nor shall this Agreement require the City or County to levy ad valorem taxes, make any payments using City or County funds, or constitute a lien upon any properties of the City or County.

**Section 9.21. Parties to Agreement; Successors and Assigns.** This is an agreement solely among the Issuer, the Agency, and the Parent. The execution and delivery hereof shall not be deemed to confer any rights or privileges or obligations on any person not a party hereto (other than the Bond Trustee, the Indemnified Persons and the Indemnified Parties) except as set forth herein; provided, however, that the Parent shall assign this Agreement in its entirety after the Issuer shall have issued the Bonds to a successor in interest in connection with a sale of the Convention Center Hotel as contemplated in Section 2.04, above. Nothing herein is intended to modify any requirements that Parent, Developer or any of their respective Affiliates must satisfy in connection with any Transfer pursuant to the Lease Agreement, including without limitation compliance with the provisions in Article V. Parent shall provide documentation in form and content acceptable to the Executive Director of the Agency in his or her reasonable discretion that any such assignee has the financial ability to meet the obligations proposed to be assigned and undertaken pursuant to this Agreement, and that the proposed assignee has assumed Parent's obligations under this Agreement. Any assignee shall enter into an assignment and assumption agreement with Parent (or subsequent assignee) in form and content acceptable to the Executive Director of the Agency in his or her reasonable discretion. This Agreement shall be binding upon the Parent and the Parent's successors and assigns, and shall inure to the benefit of the Agency and the Issuer, and their respective successors and assigns.

**Section 9.22. Venue; Applicable Law.** All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Miami-Dade County, Florida, or in the U.S. District Court for the Southern District of Florida, Miami Division. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement. Each party shall be responsible for its own attorneys' fees and costs in connection with any action to enforce the terms of this Agreement and/or the other agreements attached hereto.

**Section 9.23. Recordation.** A notice setting forth the obligations of the Parent with respect to Section 3.02 of this Agreement shall be recorded in the Public Records of Miami-Dade County, Florida, within thirty (30) days of the Effective Date.

**Section 9.24. Further Assurances.** The Issuer and the Parent will, on request of the Agency, and the Agency will, on request of the Issuer or the Parent:

- (a) promptly correct any defect, error or omission herein or in any documents executed in connection herewith;
- (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts necessary, desirable or proper to carry out the purposes of this Agreement; and
- (c) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts necessary, desirable or proper to carry out the purposes of this Agreement.



**Section 9.25. Construction.** All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. The Parent and the Issuer further acknowledge that they have had ample time to review this Agreement and related documents with counsel of its choice. Any doubtful or ambiguous provisions contained herein shall not be construed against the party who drafted the Agreement.

**Section 9.26. Headings.** The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

**Section 9.27. Further Authorizations.** The parties acknowledge and agree that the Executive Director, or his or her designee, is hereby authorized to execute any and all other contracts and documents and otherwise take all necessary action in connection with this Agreement.

**Section 9.28. [RESERVED].**

**Section 9.29. Survival.** The provisions of this Agreement and the Bond Indenture and any other document in connection with the issuance of the Bonds and making of the Grant to which Issuer is a party concerning (a) the tax-exempt status of the Bonds (including, but not limited to, provisions concerning rebate); (b) the interpretation of this Agreement; (c) governing law, jurisdiction and venue; (d) Issuer's right to rely on written representations of others contained herein or in any other document or instrument issued or entered into in respect of the Bonds, regardless of whether Issuer is a party thereto; (e) the indemnification rights and exculpation from liability of Issuer and the Indemnified Persons; and (f) any other provision of this Agreement not described or enumerated above that expressly provides for its survival, shall survive and remain in full force and effect notwithstanding the payment or redemption in full, or defeasance of the Bonds, the discharge of the Bond Indenture, and the termination or expiration of this Agreement.

**Section 9.30. Estoppel Certificate.** The parties agree from time to time, but no more frequently than twice annually, within not more than 10 business days after receipt of written request from the other party, to execute, acknowledge and deliver to the other party a statement ("Estoppel Certificate") in writing, certifying: (a) this Agreement is unmodified and in full force and effect, or in full force and effect as modified, and stating the modification; (b) that there are not, to that party's actual knowledge, any uncured defaults, or events which with the passage of time would become a default, on the part of the other party, or specifying existing defaults; and (c) any other matters required by lenders or preferred equity investors providing financing or investment for the Convention Center Hotel Project. Any such Estoppel Certificate delivered pursuant to this Section 9.30 may be relied upon by any prospective purchaser or mortgagee of all or any portion of the Convention Center Hotel, or any prospective assignee of any such mortgagee, or any ground lessor under any ground lease with respect to any portion of the Convention Center Hotel.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Agreement is executed the day and year above written.

MIAMI BEACH REDEVELOPMENT  
AGENCY, a public agency and body corporate  
created pursuant to Section 163.356, Florida  
Statutes

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

PUBLIC FINANCE AUTHORITY

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

The undersigned joins solely for purposes of  
agreeing to Section 2.04 of this Agreement:

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

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION OF HOTEL PARCEL

BEING A PARCEL OF LAND LYING IN SECTION 34, TOWNSHIP 53 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF LOT 1, BLOCK 22, ACCORDING TO THE AMENDED PLAT OF GOLF COURSE SUBDIVISION OF THE ALTON BEACH REALTY COMPANY, AS RECORDED IN PLAT BOOK 6, PAGE 26, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; THENCE N88°00'53"E, ALONG THE EASTERLY PROLONGATION OF THE NORTHERLY RIGHT OF WAY LINE OF 17TH STREET, SAID RIGHT OF WAY BEING 70 FEET IN WIDTH AS SHOWN ON SAID PLAT BOOK 6, PAGE 26, A DISTANCE 368.16 FEET; THENCE N02°04'00"W, ALONG THE EASTERN EDGE OF AN EXISTING 15 FEET WIDE SIDEWALK LYING ON THE EAST SIDE OF CONVENTION CENTER DRIVE AS NOW LAID OUT AND IN USE, A DISTANCE OF 39.94 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N02°04'00"W ALONG SAID EXISTING SIDEWALK, A DISTANCE OF 238.58 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 40.00 FEET, A CHORD WHICH BEARS N42°58'54"E; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 62.90 FEET, THROUGH A CENTRAL ANGLE OF 90°05'48"; THENCE N88°01'48"E A DISTANCE OF 13.05 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A"; THENCE CONTINUE N88°01'48"E A DISTANCE OF 297.49 FEET; THENCE S01°56'26"E, TO THE INTERSECTION WITH SAID EASTERLY PROLONGATION OF THE NORTHERLY RIGHT OF WAY OF 17TH STREET, A DISTANCE OF 318.50 FEET; THENCE S88°00'53"W, ALONG SAID EASTERLY PROLONGATION OF THE NORTHERLY RIGHT OF WAY OF 17TH STREET, A DISTANCE OF 309.96 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 40.00 FEET, A CHORD WHICH BEARS N47°01'33"W; THENCE NORTHWESTERLY ALONG THE ARC SAID CURVE A DISTANCE OF 62.78 FEET, THROUGH A CENTRAL ANGLE OF 89°55'08" TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 110,884 SQUARE FEET OR 2.55 ACRES MORE OR LESS.

TOGETHER WITH:

AN AIRSPACE PARCEL BEING A PARCEL OF LAND LYING IN SECTION 34, TOWNSHIP 53 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA, HAVING AS ITS LOWER BOUNDARY, A HORIZONTAL PLANE AT ELEVATION 23.69 FEET (NORTH AMERICAN VERTICAL DATUM OF 1988), HAVING AS ITS UPPER BOUNDARY, A HORIZONTAL PLANE AT ELEVATION 52.44 FEET (NORTH AMERICAN VERTICAL DATUM OF 1988), THE PERIMETRICAL BOUNDARIES OF WHICH ARE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT SAID POINT "A"; THENCE N03°29'22"W A DISTANCE OF 53.99 FEET; THENCE N86°30'38"E A DISTANCE OF 30.00 FEET; THENCE S03°29'22"E A DISTANCE OF 54.78 FEET; THENCE S88°01'48"W A DISTANCE OF 30.01 FEET TO THE POINT OF BEGINNING SAID POINT ALSO BEING POINT "A".

## EXHIBIT B

### IN-KIND PUBLIC BENEFIT COMMITMENTS

1. **Waiver of Junior Ballroom Rental Fees:** Up to four (4) times in any twelve (12) calendar month period, the Agency may reserve the Junior Ballroom (inclusive of access to available pre-function space directly adjacent to the Junior Ballroom) for up to eight (8) consecutive hours, but no less than four (4) consecutive hours, on a single day, plus usual and customary move in/out time. Two (2) of said reservations may be made by the Agency on behalf of the City and two (2) on behalf of the County. Such reservation shall be made in writing by emailing the General Manager of the Convention Center Hotel directly no earlier than three (3) months prior to the requested reservation date; provided, one (1) of the four (4) reservation requests may be made no earlier than nine (9) months prior to the requested reservation date. To the extent the requested date is available, all rental fees for the Junior Ballroom for such date shall be waived. Audio-visual fees and other services shall be provided at cost. Gratuity for Convention Center Hotel employees shall be charged at standard rates then in effect. Banquet and catering services, shall be charged at a 20% discount off standard rates then in effect.
2. **Waiver of Conference Room Fees:** The Agency may reserve breakout or board rooms at the Convention Center Hotel (but specifically excluding any ballrooms) for Agency, City, or County meetings for up to four (4) consecutive hours, on a single day. The total of all such bookings shall not exceed twenty (20) per calendar month. Such reservation shall be made in writing by emailing the General Manager of the Convention Center Hotel directly no earlier than two (2) weeks prior the requested reservation date; provided, two (2) of the twenty (20) bookings per month may be made no earlier than three (3) months and each such booking may be for up to eight (8) consecutive hours plus usual and customary move in/out time. To the extent the requested date is available, all rental fees for the use of the breakout or board rooms shall be waived. Audio-visual fees and other services shall be provided at cost. Gratuity for Convention Center Hotel employees shall be charged at standard rates then in effect. Banquet and catering services shall be charged at a 20% discount off standard rates then in effect.
3. **Public Safety Office:** The Parent shall, or shall cause the Developer, or their successors to provide the Agency with an additional approximately 250 sf within its first-floor retail area for a City of Miami Beach Public Safety Office. This area shall be in addition to the area allocated to the Visitor Center (approximately 1,000 square feet).
4. **Reimbursement for Hotel Rooms During Weather Emergencies:** Provided the Convention Center Hotel is in a physical and operational state (and is legally permitted) to accommodate guests, the Parent shall, or shall cause the Developer, or their successors to provide up to 100 rooms each night for Agency, City, or County emergency personnel, as further described below, working immediately before, during, and immediately after a weather emergency as declared by local, state or national authorities. In such event, the County, City, and Agency, as applicable, shall pay for their own emergency personnel's' rooms, and shall be reimbursed, by the Parent, Developer, or their successors, one-hundred percent (100%) of the costs associated with the rental of such rooms; however, all taxes (if applicable), fees, and charges other than the base room rate shall remain due and payable. For the purposes of this

subparagraph, the term “emergency personnel” is limited to employees that: (i) show valid employer-issued identification to the Agency-designated representative, as described herein, confirming that they are active law enforcement or emergency and fire rescue personnel, and (ii) appear on a written list of pre-approved employees, which list may be updated from time to time, that’s been respectively transmitted by the Agency’s Executive Director or his or her designee, the City Manager or his or her designee, and the County Mayor or his or her designee, to the Agency-designated representative, as described herein. Bookings pursuant to this public benefit shall be completed through an Agency-designated representative and shall not be withheld, conditioned, or delayed. For the purposes of this paragraph, in the event that the Agency no longer exists or is no longer operational, then the Agency-designated representative’s duties and responsibilities shall be transferred to a City-designated representative and/or County-designated representative.

5. **Complimentary Rooms for Official Delegations:** Each calendar year, the Agency shall be permitted to book up to 70 room nights with a waiver of the base room rate for the purpose of hosting official visiting delegations (e.g., Sister City delegations) to the City or County.
6. **MBSHS Culinary Arts Program:** The Parent shall develop, or shall cause the Developer, or their successors to develop and implement a program with the Miami Beach Senior High School Culinary Arts Program, which may include interactive virtual meetings with students, student site visits to the restaurants at the Convention Center Hotel, and such other activities as the Convention Center Hotel and the Miami Beach Senior High School administration shall agree upon. In addition, the Convention Center Hotel shall hold a job fair each year for junior and senior high school students residing in the Miami-Dade County.
7. **Broad Cooperation:** The Parent shall use, or shall cause the Developer, or their successors to use commercially reasonable efforts to accommodate other requests from the Agency. Additionally, the Parent shall reasonably cooperate, or shall cause the Developer, or their successors to reasonably cooperate and coordinate with the Agency and the Miami Beach Convention Center to co-market and support events and initiatives.

MIAMI 11645681.19 102232/305480  
10/8/2024 11:10 AM