

MEMORANDUM

February 02, 2010

TO: CRA Chairman and Board of Commissioners

VIA: Judith H. Delmar, Executive Director CRA^{jhd}

FROM: Harold Gallup, Economic Development Director

SUBJECT: Redevelopment Agreement for DIXIE-WALESBILT, LLC FOR THE HOTEL GRAND PROJECT

SYNOPSIS: The CRA and City of Lake Wales entered into a six months License Agreement with Dixie Walesbilt LLC., for the purpose of conducting studies, evaluations and agency reviews for the redevelopment of the Hotel Grand for commercial and residential uses through the use of private capital. The project is now moving forward with the Redevelopment Agreement for the project.

RECOMMENDATION: Staff recommends that the CRA Board of Commissioners take the following action: *Authorize the Chairman to execute, on behalf of the CRA, the Redevelopment Agreement with the Dixie-Walesbilt LLC., for the purpose of redevelopment of the Hotel Grand in accordance with the terms and conditions of the Redevelopment Agreement and meeting the spirit and intent of the CRA.*

BACKGROUND: The City entered into a License Agreement with the Dixie-Walesbilt LLC., on July 15, 2009 for a period of six months. During this period the Developer has undertaken studies exploring with professionals such areas as parking, architecture, engineering, "Green Programs", Historic Preservation requirements, LEEDs Engineering, National Building Codes and Fire Codes, and OSHA.

Extensive research has been done on the "Elements of the Building" for historic replacement of material used in the original building and working with Otis Elevator on the original elevator replacement for the project. There has been extensive research on the "skin of the building" and the application of the new surface, of which there is laboratory work still being done because of the mix of materials used on the building. The Developer has made considerable time and capital investment in the project to date. The approximate capital expenditure is approaching \$300,000 at this time.

The Redevelopment Agreement provides for the continuation of the redevelopment of the Hotel Grand back to its "Original" form as closely as physically possible while still maintaining the economics of a profitable project. The Agreement continues with the investment of private capital into the building.

The City will retain the ownership of the building until a defined element of work has been accomplished, referred to as "Milestone One" in the Redevelopment Agreement. This means that the work accomplished will have obtained the required approvals of systems in relation to National Park Service historic preservation regulations, the National Building Code and the National Fire Code. The work must be completed in a 16-month time frame, at which point the capital investment in the project will approach \$1.5 million of private capital.

The building then will be conveyed to the Dixie-Walesbilt LLC., and the developer can continue with private funding or move into the financial market to use more traditional financial instruments or vehicles

for debt funding. It is extremely important to note that the developer will not be deriving any profit from the project until title has been transferred to the developer. No public funds have been expended.

A full presentation will be made by the Director of Economic Development concerning all aspects of the Redevelopment Agreement.

CURRENT FISCAL IMPACT: At completion the project will return significant tax revenue to the City as well as stimulate and encourage new investment in the core area of the Downtown.

FISCAL IMPACTS OF OTHER ALTERNATIVES: It appears that there are no other viable economic alternatives to this proposal. The project has been hampered by the global down turn in the economy. The City and the CRA have no funds to undertake the Project on their own.

ATTACHMENT: Redevelopment Agreement for Dixie-Walesbilt LLC.

**REDEVELOPMENT AGREEMENT
FOR THE GRAND HOTEL
115 North First Street, Lake Wales, Florida 33853**

By and between

**THE CITY OF LAKE WALES,
a Florida municipal corporation
and the LAKE WALES COMMUNITY
REDEVELOPMENT AGENCY,
a body politic and corporate
and
DIXIE-WALESBILT, LLC,
a Florida limited liability company**

Dated: February 2, 2010

This agreement was prepared by
and after recording return to:

Albert C. Galloway, Jr., P.A.
202 East Stuart Avenue, Lake Wales, FL 33853

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- I. Project Milestones

REDEVELOPMENT AGREEMENT
THE GRAND HOTEL
115 North First Street, Lake Wales, Florida

This Redevelopment Agreement (this "Agreement") is made and entered into as of the 2nd day of February, 2010, by and between the City of Lake Wales, Florida, a Florida municipal corporation and the Lake Wales Community Redevelopment Agency, a body politic and corporate, located in Polk County, Florida (individually or collectively as may apply, the "City"), and Dixie-Walesbilt, LLC, an Florida limited liability company (the "Developer").

RECITALS

WHEREAS, the City of Lake Wales is a Florida municipal corporation and is a home rule unit of government in accordance with Chapter 166, Florida Statutes; and;

WHEREAS, the Lake Wales Community Redevelopment Agency ("CRA") is a body politic and corporate in accordance with the provisions of Chapter 163, Part III, Florida Statutes (the "Act"); and

WHEREAS, the City has the authority, pursuant to the laws of the State of Florida, to promote the health, safety and welfare of the City and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base, to increase additional tax revenues realized by the City, foster increased economic activity within the City, to increase employment opportunities within the City, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise be in the best interests of the City, and;

WHEREAS, the City owns real property legally described in Exhibit “A” (the “Property”); and

WHEREAS, the Property which is the subject of this Agreement is located in the Downtown Community Redevelopment Area (the “Area”) as described in the Martin & Vargas Design firm’s Assessment Report dated September 19, 2005, and revised October 20, 2005; and

WHEREAS, the City authorized a Request for Proposals (“RFP”) for the Project on May 27, 2008; and

WHEREAS, in accordance with the Act, the City conducted a public hearing with respect to the selection of the Developer at a meeting held on December 2, 2008; and

WHEREAS, the Grand Hotel, located on the Property, is important to the community and is architecturally significant; and

WHEREAS, as part of the Martin & Vargas Design study of the redevelopment of the Area, the City found that the improvements in the Area suffer from the following factors: age, obsolescence, depreciation of physical maintenance, deterioration, excessive vacancies, and deleterious land use or layout; and

WHEREAS, to stimulate and induce redevelopment in the Area pursuant to the Act, the City has adopted the following Resolutions concerning the Community Redevelopment Plan, after giving all notices required and after conducting the public hearings required by law:

1. Resolution No. 99-06, adopted June 1, 1999.
2. Revised May 7, 2002, by Resolution No. 2002-03
3. Revised September 3, 2003, by Resolution No. 2003-26; and

4. Revised March 7, 2006, by Resolution No. 2006-04.

WHEREAS, the Developer's proposal was the most responsive to the City's Request for Proposals for the Project and was selected by the City as the project best suited for the needs of the City and the Developer's Response to the Request for Proposal is incorporated herein by reference; and

WHEREAS, the Property will be sold to the Developer pursuant to the terms of the Agreement for the purchase price stated herein; and

WHEREAS, the Property is planned to be developed as a mixed use development in accordance with plans to be prepared by the Developer and approved by the City; and

WHEREAS, the Developer desires to own and redevelop the Property to consist of a residential component of not to exceed 40 residential units ("Residential Parcel"); a commercial parcel consisting of an approximately 17,800 gross square foot ground floor retail space, including office space ("Retail Parcel"); and an element defined as a "Health Club" to be developed as a health club for use of the residents as well as a membership component ("Health Club Parcel");

WHEREAS, the City desires to provide for the retention, rehabilitation and reuse of architecturally significant features of the Grand Hotel (the Residential Parcel, the Retail Parcel, the Health Club Parcel, and all improvements and construction to be made by the Developer in connection with this Agreement are to be referred to as the "Project") and

WHEREAS, the Developer represents and warrants to City that Developer, and its principals, are skilled in the business of development and redevelopment and are

able to provide to the City skill, knowledge and expertise as well as input from other experts and consultants in mixed use downtown redevelopment projects; and

WHEREAS, it is necessary for the successful completion of the Project that the City enter into this Agreement with Developer to provide for the development of the Property, thereby implementing and bringing to completion a portion of the Redevelopment Plan; and

WHEREAS, Developer has been and continues to be unwilling to undertake the redevelopment of the Property but for certain incentives from the City in accordance with the Act, which the City acknowledges to be a necessity for the Project and which the City is willing to provide under the terms and conditions contained herein. The City has determined that it is desirable and in the City's best interests to assist Developer in the manner set forth herein and as this Agreement may be supplemented and amended; and

WHEREAS, the City, in order to stimulate and induce development of the Area, has agreed to sell the Property as described in the Request for Proposals and in accordance with the terms and provisions of the Act and this Agreement; and

WHEREAS, this Agreement has been submitted to the CRA Board and the City Commission of the City for consideration and review, the City has taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the City according to the terms hereof, and any and all actions of the City precedent to the execution of this Agreement have been undertaken and performed in the manner required by law; and

WHEREAS, this Agreement has been submitted to the Managing Member of the Developer for consideration and review, the Managing Member has taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Developer according to the terms hereof, and any and all action of the Developer's Managing Member precedent to the execution of this Agreement has been undertaken and performed in the manner required by law.

ACCORDINGLY, for and in consideration of the foregoing recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Remainder of page intentionally left blank

ARTICLE 1. **RECITALS:**

Section 1.01 The recitations and definitions set forth in the preamble to this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set forth in this Section 1, and this Agreement shall be construed in accordance therewith.

ARTICLE 2. **DEFINITIONS:**

Section 2.01 In addition to terms defined elsewhere in this Agreement, for the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided herein, as follows:

“Certificate of Completion” shall have the meaning set forth in subsection C of Section 16.01.

“Change in Law” means the occurrence, after the Effective Date, of an event described in Section (a) below, provided (i) such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and (ii) such event is not caused by the Party relying thereon:

a. Change in Law means any of the following: (i) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or regulation (other than by the City or with respect to those made by the City, only if they violate the terms of this Agreement); (ii) the order or judgment of any federal or state court, administrative agency or other governmental body; or (iii) the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification,

denial or failure of issuance or renewal thereof) necessary for the undertaking of the redevelopment to be performed under this Agreement.

“Closing” means the date on which Developer acquires title to the Property pursuant to this Agreement.

“Conceptual Design Elements” means Project elements that may be contained within the boundary of the Property and/or adjacent or abutting property that may become a part of the Project.

“Day” means a calendar day.

“Developer Affiliate” means an entity which is controlled by, or is under common control with Developer and which has the same manager, members, partners or shareholders owning in the aggregate, more than fifty percent (50%) of the ownership interests in Developer owning more than fifty percent (50%) of the ownership interests in said Affiliate; and as used herein, “control” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities or rights, by contract, or otherwise.

“Effective Date” means the date of approval of this Agreement by the City of Lake Wales and the Lake Wales Community Redevelopment Agency subsequent to execution by the Developer.

“Historic Gallery” means the area within the lobby area which will be utilized for display of historic memorabilia concerning the Grand Hotel as shown on the ground floor map appended hereto as Exhibit F. Designation of the Historic Gallery shall not

create any rights of the public in the lobby area or the historic memorabilia to be exhibited.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

“Permitted Exceptions” means the permitted exceptions to the title conveyed by the City to the Developer as set forth on Exhibit E.

“Plans” means the conceptual sketch drawings for the Project submitted in response to the Request for Proposals for the Project. (The Plans are available for inspection at the City’s Department of Economic Development). The Plans may also include additional contiguous property.

“Project” means the planning, development, construction, financing, and completion of the improvements contemplated by this Agreement on the Property, including, the Residential Project, the Retail Project, and the Health Club Project.

“Uncontrollable Circumstance” means any event that:

- (a) is beyond the reasonable control of and without the fault of the Party relying thereon; and
- (b) is one or more of the following events:
 - (i) A Change in Law;
 - (ii) Insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, nuclear incident, war or naval blockade;

- (iii) Epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary weather conditions or other similar Act of God;
- (iv) Governmental condemnation or taking other than by the City;
- (v) Strikes or labor disputes, other than those caused by the acts of Developer;
- (vi) Unreasonable delay in the issuance of building or other permits or approvals by the City or other governmental authority having jurisdiction;
- (vii) Shortage or unavailability of essential materials (not including a change in the price of materials) which materially changes the ability of the Party relying thereon to carry out its obligations under this Agreement;
- (viii) Unknown or unforeseeable environmental conditions;
- (ix) Unknown or unforeseeable geotechnical conditions which delay construction of the Project for more than thirty days;
and
- (x) Non-performance by the other Party which delays construction.
- (xi) Pricing of material that is in excess of the domestic material value as priced in the Proforma as presented by the Developer in response to the City's Second Request for

Proposals for redevelopment of the Grand Hotel and more than twenty-five percent (25%) above the price of the material for the elements of the Project required for issuance of the Certificate of Completion, and which exceeds the amount set aside for Project contingency by more than twenty-five percent (25%). This provision will not apply to elements of the Project other than those set forth in §16.01(C) of this Agreement. Reasonable like kind material substitutions approved by the Building Official of the City of Lake Wales shall not be rejected by the Developer.

Uncontrollable Circumstances shall not include economic hardship; strikes or labor disputes caused by the acts of Developer; a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor) or geotechnical conditions (except as described in (b)(ix) above), or the acts of any foreign government.

ARTICLE 3. **LANGUAGE AND CONTEXT:**

Section 3.01 This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- A. Definitions include both singular and plural.
- B. Pronouns include both singular and plural and cover all genders.
- C. The word “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

D. Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

E. All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, this Agreement shall control.

F. Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.

G. In connection herewith concerning written directions or authorization in respect of the investment of any funds, notwithstanding any provision hereof to the contrary, such direction or authorization orally by telephone, other telecommunication or otherwise, confirmed in writing, including by facsimile transmission, shall be appropriate and is hereby approved.

H. The Executive Director of the CRA, unless applicable law requires action by the corporate authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for

and on behalf of the City and with the effect of binding the City as limited by and provided for in this Agreement. Developer is entitled to rely on the full power and authority of the persons executing this Agreement on behalf of the City as having been properly and legally given by the City.

I. In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Developer in a different manner, Developer agrees to designate an individual (hereinafter "Authorized Developer Representative") as its authorized representative who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Developer and with the effect of binding Developer in that connection. Developer shall have the right to change its Authorized Developer Representative by providing the City with written notice of such change which notice shall be sent in accordance with Section 19.09.

ARTICLE 4. DEVELOPER'S ACCESS TO THE PROPERTY:

Developer's rights to access the Property for purposes of development in accordance with the terms of this Agreement prior to Closing are set forth in a separate document entitled "License Agreement" by and between Developer and the City (the "License Agreement"). The License Agreement is attached hereto as Exhibit H.

ARTICLE 5. PROJECT:

Section 5.01 **Title.** City has heretofore acquired free and clear title to all of the Property and the Parties intend that the Project will consist of the following:

A. Developer intends to acquire and the City intends to convey all ownership and/or necessary right in and to the Property.

B. Developer intends to redevelop the Hotel Grand in a rendition as close as legally and economically possible to preserve the exterior historic value and the first 2 floors of the open space or commercial space as per the approved RFP and proposed plans.

Section 5.02 **Residential Project.** Developer shall construct on the Property, subject to the terms hereof, not to exceed 40 residential units (the “Residential Project”).

Section 5.03 **Retail Project.** Developer shall construct, market, own, and lease, subject to the provisions of this Agreement, approximately 17,800 gross square feet of reconstructed commercial retail space (“Retail Project”) on the ground floor, except as otherwise provided herein.

Section 5.04 **Health Club Project.** The Developer shall construct, and may subsequently lease or sell subject to the provisions of this Agreement, a Health Club Project not to exceed 5,000 square feet (“Health Club Project”). In the event that the Developer acquires additional property within the City block upon which the Project is situate, and develops a portion of the additional property in excess of 5,000 square feet for a Health Club which shall comply with all applicable codes and development standards and shall support the Project, this Section 5.04 is waived.

Section 5.05 **Parking.** The Project shall satisfy the City of Lake Wales parking requirements for projects of such kind. The City’s policies for redevelopment/reuse projects in the core development area recognize that street and public parking spaces in the vicinity serve Project needs. An analysis of the prior use of the property indicates

parking requirements of 258 spaces and the Project requires 240 spaces which are historically available. The parties recognize that the success of the Project is dependent upon ample parking for residents and patrons and the City and Developer agree to work together to provide such parking without amendment to this Agreement.

Section 5.06 **Binding on Successors.** The terms of the foregoing Sections 5.02, 5.03, 5.04, and 5.05, shall run with the land, bind the successors in interest of the Developer, and shall remain in effect for twenty years from the effective date of this Agreement.

Section 5.07 **Environmental and Other Site Conditions.** Developer represents and warrants to the City that the Developer has conducted such environmental, geotechnical and/or other studies and made inspections of the Property and its improvements sufficient to conclude that the Project may be constructed, completed and operated in accordance with the requirements of this Agreement. The City has provided no documents or studies on which the Developer has been authorized to rely for its development evaluation. THE PROPERTY IS CONVEYED AS IS AND WITHOUT ANY WARRANTY CONCERNING ANY ENVIRONMENTAL CONDITIONS OR SUITABILITY FOR ANY PURPOSE.

Section 5.08 **Developer Contributions.** The Developer shall contribute the sum of \$50,000.00 for sidewalk and street improvements related directly to the Project. The Developer shall further contribute the sum of \$30,000.00 to the Historic Lake Wales Society, Inc., for consultation related to the Project. These sums shall be collectively referred to as the "Developer Contribution" and shall be paid by the Developer in the manner set forth in the Developer's response to the Request for Proposals. The

Developer Contribution shall be in addition to any other sum payable to the City pursuant to this Agreement. The Developer Contribution, excluding that portion to be paid to the Historic Lake Wales Society, Inc., shall be held by the City's Director of Finance in a separate interest bearing account.

Section 5.09 **Developer May subdivide.** The Developer may subject the Property or portions thereof to the Florida Condominium Property Act or may create vertical subdivisions with respect to the Property which the City of Lake Wales will expeditiously process, if necessary for such action. Any and all such subdivisions shall conform to the applicable statutes, ordinances, development standards and planning standards in effect at the time of commencement of the Project.

ARTICLE 6. **ACQUISITION OF THE PROPERTY:**

Section 6.01 **Closing.** Closing on the conveyance of the Property to the Developer (the "Closing") shall be not later than sixteen (16) months after the execution and delivery of this Agreement, provided that Closing shall occur sooner upon the Developer's request if the Developer has satisfied the prerequisites for Closing set forth in Article 7, below. Closing shall be held at the offices of the City Attorney, Albert C. Galloway, Jr., P.A.

Section 6.02 **Purchase Price.** The purchase price (the "Purchase Price") for the Property shall be \$10.00 and other good and valuable consideration recognized by both parties to the transaction.

Section 6.03 **Conveyance by Special Warranty Deed.** At Closing, the City shall convey to Developer, by special warranty deed, all of the City's CRA rights, title and interest to the Property, subject to the Permitted Exceptions.

ARTICLE 7. **CONDITIONS PRECEDENT TO CLOSING:**

Closing shall take place when the conditions for Closing as set forth in this Agreement have been satisfied (the "Closing Date"). The following conditions shall be complied with within the time periods set forth below or, if no time period is specified, at or prior to the Closing Date:

Section 7.01 **Milestone One and Investment Threshold.** The Developer must accomplish the following described items which generally constitute Milestone One, as more specifically set forth in Exhibit I attached hereto:

- a. Clean; seal; paint; Repair and replace all exterior windows in the Project; clean, seal and paint all exterior surfaces of the Project; and completion of all life safety requirements for issuance of a Certificate of Completion for the first floor commercial space and basement. This is based upon plans approved by the City's Fire Marshall and Building Department. Issuance of the Certificate of Completion does not provide for occupancy.
- b. The Developer must demonstrate that all of the activities completed in the foregoing subparagraph have a market value of capital expenditure as reflected in bid documents submitted to the Developer as indicated by that work having been completed by the Developer with a value of not less than One million five hundred thousand US Dollars (\$1,500,000.00) in physical improvements.

Section 7.02 **Survey.** The City shall affirm by Affidavit that the Survey supplied by the City at the time of its Request for Proposals has not changed.

Section 7.03 **Insurance.** The Developer, at its own expense, shall insure the Property in accordance with Article 18 hereof. At least five business days prior to the occupation of the Property by the Developer in accordance with the License Agreement, certificates required pursuant to Article 18 hereof evidencing the required coverages shall have been delivered to City.

Section 7.04 **Litigation.** The Developer shall provide to the City Attorney, at least ten business days prior to Closing, a description of all pending or threatened litigation or administrative proceedings involving the Developer specifying, in each case, the amount of each claim, an estimate of probable liability, the amount of any reserves taken in connection therewith and whether (and to what extent) such potential liability is covered by insurance.

Section 7.05 **Corporate Documents.** The Developer shall provide a copy of its Articles of Organization containing the original certification of the Secretary of State of its state of formation; certificates of good standing from the Secretary of State of its state of formation and all other states in which the Developer is qualified to do business; a secretary's certificate in such form and substance as the City Attorney may require; a certified copy of its Operating Agreement; and such other organizational documentation as the City Attorney may request.

Section 7.06 **Requirements of City.** At Closing, the City shall provide the following:

A. **Fee Simple Title.** The City shall convey good and marketable fee simple title to the Property by special warranty deed to Developer (the "Deed"), subject only to the Permitted Exceptions and the Permanent Easement.

B. Title Insurance/Survey.

i. A commitment for an Owner's Policy of Title Insurance for the Property ("Title Commitment"), issued by Attorneys' Title Insurance Fund, Inc., ("Title Company"), which shall be dated down as of a date not more than thirty (30) days prior to the anticipated date of the delivery and recording of a Deed with respect to the Property, with copies of all documents referenced in Schedule B to such Title Commitment. The Title Commitment shall commit to the issuance of a policy insuring fee simple ownership in the Property as of the date of the recording of the applicable Deed, with extended coverage over all general exceptions and with affirmative coverage over exclusions relating to creditors' rights, subject only to the Permitted Exceptions, and containing endorsements reasonably required by Developer and agreed to by City ("Title Policy"). The Title Policy shall be in an amount selected by the Developer not to exceed the anticipated cost of the Project.

The Developer shall bear all costs and charges in connection with the issuance of the Title Policy, the costs of recording this Agreement and any other release or conveyance documents necessary to convey fee simple title to Developer as provided herein. Developer shall additionally bear all costs and charges in connection with recordation of the deed and any security documents for any mortgage financing it obtains.

ii. In the event that any matter arises In the Title Commitment or Survey that is not a Permitted Exception or otherwise accepted by Developer (“Defect”), the City shall have thirty (30) days from receipt of notice of such defect to cure same. In the event that the City is unable to cure such Defect(s) within the above stated time period, then Developer shall, at its sole option have the right to: (a) terminate this Agreement; (b) agree to extend the Closing of the Property to permit the City additional time to remove or cause the Title Company to insure over such Defect; or (c) agree to take title to the applicable portion of the Property as it then is.

C. **No Tenants.** At Closing, the Property shall have been vacated of all tenants.

D. **Prorations.** Real Estate taxes then due and payable, if any, and all such other taxes, assessments, liens and charges of whatever nature which are then due and payable and which affect the Property shall be paid in full and removed as a lien or charge against the Property prior to delivery of the Deed.

E. **IRS Documentation.** All documentation required by Section 1445 of the Internal Revenue Code of 1986, as amended from time to time, including without limitation, an affidavit from City that it is not a “foreign person” as defined in such Code;

F. **Title Policy.** The Title Policy and any ALTA loan and extended coverage statement, along with utility letters and other items required by the Title

Insurer to insure over each of the five (5) general exceptions, as contained in the Title Commitment.

Section 7.07 **Recording and Filing.** The City shall cause a Memorandum concerning this Agreement, its exhibits (as specified by the City Attorney), and amendments and supplements hereto to be recorded and filed in the Public Records of Polk County, Florida. The Developer shall pay all fees and charges incurred in connection with any such recording. Upon recording, the City shall transmit to the Developer a copy of the Memorandum showing the recording information.

ARTICLE 8. **Omitted:**

ARTICLE 9. **THE PROJECT DESIGN AND SCHEDULE:**

Section 9.01 **The Project.**

A. **Commencement and Completion.** The Developer shall, pursuant to the Plans, subject to Uncontrollable Circumstances, and in conformity with the provisions of Article 13, commence construction of the Project not later than sixty (60) calendar days after permits for construction have been granted, and complete the construction defined as the First Milestone and commence business operations therein no later than required pursuant to this Agreement.

B. **Delay.** For each day that City or Developer is delayed by an Uncontrollable Circumstance, the dates set forth in Exhibit "D" hereto shall be extended by one (1) day for City or Developer, as applicable.

Section 9.02 **Plans.**

A. **Plans Approval.** The Developer has delivered the conceptual Plans to the City. Construction of the Project shall not proceed until Developer has

submitted final plans substantially in accordance with the conceptual Plans. **Requirements for Plans.** The Plans referred to in this Section shall contain each of the elements and conform at minimum to the requirements and descriptions set forth below:

i. **Site Plans.** A dimensioned site plan which complies with City standards indicating the arrangement and tentative location and setbacks of all proposed structures, including buildings, signs, open space, roads, parking and loading areas, pedestrian areas and walkways, easements, natural topographic features, transportation, and utilities.

ii. **Building Elevations.** Architectural renderings of all elevations of any proposed building(s) on the Property and any contiguous property or perspective drawings of the same. Final plans for all new improvements to be constructed on the Property and any contiguous property shall be designed to be sympathetic in fenestration, materials and scale to the Hotel Grand Building and the façades of downtown Lake Wales. Refuse enclosures, as well as both ground-based and roof-based mechanical and electrical equipment, shall be screened in material and a style compatible with the proposed building.

iii. **Developer's Continuing Obligation.** The Developer will work with the City to resolve construction impacts that affect the neighborhood throughout the period of construction.

iv. **Project Milestones:** The contemplated Milestones for the Project are set forth in Exhibit "I".

Section 9.03 **Special Provisions Relating to the Grand Hotel.**

A. **Historic Features.** It shall be Developer's responsibility to identify, preserve, retain and rehabilitate the historic features of the Grand Hotel.

B. **Rehabilitation of Historic Features.** The Plans shall provide for the retention, restoration, and rehabilitation of the Historic Features of the original Grand Hotel. The rehabilitation of the Grand Hotel shall conform to applicable code and accessibility standards. The Developer shall submit plans for the modification or rehabilitation of the Historic Features for review and approval of the Historic District Regulatory Board.

C. **Grand Hotel not to be Demolished.** The Grand Hotel shall not be demolished, altered or modified for a period expiring fifty years following the effective date of this Agreement. Notwithstanding any other provision of this Agreement, the provisions of this Section shall survive the closing, shall run with the land and shall be binding upon the successors in interest of the Developer.

Section 9.04 **No Material Changes.** Prior to Completion of the Project, the Developer shall not cause any material change to the Project, including, without limitation, changes that would: (a) change the total number of units of the Residential Project or the total square footage of Retail Project (estimated to be 17,800 square feet) by more than 10%; (b) change the proposed use of the Project other than as set forth in Section 5.03; (c) delay the completion of the Project in excess of three months. With respect to any material change the Developer shall not authorize or permit any such change prior to the receipt by

the Developer of the City's written approval, which approval shall not unreasonably be withheld.

Section 9.05 **City of Lake Wales Approval.** Any approval granted by the City of the conceptual Plans are for the purposes of this Agreement only and does not affect or constitute any approval required by any other City department or pursuant to any City ordinance, code, regulation or any other governmental approval, nor does any approval by City pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the Property or the Project.

Section 9.06 **Progress Reports and Status Updates.** The Developer shall meet with the City monthly and shall provide City with written reports every other month or as requested by the Director of Economic Development and status updates detailing the status of the Project, including a revised completion date, if necessary (with any change in completion date requiring City's written approval pursuant to this Agreement).

Section 9.07 **Barricades.** Prior to commencing any construction requiring barricades, the Developer shall install a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations. City retains the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades which shall not be unreasonably withheld.

Section 9.08 **Signs.** The Developer may utilize signs on the Property during the construction of the Project of a size of and a style in conformity with the City's sign, zoning and building codes.

Section 9.09 **Utility Connections.** The City of Lake Wales warrants that the City's water, wastewater and storm sewer lines are of a sufficient size and in a condition to accommodate Developer's Project. The Developer may connect all on-site water and wastewater lines constructed on the Property to City utility lines existing on or near the perimeter of the Property, provided the Developer first complies with all City requirements governing such connections, including the payment of customary fees and costs related thereto that have not been waived or reimbursed through other agreed upon matters. The Project shall benefit from reduced Impact Fee Assessment for the property (the Grand Hotel) in accordance with the terms of the City/County Interlocal Agreement for development of the Core Development Area of the City of Lake Wales. Developer shall receive applicable credits for the existing water meters which historically served the Project.

ARTICLE 10. DEVELOPER REPRESENTATIONS AND WARRANTIES:

Developer hereby represents and warrants, to and for the benefit of City of Lake Wales CRA and the City of Lake Wales, the following:

Section 10.01 **General.** the Developer represents, warrants and covenants, as of the date of this Agreement and as of the date of each disbursement of City Funds for credits or other federal requirements hereunder, that:

A. The Developer is a Florida limited liability company duly organized, validly existing, qualified to do business in Florida, and licensed to do business in any other state where, due to the nature of its activities or properties, such qualification or license is required;

B. the Developer has the right, power and authority to enter into, execute, deliver and perform this Agreement;

C. the execution, delivery and performance by the Developer of this Agreement has been duly authorized by all necessary action, and does not and will not violate its Articles of Organization as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which the Developer is now a party or by which the Developer is now or may become bound;

D. unless otherwise permitted pursuant to the terms of this Agreement, the Developer shall acquire and shall maintain good, indefeasible and merchantable fee simple title to the Property free and clear of all liens (except for the Permitted Exceptions, non-governmental charges that the Developer is contesting in good faith) provided, that after the issuance of Certificate of Occupancy, the Developer may sell or transfer all or any portion of the Property.

E. the Developer is now and shall remain solvent and able to pay its debts as they mature during the time the Project is under construction;

F. there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending or, to the Developer's knowledge, threatened or affecting the Developer which would impair its ability to perform under this Agreement;

G. the Developer has and shall maintain all government permits, certificates and consents (including, without limitation, appropriate environmental

approvals) necessary to conduct its business and to construct, complete and operate the Project;

H. the Developer is not in default with respect to any indenture, loan agreement, mortgage, deed or any other agreement or instrument related to the borrowing of money to which the Developer is a party or by which the Developer is bound;

I. prior to the issuance of a Certificate of Completion, the Developer shall not do any of the following without the prior written consent of the City (1) be a party to any liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any portion of the Property (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business; (3) enter into any transaction outside the ordinary course of the Developer's business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity except in the ordinary course of business; (5) enter into any transaction that would cause a material and detrimental change to the Developer's financial condition;

J. the Developer has not incurred, and, prior to the issuance of a Certificate of Completion, shall not, without the prior written consent of the City of Lake Wales CRA, allow the existence of any liens against the Property other than the Permitted Liens, Lender financing, non-governmental charges that the Developer is contesting in good faith pursuant to the terms of this Agreement, and liens for which the Developer has obtained insurance; or incur any indebtedness,

secured or to be secured by the Property or any fixtures now or hereafter attached thereto, except Lender financing disclosed;

K. the Developer has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or pursuant to the City ordinance, for services to any City agency ("City Contract") as an inducement for the City to enter into the Agreement or any City Contract with the Developer in violation of law;

L. to the best of the Developer's knowledge after diligent inquiry, no judgments are outstanding against the Developer, nor is there now pending or threatened, any litigation, contested claim or governmental proceeding by or against the Developer or affecting the Developer or its property, or seeking to restrain or enjoin the performance by the Developer of the Agreement or the transactions contemplated by the Agreement, or contesting the validity thereof;

M. to the best of the Developer's knowledge after diligent inquiry, the Developer is not in default with respect to any order, writ, injunction or decree of any court, government or regulatory authority or in default in any respect under any law, order, regulation or demand of any governmental agency or instrumentality, a default under which would have a material adverse effect on the Developer or its business;

N. to the best of the Developer's knowledge after diligent inquiry, there is no default by the Developer or any other party under any material contract, lease, agreement, instrument or commitment to which the Developer is a party or by which the company or its properties is bound; and

O. to the best of the Developer's knowledge after diligent inquiry, all of the assets of the Developer are free and clear of mortgages, liens, pledges, security interests and encumbrances except for those specifically set forth in the Documents.

Section 10.02 **Covenants to Construct.** Upon the Developer's receipt of all required building permits and governmental approvals, the Developer shall construct the Project in accordance with this Agreement and all Exhibits attached hereto, the Conceptual Drawings, Plans and Specifications, Project Budget and all amendments thereto, and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the Property and/or the Developer.

Section 10.03 **Developer to Pay all Fees.** The Developer shall pay all of the applicable fees, rates and charges in connection with the construction of the Project unless they are specifically waived, off-set or otherwise agreed to be satisfied by alternative methods.

Section 10.04 **Covenant as to Use.** The Developer shall use the Project solely as permitted in this Agreement.

Section 10.05 **Employment Opportunity.** The Developer shall abide by, and contractually obligate and use reasonable efforts to cause the general contractor and each subcontractor to abide by the terms set forth herein. The Developer shall give due consideration to all local trades contractors and professionals in the bidder process for their project.

Section 10.06 **Conflict of Interest.** The Developer represents, warrants and covenants that, to the best of its knowledge no member, official, or employee of the

City, or of any commission or committee exercising authority over the Project, or any consultant hired by the City or the Developer with respect thereto, owns or controls, has owned or controlled or will own or control any interest, and no such person shall represent any person, as agent or otherwise, who owns or controls, has owned or controlled, or will own or control any interest, direct or indirect, in the Developer's business or the Property.

Section 10.07 **Insurance.** The Developer, at its own expense, shall comply with all insurance provisions of this Agreement as set forth in Article 18, hereof, and as may from time to time be modified or amended.

Section 10.08 **Developer's Liabilities.** The Developer shall not enter into any transaction that would materially and adversely affect its ability to perform its obligations hereunder or to repay any material liabilities or perform any material obligations of the Developer to any other person or entity. The Developer shall immediately notify the City of any and all events or actions which may materially affect the Developer's ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements.

Section 10.09 **Compliance with Laws.** To the best of the Developer's knowledge, after diligent inquiry, the Project is and shall be in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project. After Closing, Developer shall maintain said compliance. Upon the City's request, the Developer shall provide evidence satisfactory to the City of such compliance.

Section 10.10 **Survival of Covenants.** All warranties and representations of the Developer contained in Section 10.01 D, G and L, 10.06 through 10.09 and elsewhere in this Agreement shall be true, accurate and complete at the time of the Developer's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and the Closing and shall be in effect until the Certificate of Completion is issued.

Section 10.11 **Adherence to City of Lake Wales Codes, Ordinances and Development Standards:** All development and construction of the Project shall comply in all respects with the provisions in the building, plumbing, mechanical, electrical, storm water management, fire prevention, property maintenance, zoning and subdivision codes of the City and all other germane codes and ordinances of the City of Lake Wales. Developer has examined and is familiar with all the building regulations, zoning ordinances, property maintenance regulations, environmental regulations and land use regulations, codes, ordinances, federal, state and local ordinances and represents and warrants that the Project will be developed in accordance with same.

Section 10.12 **Quality of Material:** Developer shall not specify, price, purchase or accept material(s) known to be or under review or investigation as being inferior to generally accepted construction material specifications.

ARTICLE 11. DEVELOPER OBLIGATIONS, COVENANTS AND AGREEMENTS:

Subject to the terms and provisions of this Agreement, Developer shall have the following obligations with respect to the Project:

Section 11.01 **Submission of Plans.** Developer has heretofore submitted to the City conceptual drawings (the “Plan”) including elevations with regard to the Project which are referred to in Exhibit B and made a part hereof

Section 11.02 **Zoning.** The Project shall be planned and constructed in accordance with the City’s Zoning Code.

Section 11.03 **Preliminary Project Budget.** A preliminary project budget (“Project Budget”) setting forth line item costs budgeted with respect to the acquisition, design, construction and development of each aspect of the Project is attached hereto as Exhibit C. The Project Budget will, by the nature of the Project, be amended from time to time to reflect actual requirements of various agency reviews and Building and Fire Code requirements.

Section 11.04 **Project Schedule.** A preliminary schedule, as submitted with the RFP, with respect to the completion of each material aspect of the Project is attached hereto as Exhibit D. Developer shall commence and complete the Project as described in the Project Milestones, subject to the terms and provisions of this Agreement and subject to Uncontrollable Circumstances.

Section 11.05 **Construction of the Project.** Developer covenants to construct the Project as described in this Agreement. Developer shall develop the Project with materials, specifications and workmanship that are standard for the commercial and residential industry for comparable historical/luxury residential and commercial properties and as specified herein.

Section 11.06 **Covenant to Redevelop, Commence and Complete.** Developer shall construct, or cause the construction of, each aspect of the Project in substantial

accordance with the Plans and the plans and specifications submitted for building permits thereunder, with respect to the Project, within the time periods specified in the Project Milestones and in material compliance with all applicable laws, rules, regulations and ordinances, subject to (a) the completion by the City of its obligations that may be conditions thereto, (b) the issuance of permits, licenses and approvals for which timely application is made, and (c) Uncontrollable Circumstances (collectively, the "Permitted Delays"). Unless otherwise permitted by City, Developer shall commence the construction of the Project in accordance with this Agreement, and shall substantially complete construction within thirty (30) months of commencement of construction subject to Uncontrollable Circumstances. Developer shall use commercially reasonable efforts to cause the Project to be completed by licensed contractors.

Section 11.07 **Payment of Charges/City Payment.** Developer shall pay when due, or if not known to be due, then within a reasonable time thereafter, all Charges (hereinafter defined) arising or incurred from and after the date hereof with respect to the Project. In the event, at any time or times after the date hereof and prior to Completion, Developer shall fail to pay, bond or insure over the Charges, Developer shall so advise the City thereof in writing, and the City may, without waiving or releasing any obligations or liability of Developer under this Agreement, in its sole discretion, make such payment, or any part thereof, obtain a discharge, bond or insure over, or take any other action with respect thereto which the City deems reasonable advisable or permissible, including, without limitation, no action if not due during the period of any protest period properly invoked by Developer. All sums so paid by the City and any expenses, including reasonable attorneys' fees, courts costs, expenses and other

charges relating thereto, shall be payable by Developer to the City within thirty (30) days after written demand. As used herein, the term "Charges" shall mean all national, federal, state, county, City and/or other governmental (or any instrumentality, division, agency, body or department thereof) taxes, levies, assessments, charges, liens claims or encumbrances or non-governmental claims or liens caused by the acts of Developer or its agents upon and/or relating to the Project which directly affect any interest of the City in the Project, and which are not otherwise the obligation of the City.

Section 11.08 **Compliance with Laws.** The Project shall be constructed and completed in accordance with the requirements of this Agreement and shall be in conformity with all applicable laws, ordinances and regulations, as modified by the terms of this Agreement. Developer shall be governed by, and shall use its best efforts to adhere to and obey any and all applicable federal, state and local laws, statutes, ordinances, rules and regulations applicable to the Project as may be applicable from time to time.

Section 11.09 **Developer Meetings.**

The Developer shall designate a representative of the Developer with full power and authority to meet with the City's designated representatives, as hereinafter provided, for purposes of carrying out the provisions of this Agreement.

Section 11.10 **Restrictions/Additional Covenants.** Developer shall construct and operate the Property in accordance with the uses set forth herein, and shall observe, and cause its agents and employees to observe all restrictions and covenants set forth in this Agreement.

Section 11.11 **Limitation of Usage.** The Health Club Parcel shall be limited to operation as a health club subject to Section 5.04 herein.

ARTICLE 12. **NON-DISCRIMINATION:**

Section 12.01 **Employment Opportunity.** The Developer, on behalf of itself and its successors and assigns, hereby agrees, and shall contractually obligate its or their various contractors, subcontractors or any Affiliate of the Developer operating on the Property (collectively, with the Developer, the “Employers” and individually an “Employer”) to agree, that for the Term of this Agreement with respect to Developer and during the period of any other party’s provision of services in connection with the construction of the Project or occupation of the Property, as follows:

A. **No Discrimination in Employment.** No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, disability, sexual orientation, military discharge status, marital status, parental status or source of income. Each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without limitation: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Compliance with Employment Laws. Each employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, and any subsequent amendments and regulations promulgated thereto.

Section 12.02 **No Discrimination in Sale or Lease.** The Developer shall not discriminate based upon race, color, religion, sex, national origin or ancestry, age, disability or sexual orientation in the sale, lease or rental, or in the use or occupancy of the Project or any improvements located or to be constructed thereon, or any part thereof.

Section 12.03 **Advertising MBE/WBE Opportunities.** The Developer shall advertise in forms of media, including one or more daily newspapers and/or trade publications, to solicit MBE/WBE participation in the Project.

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ARTICLE 13. **CONSTRUCTION:**

Section 13.01 **Submittals for Permits.** Developer shall complete the process of submittals for all governmental approvals required for the issuance of building permits required for Milestone One work within One hundred twenty (120) days after action by the City approving this Agreement. However, all other Milestone One work shall commence not later than Forty-five (45) days from the date of this Agreement.

Section 13.02 **Hours of Construction.** Developer shall abide by the following construction hours: Monday through Friday 6:30 a.m. To 8 p.m., Saturday 7 a.m. To 5 p.m. Upon written request of the Developer with an adequate description of the proposed work, and with the agreement of the City's Economic Development Director, construction hours may be adjusted to expedite the construction schedule. Sunday construction and later evening hours shall be permitted for work to be performed on the interior of the building once the building is enclosed.

Section 13.03 **Pedestrian Passage.** Pedestrians may not utilize the existing sidewalks adjacent to the Project site.

Section 13.04 **Staging.** The parties shall cooperate to assure that construction of the Project is carried out in a manner that minimizes the negative impact and inconvenience to the neighborhood and surrounding community. The Parties shall confer and agree upon procedures governing staging, staging areas, traffic controls, construction boundaries, worker parking, and other matters that relate to the construction.

Section 13.05 **Indemnity.** Except with respect to matters that arise out of the willful misconduct or negligence of the City, its trustees, agents, contractors and/or

employees, Developer hereby agrees to indemnify, defend and hold the City harmless from and against any costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including without limitation, reasonable attorneys' fees and court costs, including any appeal) suffered or incurred by the City arising from or in connection with (i) the work performed by the Developer, its agents, contractors and/or employees under this Agreement, or (ii) material misrepresentations or omissions by Developer in this Agreement; or (iii) the failure of Developer to cure or otherwise correct any material misrepresentations or omissions of Developer in this Agreement or any other agreement relating hereto; (iv) any violation, which occurred during the time Developer owned and/or controlled, as applicable, the Property, of any applicable statute, rule or regulation for the protection of the environment ("Environment Violation"), which occurs or is alleged to occur upon the Property or in connection with the imposition of any governmental lien for the recovery of environmental clean-up costs expended by reason of Environmental Violation; provided that to the extent that the City is strictly liable or alleged to be strictly liable in respect to the Property under any such environmental statute as a result of the Environmental Violation, Developer's obligation to the City under this indemnity shall likewise be without regard to fault on the part of Developer, who will also indemnify the City with respect to the Environmental Violation which results in liability to the City. The indemnity in subsection (iv) shall not apply to any act or omission resulting in the Environmental Violation which arises from the City's own negligence.

ARTICLE 14. **TRANSFER AND ASSIGNMENT:**

Section 14.01 **Assignment to Affiliates.** Any Developer Affiliate shall become the Developer hereunder with respect to the Property owned and shall be entitled to all the rights hereunder and assumes all obligations hereunder with respect to the Project so transferred. Developer guarantees the performance of Developer's affiliates. Nothing in this Section prohibits Developer from accepting a new member, including a financial member, so long as the Developer remains the Managing Member of the Project.

Section 14.02 **Other Assignments.**

A. **No Assignment Prior to Closing.** This Agreement is personal to the Developer and may not be assigned prior to the City's issuance of a Certificate of Completion.

B. **Notice of Assignment Following the Commencement of Operations.** Following the issuance of a Certificate of Completion, this Agreement may be assigned with notice to the City.

C. **Sale of Residential Units.** Notwithstanding any other provision hereof, individual residential units may be sold to third parties. No notice thereof need be given to the City.

ARTICLE 15. **CITY COVENANTS, OBLIGATIONS AND REPRESENTATIONS:**

The City hereby represents to and for the benefit of Developer, and its permitted successors and/or assigns, as follows:

Section 15.01 **Existence/Authority.** The City is a municipal corporation and the CRA is a body politic and corporate under the laws of the State of Florida with power

and authority to enter into this Agreement and to consummate all of the transactions contemplated hereby.

Section 15.02 **Conflict.** The execution of this Agreement and the consummation of all of the transactions contemplated hereby will not result in any breach of, or constitute a default under, any agreement, contract, lease, mortgage, indenture, or other instrument to which the City is a party.

Section 15.03 **Litigation/Proceedings.** There are no actions, suits or proceedings pending, or to the knowledge of the City threatened, against or affecting the City, at law or in equity, or before any governmental authority, which, if adversely determined, would impair the ability of the City to perform all of its obligations under this Agreement.

Section 15.04 **Board Action.** All actions of the Mayor and Commissioners and of the CRA Board of the City of Lake Wales required to be taken to authorize execution of this Agreement have been validly and duly taken in accordance with the law and the officers of the City and CRA signing this Agreement have been duly authorized to execute this Agreement on behalf of the City.

Section 15.05 **Issuance of Building and Occupancy Permits and Timely Inspections.** The City shall promptly issue building and construction permits, temporary and final Occupancy Certificates or state in writing to the Developer the reason for denial within thirty days of submittal of a complete application therefor. The City shall promptly perform required inspections upon request by Developer or its contractors.

ARTICLE 16. **OBLIGATIONS, COVENANTS AND AGREEMENTS:**

Section 16.01 **Acquisition/Conveyance of Property.** The CRA currently owns the Property. The CRA shall convey the Property on the terms and conditions generally set forth herein and specifically as provided in this Agreement:

A. **The Project.** The CRA holds clear title to the Property subject to the Permitted Exceptions.

B. **Commencement of Construction.** If the Developer does not initiate construction pursuant to approved and permitted plans for the Project within One hundred eighty (180) days of final action of City approving this Agreement and the License Agreement (Exhibit G), subject to Uncontrollable Circumstances, the Developer shall, at the City's option, relinquish any and all rights granted pursuant to the terms of the License Agreement and shall hold the City harmless against all claims, including monetary claims, in any way related to Developer's activities on the Property.

C. **Certificate of Completion.** After completion of the construction of Milestone One of the Project (exclusive of any interior finishes for the residential, commercial, or office units, and inclusive of all corridors, passageways and common areas within the building envelope) in accordance with this Agreement, the City shall promptly, at Developer's request and in accordance with the generally applicable City Ordinances, furnish Developer with an appropriate instrument so certifying such completion ("Certificate of Completion"). The Certificate of Completion as to Milestone Two (inclusive of all corridors, common areas and passageways within the residential portion of the Project) shall be a

conclusive determination of satisfaction and termination of the covenants in this Agreement with respect to the obligations of Developer and its successors and assigns to construct or cause the Project to be constructed. The City shall respond to Developer's written request for a Certificate of Completion within the time period provided by the Florida Building Code or applicable provision of the Florida Statutes after the City's receipt thereof, either with the issuance of a Certificate of Completion or with a written statement indicating in adequate detail how Developer has failed to complete the Project in conformity with this Agreement, and what measures or acts will be necessary, in the reasonable opinion of the City, for Developer to take or perform in order to obtain the Certificate of Completion. If the City requires additional measures or acts of Developer to assure compliance, Developer shall resubmit a written request for a Certificate of Completion upon compliance with the City's response as given above.

D. **Permit Fees.** The Developer shall be obligated to pay, in connection with the development of the Project, only those building, permit, engineering, and inspection fees assessed on a uniform basis throughout the City and are of general applicability to other property within the City with respect to the Project, unless otherwise waived pursuant to this Agreement or in accordance with the provisions of the Interlocal Agreement between the City and Polk County concerning such fees within redevelopment areas.

ARTICLE 17. PERFORMANCE/DEFAULT/TERMINATION:

Section 17.01 **Time is of the Essence.** Time is of the essence of this Agreement.

Section 17.02 **Events of Default.** The occurrence of any one or more of the following events, subject to the provisions of Section 17.04, shall constitute an “Event of Default” by the Developer hereunder:

A. **Failure to Perform this Agreement.** The failure of the Developer to perform, keep or observe any of the material covenants, conditions, promises, agreements or obligations of the Developer under this Agreement or any related agreement;

B. **Failure to Perform Other Agreements.** The failure of the Developer to perform, keep or observe any of the material covenants, conditions, promises, agreements or obligations of the Developer under any other agreement with any person or entity if such failure may have a material adverse effect on the Project;

C. **False Statements.** The making or furnishing by the Developer to the City of any material representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect;

D. **Bankruptcy and Financial Failure.** The commencement of any proceedings in bankruptcy by or against the Developer or for the liquidation or reorganization of the Developer, or alleging that the Developer is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of the Developer’s debts, whether under the United States Bankruptcy Code or under any other state or federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving the Developer; provided, however, that if such commencement of

proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within sixty (60) days after the commencement of such proceedings;

E. Appointment of Receiver. The appointment of a receiver or trustee for the Developer, for any substantial part of the Developer's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of the Developer; provided, however, that if such appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within sixty (60) days after the commencement thereof, provided that nothing in this subsection applies to a trustee appointed pursuant to the administration of a decedent's estate;

F. Unsatisfied Judgment. The entry of any judgment or order against the Developer which remains unsatisfied or undischarged and in effect for sixty (60) days after such entry without a stay of enforcement or execution, the effect of which would have a material adverse effect on the ability of the Developer to perform its obligations under this Agreement;

G. Default Under Lender financing. The occurrence of a monetary event of default under any lender financing, which default is not cured within any applicable cure period; or

H. Dissolution. The dissolution of the Developer;

Section 17.03 **Remedies.** Upon the occurrence of an Event of Default, the City may terminate this Agreement and all related agreements, subject to the curative period set

forth in Section 17.04. The City shall, in its sole discretion, call all financial instruments and cash deposits held in its control without offset or delay as provided in each such instrument and this Agreement to provide funding for the completion of the Project. Further, the City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein. In addition to any other remedy, the City may also call the financial guarantee provided for in Section 11.05.

Section 17.04 **Curative Period.** In the event the Developer shall fail to perform a monetary covenant which the Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer shall have failed to perform such monetary covenant within thirty (30) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event the Developer shall fail to perform a non-monetary covenant which the Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer shall have failed to cure such default within forty-five (45) days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such forty-five (45) day period, the Developer shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within

such forty-five (45) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

Section 17.05 **No Waiver by Delay.** Any delay by the City in instituting or prosecuting any actions or proceedings or in otherwise exercising its rights shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the City and the Developer should still hope to otherwise resolve the problems created by any Default involved). No waiver in fact made by the City with respect to any specific Default by Developer shall be considered or treated as a waiver of the rights of the City with respect to any other Defaults by Developer or with respect to the particular Default except to the extent specifically waived in writing. No waiver in fact made by the Developer with respect to any specific Default by City shall be considered or treated as a waiver of the rights of the Developer with respect to any other Defaults by City or with respect to the particular Default except to the extent specifically waived in writing.

ARTICLE 18. **INSURANCE:**

Section 18.01 **Evidence of Insurance.** The Developer agrees that during such periods that the Developer is constructing or renovating the Property, it will cause the same to be insured against loss or damage by fire, windstorm, hail, explosion, riot and civil commotion, smoke damage, and such other risks as are from time to time included in "extended coverage" endorsements (including during construction thereof, builder's risk insurance) in an amount and form so that the proceeds are sufficient to provide for actual replacement of the respective improvements. The Developer shall furnish the City with Certificates of Insurance. The Certificates are to be signed by a person

authorized by the insurer to bind coverage on its behalf. The City is to be specifically included as an additional insured on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the Project, a renewal certificate shall be issued 30 days prior to said expiration date. The policy shall provide a 30-day notification clause in the event of cancellation or modification of the policy. All certificates of insurance must be on file with and approved by the City before the commencement of any work activities. Said insurance policies of the Developer shall provide for waivers of subrogation, and shall be at levels and with terms that are set forth as follows:

Section 18.02 **Commercial General Liability – Occurrence Form Required.** Developer shall maintain commercial general liability (CGL) insurance with a limit of not less than \$1,000,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location/project in the amount of \$2,000,000.00. Products and completed operations aggregate shall be \$1,000,000.00. CGL insurance shall be written on an occurrence form and shall include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x. c, u) exposures, personal injury and advertising injury. Fire damage liability shall be included at \$1,000,000.00.

Section 18.03 **Workers Compensation.** Coverage is to apply for all employees for statutory limits in compliance with the applicable state and federal laws.

Section 18.04 **Commercial Automobile Liability Insurance.** Developer shall maintain automobile liability insurance with a limit of not less than \$1,000,000.00 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any vehicle (including owned, hired and non-owned vehicles). The policy shall be endorsed to provide contractual liability coverage.

ARTICLE 19. **MISCELLANEOUS:**

Section 19.01 **Term of Agreement/Recording/Covenants Running with Land.** The term of this Agreement shall commence as of the date of its execution by the last party to execute the Agreement after approval by the City and by the Managing Member of Developer and shall terminate twenty years from the Effective Date. The Parties agree to execute and deliver the original of this Agreement in proper form for recording in the Public Records of Polk County, Florida, and the Parties hereto acknowledge that this Agreement, or a memorandum thereof, may be recorded with the Clerk of the Circuit Court to evidence the obligations and covenants contained herein, each of which shall, upon such recording, run with and bind the Property and each successor in interest of the Developer until such time as this Agreement has been terminated as provided above, or by written instrument executed by the parties hereto. Except to the extent expressly limited herein, any party hereto shall have the right to avail itself of any equitable or legal right or remedy to enforce the provisions hereof.

Section 19.02 **Amendment.** Except as permitted in this Agreement, and except for non-material matters, this Agreement and any Exhibits attached hereto, may be amended only by the mutual consent of the Parties and by the adoption of an ordinance

or resolution of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

Section 19.03 **No Other Agreements.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof, and, together with the Plans and other Exhibits, represents the full integration of the agreement of the Parties.

Section 19.04 **Consent.** Except as otherwise provided in this Agreement, whenever herein consent or approval of either party is required, such consent or approval shall not be unreasonably withheld.

Section 19.05 **Conflict of Interest/Limitation of Liability.** No elected or appointed official or employee of the City shall have any personal interest, direct or indirect, in this Agreement; nor shall any such elected or appointed official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested. No individual elected or appointed official or employee of the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement.

Section 19.06 **Mutual Assistance.** The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

Section 19.07 **Limited Applicability of City's Approval.** Any approval made by the City with regard to provisions of the Plans are for the purposes of this Agreement only and do not affect or constitute approvals required for building permits or approvals required pursuant to any other ordinance of the City, nor does any approval by the City pursuant to the Agreement constitute approval of the quality, structural soundness or the safety of the Project.

Section 19.08 **Remedies Cumulative.** The remedies of a party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any of the other remedies of such party unless specifically so provided herein.

Section 19.09 **Notices.** All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be in writing and shall be sufficiently given on: (a) the third "business day" (defined as Monday through Friday, excluding Saturday, Sunday and all nationally recognized holidays) following the day on which the same shall have been mailed by certified mail, postage and fees prepaid, return receipt requested; or (b) the next succeeding business day if sent by nationally recognized overnight courier; or (c) when received, if received on a business day, otherwise on the first business day after receipt, if sent by direct messenger, and in all cases, addressed as follows:

If to City:	CITY OF LAKE WALES PO Box 1320 Lake Wales, FL 33859 Attention: Judith H. Delmar, City Manager 863-678-4182
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With copy to: Albert C. Galloway, Jr., Esquire
Albert C. Galloway, Jr., P.A.
PO Box 3339
Lake Wales, FL 33859
863-679-5333

If to Developer: DIXIE-WALESBILT, LLC,
a Florida limited liability company
236 Lake Like Road
Winter Haven, FL 33884

With copy to: John P. Collins, Esquire
John P. Collins, P.A.
59 Lake Morton Drive
Lakeland, FL 33801

The Parties, by notice given hereunder, may designate any further or different address to which subsequent notices, certificates, approvals, consents or other communications shall be sent.

Section 19.10 **Governing Law and Venue.** The provisions of this Agreement shall be governed by the law of the State of Florida, and the parties agree that venue shall lie in the Courts of the 10th Judicial Circuit in and for Polk County, Florida.

Section 19.11 **Paragraph Headings.** The paragraph headings and references are for the convenience of the Parties and are not intended to limit, vary, define or expand the terms and provisions contained in this Agreement and shall not be used to interpret or construe the terms and provisions of this Agreement.

Section 19.12 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which, when taken together, shall constitute a single agreement.

Section 19.13 **Broker's Fees.** The Developer and the City each represents to the other that it has not engaged the services of any finder or broker with respect to the purchase of the Property and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue by means of the acquisitions of any portion of the Property, and each agrees to hold the other harmless from such commissions or fees as are alleged to be due from any party making such representations.

Section 19.14 **Attorney's Fees and Costs.** In any litigation arising from or in any way related to this Agreement or the Project, each party shall bear its own respective attorney's fees and costs.

Section 19.15 **Successors and Assigns.** The terms, conditions, covenants and restrictions of this Agreement shall extend and apply to and bind the successors and assigns of City and the successors and assigns of Developer.

Section 19.16 **Severability.** If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held invalid, the remainder of the Agreement shall be construed as if such invalid part were never included herein, and the Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

Section 19.17 **Provisions not Merged with Deed.** None of the provisions of this Agreement are intended to, nor shall they be merged, by reason of any deed transferring title to any portion of the Property from the City to the Developer or any successor in interest, and said deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 19.18 **No Partnership or Joint Venture.** The parties are not partners, fiduciaries or joint venturers, and nothing in this Agreement creates or will create the relation of partners, fiduciaries or joint venturers among or between the parties. Without limiting the generality of the foregoing, each is acting independently, is obligated to separately account for their respective activities for tax and other purposes, and expressly disclaim any fiduciary duty to the other.

Section 19.19 **No Third Party Beneficiaries.** The terms, conditions, obligations and benefits of this Agreement are intended solely for the parties hereto. No third party is an intended beneficiary of this Agreement nor is entitled to enforce any provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

City of Lake Wales

By: _____
L. Jack Van Sickle, Its Mayor

Attest: _____
City Clerk

Lake Wales Community Redevelopment Agency

By: _____
Its Chairman

Attest: _____
Executive Director

DEVELOPER:

Dixie-Walesbilt, LLC
a Florida limited liability company

By: _____

Its Managing Member

Witness

Witness

EXHIBIT LIST

Those Exhibits below identified with an asterisk are to be finalized by the Developer during the time period in which the License Agreement is in effect.

- A. Legal Description
- B. The Plans
- C. Project Budget
- D. Project Schedule
- E. Permitted Exceptions
- F. Lobby Display Area Map
- G. License Agreement
- H. Copy of Agency Representation for Ray Brown on behalf of the Developer
- I. Project Milestones

Exhibit A

Legal Description

Commonly known as 115 North First Street, Lake Street, Lake Wales, Florida.

Exhibit B

The Plans

The Plans submitted with the response to the RFP are conceptual and serve as a guide for redevelopment of the Property.

Exhibit C

Project Budget submitted with RFP

Exhibit D
Project Schedule

Exhibit E

Permitted Exceptions

Exceptions appearing in Schedule B to the Title Insurance Commitment subsequent to preparation of same.

Improvements on the subject property encroaching onto adjoining property and improvements on adjoining property encroaching on the subject property, as shown on survey Job No.: ASM51734 dated January 9, 2005 by American Surveying & Mapping

Exhibit F

Hotel lobby map showing area for public display of historic memorabilia concerning the Grand Hotel.

Exhibit G
License Agreement

Exhibit H

Agency Representation for Ray Brown (LLC Articles of Organization)

Exhibit I Project Milestones

Milestones are identified for the purpose of this document as a grouping of sequential project elements that provide a definable "Major Completion" that include numerous sub-projects and a definable Market Value Capital Expenditure on the physical improvements to the building during a period of time that still provides scheduling flexibility.

MILESTONE ONE

- Consultants continue to work with the State and Federal Agencies on all facets of the qualifying of the Project for the Historic Preservation Tax Credits; Compliance with the "Secretary of the Interior's Standards for the Rehabilitation and Guidelines for the Rehabilitating Historic Buildings"; Obtain all required approvals from the Department of the Interior/National Park Service ("NPS") for the work;
- Preparation of all plans through Architect / Engineers / Green Program (including possible application for the use of Geothermal Alternative Energy Systems);
- Preparation of all plans for the sequenced work for:
 - Prepare the entire building exterior for cleaning' sealing and painting inclusive of the commercial first floor and the residential tower. This includes all exterior faces of the building, parapet walls, windows openings, fenestrations, portals, and architectural articulations;
 - Prepare, repair, replace or as otherwise required all windows on the exterior walls from the ground level to the top floor;
 - Selected and approved demolition and removal of material as approved by the NPS based upon sufficient evaluation of debris for any historical material or elements that may have been damaged during vandalism of the building;
 - Prepare and update with corrective actions all elements of the OSHA Plan required for each work element of the Project.
- Prepare, design, construct, install or otherwise complete the elements of the Life Safety Systems as defined by the appropriate National Building and Fire Codes, and required NPS.
- Commence the hard marketing of the commercial and residential project.

The time elapsed is 16 months from the Effective Date of the Agreement to which this Exhibit is appended. The projected minimum Market Capital Investment Expenditure including those expenditures made during the Initial License Agreement Period will be One Million Five Hundred Thousand Dollars (\$1,500,000.00). This will be verified by contracts and or bid (3) documents for the work required in the Milestone One project element of the building.

MILESTONE TWO

- Continued work on the vertical residential component of the project;
- Full design of the Second Life Safety System for the vertical tower, inclusive of the refurbishing of the two elevators located in the lobby;