

City of Melbourne

City Hall • 900 E. Strawbridge Avenue, Melbourne, FL 32901
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Melbourne Downtown Community Redevelopment Agency

August 14, 2018 • 6:30 PM

The following item will be heard during the regular meeting of the Melbourne City Council. The meeting will begin at 6:30 p.m. See full City Council agenda for location of the following item.

1. A joint resolution of the City Council and the Melbourne Downtown Community Redevelopment Agency (CRA), in consideration of approvals for a public private development application for the construction of a Hilton Tapestry Hotel and associated public infrastructure improvements in Downtown Melbourne; providing for a three-party partnership among the City, the CRA, and 801 Strawbridge Hotel, LLC, under a master redevelopment agreement, which includes a transfer agreement, an off-site parking agreement, a redevelopment incentive agreement, and an off-site infrastructure agreement. (Public Hearing)
 - a. Exercise the purchase option in the Agreement to Lease and Option to Purchase with the Michael F. Maguire Revocable Trust.
 - b. **Resolution No. 3770:** Authorizing the execution of a master redevelopment agreement, a transfer agreement, an off-site infrastructure agreement, a redevelopment incentive agreement, and a parking agreement among the City, the CRA, and 801 Strawbridge Hotel, LLC.

Mayor Kathy Meehan, Council Member Debbie Thomas, and Council Member Tim Thomas, as members of the Airport Authority Board, may discuss Airport Authority issues, which may subsequently be addressed by the Airport Authority.

Mayor Meehan and Council Members Teresa Lopez, Betty Moore and Paul Alfrey (alternate), as members of the Space Coast Transportation Planning Organization (SCTPO), may discuss SCTPO issues, which may subsequently be addressed by the SCTPO.

Pursuant to 286.0105, Florida Statutes, the City hereby advises the public that if a person decides to appeal any decision made by the City Council with respect to any matter considered at its meeting or hearing, he will need a record of the proceedings, and that for such purpose, affected persons may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission into evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's Office (321/608-7220) at least 48 hours prior to the meeting.



DEPARTMENT: Community Development	Reading No.	N/A
	Public Hearing	Yes
	Quasi-judicial Item (Disclosure Required)	No
	Item No.	C.17.
COUNCIL DISTRICT: 3		

SUBJECT:

Joint resolution and approval of 801 Strawbridge Hotel, LLC Master Redevelopment Agreement

BACKGROUND/CONSIDERATION:

This is a request for consideration of approvals for a public private development application for the construction of a Hilton Tapestry Hotel and associated public infrastructure improvements in Downtown Melbourne. A three-party partnership is proposed among the City of Melbourne, the Melbourne Downtown Community Redevelopment Agency (CRA) and 801 Strawbridge Hotel, LLC, under a master redevelopment agreement. The developer is requesting the purchase of the City-owned and CRA-controlled properties comprising the development site.

The master redevelopment agreement binds the developer to the construction of a 156-room hotel, including a parking structure having 170 parking spaces as described and depicted in the conceptual project plan. The master redevelopment agreement contains four sub-agreements:

- Transfer Agreement - Provides for the developer's acquisition of .56± acres of property from the City/CRA
- Parking Agreement - Provides for public parking of 30 spaces within the hotel facility garage, and a reciprocal provision to reserve 30 parking spaces at the top floor of the City Hall parking facility, for hotel overflow parking.
- Redevelopment Incentive Agreement - Provides for an annual rebate of a portion of the tax increment financing generated specifically from the new investment from the hotel over a 20-year period after the hotel is constructed and on the tax roll. In years one through three, a 75% rebate will be granted and in years four through 20, a 50% rebate will be granted.
- Off-Site Infrastructure Agreement - Provides mitigation to the concerns of the businesses south of the proposed development by providing public infrastructure improvements within a public right-of-way easement for deliveries, improvements to surface conditions, shared and designated trash collection, and drainage improvements.

The project investment is estimated to be over \$35 million, and is anticipated to be fully constructed by the end of 2021. The following City boards have reviewed the project based upon their purview, and made unanimous recommendations for City Council and the CRA Board approval:

- Planning and Zoning Board
- Citizens' Advisory Board
- Historic and Architectural Review Board
- Melbourne Downtown CRA Advisory Committee



FISCAL/BUDGET IMPACT:

The City will realize approximately \$1 million upon property acquisition, including impact and permit fees in relation to the construction of the hotel. Thereafter, the hotel will generate over \$168,000 in annual revenues to the City once in operation. The annual revenues include increased TIF value realized at approximately \$70,000. Other annual revenues generated by fees in operation of the hotel (Business tax receipt, utility taxes, franchise fees, water and sewer fees) is estimated at approximately \$98,000.

REQUESTED ACTION:

Council will convene as the Melbourne Downtown Community Redevelopment Agency for the following item:

- a. Approval to exercise the purchase option in the Agreement to Lease and Option to Purchase with the Michael F. Maguire Revocable Trust.
- b. Approval of Resolution No. 3770.

Council will reconvene for the remaining items.

- c. Approval of Resolution No. 3770.

MEMORANDUM



Community
Development
Department

TO: Michael A. McNees, City Manager

THRU: Cindy Dittmer, AICP, Community Development Director

FROM: Doug Dombroski, Economic Development Manager

RE: **801 Strawbridge Hotel, LLC Master Redevelopment Agreement**

DATE: August 2, 2018

This is a request to the Melbourne Downtown Community Redevelopment Agency (CRA) and to Melbourne City Council for approval of a joint resolution supporting the Master Redevelopment Agreement to develop a Hilton boutique hotel in Downtown Melbourne through the Public Private Development Program. The Master Redevelopment Agreement is a three party agreement involving, the City of Melbourne, the Melbourne Downtown CRA and 801 Strawbridge Hotel, LLC.

The Public Private Development Program was created in 2014 through an amendment of the Melbourne Downtown CRA Redevelopment Plan. The goal of the program is to spur large catalyst projects in Downtown Melbourne that will create a market, which currently does not exist. Desirable projects are vertical mixed-use projects, preferably having a primary use of residential, hotel or office. The program is an acknowledgement to the complexity and costs associated with large urban developments such as the expenditures on land, structured parking, storm water, professional services, and financing. Additionally, the program allows flexibility in determining the form of incentives included in the partnership between the applicant and the City, because each development proposal has unique challenges.

Background

City staff received an amended application from 801 Strawbridge Hotel, LLC to participate in the Downtown Melbourne CRA Public Private Development Program for the development of a Hilton Tapestry boutique hotel within Downtown Melbourne. 801 Strawbridge Hotel, LLC is managed by Willow Street Capital, a south Florida developer who coordinated the 2016 original application, conceptual approval by City Council in 2016 and the amended application. The general partners are comprised of members from Duke Hospitality located in Atlanta, and the Charre Hotel Investment Group, located in Miami.

City Council conceptually approved the project in 2016 and provided City staff with the authority to continue working through the intricacies of the agreements. These specific agreements are now contained within the Master Redevelopment Agreement for the City Council's and the Melbourne Downtown CRA Board's consideration. The conceptual approval also authorized the City Manager and City staff to coordinate the application to HUD for the Section 108 Loan Guarantee Program.

There are four primary changes from the 2016 original application, conceptually approved by City Council in 2016:

1. The developer has entered into a franchise agreement with Hilton Corporation to develop the hotel;
2. The hotel project is larger than originally proposed with an increase from 120 rooms to 156 rooms, and from 120 parking spaces to 170 parking space;
3. The total investment has increased from \$19M to \$35M;
4. The developer has proposed to purchase the properties from the City at the City's appraised value, rather than enter into a ground lease for a 49-year period.

Project Description

At the southeast corner of Strawbridge Avenue and Waverly Place, the proposed hotel project is situated within the Melbourne Downtown Community Redevelopment Area (CRA) over two properties, 801 East Strawbridge Avenue and 809 East Strawbridge Avenue (**Attachment A**). The City owns 809 East Strawbridge Avenue, and has an option to acquire 801 East Strawbridge Avenue from the Michael F. Maguire Revocable Trust. According to HUD, census data indicates that the project is within a low and moderate-income community; furthermore, the census tract exhibits a high incidence of poverty of approximately 22%, according to the Community Development Financial Institutions (CDFI) fund of the Department of Treasury.

The proposed development consists of a 156 room hotel over structured parking containing 170 parking spaces. The developer has secured a franchise agreement with Hilton Hotels for their boutique Tapestry line of hotels. The Hilton Tapestry product is an upper midscale lifestyle boutique hotel, having well-furnished and usable common areas, with some amenities available to the Melbourne community. These proposed public areas include: a meeting space, a rooftop lounge, and a ground floor lounge with a coffee bar. The Tapestry boutique style hotels have well-appointed common areas, which is the newest trend in hotel development. Many of the major hotel flags are starting to offer this boutique lifestyle product. The developer has provided conceptual images of the exterior and interior outfitting to provide Council and the CRA a sense of the hotel product proposed in Downtown (**Attachment B**).

Currently, both properties can be described as underutilized and unproductive. The site serves as public parking; however, the privately owned portion can best be described as blighted, providing an area of unimproved, and non-conforming public parking. A public-private partnership is the proposed path to achieve economic and redevelopment

benefits for the City, through realization of the proposal's full real estate development potential.

Project Sources and Financial Structure

In total, the proposed development represents approximately \$35.0 million in new investment. The private and public sources for this project are comprised approximately of the following:

• Developer Equity	\$11.3M	32%	(private source)
• Commercial Loan(s)	\$20.9M	60%	(private source)
• HUD Section 108 Loan	\$2.0M	6%	(3 rd party finance)
• TIF (Tax Increment Financing) 20-Year Partial Reimbursement	\$.8M	2%	(CRA grant NPV)

The three sources of financing will be repaid through the operating cash flows of the project. It is important to note that the pro forma demonstrates a stabilized debt coverage ratio of 1.79, indicating the project is an acceptable credit risk for further underwriting and evaluation. A financial analysis by the National Development Council (NDC) is attached (**Attachment C**). NDC is the City's consultant for evaluation of program applications.

The **HUD Section 108 Loan Guarantee** would be awarded to the City through an application submittal to HUD. As an entitlement community, the City of Melbourne is able to borrow up to five times its most recent entitlement amount. The loan must be used for qualified Community Development Block Grant (CDBG) activities. Once the Section 108 Loan is provided from HUD, the City would lend the funding to the developer under a third party loan agreement. As a loan guarantee, the loan is backed by the Federal Government; however, HUD considers the City's annual entitlement as the final source of security, if other sources are exhausted.

If the City is awarded the Section 108 Loan from HUD, the term for repayment will be over a 20-year period. The following sources will be identified as security for repayment of the loan with HUD:

1. Developer personal guarantees
2. Subordinate lien on the hotel and property
3. Performance bond (during construction)
4. Tax increment generated from the site
5. CDBG and or additional tax increment

Master Redevelopment Agreement Summary

The project investment is estimated to be \$35,191,278 for the construction of a 156 room hotel having structured parking with 170 spaces. The project is anticipated to be fully constructed by the end of 2021. Below is a listing of all of the required approvals, including a brief description of each aspect of the agreement:

- **Exercise of the CRA's Purchase Option for 801 East Strawbridge Avenue with the Michael F. Maguire Revocable Trust** – This option is contained within an existing parking lease agreement between the Melbourne Downtown CRA and the Michael F. Maguire Revocable Trust. The option provides for the ability of the CRA/City to purchase and own the property. The purchase would be recouped from the proceeds of the developer's overall land acquisition.
- **Transfer Agreement** – for the sale of the City parcel and a privately owned parcel having an option for purchase by the CRA/City. The City will transfer the property simultaneous to the developer having secured financing, having pulled certain permits, and having paid for 50% of associated impact fees. The sale price is \$500,000 and the developer is required to place a \$50,000 non-refundable deposit in escrow, thirty days after the execution of the Master Agreement. As part of this ownership, the developer will provide a pedestrian easement on the east property line and an access easement on a portion of the south property line.
- **TIF (Tax Increment Financing) Reimbursement Agreement (site specific)** – Once the project is completed and on the property tax roll, the City will commit 75% of the tax increment in years one through three, and 50% in years four through twenty from the new investment generated from the development, as a reimbursement grant to the developer. The first three years are considered to be the hotel stabilization period. In the case of a default on the Section 108 loan, the TIF would revert back to the City as security for repayment to HUD. The annual TIF to the developer is projected to be approximately \$75,000 to \$100,000 annually over the grant period, having a net present value of \$807,093 (**Attachment D**).
- **Off Site Improvement Agreement** – Provides for additional improvements off of the hotel project site, managed by the developer. The goal of the offsite improvements is to provide legal public access and improve the current substandard conditions for the neighboring commercial properties to the south. These improvements are conditioned upon the participation of the four property owners directly to the south of the hotel development, by providing public easements. An approximate 15-foot wide by 200-foot long public right-of-way easement with improvements to storm drainage will be installed. Pavement and a centralized trash area will be enclosed. The CRA will commit an amount not to exceed \$195,000 to fund these improvements.
- **Parking Agreement at 801-809 East Strawbridge Avenue and 900 East Strawbridge** – The developer agrees to commit 30 spaces on the second floor of the structured parking at the hotel, to the City for public parking. This agreement would also allow the developer to utilize 30 parking spaces for hotel use within the City Hall parking garage on the fifth floor, for overflow parking as needed.
- **HUD Section 108 Third Party Loan Guarantee Agreement** – The Master Agreement lays the groundwork for terms, purpose, and obligations through the City's application to HUD for assistance. The developer will also be party to the City's agreement with HUD by providing personal guarantees and other acknowledgements

backing the loan. The total amount of the loan of \$2,000,000 will be due to the City from the development, with defined payments over 20 years or sooner if the project is sold and the Section 108 debt obligation is settled.

Additional Approvals Required as Part of This Proposal

The 801 Strawbridge Hotel, LLC development will require additional City Council approvals at future City Council meetings:

- **Department of HUD Contract for Section 108 Loan Guarantee Assistance-** Formalization of approval with HUD to utilize the Section 108 Loan Program for a third party loan assistance to the hotel project. This agreement is between the City of Melbourne and HUD.
- Correspondingly, a **Third Party Section 108 Loan Agreement** between the City and developer will be considered by City Council congruently with the agreement between HUD and the City of Melbourne.
- **A resolution observing the Transfer Agreement** after the developer has met the terms of the Master and Transfer agreements, and are prepared to move forward with the property acquisition.

Project Qualification for TIF and HUD Incentives

Incentivizing private development by utilizing TIF (Tax Increment Financing) is a quite common practice in communities throughout Florida. It is also provided for and encouraged under Section 163.345 and 163.370 Florida Statutes. The project must demonstrate a public purpose in the redevelopment of the CRA area. The improvements may be physical improvements or improvements consistent with the goals of the redevelopment plan for the betterment of the CRA. Typical public benefits of public private redevelopment within a CRA may include streetscape enhancement, public parking, public infrastructure or utility upgrades, eradication of blighted property, job creation and positive economic impact.

In 2014, City Council as the CRA Board, amended the redevelopment plan to provide for the *Public Private Development Program*, as a way to encourage these types of partnerships utilizing TIF funding as a primary inducement.

The *Section 108 Loan Program* is a funding mechanism authorized under the Community Development Block Grant (CDBG) Program pursuant to *Section 108* of the Housing and Community Development Act of 1974, as amended. Under this loan guarantee provision of the CDBG Program, a jurisdiction can borrow up to five times the value of its most recent CDBG entitlement amount, with up to 20 years to repay the loan. Based on the City's \$512,071 CDBG award for Program Year 2018-2019, the maximum loan amount to the City could be \$2,560,355.

The *Section 108 Loan Guarantee Program* is subject to the same regulations governing eligible uses, benefit to low and moderate income persons, and public benefit standards

as other programs provided under the CDBG program. *Section 108* funds may be used for economic development purposes and *Section 108* loans to businesses can be structured in a variety of ways. While CDBG jurisdictions have broad latitude in using the funds, most communities use *Section 108* loans for larger projects that would otherwise not be possible with their annual CDBG allocation.

The proposed hotel project meets key threshold eligibility requirements for CDBG economic development activities as listed below:

- **Use of Funds:** The developer is requesting that the City provide *Section 108 Loan* funds to the project for the purpose of assistance to a private for profit business for carrying out an economic development project. The funds will be used in developing a 156 room hotel *Regulatory Citation: 24 CFR 570.203(b)*
- **Low-Moderate National Objective:** The project promises to create 42 full-time equivalent jobs, at least 51% of which would be available to low and moderate income persons. *Regulatory Citation: 24 CFR 570.208 (a)(4)*
- **Public Benefit:** The City's estimated investment of \$47,619/job of CDBG funds through the *Section 108 Loan* (\$2.0 million divided by 42) per FTE permanent job expected to be created by the proposed project is within the \$50,000 maximum allowed, under "standards for individual activities". *Regulatory Citation: 24 CFR 570.209 (b)(2)(v)(D)&(F) and 24 CFR 570.209 (b)(3)(i)(A)*

The City's current Strategic Plan and 2017-2018 CDBG Action Plan cite economic development for low to moderate income persons as a priority need. The Citizens Advisory Board reviewed the proposed hotel development and made a unanimous recommendation for City Council approval.

Project Benefits

The proposed boutique hotel development by 801 Strawbridge, LLC is consistent with the vision of the Melbourne Downtown CRA Redevelopment Plan that was approved by City Council in 2006, as well as, the CRA plan amendment approved in 2014. The plan explicitly addresses the importance of lodging and hospitality opportunities as an important element in the revitalization of Downtown. Vibrant downtowns have a major hotel presence. The Redevelopment Plan also emphasizes the importance of capitalizing on tourist/visitation in the redevelopment strategy. Staff has conducted an evaluation of the economic and fiscal impacts of this project utilizing relevant sources, such as the Tourist Development Council, Career Source Brevard and the EDC. The following is a listing of project benefits that will be realized from this development:

- a. **Job creation** of 108 temporary jobs and 57 permanent jobs will result from the construction and operation of the hotel.¹ As a condition of the HUD *Section 108*

¹ IMPLAN economic impact data provided by the EDC of Florida's Space Coast based upon a 120 room hotel

Loan Program a majority of the 42 hotel jobs will be made available to low and moderate income residents of the City.

1. Direct Hotel Construction	73 jobs (temporary)
2. Indirect and Induced Construction	35 jobs (temporary)
3. Direct Hotel Jobs (operation)	42 jobs (permanent)
4. Indirect and Induced (operation)	15 jobs (permanent)

b. **Economic impacts from hotel spending** will be significant in supporting the surrounding Downtown businesses. A 2018 study performed for the Brevard County Tourist Development Council shows that people on average will spend \$70 per day, not including lodging.² In addition, each person in a hotel party will spend \$56 per day for lodging. It is estimated that there will be \$8.8 million in direct spending other than lodging based upon guests spending \$70/day at 72% occupancy. Annually, a total of \$15.9 million will be spent including hotel lodging costs.

c. **City Fiscal impacts from hotel construction and operation** will result in additional direct revenues to the City and CRA. The following direct revenues will be generated from the hotel project:

	<u>Estimated</u>
1. City revenue from construction	\$1,000,000 (one-time)
▪ <i>Permits, impact fees</i>	
2. City revenue from hotel operation	\$168,000 (annual)
▪ <i>Property taxes/TIF, utilities, franchise fees</i>	
3. Sales taxes from direct spending	\$1,113,000 (shared)

d. **Brevard County & Schools Fiscal Impact** will realize an increase in revenues from this project by over \$100,000 annually, as the Brevard County Property Appraiser estimates that the project will add at least \$12.0M of new taxable value for generation of new tax revenues using the associated millage rates:

1. Schools -	\$78,816/annual
2. County Government -	\$17,340/annual
3. County Agencies -	\$4,777/annual

• **Eradication of blighted conditions** through physical public improvements and aesthetic enhancements to the Downtown CRA. The project will incorporate on going streetscape enhancements and storm water upgrades, as required in the development of the site. Bringing the property to its highest and best use, will bring additional value to the tax rolls. The current property has sat vacant producing little to no property tax revenue. A portion of the proposed site was

² 2017-2018 Tourist Development Study by Professor Slotkin of the Florida Institute of Technology School of Business

formerly the home of “Big Al’s” bar, a dilapidated commercial/residential building that was raised in 2008.

- **A catalyst for future development and increased property values** will result by having the hotel located within the Melbourne Downtown CRA, because it will show the market possibilities for large real estate development in the downtown. Increased demand for commercial/retail space and developable land will continue to improve property values, and thereby, generate increased property tax revenues for the City.

On June 6, 2018, the Downtown Melbourne CRA Advisory Committee was provided a thorough overview of the project, commitments, and approvals. The committee voted unanimously to recommend support of the Amended Public Private Development application, and use of CRA funding as outlined in the Master Redevelopment Agreement.

The NDC has completed their review on behalf of the City, regarding the capacity of this development group and the project. Their review of the application and project financials, supports the project as viable; moreover, they have also verified that there is a need for public participation for the project to be realized. NDC has completed a draft HUD Section 108 application and will be providing technical support during HUD’s underwriting of the project. A project recommendation has been included. **(Attachment E)**

Recommendations:

Melbourne Downtown CRA:

- a. Approval to exercise the purchase option in the Agreement To Lease and Option To Purchase with the Michael F. Maguire Revocable Trust
- b. Approval of Resolution No. XXXX

City Council:

- a. Approval of Resolution No. XXXX

**801 Strawbridge Hotel, LLC
Master Redevelopment Agreement**

Attachment A – Location Aerial Map



Strawbridge Ave.

Waverly Place

801 & 809 East Strawbridge Ave.
Total Acreage = .57
Zoning C3 Commercial Mixed-Use

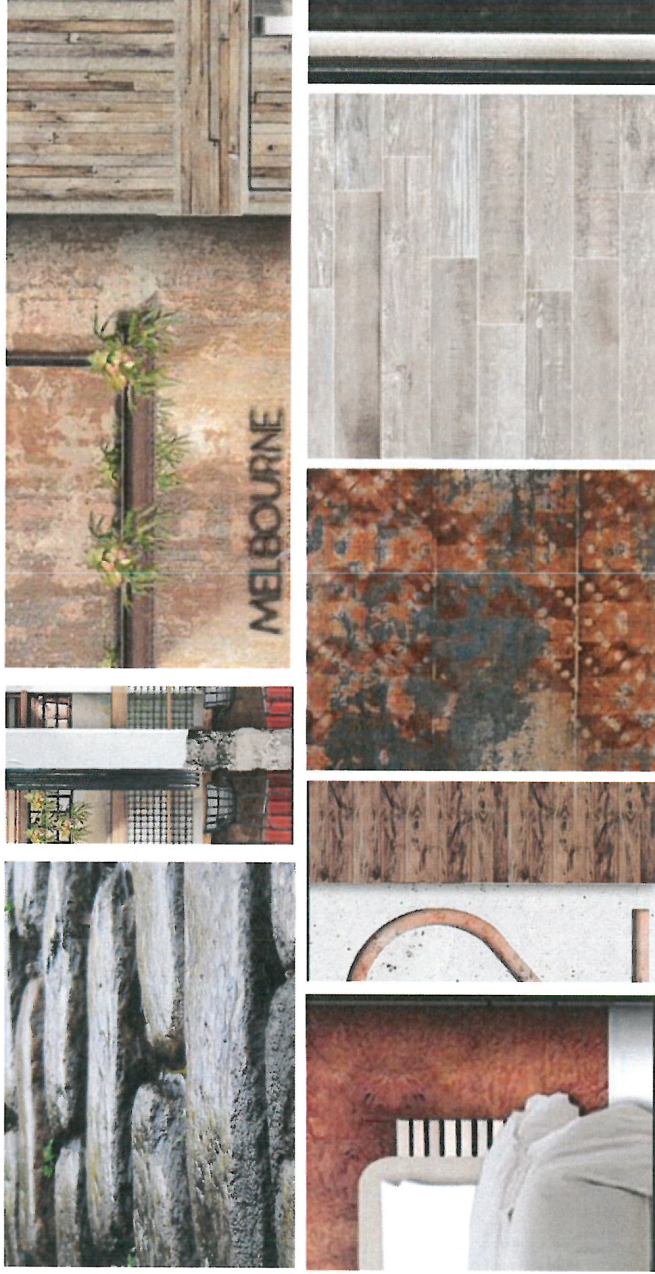
**801 Strawbridge Hotel, LLC
Master Redevelopment Agreement**

Attachment B – Hotel Conceptual Images

Downtown Hotel- Hilton Tapestry



THE PROPERTY: Concept Board



The images shown above are for illustrative purposes only. They are representative of the concept developed by EoA Group, the interior designer for the Melbourne Downtown hotel. Not for reproduction or publication.

**801 Strawbridge Hotel, LLC
Master Redevelopment Agreement**

Attachment C – NDC Financial Analysis

Willow Street - Hotel Analysis
Financial Overview
\$2.0 Million Section 108 w 50% Tax Increment

USES OF FUNDS	Amount	Comments
Land	\$500,000	
Hotel Construction Costs	\$21,644,441	\$213 SF
Rooftop Construction Costs	\$2,945,000	\$192 SF
Garage Construction Costs	<u>\$2,811,949</u>	\$37 SF
Total Construction	\$27,901,390	\$145 SF
Contingency	\$2,325,000	
Working Capital	\$1,046,464	
Subtotal	\$31,272,854	
Finance Fees	\$1,605,275	
Developer's Fee	\$1,006,449	
Non-financeable Closing Fees	\$411,860	
Legal and Closing Costs	\$827,540	
Section 108 Application Fee	\$20,000	
Section 108 Guarantee Fee	\$47,300	
Other	\$0	
TOTAL USES OF FUNDS	<u>\$35,191,278</u>	
PERMANENT SOURCES OF FUNDS	Amount	%
108 loan	\$2,000,000	6%
Commercial Loan	\$20,929,273	59%
GP Developer Equity	\$1,173,400	3%
LP Investor Equity	<u>\$11,088,605</u>	32%
TOTAL SOURCES	<u>\$35,191,278</u>	100%
STABILIZED OPERATING PRO FORMA (Yr 3)	Amount	Comments
Revenues	\$9,841,050	Based on 76.5% occup: \$108 ADR
Departmental Expenses	(\$3,032,000)	
Gross Operating Income	\$6,809,050	
Undistributed Operating Expense	(\$1,739,000)	
Licenses and Fees	(\$824,000)	
Insurance	(\$116,000)	
Real Estate Taxes	(\$262,042)	
RR Reserve	(\$414,000)	
Land Lease	\$0	
Net Operating Income (NOI)	\$3,454,008	
Commercial Loan Debt Service	(\$1,924,624)	
Section 108 Debt Service	(\$197,548)	Interest only for 7 years incl. construction period
Cash Flow	\$1,331,835	
Tax Increment	\$36,876	75% Yr 1-3 and 50% thereafter of City and County Taxes
Adjusted Cash Flow	\$1,368,711	
METRICS	Amount	Comments
Stabilized Debt Coverage Ratio (DCR) on Commercial Loan	1.79	
DCR on all Debt	1.63	
Cash on Cash Rate of Return	11%	
Cash on Cost (NOI/Project Cost)	10%	
Loan to Value (LTV)	58%	
Total Debt to Value	63%	
Loan to Cost	60%	
Internal Rate of Return After 5 Operating years	15%	
Estimated Stabilized Fair Market Value	\$36,357,976	
PROGRAM and ASSUMPTIONS	Amount	Comments
Rooms	156	24 will be 2-bed suites 1,236 square feet per room
Hotel SF	101,452	
Rooftop	15,322	
Parking Garage	76,039	
Total SF	192,813	
Construction Loan Rate	7.85%	
First Mortgage Perm Loan Rate	6.85%	
First Mortgage Loan Amortization	20	
Cap Rate	9.50%	
Section 108 Term	20	
Section 108 Interest Only Period	7	
Section 108 Amortization Period	13	
Section 108 Interest Rate	4.00%	
Broker Fee at Sale	2.50%	
Section 108 Guarantee Fee	2.37%	

**801 Strawbridge Hotel, LLC
Master Redevelopment Agreement**

Attachment D – Project TIF Generation Estimates

Assessor Valuation	\$12,500,000
Total Mill	0.01976
Total Taxes	\$247,000
Mill for City and County Taxes	0.01134
City and County Taxes	\$141,775
Assumed Escalator	2.00%

Year	Full Taxes	City and County Taxes	Reimbursement to Project 75% first 3 years 50% yr 3 and after 9.5% discount rate	Net to City and County	Net to All Taxing Jurisdictions
1	\$247,000	\$141,775	(\$106,331)	\$35,444	\$140,669
2	\$251,940	\$144,611	(\$108,458)	\$36,153	\$143,482
3	\$256,979	\$147,503	(\$110,627)	\$36,876	\$146,352
4	\$262,118	\$150,453	(\$75,226)	\$75,226	\$186,892
5	\$267,361	\$153,462	(\$76,731)	\$76,731	\$190,630
6	\$272,708	\$156,531	(\$78,266)	\$78,266	\$194,442
7	\$278,162	\$159,662	(\$79,831)	\$79,831	\$198,331
8	\$283,725	\$162,855	(\$81,427)	\$81,427	\$202,298
9	\$289,400	\$166,112	(\$83,056)	\$83,056	\$206,344
10	\$295,188	\$169,434	(\$84,717)	\$84,717	\$210,471
11	\$301,092	\$172,823	(\$86,411)	\$86,411	\$214,680
12	\$307,113	\$176,279	(\$88,140)	\$88,140	\$218,974
13	\$313,256	\$179,805	(\$89,902)	\$89,902	\$223,353
14	\$319,521	\$183,401	(\$91,701)	\$91,701	\$227,820
15	\$325,911	\$187,069	(\$93,535)	\$93,535	\$232,377
16	\$332,429	\$190,810	(\$95,405)	\$95,405	\$237,024
17	\$339,078	\$194,627	(\$97,313)	\$97,313	\$241,765
18	\$345,860	\$198,519	(\$99,260)	\$99,260	\$246,600
19	\$352,777	\$202,490	(\$101,245)	\$101,245	\$251,532
20	\$359,832	\$206,539	(\$103,270)	\$103,270	\$256,563
			(\$1,830,852)	\$1,613,908	\$4,170,598
			\$807,093		
NPV OF Increment					

**801 Strawbridge Hotel, LLC
Master Redevelopment Agreement**

Attachment E – NDC Project Analysis and Recommendation



Headquarters

One Battery Park Plaza
24 Whitehall Street
Suite 710
New York, NY 10004

TO: Doug Dombroski, Economic Development Manager, City of Melbourne
Cindy Dittmer, Community Development Manager, City of Melbourne

FROM: KC George, Director
Kevin F. Gremse, Senior Director

DATE: July 25, 2018

RE: Melbourne Downtown Hotel, LLC Development
Application for Financial Benefits and City Incentive Package

OVERVIEW

The National Development Council (“NDC”) has an ongoing engagement with the City of Melbourne (the “City”) and its Community Redevelopment Agency (“CRA”) to review applications for financial benefits under the City’s Public Private Partnership (P3) program. The P3 is a program designed to leverage private real investment for commercial, residential, and mixed-use development in downtown Melbourne. NDC is a national economic development finance company that works on behalf of municipalities around the country to evaluate the need for and determine the appropriate mix and sizing of economic development incentives. The purpose of this memo is to describe NDC’s project understanding and findings for the requested public assistance for the above-referenced development.



Rendering of Hilton – Tapestry Collection

PROJECT SUMMARY

Melbourne Downtown Hotel, LLC (the “Developer” or “Applicant”), is a joint venture general partnership consisting of three experienced hotel developers and operators. It has selected *Tapestry by Hilton* as the upscale lifestyle brand for the hotel, one that will have a more contemporary demographic. Willow Street Capital (WSC), the principal partner, is a private investment and development firm based in Miami, Florida and New York City. Collectively, the principals from each development entity have been involved in the full range of hotel development, developing approximately 40 hotel projects throughout the country.

The proposed \$35.1 million hotel development, located at 801 and 809 E. Strawbridge Avenue, will involve the construction of a 156 room hotel in the central business district on a city owned .57-acre lot. The 11-story building, including a 3-level 170 space parking garage, will also feature a 4,600 square foot conference/event center and 4,900 square foot indoor/outdoor rooftop lounge.

A developer financial package totaling \$2.8 million, or roughly 8% of the total development cost, has been proposed to the applicant. The developer will contribute \$32.3 in debt and equity. The developer's funding represents \$12.54 for every dollar of public funding as part of the proposed package.

CITY FINANCIAL PACKAGE SUMMARY	
Land Contribution	\$0
Section 108 Loan	\$2,000,000
Tax Increment Reimbursable (NPV w/ 9.5% discount)	<u>\$807,093</u>
Total City Package	\$2,807,093
Total Project Cost	\$35,191,278
Private Sources	\$32,384,185
Ratio of Private to Public Debt	\$12.54 : \$1

The public financial package includes the following;

- a \$2 million Section 108 loan that the City of Melbourne accesses by borrowing against its community development block grant (CDBG) entitlement and
- a partial reimbursement of the tax increment, one with a net present value of \$807,093 over a 20-year period.

The financial incentive package is structured as a means of addressing two primary financial challenges for a limited service hotel in downtown Melbourne, the cost of structured parking and the limitations of conventional debt.

<i>Challenge</i>	<i>Approach to Address</i>
\$2.8 million Cost of Structured Parking	The financial package is intended to offset the cost of structured parking. The cost of structured parking is unique to the downtown marketplace and necessitates the financial incentive. The structured parking is one of the main reasons why there has not been a hotel built in downtown Melbourne.
Limitation of Debt at 60% of Loan to Cost	The financial returns are below market with a capital structure involving 60% debt and 40% equity. A subordinated low cost and long-term Section 108 loan reduces equity from 40% to 34% and improves returns in order to attract the necessary equity.

SOURCES & USES

The developer has proposed the following development budget and capital structure for the \$35.1 million project.

USES OF FUNDS	Amount	%	PERMANENT SOURCES OF FUNDS	AMOUNT	%
Land	\$500,000	\$3,205	108 Loan	\$2,000,000	6%
Hotel Construction Costs	\$21,667,941	\$138,897	Commercial Loan	\$20,929,273	59%
Rooftop Construction Costs	\$2,945,000	\$18,878	GP Developer Equity	\$1,173,400	3%
Garage Construction Costs	<u>\$2,811,949</u>	\$18,025	LP Investor Equity	<u>\$11,088,605</u>	32%
Total Construction	\$27,924,890	\$179,006	TOTAL SOURCES OF FUNDS	\$35,191,278	100%
Contingency	\$2,568,119	\$16,462			
Working Capital	\$345,060	\$2,212			
Subtotal	<u>\$30,838,069</u>	\$197,680			
Soft Costs	\$3,789,509	\$26,916			
Section 108 Application Fee	\$20,000	\$128			
Section 108 Guarantee Fee	<u>\$43,700</u>	\$303			
TOTAL USES OF FUNDS	\$35,191,278	\$225,585			

The \$35.1 million budget is equivalent to approximately \$225,000 per room which is considered somewhat high, but reasonable for a 11-story steel frame construction building that includes a structured parking garage.

The Developer will acquire two parcels (801 and 809 E. Strawbridge) from City for \$500,000, conditioned upon WSC's providing proof of funds and securing permits to develop the site. Construction costs estimates were established from a certified general contractor. The development team also drew upon its experience with building a comparable product in Florida and throughout the country. As a condition of loan approval, cost estimates for predevelopment, soft costs and construction of the hotel and parking will be submitted by the developer and prepared by a qualified third party to verify industry standards.

The developer will finance the development with conventional debt, developer equity (general partner and limited partner equity) and Section 108 Loan Guarantee. The subordinated Section 108 loan expands borrowing capacity and reduces equity requirements and helps produce acceptable returns.

OPERATING PROFORMA

The following pro forma represents operations in the third year, the hotel's stabilization year.

STABILIZED OPERATING PRO FORMA (Yr 3)	Amount	Comments
Revenues	\$9,841,050	Based on 76.5% occupancy
Departmental Expenses	(\$3,032,000)	
Gross Operating Income	\$6,809,050	
Undistributed Operating Expense	(\$1,739,000)	
Licenses and Fees	(\$824,000)	
Insurance	(\$116,000)	
Real Estate Taxes	(\$262,042)	Full RE Taxes.
RR Reserve	(\$414,000)	
Net Operating Income (NOI)	\$3,454,008	
Commercial Loan Debt Service	(\$1,924,624)	
Section 108 Debt Service	(\$197,548)	Interest only for 7 years including construction period
Cash Flow	\$1,331,835	
Tax Increment	\$36,876	75% years 1-3. 50% years 4 - 20. City and County Taxes
Adjusted Cash Flow	\$1,368,711	
Debt Coverage Ratio	1.63	
Cash on Cash Return	11%	

The primary source of repayment for the loan will be revenue derived from hotel revenues from the project operations. The operations of the hotel represent the stabilized year of operations (third year) and were derived from the developer's financial model. Hotel revenues were discounted by 5% for underwriting

purposes. The stabilized Average Daily Rate (ADR) for the proposed project is \$130/night and projected occupancy is 76.5% are both deemed reasonable and consistent with market comparables. The revenue assumptions are based upon WSC's observation of historical performance of hotels in the region. Melbourne's employment and corporate expansions further substantiate expected growth.

FINDINGS ON PROPOSED INCENTIVE PACKAGE

The \$2.8 million public incentive package results in a \$12.54 :\$1 private to-public ratio, exceeding the City's \$7:\$1 requirement for minimum eligibility.

The proposed \$2.8 million financial package is structured to offset the costs of structured parking, attract additional debt, reduce equity requirements, and to improve returns in order to attract the necessary equity.

Section 108 Loan

The Section 108 loan is used for leveraging additional debt and reduce equity. The City of Melbourne arranges to access lower cost, long-term debt by borrowing off of its community development block grant (CDBG) annual allocation. Through the use of this program, the City is able to offer favorable rates and terms. The loan is structured as a subordinate loan, it will have an interest rate of approximately 4%, and will be structured with interest only payments for the first seven years, two years during construction and five years during operations. The loan has been programmatically and financially underwritten by NDC. The project meets the U.S. Department of Housing and Urban Development's (HUD) underwriting standards, including a debt coverage ratio (DCR) in excess of 1.25 and a total loan to value (LTV) ratio less than 80%. As the developer's expect that the property will appraise at or near the project budget, the total debt to value is expected to be less than 70%. The project meets HUD's programmatic underwriting requirements for eligibility, national objective, and public benefit.

The loan will be secured by a second mortgage interest on the property and be personally guaranteed by the principals of the developer.

The loan will be disbursed in three installments

- \$100,000 at execution of all agreements between the developer and the City/CRA.
- \$900,000 at the close of construction financing
- \$1,000,000 during construction period with draws coordinated with the developer's construction lender.

TIF Reimbursement

Once the project is completed and restored to the tax rolls, the City will commit 75% of the city and county tax increment in years one through three, and 50% in years four through twenty from the new investment generated from the development, as a reimbursable payment to the developer. The reimbursable payment is greater in the first three years, representing the hotel's stabilization period during which it is more likely to have higher vacancy rates. The annual TIF to the developer over the twenty- year period is \$1,830,852, with a net present value (NPV) of \$807,093 using a discount rate of 9.5%, reflective of the capitalization rate for a hotel in downtown Melbourne. The aggregate taxes paid by the development over the twenty-year period is \$4,170,598, or an average of \$208,529 annually. The City and the County will receive \$1,613,908 over the twenty-year term, an average of \$80,695 annually. This is a substantial increment given that the properties have been vacant land with no structures on the tax rolls for over ten years.

See details for the tax reimbursement in Exhibit 1.

NDC has determined the above package is necessary for the financial feasibility and project viability. That is, "but for....." the use of the aforementioned financial package, the development would likely not be able to proceed. The financial incentive package is sized appropriately for the needs of the lenders and investors. While the proposed financial package from the City improves returns to what is expected in the marketplace for a comparable hotel development, it does not unduly enrich the project and/or developer.

Exhibit 1

TIF Reimbursement Summary						
Assessor Valuation				\$12,500,000		
Total Mill				0.01976		
Taxes at Full Assessment				\$247,000		
Mill for City and County Taxes				0.01134		
City and County Taxes				\$141,775		
Assumed Escalator				2.00%		
Year	Taxes at Full Assessment	City and County Taxes	Reimbursable %	Reimbursement to Project 9.5% discount rate *	Net to City and County	Net to All Taxing Jurisdictions
1	\$247,000	\$141,775	75%	(\$106,331)	\$35,444	\$140,669
2	\$251,940	\$144,611	75%	(\$108,458)	\$36,153	\$143,482
3	\$256,979	\$147,503	75%	(\$110,627)	\$36,876	\$146,352
4	\$262,118	\$150,453	50%	(\$75,226)	\$75,226	\$186,892
5	\$267,361	\$153,462	50%	(\$76,731)	\$76,731	\$190,630
6	\$272,708	\$156,531	50%	(\$78,266)	\$78,266	\$194,442
7	\$278,162	\$159,662	50%	(\$79,831)	\$79,831	\$198,331
8	\$283,725	\$162,855	50%	(\$81,427)	\$81,427	\$202,298
9	\$289,400	\$166,112	50%	(\$83,056)	\$83,056	\$206,344
10	\$295,188	\$169,434	50%	(\$84,717)	\$84,717	\$210,471
11	\$301,092	\$172,823	50%	(\$86,411)	\$86,411	\$214,680
12	\$307,113	\$176,279	50%	(\$88,140)	\$88,140	\$218,974
13	\$313,256	\$179,805	50%	(\$89,902)	\$89,902	\$223,353
14	\$319,521	\$183,401	50%	(\$91,701)	\$91,701	\$227,820
15	\$325,911	\$187,069	50%	(\$93,535)	\$93,535	\$232,377
16	\$332,429	\$190,810	50%	(\$95,405)	\$95,405	\$237,024
17	\$339,078	\$194,627	50%	(\$97,313)	\$97,313	\$241,765
18	\$345,860	\$198,519	50%	(\$99,260)	\$99,260	\$246,600
19	\$352,777	\$202,490	50%	(\$101,245)	\$101,245	\$251,532
20	\$359,832	\$206,539	50%	(\$103,270)	<u>\$103,270</u>	<u>\$256,563</u>
				(\$1,830,852)	\$1,613,908	\$4,170,598
NPV OF Increment				\$807,093		
* Discount Rate reflect the capitalization rate for a hotel in downtown Melbourne						



July 16, 2018

Dear Mayor and Council members,

I am writing this letter of support, not only representing the area's business interests, but also as a downtown property owner. The Chamber is very excited for the future of the downtown Melbourne Tapestry Collection hotel and what that will mean to the downtown area and the Melbourne region as a whole.

This will be a catalyst to growth, not only in the downtown area, but in the Melbourne region. By supporting this project, you will vote to create 225 jobs for the construction of this hotel along with creating approximately 70 permanent jobs from the operation of the hotel. The construction will inject over \$13 million into the local economy, while the hotel will inject almost \$9 million a year into Melbourne's economy. These 156 rooms will bring business people to Melbourne and show that development and improvement in our area is profitable and successful as well as a great place to live, work and play. The meeting space, with the beautiful views of Melbourne and the Lagoon will be a very popular spot for residents and guests.

I'd also ask you to consider the lost opportunity costs if this project does not move forward. Right now the city has the valuable property sitting idle and losing out on potential gains that benefit local residents, like increased business for retailers, restaurants and additional tax revenue. There is no other plan on the table for this parking lot, currently 2/3 of which is city owned. We can look toward the future and allow this investment or do nothing and lose these economic gains.

By supporting the public-private partnership on this project, the Melbourne City Council will be making a huge investment in our future that will have great returns. The funding that is used for this will not take away general revenue funds, but will in fact, return general revenue funds in the future when the value of this property has increased. This \$800,000 investment by the CRA grant will be returned tenfold, both to the CRA, and in the future in tax revenue to the local government as this hotel will be the impetus behind the blossoming of downtown Melbourne.

The choice is clear. This is a unique opportunity that will have an extraordinary impact on Melbourne and the surrounding area. Please support this proposal.

Sincerely,



Michael S. Ayers
President & CEO

UNIQUE TREASURES

JUL 19 2018

July 18, 2018

Dist. to CM+C
CM
DCM
CD

Dear Mayor Meehan and Melbourne City Council Members,

Let me begin by thanking you for your time and service to our community as well as your consideration of my thoughts on the prospective plans to allow the Hilton Tapestry Boutique Hotel to join our Downtown community.

Unique Treasures has enjoyed being a part of the Historical Downtown District for over fifteen years and I personally have been involved for eight of those years.

The retail businesses are currently challenged with the ecommerce element that our society seems to be enjoying. However, I am happy to report that our boutique has not been significantly impacted but we have noticed a difference.

The prospect of adding anything to our community that could or would attract more business is more than exciting!

It is a joy to talk to my customers that are from near and far and I have heard many times; "I wish there was a hotel in this downtown area that we could stay in." The number of compliments that I hear regarding our downtown area is so refreshing. The thought of providing a place for people that want to visit and stay in Downtown Melbourne is exhilarating!

As our leaders of this great community, I hope you will do all that is necessary to welcome and assist those that can make this asset to our community possible.

Again, thank you for your time and consideration.

Sincerely,



Kathi D. Trumeter



CBK GROUP, LLC

JUL 19 2018

July 19, 2018

Dist. to MHC
CM
DCM
CD

Dear Mayor Meehan and Melbourne City Council Members,

As managing members of CBK Group, LLC and owners of the commercial building and property that is directly south and adjacent to the prospective future property of the Hilton Tapestry Boutique Hotel, we appreciate your consideration of our perspective.

Barry Rehl and I could not be more excited about the vast opportunities that this property will bring to the downtown area. This boutique hotel offers additional beautification of the area, it enables tourists and business people an opportunity to stay in a location that is convenient to unique shopping and a variety of great restaurants and entertainment, and most importantly, it increases the exposure of our special Historical Downtown District and therefore stimulating our local economy.

We are so on board with this proposal that we have agreed to sacrifice a significant parcel of *our* property to add to the beautification and convenience of the building and business owners in the direct vicinity to provide a community waste enclosure. We are also about to embark on an extensive renovation of our entire building as well.

This project will not move forward without further sacrifice and challenges as we are all well aware. However, we can see the incredibly positive impact on the future of Melbourne and it is our hope that our leaders; all of you share in the excitement of this venture. Of all places, they picked this location as they must have seen and experienced the charm that we have the privilege of experiencing every day.

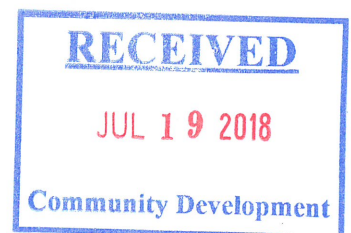
Thank you for carving out the time to read and consider this letter.

Sincerely,



Kathi D. Trumeter

Barry G. Rehl





515 E. Melbourne Ave.
Melbourne, FL 32901

Phone: 321-831-9933
E-Mail: CraneCreekLandings@gmail.com
Web: www.CraneCreekLandings.com

July 23, 2018

City Council for the Melbourne Downtown Community Redevelopment Area
Council Chamber at Melbourne City Hall
900 E. Strawbridge Ave.
Melbourne, FL 32901
RE: Melbourne Downtown Hotel Project

To Whom It May Concern:

Crane Creek Landings is a luxury townhome community, an outstanding custom build, by a reputable family owned and operated local company, MAI Design Build. I call Crane Creek Landings home too as I help build (literally and figuratively) the personality of our new community.

The heart of Crane Creek Landings is Downtown Melbourne, and our new residents are the pulse helping it grow. They chose to make Crane Creek Landings their home not only for aesthetics; they also have a strong thirst for culture and community that goes past the gates of our neighborhood.

In a world of a "Thank You Economy" as Gary Vaynerchuk calls it, our global economy is really just a louder version of a single voice. The voice of your neighbors, expressing what they love of their home, where they like to eat, and why they shop in the places they do. Any marketer will tell you about the 4P's, ultimately it is only 2P's. It is not always about price and product, but it is always strongly influenced by place and promotion. And there is no better promotion than word of mouth.

Crane Creek Landings residents are Downtown Melbourne influencers and advocates. The benefits of this hotel for our homeowners and our local economy as whole, complement the intentions of what the CRA program is meant to do. According to the eligibility requirements on the city's application, the activities and programs offered within a Community Redevelopment Area are to "incentivize[d] projects [and] developments that will be transforming and will serve as a catalyst to attract additional private investment within the CRA."

Our residents have already invested their private money in 32901, many of which are local business professionals, eager to know they have invested wisely, and more importantly, that they have provided their family with a safe sophisticated surrounding. The proposed Tapestry Collection by Hilton hotel will help to ensure such wisdom.

Thank you for the opportunity to share my voice on behalf of our community and graciously offer our support in building this project.

Best Regards,

Melissa Horne
Crane Creek Landings
Director of Sales & Marketing



July 23, 2018

Dear Downtown Melbourne City Council,

I, on behalf of my firm, submit this letter of complete support for the Hotel Project behind Meg's. This Hotel Project is a very important step to the growth of Downtown. We have many clients, both domestic and international, that are waiting for the start of this and "Highline" to begin in order to take their interest in investing into Downtown to a further level.

The investment eyes of Central Florida are watching and waiting for this meaningful impact on South Brevard County, and your approval for the public-private partnership is vital. If there is anything we can do, please let us know.

We own many properties in the Downtown Corridor and are counting on the growth that all Downtown Residents are hoping for.

Sincerely,

Garat Oates
Broker/Owner

Engel & Völkers Brevard
505 East New Haven Ave.
Melbourne, FL 32901
Licensee of E&V Florida
Real Estate L.L.C.

Telephone +1 321-821-4515
Facsimile +1 321-821-4516
Garat.Oates@EVUSA.com
www.brevard.evusa.com



24 July 2018

Mayor Meehan and Esteemed Members of City Council;

I write this letter as both a property owner and a business owner in Historic Downtown Melbourne. I unequivocally support the project we commonly refer to as "our" hotel; the boutique hotel under the Tapestry Collection brand being developed by Willow Street Capital.

This project requires incentives from the CRA to make it feasible. The CRA grant will effectively "reimburse" the developer for the additional costs they will incur developing in our downtown vs. open, undeveloped space and for the public parking requirements the City has imposed on the developer.

It is important to realize that the CRA grant is an investment in the future of Historic Downtown Melbourne. The grant does not utilize funds from our current general revenue fund. It is using a portion of the future property taxes generated by this hotel.

The CRA's investment in our future also pays immediate dividends to our schools, since the schools get their portion of tax dollars before the CRA. The children of our county will benefit from about \$100,000* per year in added tax revenue once this project is complete. Additionally, the Tourist Development Fund will benefit from a 5% tax on the room charges and our county will still realize its share of the sales taxes (1% of sales) to continue the lagoon cleanup and other general needs. Special taxing districts will also benefit in the same way as the schools.

Additional benefits of the project include the generation of both temporary construction jobs and permanent employee jobs within the hotel itself; the transformation of an empty, underutilized and zero tax-generating vacant property in our downtown into a valuable asset contributing to the revitalization of downtown; an increase in the amount of business and leisure travelers to our downtown area and the potential increases in sales by our local merchants which will increase the county's portion of sales taxes.

There are no other options available. No other developer is willing or able to develop that property. No developer is willing to develop the property without the support of the public-private partnership with the CRA. We cannot allow this project to die based on a failure to fully understand the intricate aspects of the public-private partnerships and TIF financing.

Please do not allow uninformed soundbites being circulated in the media to influence your decision.

Make the right decision; support the public-private partnership. What other choice is there?

Submitted for your careful and thoughtful consideration.

Respectfully

Donald A DiFrisco
Owner & President; Hell 'n Blazes Brewing Company
Owner; 1002 E New Haven, LLC

July 25, 2018

Dear Mayor Meehan and Council Members:

Please consider this letter as my strong endorsement of the Downtown Melbourne Hotel project.

As an owner of three commercial properties in the downtown corridor, I see this project as a very good thing for our community.

The hotel will lead to increased revenues to the city and to significantly increased business to downtown restaurants and storefronts.

As the producer of our annual Publix Florida Marathon & ½ Marathon Weekend, I also look forward to the hotel as being a convenient place for out of town runners to stay and for our pre-race expo, etc..

Thank you very much for the consideration, and please contact me with any questions.

Sincerely,

Mitchell Varnes

mitchvarnes@gmail.com

/ 321-759-7200



Melbourne City Council
Melbourne, FL 32901

SUBJECT: The Melbourne Downtown Hotel

Dear Madam Mayor and Respected City Council Members,

As property owners and the proprietors of Mainstreet Pub, we wanted to go on record on how elated we are to see the direction The Downtown CRA is moving to with respect to The Downtown Melbourne Hotel (Hilton). It is exciting to see this reciprocal type partnership and reimbursement of funds. We view this as a clear indication of a positive direction in growth for everyone here downtown.

Being right next door to another high rise project which recently broke ground, The Highline, we understand the changes that will certainly come about with such an endeavor. Ultimately, these new additions to our downtown will justify any of the short term challenges they would bring as well.

We stand in support of The Downtown Melbourne Hotel, and thank you for your wise planning for economic growth in Downtown Melbourne.

Sincerely Yours,

Joe and Lena McAneney

Mainstreet Pub
705 E. New Haven Ave, Historic Downtown Melbourne, FL 32901
321-723-7811 <http://www.mainstreetpub.cc>

To Mayor Meehan and fellow Council members:

My name is Frank Wolking and I live at 612 East Lincoln Avenue in the downtown area. I also own a rental home at 608 East Lincoln Ave. Both were built in 1926 and both have been lovingly restored. I point this out because I continue to believe that the trajectory of downtown and downtown neighborhoods will continue to be upwards as long as the intelligent and thoughtful decisions that the Council has made in the recent past continue to be made in the future. This is extremely important to me because I am truly vested in our town and have a great deal of pride in the progress that's been made in the past 15 years revitalizing and re-imagining our downtown area. To this end I urge the Council to take the final step and approve the public-private partnership agreement with the developers of the downtown boutique hotel project. I believe the construction of this hotel will be the beginning of the next step in downtown's positive evolution.

Thank you,

Frank Wolking

612 East Lincoln Ave.

321-537-9194



Lisa Herendeen, Owner-Broker
www.realestateinksolutions.com
233 East New Haven Avenue
Downtown Melbourne, FL 32901

Dear City Counsel of Melbourne,

The Tapestry Collection by Hilton Hotels through developer Willow Street Capital will undoubtedly continue an increasingly renewed sense of economic improvement and revitalization into the center of an energetic, walkable neighborhood, much like a living room in a house, that is Downtown Melbourne specifically due to the overt positive effects from the public-private partnership currently in place. Without that partnership, we may not see the variation of guests and travelers likely to be wide in terms of business and pleasure, culture, domestic & international, families staying to see their child enter college, the family and/or young professionals relocating to stay while they look around to buy a house...then there are the 1000's of people that will stay during a range of festivals and events (FIT Homecoming, food & wine, music, craft beer, Chili and or Bar-B-Q cookoffs, sail boat regattas out of Riverview Park, AAU basketball league series games). As business owners, real estate investor-developers, part of the community and a patron all since 2001, my wife and I have long waited with great excitement, (at times anxiety) and optimism at the prospect of a project like this hotel, and the many jobs it will bring plus the dozens and dozens of jobs that it will indirectly create alone from the new businesses and new lives that will start in Melbourne. If this hotel was in Downtown when I first came to Melbourne in 2001, I can assure you, the Tapestry is where I would have absolutely considered. The hotel will very likely be THE spot to stay for returning college grads coming to home games of their respective amateurs, and family reunions. It cannot be underscored enough how much our Downtown Melbourne needs this hotel, the positive attention, new patrons it will bring, and the added parking all the while substantiating to the commercial lending world that this place matters, that investing here is a fruitful endeavor with return on that investment into Downtown Melbourne. Council, you all are at a crucial moment in Downtown's history and we would not have project like this if not for the public-private agreement. Please vote "yes" to approve.

Sincerely yours,

Mark Herendeen/Business Development, Commercial & Investor Relations c/o Real Estate INK
321-863-4426

www.realestateinksolutions.com , mark@realestateinksolutions.com

August 6, 2018

City of Melbourne
City Council
900 E. Strawbridge Ave.
Melbourne FL 32901

Dear Council Members,

I am writing to support the development of the Willow Street Capital Hotel in Downtown Melbourne.

This hotel is an extremely important piece to help the prosperity of downtown Melbourne. The incentives the City would approve would not only be recovered very fast, but would assure additional future City revenues directly and indirectly from the hotel and other businesses prospering in downtown due to this development.

I feel this hotel will set a high bar for future projects which will only improve our changing neighborhood and City.

Thank you very much for your support and efforts to help Melbourne prosper.

Sincerely,

A handwritten signature in black ink, appearing to read 'F. Arocena', with a long horizontal stroke extending to the right.

Federico Arocena
Owner, 1900 Building & Flatiron Building

RESOLUTION NO. 3770

A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MELBOURNE, FLORIDA AND THE GOVERNING BODY OF THE MELBOURNE DOWNTOWN COMMUNITY REDEVELOPMENT AGENCY, RELATING TO COMMUNITY REDEVELOPMENT WITHIN THE MELBOURNE DOWNTOWN REDEVELOPMENT AREA; PROVIDING FINDINGS; APPROVING AND AUTHORIZING EXECUTION OF A MASTER REDEVELOPMENT AGREEMENT, A TRANSFER AGREEMENT, AN OFFSITE INFRASTRUCTURE AGREEMENT, A REDEVELOPMENT INCENTIVE AGREEMENT, AND A PARKING AGREEMENT BETWEEN THE CITY, THE AGENCY, AND 801 STRAWBRIDGE HOTEL, LLC PROVIDING FOR THE REDEVELOPMENT OF CERTAIN REAL PROPERTY LOCATED IN THE REDVELOPMENT AREA; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MELBOURNE, FLORIDA, AND THE GOVERNING BODY OF THE MELBOURNE DOWNTOWN COMMUNITY REDEVELOPMENT AGENCY, AS FOLLOWS:

SECTION 1. AUTHORITY. This Resolution is adopted pursuant to and under the authority of the City Charter, Section 163.01, Florida Statutes, the Community Redevelopment Act of 1969, codified in Part III, Chapter 163, Florida Statutes, Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby ascertained, determined and declared that:

(A) The City Council of the City of Melbourne, Florida (the "City Council"), adopted Resolution No. 775 which found and determined that the Melbourne Downtown Redevelopment Area described therein (as expanded from time to time, the "Redevelopment Area") is a "blighted area" within the meaning of Part III, Chapter 163, Florida Statutes (the "Act") and in particular section 163.340 thereof, and that such area was in need of the redevelopment, rehabilitation and improvement contemplated by the Act.

(B) By Ordinance No. 82-38, the City Council created the Melbourne Downtown Community Redevelopment Agency (the "Agency") to carry out the community redevelopment purposes of the Act within the Redevelopment Area.

(C) The City Council adopted Ordinance No. 82-58 which approved a community redevelopment plan for the Redevelopment Area (as amended from time to time, the "Redevelopment Plan").

(D) By Ordinance No. 82-53, the City Council established the redevelopment trust fund into which tax increment is deposited each year by affected taxing authorities (the "Tax Increment"), all in accordance with section 163.387 of the Act.

(E) The Redevelopment Plan recognizes that the Redevelopment Area lacks an adequate supply of hotel and lodging facilities, and that the provision of hotel accommodations is an essential requirement for addressing the blighted conditions present therein.

(F) The Redevelopment Plan provides for a public-private development program to encourage private investment, specifically targeting uses including hotels, retail, residential and office uses.

(G) The City owns certain real property in the Redevelopment Area located at 809 E. Strawbridge Avenue (the "City Parcel") and the Agency has a leasehold interest in, as well as an option to purchase, real property immediately adjacent to the City Parcel (the "Option Parcel") located at 801 E. Strawbridge Avenue, (collectively referred to herein as the "Project Site"), a description of each which is included in the form of the Master Redevelopment Agreement attached hereto as Appendix A (the "Master Redevelopment Agreement").

(H) The Developer desires to redevelop the Project Site to include (i) a multi-story hotel, a parking garage and a public walkway as constructed on the Project Site defined herein as the "Hotel Facility" and (ii) certain off-site improvements located in the adjacent alley defined herein as the "Off-site Improvements" (collectively, the Hotel Facility and the Off-site Improvements are defined herein as the "Project").

(I) The total estimated cost of the Project is \$35,486,278.00 as further described in the Master Redevelopment Agreement.

(J) The Developer has represented to the City and the Agency that but for financial and other assistance from the City and the Agency as herein set forth, the Project is not financially feasible and the Developer will not proceed.

(K) The financial and other assistance to be provided by the City and Agency includes (i) the acquisition of the Option Parcel through exercise of the purchase option, (ii) sale of the City Parcel and the Option Parcel to the Developer in accordance with Section 163.380 of the Act, (iii) a financial contribution or grant by the Agency on an annual basis of up to seventy-five percent (75%) of the Tax Increment generated each year by the Project for a twenty (20) year term (the "Tax Increment Recapture"), (iv) the City obtaining a loan through Section 108 of the Housing and Community Development Act of 1974 and lending the proceeds thereof to the Developer pursuant to a third party loan agreement, to pay for soft costs associated with constructing the Project (the "108 Loan"), and (v) a one-time financial contribution or grant by the Agency to reimburse for certain public improvements in the amount of \$195,000 (the "Off-site Improvements Reimbursement").

(L) The Act authorizes "area reinvestment agreements" between a community redevelopment agency and private parties pursuant to which the increment computed for a specific area is reinvested in services or public or private projects, or both, including debt service, supporting one or more projects consistent with the community redevelopment plan that is identified in the agreement to be constructed within that area.

(M) The Tax Increment Recapture, the 108 Loan and the Off-site Improvements Reimbursement to be provided as an inducement for redevelopment of the Project Site represents a small portion of the overall cost of the Project and will result in the provision of a vibrant Hotel Facility and, which is expressly contemplated by the Redevelopment Plan.

(N) The Developer intends to perform the Off-Site Improvements and immediately

thereafter or concurrently redevelop the Project Site.

(O) The City hereby determines that the Project is consistent with the City's comprehensive plan.

(P) The Agency estimates that the Project will generate substantial ad valorem and sales tax revenues through the term of the Redevelopment Plan and beyond.

(Q) The Project is expected to act as a catalyst for additional high quality redevelopment in the Redevelopment Area, thus significantly benefiting the City's economy and its citizens and significantly advances the community redevelopment objectives set forth in the Act and the Redevelopment Plan.

(R) The construction phase of the Project is expected to create local jobs stemming from construction related activities, and upon completion, the Project is expected to create and sustain a minimum of forty-two (42) local jobs related to operation of the Hotel Facility.

(S) Construction and operation of the Project is further expected to stimulate economic development in the City and to materially benefit the City, the taxing authorities which contribute Tax Increment and their respective residents for many reasons, including but not limited to the increased direct and indirect funds that will be received from ad valorem tax revenue, sales tax revenue, utility revenue, and other revenues.

(T) The City and Agency therefore have an interest in the diverse economic benefits which would be created through construction of the Project and redevelopment of the Project Site.

(U) The City and Agency desire to facilitate the successful construction of the Project in order to realize the public and community redevelopment benefits identified herein.

(V) Provision of the Hotel Facility and Off-site Improvements is a valid and important public purpose in light of the need to redevelop the land within the Redevelopment Area, and the Agency is authorized by the Act to expend Tax Increment proceeds in furtherance of the community redevelopment objectives of remedying blight and preserving and enhancing the tax base.

(W) The City and Agency hereby determine that the economic incentives and contributions contemplated herein are an advantageous means of inducing construction of the Project and which will serve a valid and paramount public purpose in that: (1) construction of the Project will directly promote redevelopment of the Project Site and the Redevelopment Area, as well as the overall economy of the City; (2) the Project will further the development of commercial activities in the Redevelopment Area, thereby achieving essential objectives of the Redevelopment Plan and providing a more balanced and stable area economy and increased opportunities for gainful employment; (3) construction of the Project will stimulate and promote redevelopment in the Redevelopment Area above and beyond the Project Site; and (4) all economic incentives will be used for the public purposes described herein.

(X) The City and Agency now desire to facilitate construction of the Project and redevelopment of the Project Site by authorizing and approving execution of the (1) the Master

Redevelopment Agreement setting forth the terms and conditions upon which redevelopment of the Project Site will take place, (2) an agreement providing for conveyance of the Transfer Parcel to Developer (the "Transfer Agreement"), (3) an off-site improvements agreement providing for infrastructure improvements in the adjacent alley (the "Off-site Infrastructure Agreement"), (4) an incentive agreement providing for tax increment reimbursement and other economic incentives to the Developer to induce construction of the Project and redevelopment of the Project Site (the "Redevelopment Incentive Agreement"), and (5) a parking agreement between the City and the Developer in which the City will allow the use of thirty (30) parking spaces in the City Parking Garage for hotel patrons and the Developer will allow thirty (30) parking spaces in the Hotel Parking Garage to the City for use by the public (the "Parking Agreement").

SECTION 3. APPROVAL OF AGREEMENTS.

(A) The Agency and City, respectively, hereby approve, authorize and direct execution of the Master Redevelopment Agreement, together with the Transfer Agreement, the Off-site Infrastructure Agreement, the Redevelopment Incentive Agreement and the Parking Agreement attached as exhibits thereto, in substantially the form attached hereto as Appendix A.

(B) The Agency and City, respectively, hereby authorize and direct the City Manager to execute and deliver the Master Redevelopment Agreement, the Transfer Agreement, the Off-site Infrastructure Agreement, the Redevelopment Incentive Agreement, and the Parking Agreement, and any other papers and instruments, with such omissions, insertions, and variations as may be necessary and/or desirable and approved in consultation with the City Attorney prior to the delivery thereof, with such necessity and/or desirability and approval to be evidenced by the execution and delivery thereof, and to execute and deliver any and all papers and instruments to do and cause to be done all acts and things necessary or proper for carrying out the actions contemplated by this Resolution and the agreements between the parties authorized hereunder.

SECTION 4. RATIFICATION AND CONFIRMATION. Based upon the findings herein, the Redevelopment Plan, and the public purpose advanced by redevelopment of the Redevelopment Area, all prior actions by the City and the Agency associated with advancing redevelopment of the Project Site are in the public interest, serve public purposes and provide for accomplishing community redevelopment consistent with the Redevelopment Plan. The findings herein and all prior actions and plans of the City and the Agency associated with redevelopment of the Project Site are hereby ratified and confirmed.

SECTION 5. GENERAL.

(A) If any one or more of the provisions of this Resolution should be held contrary to any express provision of law or shall for any reason whatsoever be held invalid by a court of competent jurisdiction, then such provisions shall be null and void and shall be deemed separate from the remaining provisions of this Resolution.

(B) It is not the City's intention, and nothing herein shall be so construed, to impair the effectiveness of any prior action or resolution taken or adopted by the City or the governing body of the Agency, with respect to the creation and establishment of the Agency, community redevelopment, the issuance of any bonds or obligations, or any other associated action taken by such governmental bodies.

(C) This Resolution shall take effect immediately upon its passage and adoption by both the Agency and City.

PASSED AND ADOPTED at a regular meeting of the governing body of the Melbourne Downtown Community Redevelopment Agency on the _____ day of _____, 2018.

MELBOURNE DOWNTOWN COMMUNITY
REDEVELOPMENT AGENCY

[Seal]

By: _____
Kathleen H. Meehan
Chair

Attest:

Cathleen A. Wysor
City Clerk

PASSED AND ADOPTED at a regular meeting of the City Council on the _____ day of _____, 2018.

CITY OF MELBOURNE, FLORIDA

[Seal]

By: _____
Kathleen H. Meehan
Mayor

Attest:

Cathleen A. Wysor
City Clerk

Attachment: Appendix A

Resolution No. 3770

RESOLUTION NO. 3770
APPENDIX A

FORM OF MASTER REDEVELOPMENT AGREEMENT WITH ATTACHED:

TRANSFER AGREEMENT
PUBLIC INFRASTRUCTURE AGREEMENT
REDEVELOPMENT INCENTIVE AGREEMENT
PARKING AGREEMENT

**MASTER REDEVELOPMENT AGREEMENT
(STRAWBRIDGE HOTEL PROJECT)**

By and Between

THE CITY OF MELBOURNE, FLORIDA

and

THE MELBOURNE DOWNTOWN COMMUNITY REDEVELOPMENT AGENCY

and

801 STRAWBRIDGE HOTEL, LLC

Dated as of August____, 2018

**MASTER REDEVELOPMENT AGREEMENT
(STRAWBRIDGE HOTEL PROJECT)**

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**MASTER REDEVELOPMENT AGREEMENT
(STRAWBRIDGE HOTEL PROJECT)**

THIS MASTER REDEVELOPMENT AGREEMENT (STRAWBRIDGE HOTEL PROJECT) ("Agreement") is made and entered into this ____ day of _____, 2018 by and between the **CITY OF MELBOURNE, FLORIDA**, a municipal corporation with a principal place of business at 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (the "City"); and the **MELBOURNE DOWNTOWN COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163, Florida Statutes, with a principal place of business at 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (the "Agency"); and **801 STRAWBRIDGE HOTEL, LLC**, a Wyoming limited liability company with a principal place of business at 1234 S. Greenway Drive, Coral Gables, Florida 33134 (the "Developer").

W I T N E S S E T H:

WHEREAS, the City Council of the City (the "City Council"), adopted Resolution No. 775 which found and determined that the Melbourne Downtown Redevelopment Area described therein (as expanded from time to time, the "Redevelopment Area") is a "blighted area" within the meaning of Part III, Chapter 163, Florida Statutes (the "Act") and in particular section 163.340 thereof, and that such area was in need of the redevelopment, rehabilitation and improvement contemplated by the Act; and

WHEREAS, by Ordinance No. 82-38, the City Council created the Agency to carry out the community redevelopment purposes of the Act within the Redevelopment Area; and

WHEREAS, the City Council adopted Ordinance No. 82-58 which approved a community redevelopment plan for the Redevelopment Area (as amended from time to time, the "Redevelopment Plan"); and

WHEREAS, by Ordinance No. 82-53, the City Council established the redevelopment trust fund (the "Trust Fund") into which tax increment is deposited each year by affected taxing authorities (the "Tax Increment"), all in accordance with section 163.387 of the Act; and

WHEREAS, the Redevelopment Plan describes the lack of hotel and lodging facilities in the Redevelopment Area and recognizes that adequate hotel lodging is required if the Redevelopment Area is to achieve significant revitalization; and

WHEREAS, the Redevelopment Plan provides for a public-private development program to encourage private investment in the Redevelopment Area, specifically targeting hotel and retail uses; and

WHEREAS, the Agency owns certain real property in the Redevelopment Area located at 809 E. Strawbridge Avenue (the "City Parcel"), a description of which is attached hereto as Exhibit "A"; and

WHEREAS, the City has a leasehold interest in, as well as an option to purchase, real property immediately adjacent to the City Parcel located at 801 E. Strawbridge Avenue, a description of which is attached hereto as Exhibit "B" (the "Option Parcel," and together with the City Parcel, the "Project Site"); and

WHEREAS, the City Parcel and the Option Parcel are currently utilized as public parking which serves surrounding businesses and the Redevelopment Area in general; and

WHEREAS, the Developer has presented a proposal for the redevelopment of the Project Site to include (i) a multi-story hotel and a parking garage and a public walkway as constructed on the Project Site defined herein as the "Hotel Facility" and (ii) certain off-site infrastructure located in the adjacent alley defined herein as the "Off-Site Infrastructure" to be performed by the Developer or its assignee (collectively, the Hotel Facility and the Off-Site Infrastructure are defined herein as the "Project"); and

WHEREAS, the Project is further described in the Conceptual Project Plan attached hereto as Exhibit "C"; and

WHEREAS, the total estimated cost of the Project is \$35,486,278 for the Hotel Facility as further described in the Project Cost Estimate attached hereto as Exhibit "D"; and

WHEREAS, the Developer has represented to the City and the Agency that but for financial and other assistance from the City and the Agency as herein set forth, the Project is not financially feasible and the Developer will not proceed; and

WHEREAS, subject to the terms and conditions of this Agreement, the financial and other assistance to be provided by the City and Agency includes (i) the acquisition of the Option Parcel through exercise of the purchase option, (ii) sale of the City Parcel and the Option Parcel to the Developer in accordance with section 163.380 of the Act, (iii) a financial contribution or grant by the Agency on an annual basis of up to seventy-five percent (75%) of the Tax Increment generated each year by the Project for the term

set forth herein (the " Tax Increment Recapture "), (iv) the City obtaining a loan through Section 108 of the Housing and Community Development Act of 1974 and lending the proceeds thereof to the Developer pursuant to a third party loan agreement, to pay for soft costs associated with constructing the Project, and (v) a one-time financial contribution or grant by the Agency to reimburse for certain public improvements in the amount of up to \$195,000.00, as the same may be adjusted pursuant to the Off-Site Infrastructure Agreement, and

WHEREAS, the Act authorizes an agreement between a community redevelopment agency and private parties pursuant to which the increment computed for a specific area is reinvested in services or public or private projects, or both, supporting one or more projects consistent with the community redevelopment plan that is identified in the agreement to be constructed within that area; and

WHEREAS, the financial and other assistance to be provided by the City and the Agency as an inducement for redevelopment of the Project Site represents a relatively limited portion of the Estimated Project Cost to the Developer and will result in the provision of hotel facilities contemplated by the Redevelopment Plan as a necessary requirement for achieving significant revitalization of the Redevelopment Area; and

WHEREAS, the City has determined that the Project is consistent with the City's comprehensive plan and the public-private development program described in the Redevelopment Plan; and

WHEREAS, the Agency estimates that the Project will generate substantial ad valorem and sales tax revenues through the term of the Redevelopment Plan and beyond; and

WHEREAS, the Project is expected to act as a catalyst for additional high quality redevelopment in the Redevelopment Area, thus significantly benefiting the City's economy and its citizens and significantly advances the community redevelopment objectives set forth in the Act and the Redevelopment Plan; and

WHEREAS, the construction phase of the Project is expected to create local jobs stemming from construction related activities, and upon completion, the Project is expected to create local jobs related to operation of the commercial uses; and

WHEREAS, construction and operation of the Project is further expected to stimulate economic development in the City and to materially benefit the City, the taxing authorities which contribute Tax Increment and their respective residents for many reasons, including but not limited to the increased direct and indirect funds that

will be received from ad valorem tax revenue, sales tax revenue, utility revenue, and other revenues; and

WHEREAS, the City and Agency therefore have an interest in the diverse economic benefits which would be created through construction of the Project and redevelopment of the Project Site, and

WHEREAS, the City and Agency desire to facilitate the successful construction of the Project in order to realize the public and community redevelopment benefits identified herein; and

WHEREAS, redevelopment of the Redevelopment Area serves an important public purpose and the Agency is authorized by the Act to expend Tax Increment proceeds in furtherance of the community redevelopment objectives of remedying blight and preserving and enhancing the tax base; and

WHEREAS, the City and Agency hereby determine that the economic incentives and contributions contemplated herein are an advantageous means of inducing construction of the Project and which will serve a valid and paramount public purpose in that: (1) construction of the Project will directly promote redevelopment of the Project Site and the Redevelopment Area, as well as the overall economy of the City; (2) the Project will further the development of commercial activities in the Redevelopment Area, thereby achieving essential objectives of the Redevelopment Plan and providing a more balanced and stable area economy and increased opportunities for gainful employment; (3) construction of the Project will stimulate and promote redevelopment in the Redevelopment Area above and beyond the Project Site; and (4) all economic incentives will be used for the public purposes described herein; and

WHEREAS, the parties now desire to enter into this Agreement in order to provide for construction of the Project and redevelopment of the Project Site in furtherance of meeting the redevelopment goals and objectives set forth in the Redevelopment Plan; and

WHEREAS, the parties acknowledge that redevelopment activities in the Redevelopment Area must be coordinated to insure their compliance and consistency with the Act and the Redevelopment Plan, and the parties mutually agree to cooperate to achieve such coordination; and

WHEREAS, the City's grant of funds to attract and retain business enterprises and the use of public funds toward the achievement of economic development goals constitutes a valid public purpose pursuant to Section 166.021(8), Florida Statutes

(2018); and

WHEREAS, pursuant to Article VIII, Section 2(b), Florida Constitution of 1968, the City has the home rule power and authority to exercise any power not inconsistent with Florida law for municipal purposes which would include powers exercised pursuant to Section 166.021(8), Florida Statutes (2018); and

WHEREAS, this Agreement has been prepared and reviewed by the City, the Agency and the Developer, and all are desirous of entering into this Agreement to effectuate redevelopment of the Project Site upon the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions. Capitalized terms used herein shall have the meanings set forth in the Recitals above and as follows:

"Act" means Part III, Chapter 163, Florida Statutes known and referred to as the Community Redevelopment Act of 1969, as amended from time to time, and other applicable provisions of law.

"Agency" means the Melbourne Downtown Community Redevelopment Agency, and its successors or assigns.

"Alley Parcel" means the property adjacent to the south boundary of the Project Site, owned by multiple private owners, as described in Exhibit "E".

"Agreement" means this Master Redevelopment Agreement, including all Exhibits and all amendments, modifications, addenda, supplements and revisions to this Agreement or to any of the Exhibits.

"Building Permit" means the permit, certificate, license or other approval by the City or other applicable governmental authority required to be obtained, issued, granted, or received as the final such permit, certificate, license or approval prior to commencement of construction of any portion Project on the Project Site.

"Certificate of Completion" means that document which, upon satisfactory completion of a structure or improvement not intended for occupancy (such as an alley

improvement or street improvement), issued by the building official or the city engineer, as applicable, certifying that the associated permit has received the required inspections to include a passing final inspection. The Certificate of Completion does not grant authority to occupy a space prior to the issuance of a Certificate of Occupancy.

"Certificate of Occupancy" means that document which, upon satisfactory completion of a building, structure, electrical, gas, mechanical or plumbing system, may be issued by the building official, certifying that the project is suitable for final occupancy.

"City" means the City of Melbourne, Florida, a Florida municipal corporation and its successors or assigns.

"City Parcel" means the tax parcel owned by the City and located at 809 E. Strawbridge Avenue, which comprises a portion of the Project Site, as described in Exhibit "A".

"Commencement Date" means the date when the Developer begins the construction of the Project pursuant to a Building Permit.

"Completion Date" means the date when construction of the Project is completed as provided in Section 2.13 C. hereof, but in no event later than December 31, 2021, unless otherwise extended pursuant to Section 2.13(D).

"Conceptual Project Plan" means the site plan and narrative description of the conceptual plan for redevelopment of the Project Site for construction of the Hotel Facility (including the Hotel Parking Garage and the Walkway Improvements) and the narrative for redevelopment adjacent to the Project Site for construction of the Off-Site Infrastructure, prepared by the Developer and included herein as Exhibit "C".

"Construction Period" means the period of time beginning on the Commencement Date and ending upon the sooner to occur of the following: (i) December 31, 2021; and (ii) the Completion Date.

"Design Documents" means the Preliminary Design Documents and the Final Design Documents for the Project.

"Developer" means 801 Strawbridge Hotel, LLC and its successors and assigns.

"Effective Date" means the date on which this Agreement is executed by all the parties.

"Event of Termination" has the meaning ascribed to it in Article 6.

"Exhibits" means those agreements, forms of agreements, instruments, legal descriptions, schedules, maps, depictions and other documents attached hereto and designated as Exhibits to this Agreement or incorporated by reference into this Agreement to the same extent as if fully set forth herein.

"Final Design Documents" means the final narrative and graphic description and depiction of the Project, including the final site plan, site elevation, design concept, any recommended streetscape improvements on or adjacent to the Project, a depiction of the pedestrian and automobile ingress and egress to the Project Site and all parking facilities on the Project Site as prepared by or for the Developer in order to receive construction plan approval of the Project from the City.

"Force Majeure" means failure to perform as a result of acts of God, (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, or terrorist activities, or an event for which a declaration of emergency is issued by legally empowered local, state or federal governing authorities,

"Hotel Facility" means the multi-story hotel and any related accessory uses to be constructed on the Project Site, including the Hotel Parking Garage and the Walkway Improvements, as further described in the Conceptual Project Plan. The term "Hotel Facility" shall include the real property upon which the facility is constructed, defined herein as the Project Site.

"Hotel Parking Garage" means the parking garage constructed by the Developer on the Project Site for use by guests, employees, visitors, vendors, agents of the Hotel Facility and by the public in accordance with the Parking Agreement, as provided in Section 2.10 hereof.

"HUD" means the U.S. Department of Housing and Urban Development.

"Material" shall mean and refer to those portions of the Project specifically listed or described in the Conceptual Project Plan as being expressly required by the City, as set forth in the narrative portion of the Conceptual Project Plan.

"Off-Site Infrastructure" means the improvements to property located adjacent to the Project Site as described in the Off-Site Infrastructure Agreement between the City , the Agency and the Developer in the form attached hereto as Exhibit "J" and as

provided in Section 2.9 hereof .

"Option Parcel" means the tax parcel for which the City has a purchase option located at 801 E. Strawbridge Avenue, which comprises a portion of the Project Site, as described in Exhibit "B".

"Parking Agreement" means the agreement, as provided in Section 2.10 hereof, by which (i) the City will allow the use of thirty (30) parking spaces in the City-owned parking facility located at 900 E. Strawbridge Avenue to the Developer, and (ii) the Developer will allow the use of thirty (30) parking spaces in the Hotel Parking Garage to the City for use by the public.

"Preconstruction Period" means the period of time commencing upon the Effective Date of this Agreement and ending upon the sooner to occur of the following: (i) December 31, 2019; and (ii) the Commencement Date.

"Preliminary Design Documents" means a preliminary narrative and graphic description and depiction of the Project, including the preliminary site plan, site elevation, design concept, any recommended streetscape improvements on or adjacent to the Project, a depiction of the pedestrian and automobile ingress and egress to the Project Site and all parking facilities on the Project Site prepared by or for Developer, in short all design documents required to receive preliminary site plan approval from the City.

"Project" means the redevelopment of the Project Site through the design and construction of the Hotel Facility and the redevelopment of the Alley Parcel through the design and construction of the Off-Site Infrastructure by the Developer.

"Project Cost Estimate" means the estimate of all Project Costs included herein as Exhibit "D".

"Project Costs" means all costs, both direct and indirect, incurred by the Developer in designing, permitting, acquiring and constructing the Project.

"Project Schedule" means the schedule and sequence of events prepared by the Developer subject to review by and coordination with the City staff for the commencement, progression, and completion of the design, construction, rehabilitation, equipping and furnishing of the Project, including revisions, amendments and changes thereto made from time to time as provided herein.

"Project Site" means the real property comprised of the City Parcel and the

Option Parcel, upon which the Hotel Facility shall be constructed.

"Redevelopment Area" means the Downtown Melbourne Redevelopment Area defined in City Resolution No. 775, as amended, which is located in the downtown area of the City.

"Redevelopment Trust Fund" means the trust fund for the Redevelopment Area into which the Tax Increment is deposited, which was created and established pursuant to Section 163.387, Florida Statutes, by City Ordinance No. 82-53 and codified in Section 20-44 of the City Code of Ordinances, as amended and supplemented as of the effective date of this Agreement.

"Redevelopment Plan" means the Downtown Melbourne CRA Redevelopment Plan dated November 2005, as may be amended and supplemented from time to time and particularly as amended by City Ordinance No. 2017-56.

"Tax Increment" means the tax increment contemplated paid by each taxing authority and deposited to the Redevelopment Trust Fund each year in accordance with section 163.387 of the Act.

"Tax Increment Recapture" means the portion of the Tax Increment granted to the Developer pursuant to the Redevelopment Incentive Agreement in the form attached hereto as Exhibit "I".

"Termination Date" means the date on which this Agreement is terminated and is no longer of any force and effect as provided herein in Article 6.

"Third Party Loan Agreement" means the agreement between the City and the Developer described in Section 2.7 hereof.

"Transaction Documents" means all of those agreements listed in Section 2.12 and any other agreements or documents entered into between the Developer and the City and/or Agency in furtherance of the objectives of this Agreement.

"Transfer Agreement" means the agreement between the City and the Developer providing for conveyance of the City Parcel and the Option Parcel to the Developer, in the form attached hereto as Exhibit "H".

"Walkway Improvements" means the pedestrian walkway to be constructed by the Developer along the entire east side of the Project Site, to allow public access to the Hotel Parking Garage.

Section 1.2 Use of Words and Phrases. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number and the word "person" shall include corporations and associations, including public bodies, as well as natural persons. "Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

Section 1.3 Florida Statutes. All references herein to "Florida Statutes" are to Florida Statutes (2018), as amended from time to time, unless specifically indicated otherwise.

ARTICLE 2
PURPOSE: FINDINGS: INTENT

Section 2.1 Purpose. The purpose of this Agreement is to outline the details of the transaction, and the commitments and responsibilities of each of the parties from conceptual planning through final Project completion, and to provide acceptable releases to each of the parties should the Project fail to proceed, or be terminated pursuant to the provisions of this Agreement, at any point in time.

Section 2.2 Findings.

A. The City and the Agency do hereby find that the Project will advance the community redevelopment goals and objectives set forth in the Redevelopment Plan which expressly contemplates and encourages the construction of hotel facilities and enhanced public parking in the Redevelopment Area and provides for private sector participation in remediating the blighted conditions therein.

B. The City and the Agency do hereby find that the Developer has represented to City and the Agency that the Developer needs financial and other assistance from the City and the Agency in order for the Project to proceed.

C. The City and the Agency do hereby find that there is, in fact, a need for financial and other assistance by the City and the Agency for the Project to proceed.

D. The City and the Agency do hereby find that the City has an interest in the diverse economic benefits which would be created for the City by the construction and operation of the Hotel Facility and that the Project is consistent with and furthers the objectives of the Redevelopment Plan and is in the best interest of the citizens of the

City.

E. The parties hereto recognize and acknowledge and do mutually find that but for the financial and other assistance provided for herein, the Developer would not undertake construction of the Project and redevelopment of the Project Site, and such assistance is a critical and important inducement without which such construction and redevelopment would not be undertaken.

Section 2.3 **Intent.** It is the intent of the parties hereto to efficiently, effectively and economically cause the successful construction of the Project in order to improve and redevelop the Project Site, specifically, and the conditions in the Redevelopment Area, in general, as well as implement the Redevelopment Plan and otherwise further the purposes of the Act. It is further the intent of the parties that the Developer shall permit, design, engineer, construct, equip, and otherwise complete the Project by the Completion Date. The parties mutually recognize and acknowledge that the Developer will require the City's and the Agency's financial and other assistance, the extent of which is set forth in Sections 2.5, 2.6, 2.7 and 2.9 below.

Section 2.4 **Project Cost.**

A. The cost of the Project is estimated to be \$35,191,278 for the Hotel Facility as further described in the Project Cost Estimate attached hereto as Exhibit "D". The Developer shall be responsible for funding and financing acquisition and construction of the Project, subject to the City and Agency contributions described in Sections 2.5, 2.6, 2.7 and 2.9 below.

B. Except for such contributions by the City and the Agency, all other Project Costs associated with the design and construction of the Project (including but not limited to infrastructure, curbs, sidewalks, lighting, signage, street access points and utility relocations, if any) shall be the responsibility of the Developer.

C. Cost overruns, if any, which result from changes to the Project deemed necessary by the Agency for consistency with any changes to the Redevelopment Plan that are made after the Effective Date shall be the responsibility of the Developer. As of the Effective Date of this Agreement, the Agency has reviewed the Conceptual Project Plan and the Preliminary Design Documents and determined they are consistent with the existing Public-Private Development Program of the Redevelopment Plan.

D. Cost overruns, if any, which result from changes to the Project which are necessary to comply with the City's land development code provisions, City standards and codes or requirements of other City applicable regulatory boards or agencies shall

be the responsibility of the Developer.

E. Cost overruns, if any, resulting from discretionary requests of the City or Agency pertaining to the Off-Site Infrastructure or the Walkway Improvements shall be the responsibility of the City and/or Agency, provided such requests are pursuant to a written change order identifying the scope of work and costs, approved by the City and the Developer prior to performance of the work, which approval shall not be unreasonably withheld, conditioned or delayed.

F. Such cost overruns shall be based on changes directed by the City or the Agency subject to the written approval of the City Manager prior to commencement of the work so directed by the City or the Agency. The City Manager agrees to promptly approve or deny any such change in work for the Project directed by the City or the Agency and if significant delays in the Project are caused by such work directed by the City or the Agency, the City Manager shall have the right to and shall extend the Completion Date for a period of time commensurate with the delay caused by such work.

Section 2.5 Conveyance of Project Site.

A. The City shall convey the City Parcel and the Option Parcel to the Developer in accordance with the terms and conditions of the Transfer Agreement attached hereto as Exhibit "H".

B. Within thirty (30) days of the execution of this Agreement, pursuant to Section 1.A. of the Transfer Agreement, the Developer shall provide the City with a non-refundable down payment in the amount of Fifty Thousand Dollars and 00/100 (\$50,000.00) towards the purchase of the Option Parcel, which is the Initial Downpayment, as defined in the Transfer Agreement.

Section 2.6 Tax Increment Recapture. The Agency shall contribute tax increment revenues to Developer in accordance with the terms and conditions of the Redevelopment Incentive Agreement attached hereto as Exhibit "I".

Section 2.7 Section 108 Third Party Loan Agreement.

A. The City shall apply for a loan through Section 108 of the Housing and Community Development Act of 1974 administered by HUD during the Preconstruction Period.

B. The loan will be in the principal amount not to exceed \$2,000,000.00.

C. The City will lend the proceeds thereof to the Developer pursuant to a "Third Party Loan Agreement," to pay for soft costs associated with constructing the Project.

D. The Third Party Loan Agreement will be mutually drafted and agreed upon by the City and the Developer, in accordance with all requirements of the Section 108 Loan Guarantee Program administered by HUD, including any third party underwriting guidelines promulgated thereunder. The City Manager has the right to approve on behalf of the City and the Agency the terms and provisions of the Third Party Loan Agreement, and to the extent the terms and provisions of the Third Party Loan Agreement differ from the terms and provisions set forth below in Section 2.7(E), Section 2.7(F) and/or Section 2.7(H), the terms of the Third Party Loan Agreement approved by the City Manager and the Developer shall control.

E. Such Third Party Loan Agreement shall include, inter alia, the following terms and conditions; provided, however, that the terms and conditions shall be revised as necessary to ensure conformity with the requirements of the Section 108 Loan Guarantee Program:

1. The term of the loan shall not exceed twenty (20) years.
2. The loan shall bear annual interest at a rate determined by HUD at the time of the initial loan offering.
3. Loan payments by the Developer shall be interest-only for years 1 through 7, with amortization of the principal balance during year 8 through 12.
4. Upon execution of the Third Party Loan Agreement, the Developer shall pay one percentage point (1%) of the principal balance of the loan to the City to reimburse the City's costs for associated loan origination and other fees.
5. The Developer will pay the applicable Section 108 Loan Guarantee Fee upon the disbursement of funds by the City.
6. Subject to the receipt by the City of the Section 108 HUD loan proceeds, such proceeds will be released to the Developer in accordance with three (3) benchmarks: (i) for the first draw of \$100,000.00, once execution of all related Transaction Documents by the City, the Agency and the Developer, as applicable, including the Third Party Loan Agreement have occurred and in connection with the Closing of the Project Site, (ii) for the second draw of \$900,000.00, when site plan and construction/engineering plans have been approved, Structural Foundation, Underground MEP (Mechanical Electrical and

Plumbing) and Underground Fire permits have been issued, all other building permits have been submitted and pending approval, and all water impact fees, wastewater impact fees and transportation impact fees have been paid, and (iii) for the third and final draw of the remaining proceeds of the loan, upon all construction permits for the Project being issued by the City and all horizontal and underground development work necessary for vertical construction of the Hotel Facility to commence is complete and inspected by the City. Once the conditions in this section 2.7E.6(iii) have been met, the Developer shall submit a draw request to the City for the third and final draw of the Loan Proceeds, and the City shall process such request within forty-five (45) days of Developer's draw request for the same.

F. The Third Party Loan Agreement shall also include the following security provisions:

1. Subordinate Lien on the Project Site, which subordination shall include standard market-style mortgagee protection language for any and all superior mortgagees, similar to the following language:

Upon request by Developer, the City shall subordinate the lien, operation and effect of this Third Party Loan Agreement to the lien, operation and effect of a mortgage, security agreement and other loan documents evidencing and securing a development or construction loan procured by Developer for the development of the Project. The City may subsequently agree to subordinate the lien, operation and effect of this Third Party Loan Agreement to any refinance, renewal, extension or modification of such development or construction loan or to any other loan granted to Developer, with the consent and approval of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed. The City Manager shall provide his approval or denial of such subordination of the Third Party Loan Agreement within thirty (30) days after receiving Developer's written request therefor. In the event the City Manager denies the requested subordination, the Developer shall have the right to seek approval of such assignment directly by City Council. The City and the Developer shall furnish to the lender making such development loan or refinancing such development loan, if approved by the City as provided for above, any and all such instruments and documents as such lender may reasonably require to evidence the subordination referred to hereinabove.

2. Agreed-upon personal guarantees from the Developer and its managing members.

3. The Tax Increment Recapture will be paid to the City instead of the Developer if the Developer defaults on its payment obligations under the Third Party Loan Agreement.

4. Appropriate payment and performance bond(s) from the contractor(s) allowing the City to be named as a party for completion of the Project.

G. In the event the City is not able to obtain funding from the Section 108 Loan Guarantee Project as contemplated by this section or the Section 108 Loan is approved for less than \$2,000,000.00, then, upon written notice to Developer of such inability or decrease in the principal amount, the Developer may cancel this Agreement by providing the City with written notice of such cancellation within sixty (60) days of such notice to the Developer; provided, however, that upon any such cancellation if the Project Site has been conveyed to the Developer, the City may repurchase the Project Site from the Developer at the purchase price paid by the Developer pursuant to the Transfer Agreement contemplated by Section 2.5 hereof, and those amounts set forth in Section 2.7E(4) that have been paid by the Developer shall be forfeited to the City.

H. The Third Party Loan Agreement shall also include the following additional provisions:

1. The Developer will provide the City with all employment and financing reporting and documentation in a form acceptable to the City as deemed necessary by the City to comply with all obligations of the City for its Section 108 Loan with HUD.

2. Default by the City of its Section 108 Loan with HUD shall be deemed a default of the Third Party Loan Agreement by the Developer, unless such default by the City is unrelated to the Developer.

Section 2.8 On-site Public Improvements. The Developer shall construct the Walkway Improvements comprised of an approximately 5' wide pedestrian walkway along the entire east side of the Project Site, as further described in the Conceptual Project Plan. The Developer shall grant a public easement for use of the pedestrian walkway through delivery to the City of a Public Access Easement in substantially the form attached hereto as Exhibit "G".

Section 2.9 Off-Site Infrastructure.

In the event the conditions set forth in the Off-Site Infrastructure Agreement are met pursuant to the deadlines for such provided for therein, the Developer, or its assignee, shall construct the Off-Site Infrastructure comprised of alley improvements on property located immediately south of and adjacent to the boundary of the Project Site in accordance with the terms and conditions of the Off-Site Infrastructure Agreement attached hereto as Exhibit "J".

Section 2.10 Parking Agreement. The City Parcel and the Option Parcel currently serve as public parking for patrons of the nearby commercial establishments and those visiting the Redevelopment Area. In order to continue the availability of public parking for such patrons and visitors, the Developer will provide thirty (30) parking spaces in the Hotel Parking Garage for public use, and the City will provide thirty (30) parking spaces in the City-owned parking facility located at 900 E. Strawbridge Avenue for the use of the Hotel Facility pursuant to the terms and

conditions set forth in the Parking Agreement attached hereto as Exhibit “F”.

Section 2.11 Ownership and Operation.

A. The Developer shall be the owner of the Hotel Facility and shall be solely responsible for the expenses associated with ownership, operation and maintenance of the Hotel Facility, including the entire stormwater maintenance system serving the Hotel Facility and the Project Site.

B. The Developer shall be the owner of the Walkway Improvements and shall be solely responsible for the expenses associated with ownership, operation and maintenance of the Walkway Improvements subject to the terms and conditions of the Public Access Easement.

C. The Developer shall be the owner of the Hotel Parking Garage and shall be solely responsible for the expenses associated with ownership, operation and maintenance of the Hotel Parking Garage subject to the terms and conditions of the Parking Agreement.

E. The City shall be the owner of the City-owned parking facility located at 900 E. Strawbridge Avenue and shall be solely responsible for the expenses associated with ownership, operation and maintenance of the City-owned parking facility located at 900 E. Strawbridge Avenue subject to terms and conditions of the Parking Agreement.

Section 2.12 Preconstruction Period.

A. The parties agree to enter into the following Transaction Documents concurrent with this Master Redevelopment Agreement, providing for the development, funding and construction of the Project:

1. Transfer Agreement in the form attached hereto as Exhibit “H”.
2. Redevelopment Incentive Agreement in the form attached hereto as Exhibit “I”.
3. Off-Site Infrastructure Agreement in the form attached hereto as Exhibit “J”.
4. Parking Agreement in the form attached hereto as Exhibit “F”.

B. If the parties for any reason terminate this Master Redevelopment Agreement during the Preconstruction Period, (including but not limited to those Events of Termination listed in Article 6), the City shall have no obligation to convey the City Parcel and the Option Parcel to the Developer.

C. The parties agree to enter into the Third Party Loan Agreement prior to, or concurrent with, the conveyance of the City Parcel and the Option Parcel to the Developer.

Section 2.13 Project Schedule; Construction & Completion Date.

A. Prior to the completion of the Preconstruction Period, the Developer shall prepare and present to the City Manager for his prompt review and coordination, an overall Project Schedule reflecting the practical construction milestones of the Project, which will detail the Construction Period, the Commencement Date, and the Completion Date, and the Developer shall commence construction of the Project in accordance with such schedule and the provisions of this Agreement.

B. The planning, design, development, construction, equipping, and completion of the Project by the Developer shall be undertaken, diligently continued and completed in accordance with this Agreement and by the dates set forth in the Project Schedule provided to and accepted by the City, subject to revision as provided below.

C. Due to changes in circumstances, expectations, or assumptions of the parties not now known to or by the parties, including, but not limited to, an event of Force Majeure, those effected portions of the Project Schedule pertaining to the Project may be revised by the Developer from time to time, and if such change is material in nature the Developer shall provide to the City written notice of such revision, except that in no event shall the Completion Date extend beyond December 31, 2021.

D. Notwithstanding anything stated herein to the contrary, the Completion Date may extend beyond December 31, 2021 if there is an event or events of Force Majeure that delay completion of the Project for not more than 180 days, or unless otherwise approved by the City Council. Such extension of the Completion Date shall be for a maximum of 180 days or as otherwise may be approved by City Council. If an event of Force Majeure delays the completion of the Project by more than one hundred-eighty (180) days past the Completion Date, then either party may terminate this Agreement by giving written notice to the other party of such termination. The Developer must make every reasonable attempt to minimize delay of performance caused by an event of Force Majeure.

E. Construction of the Project will be considered complete upon:

1. Issuance by the City of the Certificate of Occupancy for the Hotel Facility which issuance shall not be unreasonably withheld, conditioned or delayed so long as such improvements have been constructed substantially in accordance with the final approved construction plans for the Hotel Facility and all Material conditions are complied with; and

2. Issuance by the City of the Certificate of Completion for the Project, including the Hotel Parking Garage and the Walkway Improvements, which issuance shall not be unreasonably withheld, conditioned or delayed so long as such improvements have been constructed in accordance with the final approved construction plans for such improvements and all Material conditions are complied with; and

3. Issuance by the City of a Certificate of Completion for the Off-Site Infrastructure, which issuance shall not be unreasonably withheld, conditioned or delayed so long as such improvements have been constructed in accordance with the final approved construction plans for the Off-Site Infrastructure and all Material conditions are complied with; and

4. Receipt by the City of an affidavit from the Developer's general contractor or construction manager stating that the Walkway Improvements and Off-Site Infrastructure have been completed, subcontractors have been paid for construction of same and all construction or other liens related to same have been released.

F. The Developer will provide periodic construction status updates to the City.

G. Except in the case of Force Majeure or approval by City Council as set forth in Section 2.13D, notwithstanding anything herein or in the Project Schedule to the contrary, the Completion Date of the Project shall be no later than December 31, 2021.

Section 2.14 Conceptual Project Plan. The Developer shall construct the Project in accordance with the Conceptual Project Plan. The Agency agrees that the Conceptual Project Plan as set forth in this Agreement and the Off-site Infrastructure Agreement is consistent with the Redevelopment Plan and will further the redevelopment purposes and objectives identified in the Redevelopment Plan. The Conceptual Project Plan is conceptual only. For purposes of this Agreement and the

Transaction Documents, the site plans of the Project may be amended as part of the development and site plan approval process provided the resulting amended site plan is substantially in the form of the site plan included in the Conceptual Project Plan. Any amendment to the Material elements of the Conceptual Project Plan, except to the extent not otherwise provided for in this Agreement or the Off-Site Infrastructure Agreement, is subject to review by the Agency to ensure consistency and compliance with the Redevelopment Plan and subject to review and approval by the City Council, on behalf of the City and the Agency, as an amendment to this Agreement and the Transaction Documents.

ARTICLE 3

REPRESENTATIONS, WARRANTIES, COVENANTS AND OBLIGATIONS OF THE DEVELOPER

Section 3.1 Representations and Warranties. The Developer for itself and any assignee, as applicable, represents and warrants to the City and Agency that each of the following statements is presently true and accurate as of the date hereof and can be relied upon by the City and Agency:

A. The Developer is a duly organized and validly existing limited liability company under the laws of the State of Wyoming, has all requisite power and authority to carry on its business as now conducted, to own or hold properties and to enter into and perform its obligations hereunder and each instrument to which it is or will be a party, and is in good standing in the State of Wyoming.

B. The principal place of business of the Developer is 1234 S. Greenway Drive, Coral Gables, Florida 33134, and the manager(s) or managing member(s) thereof executing this Agreement on behalf of the Developer are authorized to act on behalf of the Developer to execute this Agreement and any such actions by such officers shall be binding upon and enforceable against the Developer.

C. Each document in connection with the Project to which Developer is or will be a party has been duly authorized by all necessary action on the part of, and has been, or will be duly executed and delivered by, the Developer, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof (i) requires the approval and consent of any other party, except such as have been duly obtained, (ii) contravenes any existing law, judgment, government rule, regulation or order applicable to or binding on the Developer or (iii) contravenes or results in any breach of, default under or results in the creation of any lien or encumbrance upon any property of the Developer other than the Project Site under any

indenture, mortgage, deed of trust, bank loan or credit agreement, the Developer's partnership or joint venture agreement, or any other agreement or instrument to which the Developer is a party.

D. Each document contemplated by this Agreement to which the Developer is or will be a party constitutes, or when entered into, will constitute, a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with the terms thereof, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which effect creditor's rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

E. To Developer's actual knowledge and belief, there are no pending or threatened actions or proceedings before any court or administrative agency against the Developer or any partner thereof, which question this Agreement or the validity of any instrument or document contemplated hereunder or which are likely in any case, or in the aggregate, to materially adversely affect the successful development of the Project, the consummation of the transactions contemplated hereunder or the financial condition of the Developer.

F. The Developer and each member thereof, has filed or caused to be filed all federal, state, local and foreign tax returns, if any, required to be filed by the Developer and each member thereof and has paid all taxes shown to be due and payable on such returns or on any assessments levied against the Developer and each member thereof.

Section 3.2 Covenants of the Developer.

A. The Developer covenants with the City and the Agency that the Developer shall timely fulfill or cause to be fulfilled all of the conditions and obligations expressed herein and in the Transaction Documents which are within the control of the Developer or which are the responsibility of the Developer to fulfill.

B. During each year this Agreement and the obligations of the Developer under this Agreement shall be in effect, the Developer shall cause to occur and to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to, and the responsibility of, the Developer.

Section 3.3 Obligations of the Developer.

A. The Developer shall permit, design, construct and finance the Project.

B. Subject to the conditions set forth herein and in the Off-Site Infrastructure Agreement, the Developer shall permit, design and construct the Off-Site Infrastructure to meet in all respects design and specifications approved by the City prior to the commencement of construction.

C. As of the Effective Date, the Agency has reviewed and approved the Conceptual Project Plan and certain of the Design Documents to ensure consistency with the Redevelopment Plan.

D. As provided in Section 7.15 hereof, this Agreement shall not be construed as a development approval or to convey development rights upon the Developer. Prior to commencing construction of the Project, the Developer must submit to the City appropriate development applications for development permits or other entitlements. The City shall accept from the Developer for processing and review all such applications, provided that such applications are submitted in accordance with all City rules and regulations and all fees are timely and properly paid. All required permits and development approvals must be obtained prior to commencing construction. Nothing in this Agreement shall be construed to waive or modify applicable land development code and requirements of the City.

E. The Developer shall be responsible for engaging the professional services required and for the payment of all costs associated with design and construction of the Project.

F. The Developer shall coordinate with the City and the Agency through the Completion Date to ensure design and construction of the Project in a manner consistent with City standards and the Redevelopment Plan.

G. All design, engineering and construction by Developer shall be done in accordance with all applicable laws and regulations of the federal, state and local governments, including but not limited to, compliance with all building codes, planning ordinances and regulations and zoning ordinances and regulations of the City.

H. The Developer shall be responsible for and shall initiate, diligently continue and complete the Project as contemplated by this Agreement, including the preparation of the Design Documents, and the construction, and equipping of the Project substantially in accordance with the approved Building Permit(s) and in compliance with the Conceptual Project Plan.

I. The Developer shall ensure that the Project including each component

thereof adheres to all applicable building, zoning, parking, life safety, growth management, and all other codes and ordinances that may apply to the Project and Project Site.

J. The Developer shall have no authority to borrow money secured by the Off-Site Infrastructure or incur any debt or liability on behalf of the City or the Agency.

K. The Developer shall use its best efforts to ensure that the general contractor or construction manager chosen by the Developer uses its proper skill and care in constructing the Hotel Facility. The Developer shall also ensure that such general contractor or construction manager obtains a commercially reasonable and standard performance bond acceptable to the City in favor of the Developer and/or Developer's mortgagee for the construction of the Hotel Facility.

L. The Developer shall use its best efforts to ensure that the general contractor or construction manager chosen by the Developer, uses its proper skill and care in constructing the Off-Site Infrastructure. The Developer shall also ensure that such general contractor or construction manager obtains a commercially reasonable and standard performance bond acceptable to the City in favor of the Developer and the adjacent property owners for the construction of the Off-Site Infrastructure.

M. The general contractor for the Developer shall warrant for a period of two (2) years the Off-Site Infrastructure against defects in workmanship and materials and errors in design (including omissions) or construction.

N. The Developer hereby indemnifies the City and Agency against all claims, costs, losses, demands, actions, proceedings, judgments, settlements and liability arising out of any breach or non-observance of the Developer's obligations in this Agreement. The provisions of this Section 3.3(N) shall not be assigned to another entity who undertakes the construction of the Off-Site Infrastructure pursuant to Section 7.8.

O. The Developer shall obtain and deliver to the City evidence of commercial general liability insurance in amounts that are commercially reasonable and standard for this type of development project, which insurance the Developer shall maintain at all times during the construction of the Hotel Facility.

P. The Developer shall obtain and deliver to the City evidence of commercial general liability insurance in amounts that are commercially reasonable and standard for this type of development project, which insurance the Developer shall maintain at all times during the construction of the Off-Site Infrastructure.

ARTICLE 4
REPRESENTATIONS, WARRANTIES, COVENANTS
AND OBLIGATIONS OF THE CITY

Section 4.1 Representations and Warranties. The City represents and warrants to Developer that each of the following statements is presently true and accurate as of the date hereof and can be relied upon by Developer:

A. The City is a validly existing municipal corporation of the State of Florida, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations under this Agreement and each document contemplated hereunder to which it is or will be a part.

B. This Agreement and each document to which the City is or will be a party has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the City and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof (i) requires the approval and consent of any other party, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the City or (iii) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance upon any party or the City, under any indenture, mortgage, deed of trust, bank loan or credit agreement, any special acts, ordinances, resolutions or any other agreement or instrument to which the City is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the City outstanding on the Effective Date.

C. This Agreement and each document contemplated hereby to which the City is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of the City enforceable against the City in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

D. To the best of the City's belief, this Agreement does not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto.

E. The City is capable of providing water and wastewater utility service to serve the Hotel Facility and does not anticipate the need for extraordinary utility system improvements as a condition precedent to providing service to the Hotel Facility (other

than improvements associated with the payment of impact fees).

Section 4.2 Covenants of the City. The City covenants with Developer that:

A. The City shall timely fulfill or cause to be fulfilled all of the conditions and obligations expressed herein and in the Transaction Documents which are within the control of the City or which are the responsibility of the City to fulfill, subject to Section 7.18 below.

B. So long as this Agreement and the obligations of the City under this Agreement shall be in effect, the City shall cause to occur and to continue to be in effect those instruments, documents, certificate and events contemplated by this Agreement that are applicable to and the responsibility of the City as owner of the City Parcel.

C. The City shall not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto, or, to the extent permitted by law, enact or adopt or urge or encourage the enactment or adoption of any laws, ordinances, resolutions, rules, regulations or orders or approve or enter into any contracts or agreements, including issuing any bonds, notes, or other forms of indebtedness, that will result in any provision of this Agreement to be in violation thereof or which would materially impair the City's ability to perform its obligations under this Agreement or the Transaction Documents.

Section 4.3 Obligations of the City.

A. Subject to Section 7.18 below, the City agrees to timely process all applications received by the Developer for land development approvals and permits for the Project, provided that such applications are submitted in accordance with all City rules and regulations and all fees are timely and properly paid. All required permits and development approvals, whether issued by the City or any other governmental agency, must be obtained prior to commencing construction. Nothing in this Agreement shall be construed to waive or modify applicable land development code provisions and requirements of the City or to require the City to accelerate review or expend moneys for land development approvals or permits. The City shall cooperate with the Developer in the Developer's pursuit of securing all development approvals and permits which may be required by the City or any other governmental agency for construction of the Project; provided, however, the Developer shall be solely responsible for obtaining any development approvals and permits required by any governmental agency for construction and completion of the Project.

ARTICLE 5

**REPRESENTATIONS, WARRANTIES, COVENANTS
AND OBLIGATIONS OF THE AGENCY**

Section 5.1 Representations and Warranties. The Agency represents and warrants to Developer that each of the following statements is presently true and accurate as of the date hereof and can be relied upon by Developer:

A. The Agency is a validly existing public body corporate and politic of the State of Florida, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations under this Agreement and each document contemplated hereunder to which it is or will be a part.

B. This Agreement and each document to which the Agency is or will be a party has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the Agency and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof (i) requires the approval and consent of any other party, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Agency or (iii) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance upon any party or the Agency, under any indenture, mortgage, deed of trust, bank loan or credit agreement, any special acts, ordinances, resolutions or any other agreement or instrument to which the Agency is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the Agency outstanding on the Effective Date.

C. This Agreement and each document contemplated hereby to which the Agency is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

D. To the best of the Agency's belief, this Agreement does not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto.

Section 5.2 Covenants of the Agency. The Agency covenants with Developer that:

A. The Agency shall timely fulfill or cause to be fulfilled all of the conditions and obligations expressed herein which are within the control of the Agency or which are the responsibility of the Agency to fulfill, subject to Section 7.18 below.

B. The Agency will not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto, or, to the extent permitted by law, enact or adopt or urge or encourage the enactment or adoption of any laws, ordinances, resolutions, rules, regulations or orders or approve or enter into any contracts or agreements, including issuing any bonds, notes, or other forms of indebtedness, that will result in any provision of this Agreement to be in violation thereof or which would materially impair the Agency's ability to perform its obligations under this Agreement including but not limited to the Agency's obligation to pay the full amount of the Tax Increment Recapture to the Developer.

Section 5.3 Obligations of the Agency.

A. The Agency agrees to timely review the Design Documents and to negotiate in good faith any changes or revisions deemed by the Agency as necessary for the Design Documents to be consistent with the Redevelopment Plan.

B. The Agency shall cooperate with the Developer in the Developer's pursuit of securing all development permits which may be required by the Agency or any other governmental agency for construction of the Project; provided the Developer shall be solely responsible for obtaining any development approvals and permits required by any governmental agency for construction and completion of the Project. This section shall not obligate the Agency to waive City regulations, accelerate review, or expend moneys.

ARTICLE 6
EVENTS OF TERMINATION AND DEFAULT

Section 6.1 Events of Termination During the Preconstruction Period.

Upon written notice to the other party during the Preconstruction Period, the respective party shall have the right to terminate this Agreement for any of the following Events of Termination.

A. Prior to the expiration of the Preconstruction Period, the Developer agrees to obtain financing commitments adequate to complete the Project. Should the Developer fail to receive such financing commitments, then any of the parties hereto may choose to terminate this Agreement.

B. The Developer agrees to pay all permit fees when due and owing, and the Impact Fee Deposit, as that term is defined in the Transfer Agreement, concurrently with the conveyance of the Option Parcel and City Parcel from the City to the Developer, subject to the terms and conditions of the Transfer Agreement described in Section 2.5 hereof. Should the Developer fail to pay the Impact Fee Deposit to the City concurrently with the conveyance of the Option Parcel and the City Parcel, then the City may choose to terminate this Agreement.

C. During the Preconstruction Period, the Developer agrees to finalize the construction plans for the Project compliant with the Conceptual Project Plan. Should the Developer fail to obtain site plan and construction/engineering plans substantially approved, Structural Foundation, Underground MEP (Mechanical Electrical and Plumbing) and Underground Fire permits substantially approved and all other building permits submitted and pending approval during the Preconstruction Period, then the City or the Agency may choose to terminate this Agreement.

D. The Developer must own the Project Site prior to the expiration of the Preconstruction Period. Should the Developer fail to close on the conveyance of the Project Site from the City to the Developer pursuant to the Transfer Agreement prior to expiration of the Preconstruction Period, then the City may choose to terminate this Agreement.

E. Termination of this Agreement shall result in the termination of the Transfer Agreement, the Redevelopment Incentive Agreement, the Parking Agreement and the Off-Site Infrastructure Agreement.

F. In the event of a termination of this Agreement, each party shall be responsible for its own costs.

Section 6.2 Events of Default; Notice, Cure and Remedies.

A. Each of the following is hereby declared an "Event of Default" with respect to this Agreement:

1. A default by any party in the due and punctual performance of the covenants, conditions, agreements and provisions contained in this Agreement or the Transaction Documents.

2. Any representation or warranty of any party hereto shall prove to have been untrue in any material respect.

3. Any party admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors, consents to the appointment of a receiver or trustee for itself or shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof.

4. Any party is adjudged insolvent by a court of competent jurisdiction or is adjudged bankrupt on a petition of bankruptcy filed against the party, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the party, a receiver or trustee of the party or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof.

5. If, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the party or of the whole or any substantial part of its property and such custody or control shall not be terminated within ninety (90) consecutive days from the date of assumption of such custody or control.

B. Notice of Default; Right to Cure. Upon an Event of Default for the non-payment of any amount owed hereunder (a "Monetary Breach") by any party to this Agreement, or said party's successors and assigns, with regard to this Agreement or of any of its terms or conditions, the party alleging such Monetary Breach shall give the breaching party not less than thirty (30) days "Notice of Default" in writing in the manner provided for giving notice as set forth in Section 7.1 of this Agreement. Upon any other non-monetary Event of Default owed hereunder (a "Non-Monetary Breach") by any party to this Agreement, or said party's successors and assigns, with regard to this Agreement or of any of its terms or conditions, the party alleging such Non-Monetary Breach shall give the breaching party not less than sixty (60) days "Notice of Default" in writing in the manner provided for giving notice as set forth in Section 7.1 of this Agreement. The time of notice shall be measured from the date of certified mailing. The Notice of Default shall specify the nature of the alleged default, and, where appropriate, the manner and period of time in which said default may be reasonably, satisfactorily cured, which period of time shall not be less than thirty (30) days for a Monetary Breach and sixty (60) days for a Non-Monetary Breach. During any period for curing the default, the party charged shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured, then no default shall exist, and the noticing party shall take no further action.

C. Remedies. If the default has not been cured after proper notice and the expiration of said period to cure default, the noticing party may elect to terminate this Agreement and, at its option and in addition to any other rights or remedies, may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein, or to enjoin any threatened or attempted violation thereof; to recover damages for any default; or to obtain any remedies consistent with the purpose of this Agreement. Such legal actions must be instituted in the Circuit Court of the County of Brevard, State of Florida. This section shall not be interpreted as a pledge of ad valorem tax or other revenues by the City or the Agency. The parties understand and agree that although neither the Developer nor any assignee thereof shall ever have the right to compel the exercise of any ad valorem taxing power by the City or the Agency to satisfy any of the City or the Agency's obligation hereunder, the City or the Agency shall remain obligated to provide to the Developer the Tax Increment Recapture, to pay the Developer, or its assignee, for the cost of the Off-Site Infrastructure, and to transfer the Project Site to the Developer pursuant to the terms and conditions of the Transaction Agreements.

D. Waiver. Failure or delay in giving Notice of Default or seeking enforcement of this Agreement, shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by another party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

ARTICLE 7 MISCELLANEOUS

Section 7.1 Notices. Unless otherwise specifically provided herein, all notices, demands, requests for approvals or other communications which may be or are required to be given by either party to the other shall be made in writing and shall be deemed given and delivered on the date delivered in person, faxed or on the on the date mailed by registered or certified mail, postage prepaid, return receipt requested, and addressed:

To the City:	City of Melbourne 900 E. Strawbridge Avenue Melbourne, Florida 32901
--------------	--

Attention: City Manager

With copy to: City Attorney
City of Melbourne
900 E. Strawbridge Avenue
Melbourne, Florida 32901

To the Agency: Melbourne Downtown Community Redevelopment Agency
900 E. Strawbridge Avenue
Melbourne, Florida 32901
Attention: City Manager

To the Developer: 801 Strawbridge Hotel, LLC
1234 S. Greenway Drive
Coral Gables, Florida 33134
Attention: Miguel Rivera and Naomi Mirsky

With a copy to: Dean Mead
7380 Murrell Road, Suite 200
Viera, Florida 32940
Attention: Laura Minton Young, Esq.

The addresses to which notices are to be sent may be changed from time to time by a written notice of such change from the party changing its address delivered to the other parties. Until such a notice is received, a party may rely upon the last address received for the other party.

Section 7.2 Consents and Approvals.

(A) All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting by a party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any other act, except as expressly set forth herein to the contrary.

(B) Unless expressly provided otherwise, all consents and approvals which may be given by a party under this Agreement shall not (whether or not so indicated elsewhere in this Agreement) be unreasonably withheld, delayed, or conditioned by such party and shall be given or denied within a reasonable time. Upon disapproval of

any request for a consent or approval, the disapproving party shall, together with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.

(C) Unless expressly provided otherwise, where this Agreement requires approval by the City or the Agency, the City Manager of the City is authorized to grant or deny such requests.

(D) Except to the extent set forth in Section 7.14 of this Agreement, any amendments to this Agreement will require the approval of the City Council for the City and the governing body of the Agency.

Section 7.3 Invalid Provisions. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable laws and if the remainder of this Agreement can substantially be reasonably performed without material hardship, so as to accomplish the intent and the goals of the parties hereto.

Section 7.4 Applicable Law and Construction. The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. The submission of this document to the parties for examination thereby does not constitute an offer to buy, or a reservation of or operation for the Project, the Project Site, or any part thereof. This Agreement has been negotiated by the City, Agency and the Developer, and this Agreement, including the exhibits, and each of them, the City, the Agency, and the Developer shall be deemed to have participated in the preparation thereof.

Section 7.5 Submission to Jurisdiction.

A. Each party to this Agreement hereby submits to the jurisdiction of the State of Florida, Brevard County and the courts thereof for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.

B. If at any time during the term of this Agreement, the Developer is not a resident of the State of Florida or has no officer, employee, or agent thereof available for service of process who is a resident of the State of Florida, or if any permitted assignee thereof shall be a foreign corporation, partnership or other entity or shall have no officer, employee, agent, or general partner available for service of process in

the State of Florida, the Developer and its successors or assigns hereby designate Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A. ("Dean Mead") their agent for the service of process in any court action between it and the Agency arising out of or related to this Agreement and such service shall be made as provided by the laws of the State of Florida for service upon a nonresident; provided, however, that at the time of service on the Dean Mead, a copy of such service shall be mailed by prepaid, registered mail, return receipt requested, to the Developer at the address for notices as provided in Section 7.1 hereof. In the event Dean Mead is no longer designated as the registered agent for the Developer as set forth above, the registered agent designated by the Developer and listed on the website for Florida corporate entities shall act in such capacity.

Section 7.6 Complete Agreement. This Agreement, including the Exhibits, and all of the terms and provisions contained herein, constitute the full and complete agreement between the parties hereto, and supersedes and controls over any and all prior agreements, understandings, representations, and statements, whether written or oral, made with regard to the matters addressed by this Agreement. This Agreement can be modified or amended only by a writing signed by all parties hereto.

Section 7.7 Captions. The section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement, or any part thereof, or in any way affect this Agreement, or construe any article or section hereof.

Section 7.8 Successors, Assigns and Grantees. The terms herein contained shall bind and inure to the benefit of the City, the Agency, and the Developer, except as may be otherwise specifically provided herein. Except as otherwise provided in this Section, no party hereto may assign, transfer or license all or any portion of its rights or obligations under this Agreement, the Transaction Documents or any monies to become due hereunder without the prior written approval of the others; provided, however, the Developer shall have the right to collaterally assign this Agreement and all of its obligations and rights hereunder and each of the Transaction Documents to its lender for the Project without the prior written consent of the City or the Agency. Notwithstanding anything stated herein to the contrary, the Developer shall also have the right to assign to a related entity formed by Developer the rights and obligations of the Developer in this Agreement and the Off-Site Infrastructure Agreement pertaining to the construction of the Off-Site Infrastructure, except to the extent any such provision in either this Agreement or the Off-Site Infrastructure Agreement expressly state that it is not so assignable, all without the prior written consent of the City or the Agency.

After the completion of the Project, the Developer shall also have the right but not the obligation to assign this Agreement to a successor-in-title of the Hotel Facility with the prior written consent of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed. The City Manager shall approve or deny the assignment of this Agreement within thirty (30) days after Developer's written request for approval of such assignment. So long as the successor-in-title to the Hotel Facility is of the same or comparable financial stability as Developer and has the same or comparable experience in owning or managing a hotel facility of the same caliber as the Hotel Facility, the City Manager shall approve any such Developer request for assignment thereto. In the event the City Manager denies the requested assignment, the Developer shall have the right to seek approval of such assignment directly by City Council. In the event this Agreement is assigned to a successor-in-title to the Hotel Facility, the Parking Agreement shall also be assigned to the same party. Any assignment of this Agreement must be to the owner of the Project Site and must include assignment of all unperformed obligations of the Developer set forth in all of the Transaction Documents. In no event shall a Transaction Document be assigned separate and apart from this Agreement, except that the Off-Site Infrastructure Agreement and this Agreement may be partially assigned to a related entity formed by Developer as expressly provided for hereinabove in this Section 7.8.

Section 7.9 Holidays. It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given or done on a Saturday or Sunday or on a legal holiday observed in the City of Melbourne, Florida, it shall be postponed to the next following business day not a Saturday, Sunday, or legal holiday.

Section 7.10 Exhibits. Each Exhibit referred to in and attached to this Agreement is an essential part of this Agreement. The Exhibits, and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of and incorporated within this Agreement.

Section 7.11 No Brokers. The City, the Agency and the Developer hereby represent, agree and acknowledge that no real estate broker or other person is entitled to claim or to be paid a commission solely as a result of the execution and delivery of this Agreement.

Section 7.12 Developer Not Agent of Agency or City. The Developer and any contractor hired by Developer are not individually or collectively and shall not be deemed to be individually or collectively an agent or contractor of the Agency or the City, and are not subject to nor shall be required to comply with any laws, ordinances,

regulations, orders, or policies of or applicable to the Agency or the City applicable or relating to public works projects of the Agency or the City or contractors retained by the Agency or the City for such types of projects. Nothing contained in this Agreement shall be construed or deemed to name, designate, or cause (either directly or indirectly) the Developer, or any contractor thereof, to be an agent for the Agency or the City.

Section 7.13 Public Purpose. This Agreement satisfies, fulfills, and is pursuant to and for a public purpose and municipal purpose and is in the public interest, and is a proper exercise of the Agency's redevelopment powers and authority under the Act.

Section 7.14 Technical Amendments. In the event the City Manager, as to the City and Agency, is authorized to approve an amendment or changes to this Agreement, or any Exhibit or any other agreement contemplated hereby, then the City Manager is authorized to execute any required instruments to make and incorporate such amendment or change to this Agreement, or any Exhibit or any other agreement contemplated hereby.

Section 7.15 Agreement Not a Chapter 86-191 Laws of Florida Development Agreement. The City, Agency, and the Developer acknowledge and agree that it is their mutual intent that this Agreement, including any Exhibit, is an agreement contemplated by Part III, Chapter 163, Florida Statutes, and is not a development agreement described in Sections 163.3220-163.3243, Florida Statutes, originally enacted as Chapter 86-191, Laws of Florida, entitled the "Local Government Development Agreement Act." Nothing herein shall be construed as a development approval or to convey development rights upon the Developer.

Section 7.16 Third Parties. This Agreement is solely for the benefit of the Developer, the City and the Agency, and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Developer, the City and the Agency any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement. Nothing contained in this Agreement shall limit or impair the Developer's right to protect its rights from interference by a third party.

Section 7.17 Waiver of Jury Trial. Each party hereto waives all right to trial by jury in any claim, action, proceeding or counterclaim the party may have against the other parties hereto regarding any matters arising out of or in any way connected with

this Agreement.

Section 7.18 Compliance with Laws. The Developer will be solely responsible for obtaining all permitting, zoning, building, and other approvals required in conjunction with the proposed Project, including construction of the Off-site Improvements. The City agrees to cooperate with Developer with respect to obtaining any required approvals; however in entering into this Agreement the City expressly reserves its police power to review and determine all requested zoning and permit approvals in accordance with the City's obligations under federal, state, and local law. The Developer is responsible at all times for complying with all applicable federal, state, and local laws.

Section 7.19 Severability. If any portion of any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent determined by law.

Section 7.20 Time of Essence. Time is of the essence in each and every instance hereunder with respect to the covenants, undertakings, and conditions to be performed hereunder by the parties.

Section 7.21 Effective Date. The Effective Date of this Agreement shall be the date upon which all parties have executed this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City, the Agency and the Developer, by and through the undersigned, have entered into this Master Redevelopment Agreement as of the day and year first above written.

CITY OF MELBOURNE, FLORIDA

[Seal]

By: _____

Michael A. McNees, City Manager

Attest:

Cathleen A. Wysor, City Clerk

**MELBOURNE DOWNTOWN COMMUNITY
REDEVELOPMENT AGENCY**

By: _____

Michael A. McNees, City Manager

Attest:

Cathleen A. Wysor, City Clerk

801 STRAWBRIDGE HOTEL, LLC

By: _____

Name: _____

Title: _____

EXHIBIT "A"

DESCRIPTION OF CITY PARCEL

The City Parcel is located at 809 E. Strawbridge Avenue, Melbourne, Florida 32901. The property is described as situate and lying in the State of Florida, County of Brevard, to-wit:

Lots 12 and 13, Block 32, Camps Plat of Melbourne, according to the plat thereof, as recorded in Plat Book 1, Page 54, of the Public Records of Brevard County, Florida.

Parcel ID #: 28-37-03-FC-32-12

EXHIBIT "B"

DESCRIPTION OF OPTION PARCEL

The Option Parcel is located at 801 E. Strawbridge Avenue, Melbourne, Florida 32901. The property is described as situate and lying in the State of Florida, County of Brevard, to-wit:

Lot 16, Block 32, Camps Plat of Melbourne, according to the plat thereof, as recorded in Plat Book 1, Page 54, of the Public Records of Brevard County, Florida.

Parcel ID # 28-37-03-FC-32-16

EXHIBIT "C"

CONCEPTUAL PROJECT PLAN

Melbourne Downtown Hotel Project Narrative

Hotel Overview

The Melbourne Downtown Hotel project is located in the heart of Downtown Melbourne and will be a Tapestry Collection by Hilton or comparable brand of hotel, located at the southeast corner of US192 and Waverly Place. The project includes an 11 story building, approximately 121,672 square feet, at a height of 123 feet containing 156 hotel rooms, parking and a rooftop lounge and conference area on an approximately .57 acre property. Thirty parking spaces within the building will be dedicated public parking spaces and additional public improvements will be constructed adjacent to the hotel building.

The first level of the building will contain the hotel lobby, hotel entrance and 18 parking spaces. Waste, mechanical and electrical facilities for the hotel will also be located on the first level. The second through fourth levels of the building will contain 152 parking spaces, of which 30 spaces will be designated as public parking, located on the second level of the building. The fifth through the tenth levels of the building will contain the 156 hotel rooms and ancillary facilities. The eleventh level of the building will contain a rooftop lounge/bar, catering kitchen and meeting rooms with a total of approximately 11,921 square feet. The hotel facility will be consistent with the approved formal site plan SP-2018-02.

Public improvements will be constructed as part of the Hotel Facility and the Project as described in further detail below.

Public Improvements

(Portions of this section are subject to the Off-Site Infrastructure Agreement and Conceptual Project Plan)

A paved, public walkway that is approximately 5-feet in width from US192 to the southern edge of the hotel property line will be provided along the eastern edge of the hotel property. Lighting along the walkway will be provided from the eastern edge of the hotel building.

A total of 30 public parking spaces will be provided for the public on the second level of the parking garage. These parking spaces will be permanently signed and designated for the public and will follow the City adopted parking management policy. The City will also provide a parking lease agreement to the hotel for the use of 30 additional parking spaces on the fifth floor of the City Hall parking garage. Additionally, parking spaces that are not being utilized by the hotel in the garage may be utilized by the public at a parking rate determined by the hotel.

The project will install streetscaping along US 192 and Waverly Place that will include paved sidewalk accents and historical lighting consistent with the Downtown Melbourne lighting and trash receptacles and benches in appropriate areas. A designated street-side loading area will be created on the east side of Waverly Place from the intersection of East New Haven Avenue to the public alley.

The Off-Site Improvements within the Alley Parcel shall include a stormwater system, resurfacing of the entire Alley Parcel, a solid waste enclosure on the Alley Parcel and underground power lines. The terms and conditions of the Off-Site Improvements are described in and subject to the Off-site Infrastructure Agreement. The Material elements of the Off-site Improvements shall be the following:

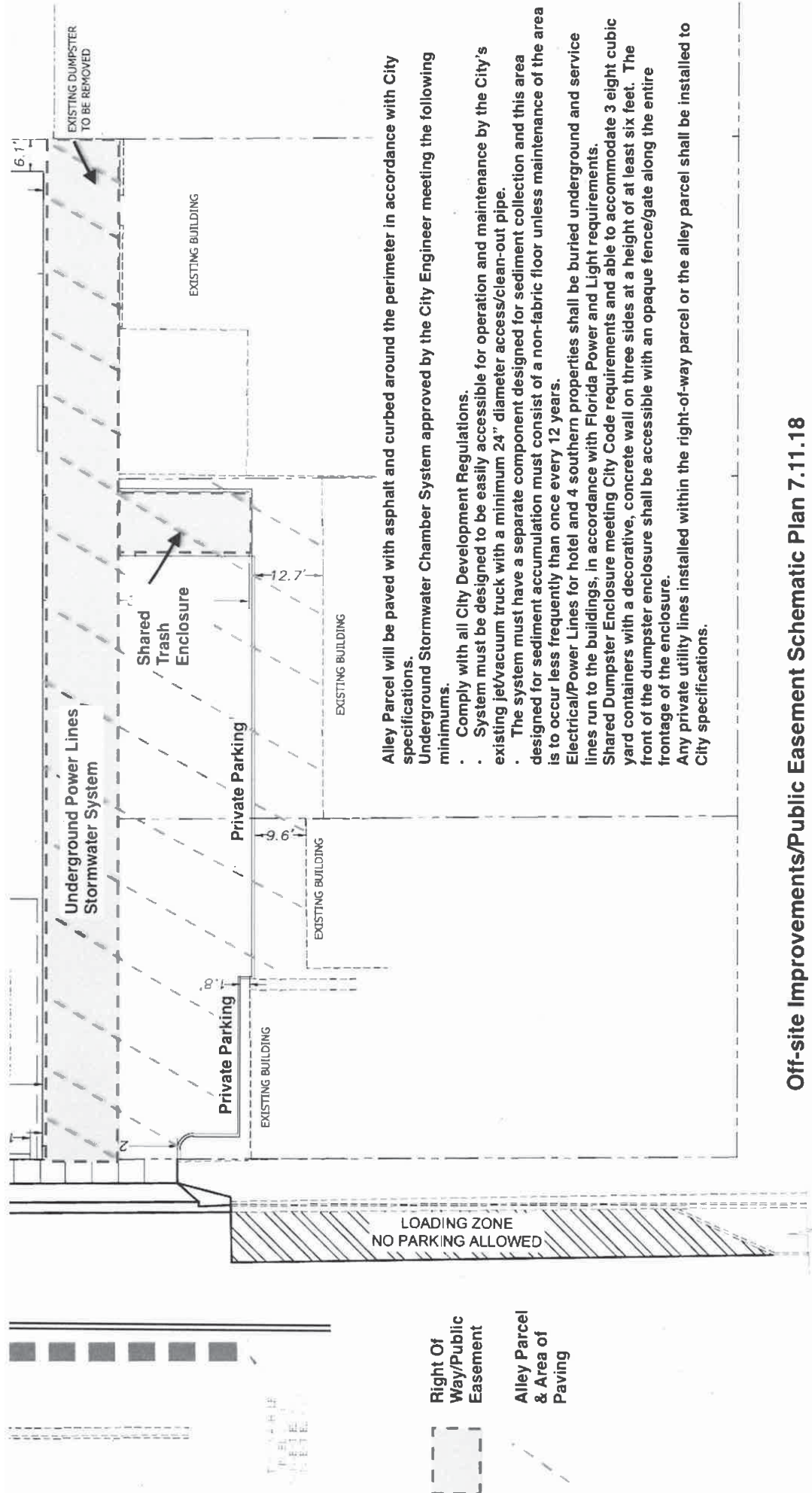
- The stormwater system will be constructed within the right-of-way easement to accommodate the current capacity of stormwater on the Alley Parcel. The stormwater system will include an underground stormwater chamber system with an outfall to Waverly Place.
- The project will also include the burial of existing overhead electrical lines in the ROW that currently serve the four properties to the south, and any new lines on the ROW that may be required to serve the hotel project.
- The solid waste enclosure will accommodate three, eight yard containers and meet City Code including a concrete wall on three sides at a height of at least six feet. The front of the solid waste enclosure shall be accessible with an opaque fence/gate along the entire frontage of the enclosure.
- The schematic plan dated July 11, 2018 attached to this exhibit is incorporated herein by reference.

An approximate fifteen-foot wide public right-of-way easement will be provided by the

four property owners to the south of the subject site for ingress/egress, utilities, stormwater and solid waste facilities. An approximate 2-foot wide public right-of-way easement on the Project Site will also be dedicated as part of the public alley for access and public utilities. The right-of-way easement area will cover the driveway and the solid waste enclosure area to be utilized by the four property owners to the south of the project as depicted on the attached sketch. The right-of-way easement will contain utilities and will provide ingress/egress for public. The alley shall be accessible to a southern ingress opening of the hotel parking lot as depicted on the site plan (subject to closures deemed necessary for safety and security measures and precautions). Private utilities may be installed in the right-of-way easement or outside of the public easement dependent upon size and necessary separation of utilities required. All utilities shall be located in an appropriate easement.

Job Creation

A total of at least 42 full-time jobs will be created by the project.



LOADING ZONE
NO PARKING ALLOWED

Right Of
Way/Public
Easement

Alley Parcel
& Area of
Paving

Alley Parcel will be paved with asphalt and curbed around the perimeter in accordance with City specifications.

Underground Stormwater Chamber System approved by the City Engineer meeting the following minimums.

- Comply with all City Development Regulations.
- System must be designed to be easily accessible for operation and maintenance by the City's existing jet/vacuum truck with a minimum 24" diameter access/clean-out pipe.
- The system must have a separate component designed for sediment collection and this area designed for sediment accumulation must consist of a non-fabric floor unless maintenance of the area is to occur less frequently than once every 12 years.

Electrical/Power Lines for hotel and 4 southern properties shall be buried underground and service lines run to the buildings, in accordance with Florida Power and Light requirements.

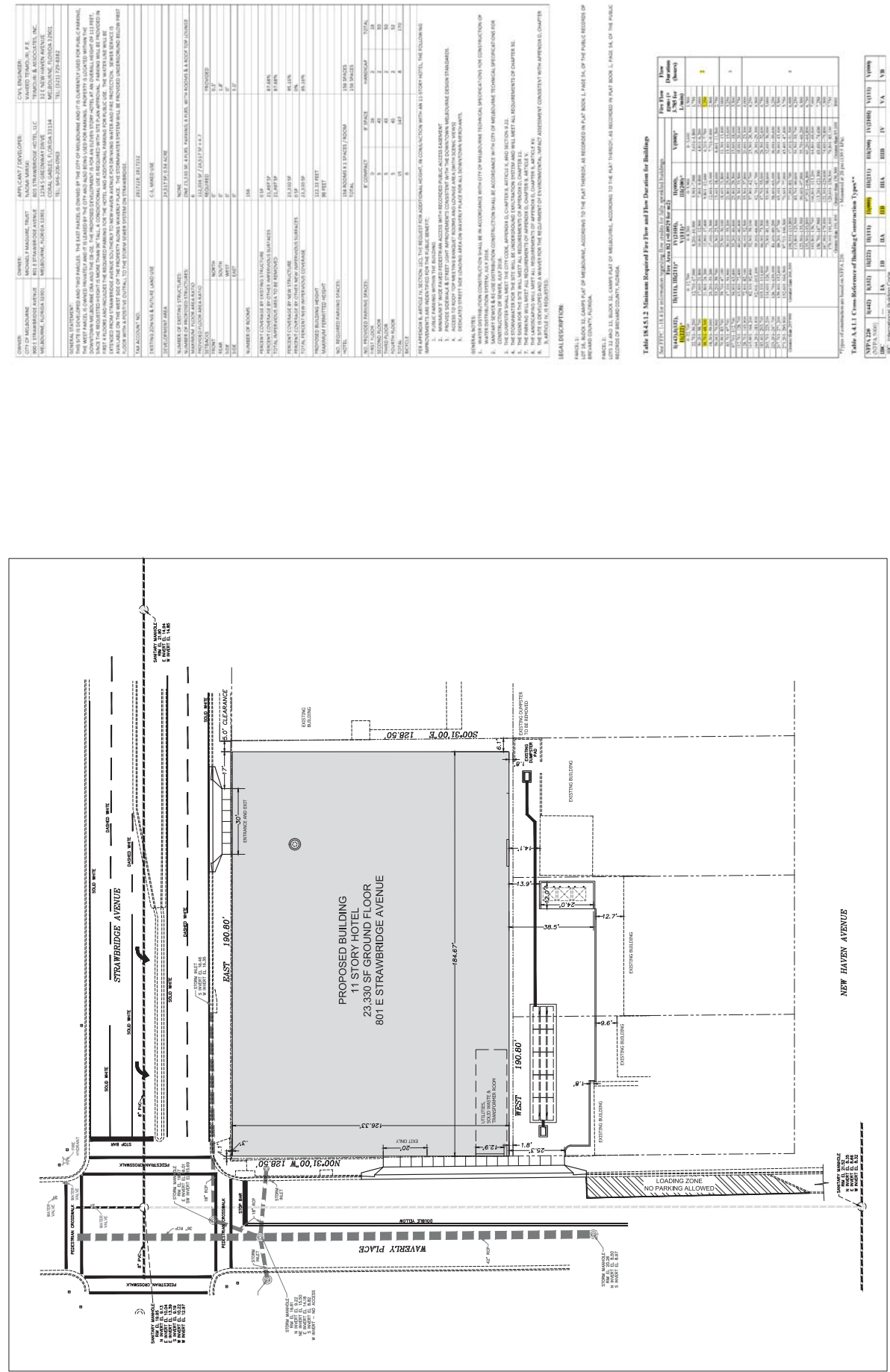
Shared Dumpster Enclosure meeting City Code requirements and able to accommodate 3 eight cubic yard containers with a decorative, concrete wall on three sides at a height of at least six feet. The front of the dumpster enclosure shall be accessible with an opaque fence/gate along the entire frontage of the enclosure.

Any private utility lines installed within the right-of-way parcel or the alley parcel shall be installed to City specifications.

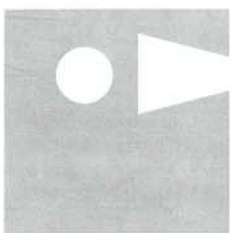
Off-site Improvements/Public Easement Schematic Plan 7.11.18

NEW HAVEN AVENUE

SANITARY MANHOLE
SIV. EL. 27.57
N. INVERT EL. 6.15
E. INVERT EL. 6.68
W. INVERT EL. 6.52



^a This table has been edited to exclude codes not adopted by the State.



ODA
overcash demmitt

2010 south lyon st, suite 1a
charlotte north carolina 28203
office 704.332.1615
web: www.odaarch.com

Handwritten signature and date: 3-21-18

**MELBOURNE
DOWNTOWN HOTEL**
801 Strawbridge ave.
Melbourne, Florida
ODA Project No. 173144

DRB REVIEW

03.29.2018

REVISIONS		Date
No.	Description	
1	30% REVIEW SET - REVISED	04.26.17
2	OWNER REVISIONS	05.02.17
3	30% REVIEW SET - REVISED	07.27.17
4	OWNER REVISIONS	08.24.18

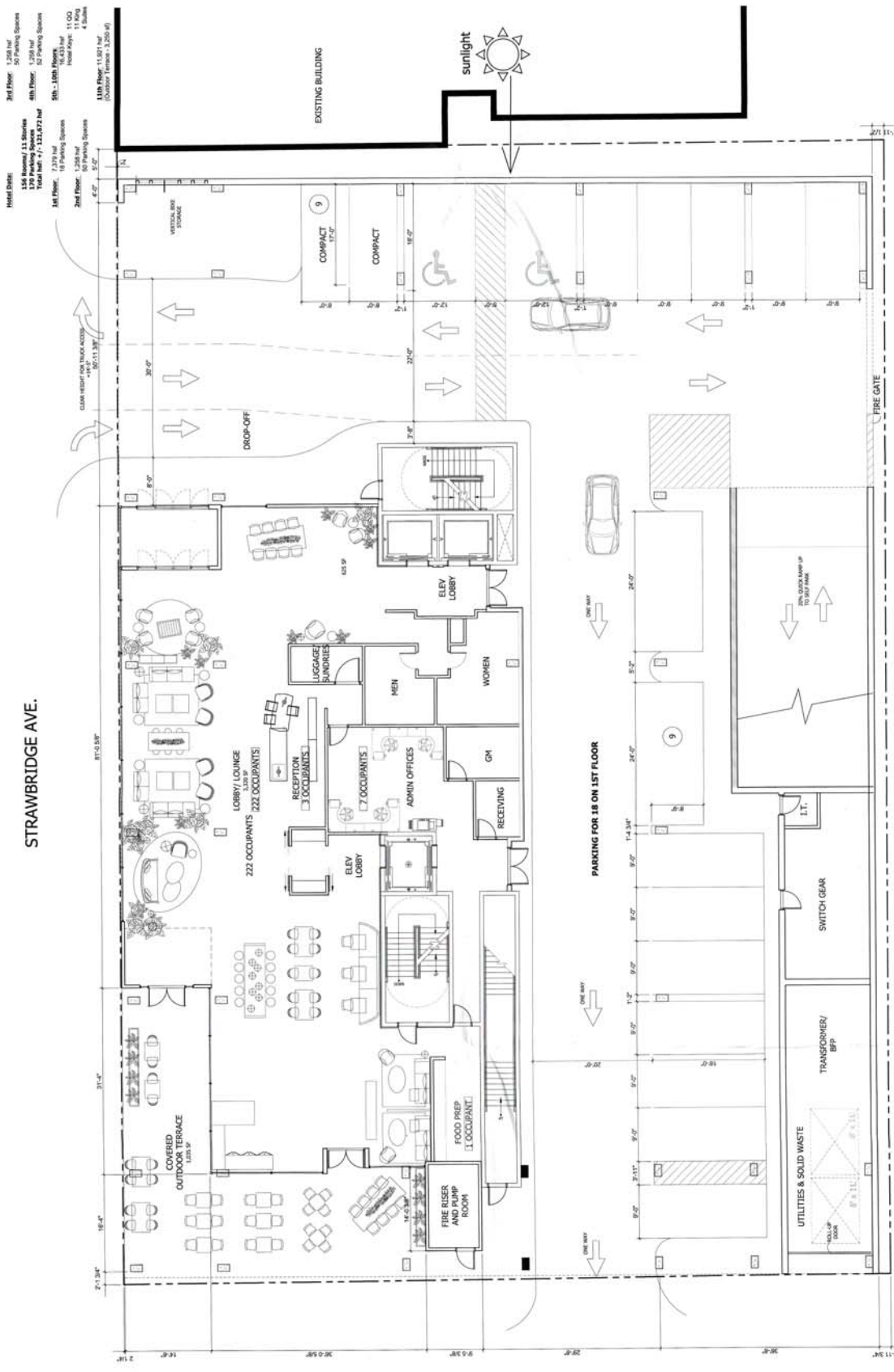
**FIRST FLOOR
PLAN**

A-101

Copyright 2017 Overcash Demmitt Architects



scale: 1/8" = 1'-0"



STRAWBRIDGE AVE.

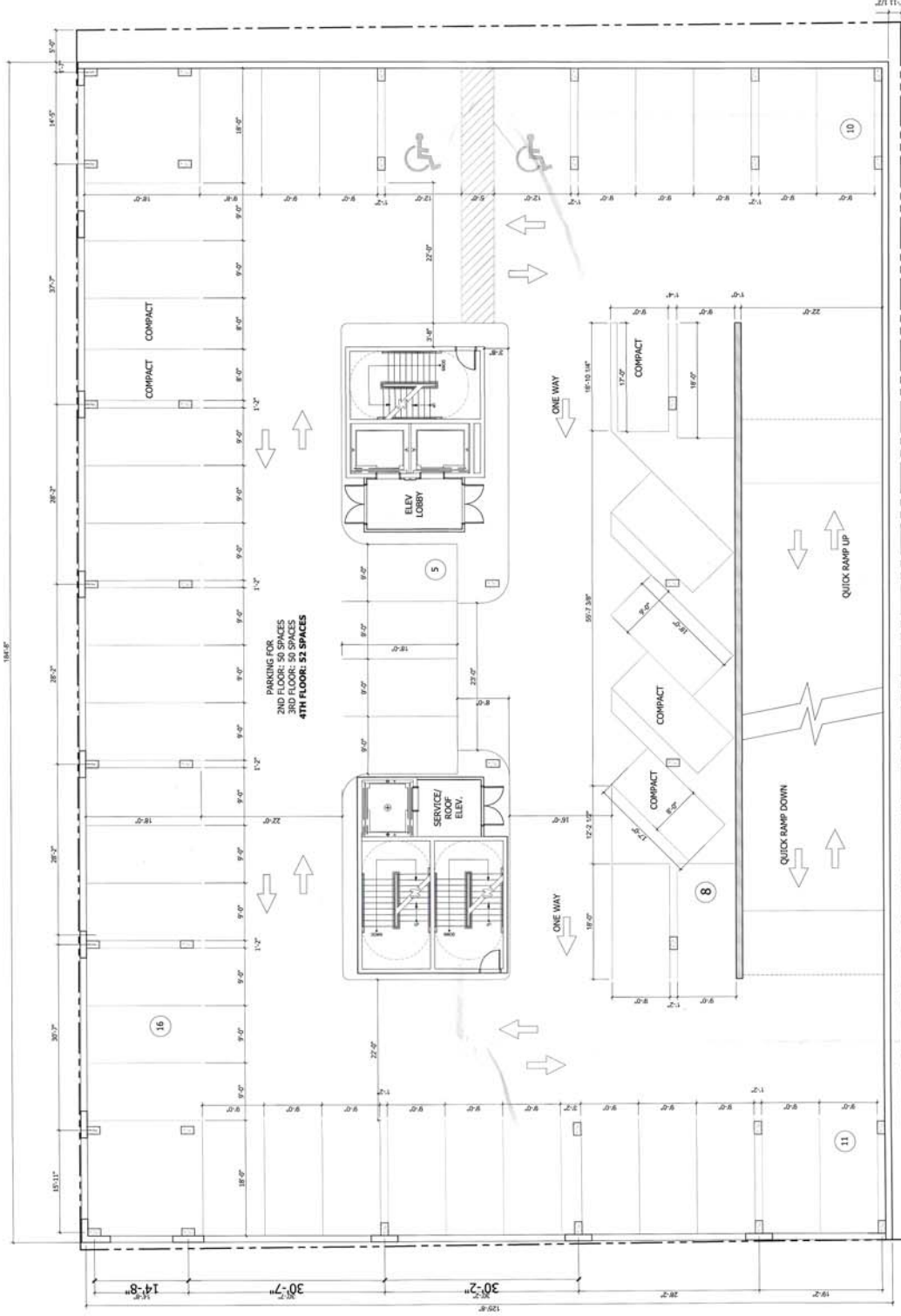
WAVERLY PLACE

EXISTING BUILDING



02.02.2022 -

1 SECOND FLOOR PLAN - PARKING LEVEL 1



SHW
3-29-2018

**MELBOURNE
DOWNTOWN HOTEL**
801 St Andrews Ave.
Melbourne, Florida
ODA Project No. 173144

DRB REVIEW

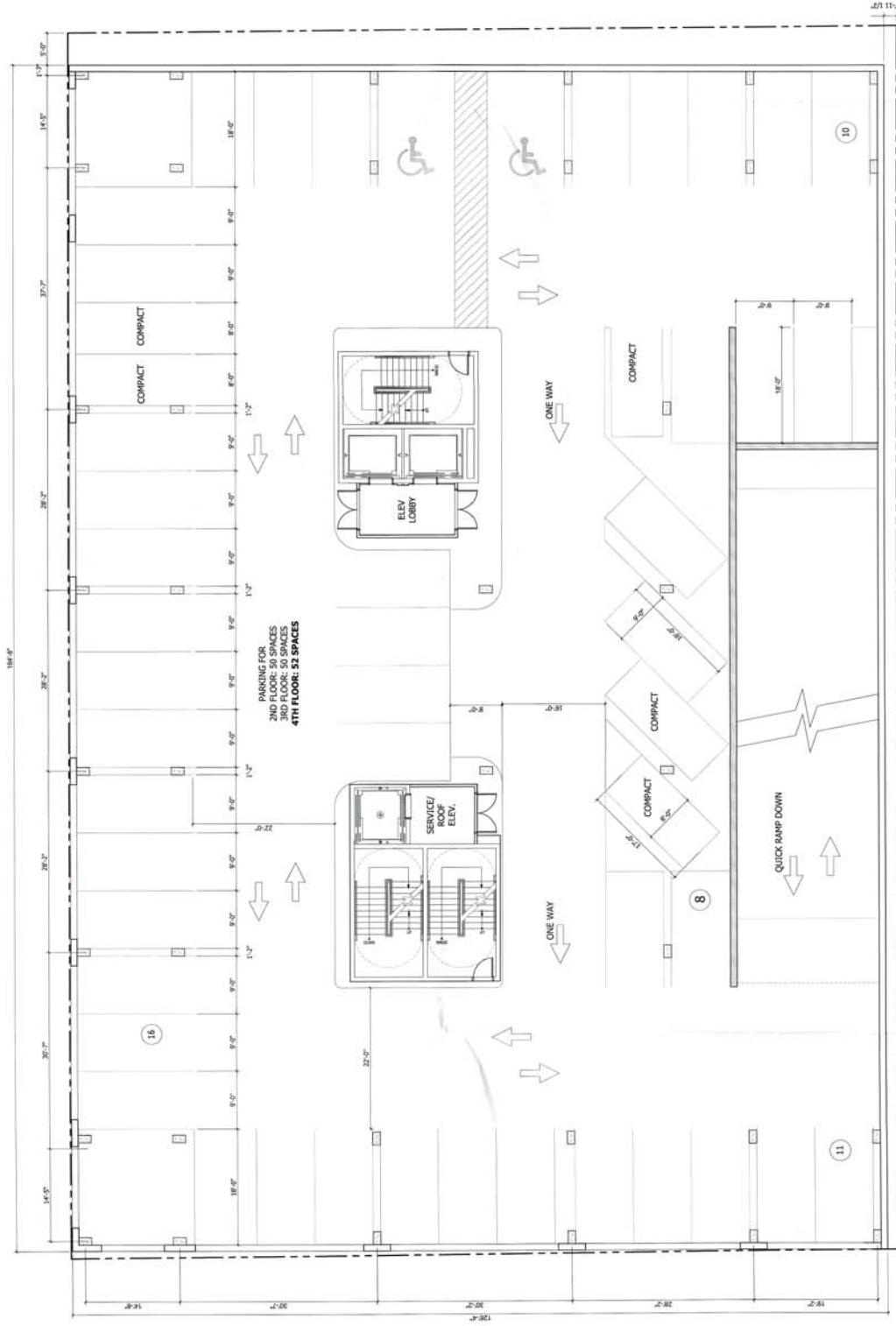
03.29.2018

No.	Description	Date
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2	30% REVIEW SET - REVISED	06.02.17
3	OWNER REVISIONS	07.27.17
4	30% REVIEW SET - REVISED	03.22.18

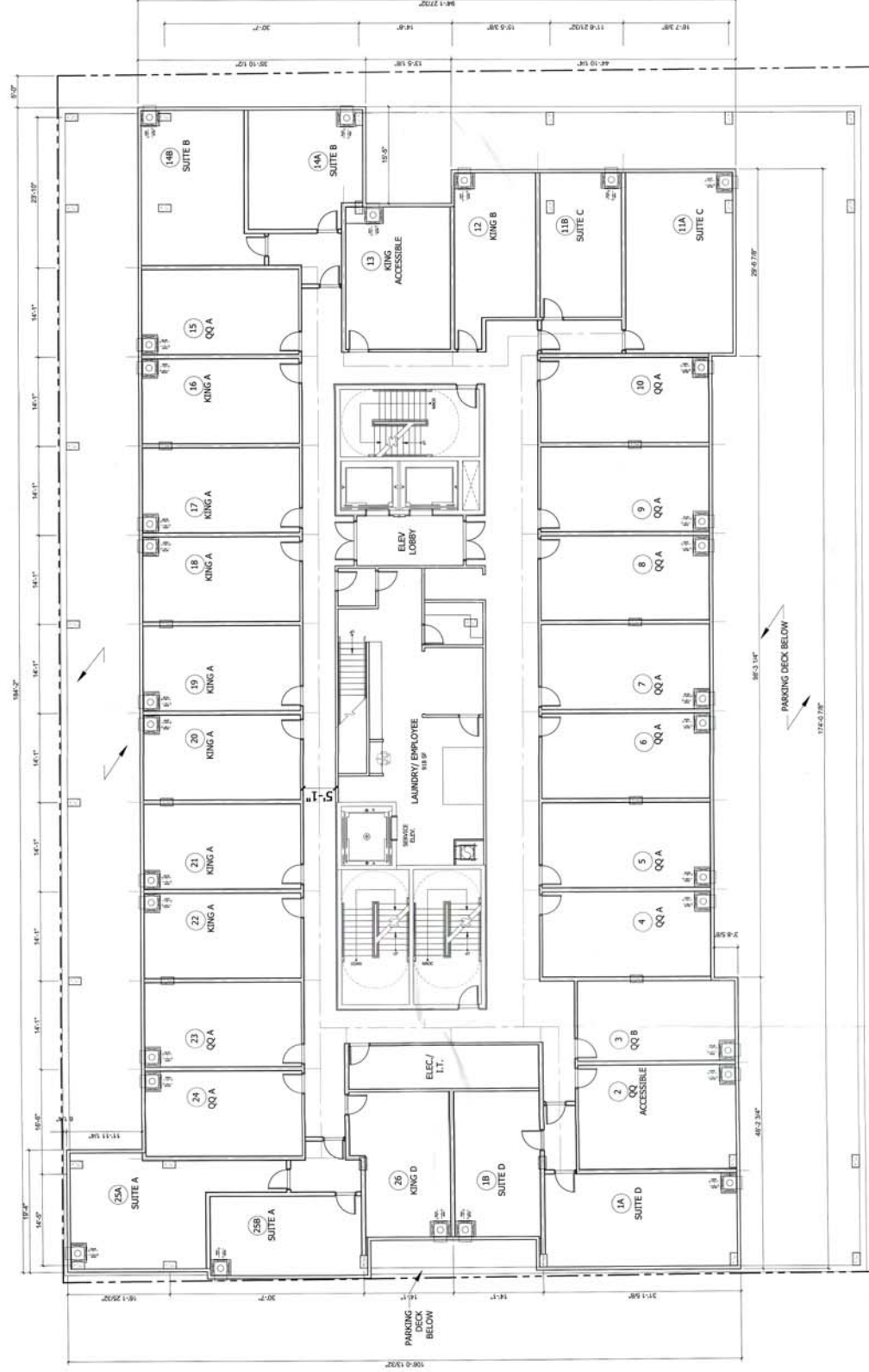
**4TH FLOOR
PLAN-PARKING 3**

A-104

Copyright 2017 Overcash Demmitt Architects
scale: 1/8" = 1'-0"



REVISIONS	
No.	Description
1	30% REVIEW SET - REVISED 06.02.17
2	30% REVIEW SET - REVISED 06.02.17
3	OWNER REVISIONS 07.27.17
4	30% REVIEW SET - REVISED 03.22.18



**MELBOURNE
DOWNTOWN HOTEL**
801 Strawbridge ave.
Melbourne, Florida
ODA Project No. 173144

DRB REVIEW

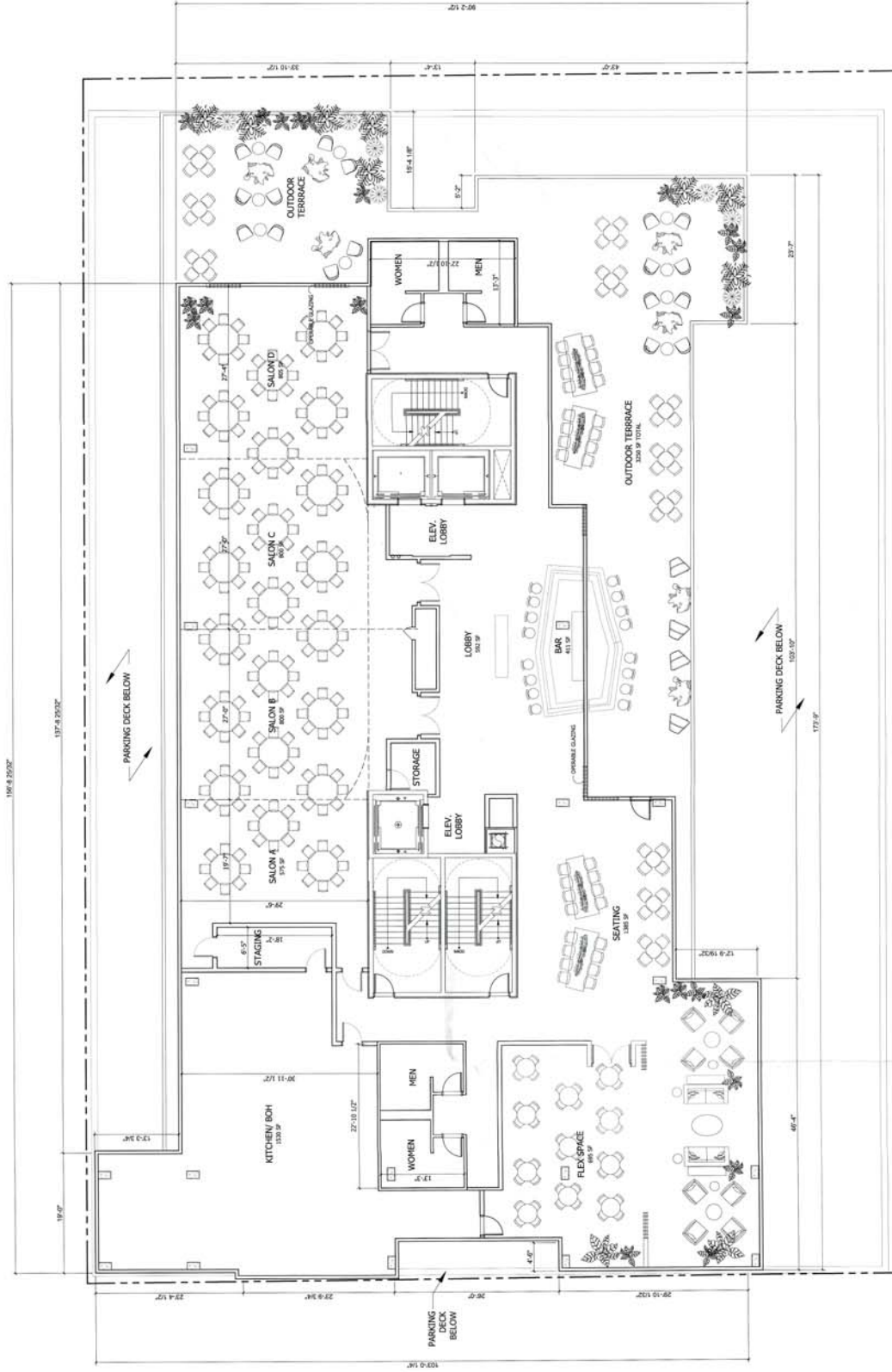
03.29.2018

No.	Description	Date
1	30% REVIEW SET - REVISED	03.29.17
2	30% REVIEW SET - REVISED	06.20.17
3	30% REVIEW SET - REVISED	07.27.17
4	30% REVIEW SET - REVISED	03.22.18

**ELEVENTH
FLOOR PLAN**

A-111

Copyright 2017 Overcash Demmitt Architects
scale: 1/8" = 1'-0"



**MELBOURNE
DOWNTOWN HOTEL**
801 Stranahan Ave.
Melbourne, Florida
ODA Project No. 173144

DRB REVIEW

03.29.2018

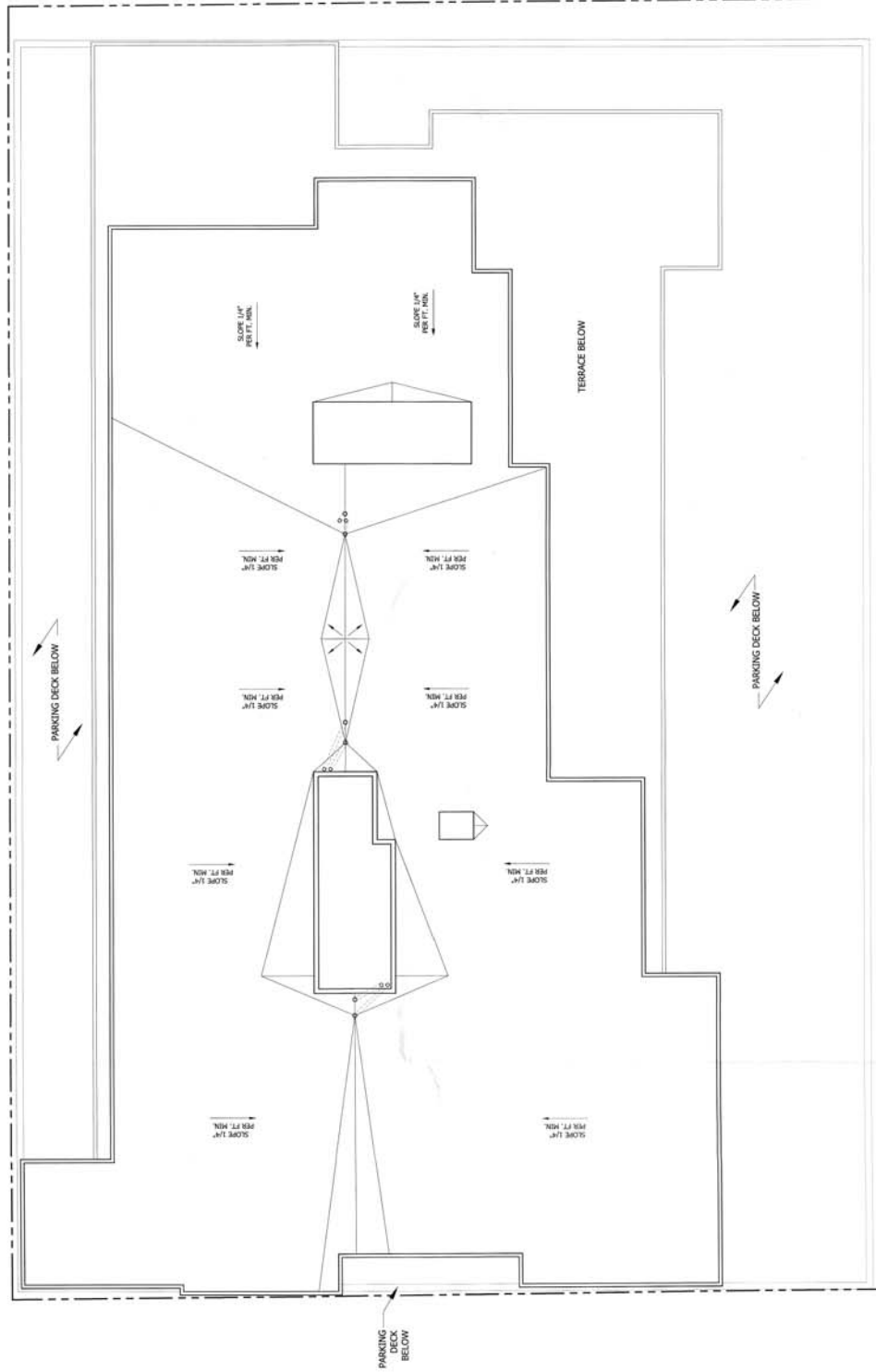
REVISIONS		
No.	Description	Date
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2	30% REVIEW SET - REVISED	06.20.17
3	30% REVIEW SET - REVISED	07.27.17
4	OWNER REVISIONS	07.27.17
5	30% REVIEW SET - REVISED	03.22.18

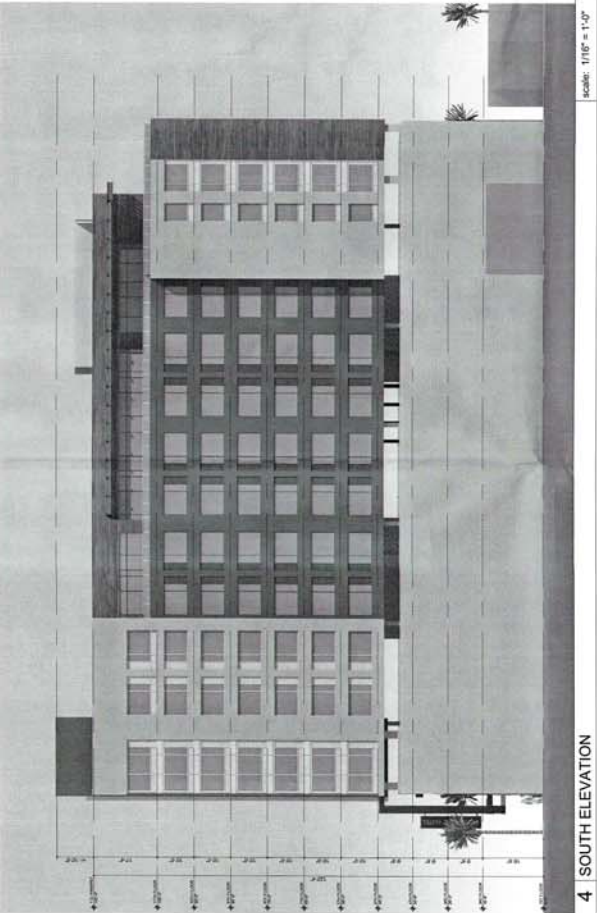
ROOF PLAN



A-112

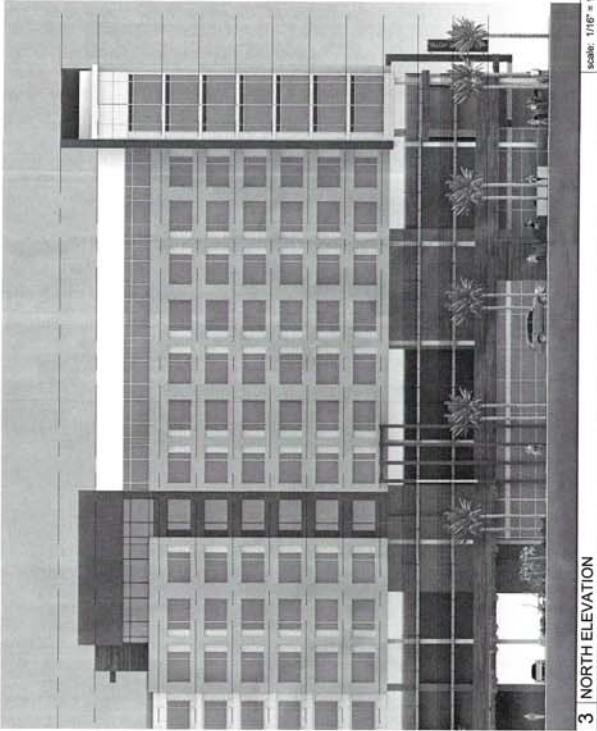
Copyright 2017 Overcash Demmitt Architects
scale: 1/8" = 1'-0"





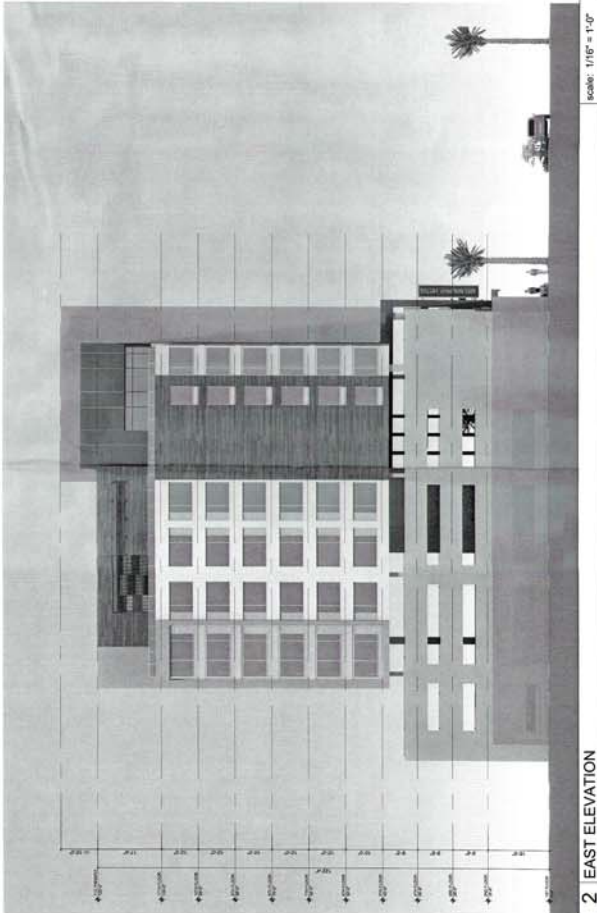
4 SOUTH ELEVATION

scale: 1/16" = 1'-0"



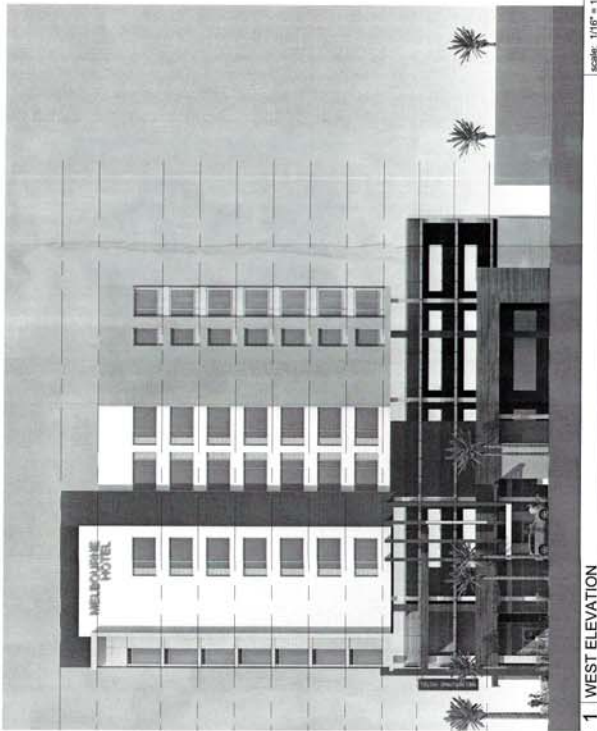
3 NORTH ELEVATION

scale: 1/16" = 1'-0"



2 EAST ELEVATION

scale: 1/16" = 1'-0"



1 WEST ELEVATION

scale: 1/16" = 1'-0"

MELBOURNE
DOWNTOWN HOTEL
801 Strawbridge ave.
Melbourne, Florida
ODA Project No. 173144

DRB REVIEW

03.29.2018

REVISIONS		
No.	Description	Date
1	30% REVIEW SET	04.28.17
2	30% REVIEW SET - REVISED	05.02.17
3	30% REVIEW SET - REVISED	05.02.17
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100	30% REVIEW SET - REVISED	05.02.17

ELEVATIONS

A-201

Copyright 2017 Overcash Demmitt Architects

EXHIBIT "D"

PROJECT COST ESTIMATE

Project Cost Estimate

(Hotel Facility)

Land Acquisition	\$500,000
Hotel Construction	\$27,401,390
Contingency	\$2,325,000
Soft Costs	\$4,964,888
Total Hotel Facilities	\$35,191,278

Public Improvements Hotel Facility Break-Out

Streetscape ROW improvements	\$178,000
Pedestrian Easement (Land and construction)	\$68,000
Easement Dedication @ South Line	\$8,000
Additional Parking (Constructed Above Required)	\$91,560

(Off-Site Improvements)

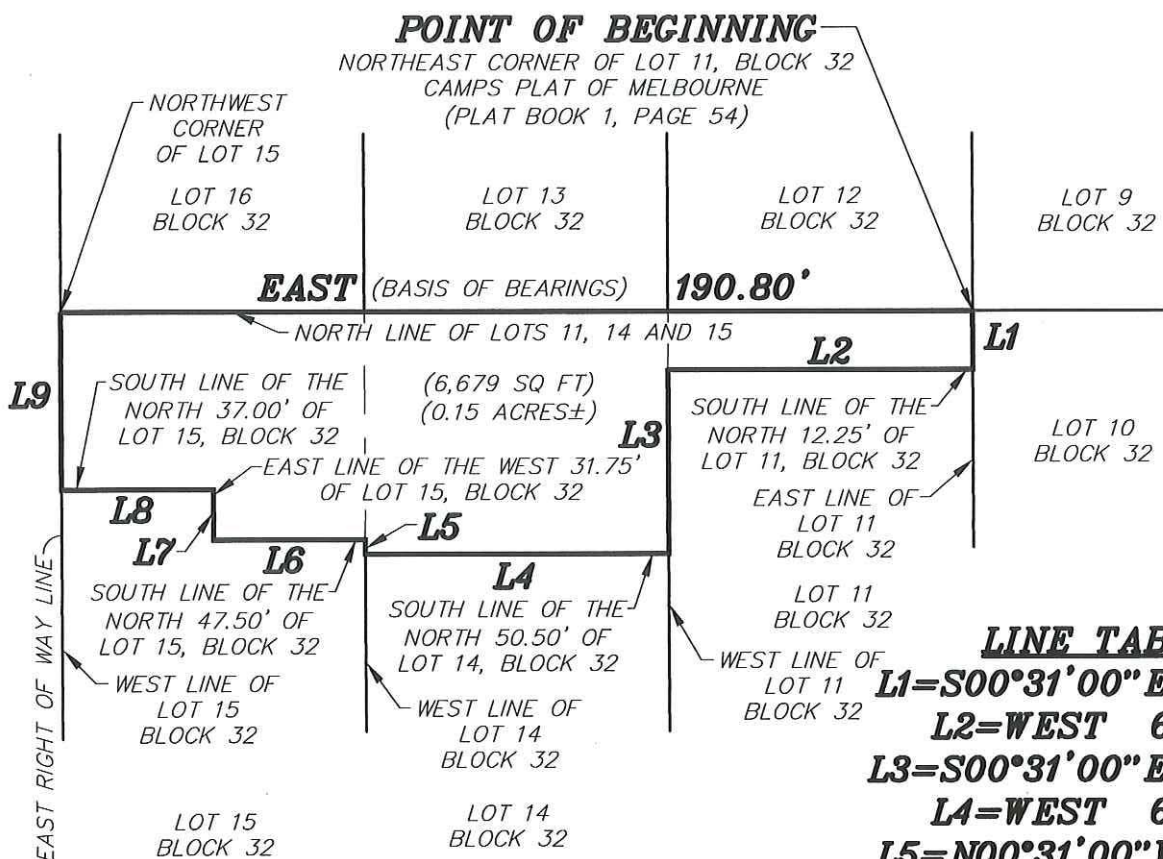
Construction Hard Costs- TIF funded	\$195,000.00
Developer Hard Cost	\$70,000.00
Developer Soft Cost	\$30,000.00
Total Off-Site Improvements	\$295,000.00

Total Project Estimate	\$35,486,278
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EXHIBIT "E"

DESCRIPTION OF ALLEY PARCEL

WAVERLY PLACE



LINE TABLE

L1	=S00°31'00"E	12.25'
L2	=WEST	63.60'
L3	=S00°31'00"E	38.25'
L4	=WEST	63.60'
L5	=N00°31'00"W	3.00'
L6	=WEST	31.85'
L7	=N00°31'00"W	10.50'
L8	=WEST	31.75'
L9	=N00°31'00"W	37.00'

ALLEY IMPROVEMENT AREA

DESCRIPTION: A PORTION OF LOTS 11, 14 AND 15, BLOCK 32, CAMPS PLAT OF MELBOURNE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 54, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF SAID LOT 11 AND RUN S00°31'00"E, ALONG THE EAST LINE OF SAID LOT 11, A DISTANCE OF 12.25 FEET TO A POINT OF THE SOUTH LINE OF THE NORTH 12.25 FEET OF SAID LOT 11; THENCE WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 63.60 FEET TO A POINT ON THE WEST LINE OF SAID LOT 11; THENCE S00°31'00"E, ALONG SAID WEST LINE, A DISTANCE OF 38.25 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 50.50 FEET OF SAID LOT 14; THENCE WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 63.60 FEET TO A POINT ON THE WEST LINE OF SAID LOT 14; THENCE N00°31'00"W, ALONG SAID WEST LINE, A DISTANCE OF 3.00 FEET, TO A POINT ON THE SOUTH LINE OF THE NORTH 47.50 FEET OF SAID LOT 15; THENCE WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 31.85 FEET TO A POINT ON THE EAST LINE OF THE WEST 31.75 FEET OF SAID LOT 15; THENCE N00°31'00"W, ALONG SAID EAST LINE, A DISTANCE OF 10.50 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 37.00 FEET OF SAID LOT 15; THENCE WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 31.75 FEET TO A POINT ON THE WEST LINE OF SAID LOT 15, ALSO BEING ON THE EAST RIGHT OF WAY LINE OF WAVERLY PLACE; THENCE N00°31'00"W, ALONG SAID WEST LINE AND SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 37.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 15; THENCE EAST, ALONG THE NORTH LINES OF SAID LOTS 11, 14 AND 15, A DISTANCE OF 190.80 FEET TO THE POINT OF BEGINNING.

SKETCH OF DESCRIPTION ONLY! THIS IS NOT A SURVEY!

AAL LAND SURVEYING SERVICES, INC.

SKETCH OF DESCRIPTION

1. THIS SKETCH AND DRAWING HAVE BEEN PREPARED TO CONFORM WITH APPLICABLE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.
2. BEARINGS ARE BASED ON ASSUMED DATUM AND ON THE LINE SHOWN AS BEING THE BASIS OF BEARINGS.

SHEET 1 OF 1

SCALE: 1" = 40'

JOB # 37442-SOD

DATE: 07-10-18

SECTION 3, TOWNSHIP 28 S, RANGE 37 E

L.B. #6623

ANDREW W. POWSHOK
P.L.S. No. 5383

3970 MINTON ROAD
WEST MELBOURNE, FL. 32904
(321) 768-8110

EXHIBIT "F"
PARKING AGREEMENT

RECIPROCAL PARKING SPACE AGREEMENT

THIS RECIPROCAL PARKING SPACE AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, 2018, by and between the CITY OF MELBOURNE, FLORIDA, a municipal corporation with a principal place of business at 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (the "City"), and 801 STRAWBRIDGE HOTEL, LLC , a Wyoming limited liability company with a principal place of business at 1234 S. Greenway Drive, Coral Gables, FL 33134 (the "Developer").

W I T N E S S E T H:

WHEREAS, the City and Developer have entered into that certain Master Redevelopment Agreement dated August____, 2018 (the "MRA"); and

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings set forth in the MRA; and

WHEREAS, the Developer owns or will own as provided for in the MRA certain real property located at 801 and 809 E. Strawbridge Avenue, Melbourne, Florida 32901 (the "Developer Parcel"); and

WHEREAS, the City owns that certain public parking lot and garage located at City Hall at 900 E. Strawbridge Avenue, Melbourne, Florida 32901 which is across the street from and east of the Developer Parcel (the "City Parking Garage"); and

WHEREAS, the MRA sets forth the terms by which the Developer will redevelop the Developer Parcel to include (1) a multi-level hotel including parking garage (the "Hotel Parking Garage") constructed on the Developer Parcel (the "Hotel Facility"), and (2) streetscape, sidewalk, walkway, lighting and landscaping improvements serving the Hotel Facility (collectively, the "Project"); and

WHEREAS, the MRA contemplates execution of this Agreement to provide for the parties to reserve certain parking spaces on their respective properties for the use of the other; and

WHEREAS, the City hereby determines that the mutual reservation of the Parking Spaces (defined below) pursuant to the terms hereof, is in the public interest and in furtherance of the redevelopment purposes of the Act and the objectives set forth in the Redevelopment Plan; and

WHEREAS, the parties acknowledge that redevelopment activities in the Redevelopment Area must be coordinated to insure their compliance and consistency with the Act and the Redevelopment Plan, and the parties mutually agree to cooperate to achieve such coordination; and

WHEREAS, the Developer and the City desire to enter into this Agreement in

furtherance of their understandings and agreements so as to memorialize the full and complete agreement between the parties with respect to the mutual reservation of the Parking Spaces.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Mutual Reservation of Parking Spaces; Consideration. Subject to the terms and conditions hereof, Developer agrees to reserve thirty (30) parking spaces in the Hotel Parking Garage, once construction of the Project is complete, for the benefit of the City and the public for the Term (defined below) hereof (the “Hotel Parking Spaces”). In exchange and consideration for the Developer reserving the Hotel Parking Spaces as provided for above and subject to the terms and conditions hereof, the City agrees to reserve thirty (30) parking spaces located in the City Parking Garage for the benefit of the Developer’s hotel guests, invitees, users, agents, employees or independent contractors for the Term hereof (the “City Parking Spaces”, and together with the Hotel Parking Spaces, collectively, the “Parking Spaces”).

2. Term; Termination. The term of this Agreement (the “Term”) shall commence on the date of issuance of the Certificate of Occupancy for the Hotel Facility (hereinafter referred to as the “Commencement Date”) and shall extend for twenty (20) years thereafter (the “Expiration Date”), unless the Term is extended or sooner terminated pursuant to the provisions of this Agreement. Upon the Expiration Date, the rights and obligations of this Agreement shall automatically cease and terminate and be in all respects null, void and of no further force or effect. The parties may mutually agree to extend the Term or, conversely, to terminate the Term prior to the Expiration Date by written instrument signed by both parties.

3. Designation of Parking Spaces. Throughout the Term hereof, the Developer shall designate thirty (30) Hotel Parking Spaces on the second floor of the Hotel Parking Garage and will clearly visually mark those spaces as “Public Parking Spaces”, subject to a three (3) hour parking limit. Throughout the Term hereof, the City shall designate thirty (30) City Parking Spaces on the top floor of the City Parking Garage and will clearly visually mark those spaces as “Reserved Hotel Parking Spaces” and shall be available for overnight parking. To the extent necessary and practicable, the parties hereto agree to cooperate in the enforcement of this Section 3.

4. Fees Charged for Parking Spaces. The parking rate charged to the public for the use of the Hotel Parking Spaces will match the highest rate designated by the City’s established rate for public parking in downtown Melbourne, as it may be modified from time to time. In the event the thirty (30) Hotel Parking Spaces are fully occupied but additional vacant parking spaces are available in the Hotel Parking Garage, those additional spaces may be made available to the general public at a charge determined by the Developer at its sole discretion.

5. Alterations. The City shall not make any alterations or improvements of any kind, nature or description in or to the Hotel Parking Spaces. The Developer shall

not make any alterations or improvements of any kind, nature or description in or to the City Parking Spaces

6. Maintenance and Repairs. Each party shall maintain in good working order and in compliance with all city code requirements, the Parking Spaces located on their respective properties. The obligations of the parties under this paragraph 6 shall survive the Expiration Date in the event such damage or injury was caused prior to the Expiration Date.

7. Lawful Use. The parties mutually agree that they will not permit or suffer any use or occupancy of the Parking Spaces, the Hotel Parking Garage or the City Parking Garage, or any part thereof, which is contrary to any applicable law, ordinance, rule, regulation, requirement or order of any governmental or judicial authority. Neither party shall use or occupy, or permit or suffer the Parking Spaces, the Hotel Parking Garage or the City Parking Garage to be used or occupied, nor do, or permit anything to be done in or about the Parking Spaces, the Hotel Parking Garage or the City Parking Garage, or any portion thereof, that would in any way make void or uncollectible any insurance then in force with respect thereto, or that will cause, or be likely to cause, damage thereto or any portion thereof, or that will constitute a public or private nuisance or waste.

8. Subordination; Non-Disturbance; Attornment. This Agreement and all rights of the City and the public hereunder shall be subject to the lien of any and all mortgages that may now or hereafter affect the Developer Parcel or any part thereof, and to any and all renewals, modifications or extensions of any such mortgages. This provision for subordination shall be self-executing and no further documents or instruments shall be necessary to evidence such subordination; provided, however, without limiting the foregoing, the City shall on demand execute, acknowledge and deliver to the Developer without expense to the Developer, any and all instruments that may be requested by Developer to subordinate this Agreement and all rights of the City hereunder to the lien, operation and effect of any such mortgage or mortgages, and each renewal, modification or extension thereof. Notwithstanding any other provision of this paragraph, any such subordination of this Agreement is and shall be with the understanding that so long as the City is not in default of its obligations under this Agreement, the rights provided for herein shall continue in full force and effect and the City shall be permitted to use the thirty (30) Hotel Parking spaces under the terms hereof notwithstanding any default by the Developer under such mortgages or security instruments, or any transfer of title to the Developer Parcel by foreclosure, deed-in-lieu of foreclosure or otherwise. The City shall, in the event of the sale or assignment of Developer's interest in the Developer's Parcel, or in the event of any proceeding filed for the foreclosure of any mortgage covering the Developer Parcel, attorn to and recognize such purchaser, assignee or mortgagee as Developer under this Agreement.

9. Default or Breach. The following event shall constitute a default by either party in its obligations under this Agreement:

If either party shall fail to perform or comply with any of the conditions or provisions of this Agreement for a period of ten (10) days after the delivery to such party (the "Defaulting Party") by the other party (the "Non-Defaulting Party") of written notice of such failure; provided, however, that in the event such default by Defaulting Party is of such a nature that it cannot reasonably be cured within such ten (10) day period, the Defaulting Party shall not be considered to be in default of its obligations hereunder in the event, within such ten (10) day period, the Defaulting Party commences actions reasonably calculated to cure such default and diligently and continuously prosecutes such actions to completion.

10. Effect of Default. In the event of any default by a Defaulting Party of its obligations under this Agreement, the rights of Non-Defaulting Party shall be to terminate this Agreement by giving the Defaulting Party written notice that this Agreement and all the rights granted hereunder to both parties and obligations imposed to both parties are terminated in their entirety.

In the event of any legal action or proceeding arising out of this Agreement, the prevailing party in such legal action or proceeding shall be entitled to reimbursement for all costs, fees and expenses incurred in connection with such action or proceeding, including court costs and reasonable attorneys' fees at or before trial and in any appellate, bankruptcy or administrative proceeding.

11. Waivers. No waiver of any default by either party hereunder shall be implied from any omission by the other party to take action on account of such default, if such default persists or is repeated; and no express waiver shall affect any default other than the default specified in the waiver, and it shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

12. Persons Bound. All of the provisions hereof shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns but nothing herein shall be construed to permit assignment of this Agreement or the rights or obligations granted hereunder, in whole or in part, by either party except as provided for in Section 8 above.

13. Notices. Any notices or other communications or deliveries which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, or if sent by overnight courier (e.g., Federal Express), or if mailed by United States certified mail, return receipt requested, postage prepaid, addressed to the respective party at the addresses for each set forth above. Any notice so given, delivered or made by mail shall be deemed to have been duly given, delivered or made five (5) days after the date the same is deposited in the United States mail in the manner specified above. Any notice delivered by overnight

courier shall be deemed to have been duly given, delivered or made on the first day following the date the same is delivered to the overnight courier as established by the receipted bill of lading. Any notice which is given, delivered or made by any manner other than U.S. certified mail or by overnight courier shall be deemed to have been duly given, delivered or made upon actual receipt of the same by the party to whom the same is to be given, delivered or made. Either party may change the address to which notices are to be sent to such party by written notice to the other party specifying said change of address.

14. Time of the Essence. It is understood and agreed between the parties that time is of the essence of this Agreement, and this provision applies to all terms and conditions hereof. Whenever this Agreement requires that something be done within a period of days, such period shall: (i) not include the day from which such period commences; (ii) include the day upon which such period expires; (iii) expire at 5:00 p.m. local time on the date by which such thing is to be done; and (iv) if the last day of the time period falls on a Saturday, Sunday or legal holiday, such time period shall be construed to exclude any Saturday, Sunday, or legal holiday and the final day for such time period shall be considered the next business day thereafter.

15. Construction of Agreement. Whenever the context of this Agreement so requires or admits, words used in any gender include all genders; the singular includes the plural and the plural the singular; the word "person" includes a corporation, partnership, trust, or unincorporated association as well as a natural person. The fact that a party may be deemed to have drafted or structured any provision hereof shall not be considered in construing the particular provision either in favor of or against such party.

16. Entire Agreement. This Agreement and the MRA contain the entire understanding between the parties concerning the subject matter and supersedes any prior understandings or agreements between them concerning the subject matter. No changes, alterations, modifications, additions or qualifications to the terms and conditions of this Agreement shall be binding upon the parties unless made in writing and signed by the party to be bound thereby.

17. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable the same as if such invalid or unenforceable provision had never comprised a part of the Agreement; and the remaining provisions of the Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

18. Recording. The parties shall record a memorandum of this Agreement in the public records of Brevard County Florida, in the form mutually acceptable to the parties.

19. Captions. The captions at the beginning of the several paragraphs of this Agreement are not a part of this Agreement but are merely labels to assist in locating and reading the respective paragraphs hereof. Such captions shall be ignored in construing this instrument.

20. Counterparts. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Agreement, it shall not be necessary to produce or account for more of such counterparts than are required to show that each party hereto executed at least one such counterpart.

21. Governing Law. All questions concerning the meaning, execution, construction, effect and validity of this Agreement shall be governed by the laws of the State of Florida.

23. Assignment. So long as this Agreement is in effect pursuant to its terms, this Agreement shall be assigned to any successor-in-title to the Hotel Facility, as that term is defined in the MRA, so long as such successor-in-title also takes an assignment of the Redevelopment Incentive Agreement which is one of the Transaction Documents attached to the MRA.

IN WITNESS WHEREOF, the parties have executed this Agreement and have intended the same to be and become effective as of the day and year first above written.

DEVELOPER:

Print Name:_____

801 STRAWBRIDGE HOTEL, LLC,
a Wyoming limited liability company

By:_____

Name:_____

Print Name:_____

Title:_____

CITY:

CITY OF MELBOURNE, FLORIDA

[City Seal]

By:_____

Michael A. McNees, City Manager

Attest:

City Clerk

Dated:_____

EXHIBIT "G"

THIS INSTRUMENT RETURN TO:

Cathleen A. Wysor, City Clerk
City of Melbourne
900 East Strawbridge Avenue
Melbourne, Florida 32901

Property Appraiser's PIN:

Part of _____

PUBLIC ACCESS EASEMENT

THIS PUBLIC ACCESS EASEMENT is made this _____, between, _____, a _____, whose address is _____ (hereinafter "Grantor"); and the **CITY OF MELBOURNE**, a Florida Municipal Corporation whose address is 900 East Strawbridge Avenue, Melbourne, Florida 32901 (hereinafter "City").

WITNESSETH:

THAT the Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLAR (\$10.00) and other good and valuable considerations, to it in hand paid by the City, the receipt whereof is hereby acknowledged, hereby grants, bargains, sells, alienates, remises, releases, conveys, and confirms unto the City a nonexclusive permanent easement for ingress and egress by the City and the general public over and across the following described real property, located and situate in the County of Brevard, State of Florida, to wit:

See Legal Description and Sketch
attached hereto as Exhibit "A" and incorporated herein by reference;

A portion of PIN: Part of _____,
commonly referred to as 801-809 East New Haven Avenue, Melbourne, Florida

TITLE TO THE PROPERTY DESCRIBED HEREIN, AS WELL AS
THE LEGAL DESCRIPTION, HAS NOT BEEN EXAMINED OR
APPROVED BY THE CITY OF MELBOURNE OR THE CITY
ATTORNEY'S OFFICE

(hereinafter, the "Easement Area").

The rights herein granted to the City by Grantor specifically include the right of the general public to use the aforesaid Easement Area for pedestrian ingress and egress purposes only. The Grantor shall design, permit, construct, maintain, repair, replace and operate the Easement Area for such purposes at its expense. The Grantor

reserves the right to prohibit the use of the Easement Area for commercial activities of any sort, including without limitation the solicitation of business or posting or distribution of handbills or posters, the use of sound transmission devices, use of motorized vehicles and bicycles and similar activities.

This is a nonexclusive easement, with the Grantor reserving unto itself, its heirs, successors and assigns, the right to the continued free use and enjoyment of the property herein described for any purposes which are not inconsistent with the rights granted herein unto the City.

TO HAVE AND TO HOLD unto the same forever.

The Grantor hereby covenants with the City that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey an easement in the same; that the Grantor does hereby fully warrant the title to the said land and will defend the same against the lawful claims of all persons whomsoever.

All covenants, terms, provisions, and conditions herein contained shall inure and extend to and be obligatory upon the successors, lessees, licensees and assigns of the respective parties hereto.

(Signature page follows.)

IN WITNESS WHEREOF, the Grantor has hereunto set by hand and seal this day and year first above written.

Signed, sealed and delivered
in the presence of:

GRANTOR:

_____,
A _____

Signature of Witness #1

By: _____

Name: _____

Name Printed/Typed

Title: _____

Signature of Witness #2

Name Printed/Typed

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ as _____ of _____, a _____, who is personally known to me OR who has produced _____ as identification.

My commission expires:

Notary Public

The foregoing easement is accepted and agreed to by the City of Melbourne, Florida, this _____, 2018.

ATTEST:

Michael A. McNees

As City Manager

Cathleen A. Wysor, City Clerk

Exhibit "A": Easement Area (801 East New Haven Avenue)

EXHIBIT "H"
TRANSFER AGREEMENT

TRANSFER AGREEMENT
[STRAWBRIDGE HOTEL PROJECT]

This **TRANSFER AGREEMENT [STRAWBRIDGE HOTEL PROJECT]** (hereinafter, "this Agreement") is made and entered into this ____ day of August, 2018 by and between the **CITY OF MELBOURNE, FLORIDA**, a municipal corporation with a principal place of business at 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (the "City"); and **801 STRAWBRIDGE HOTEL, LLC**, a Wyoming limited liability company with a principal place of business at 1234 S. Greenway Drive, Coral Gables, Florida 33134 (the "Developer").

WITNESSETH:

WHEREAS, the City and Developer, together with the Melbourne Downtown Community Redevelopment Agency (the "Agency"), have entered into that certain Master Redevelopment Agreement (the "MRA") dated concurrently with this Transfer Agreement; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings set forth in the MRA; and

WHEREAS, the City owns certain real property in the Redevelopment Area located at 809 E. Strawbridge Avenue (the "City Parcel"), a description of which is attached hereto as Exhibit "A"; and

WHEREAS, the Agency has a leasehold interest in, as well as an option to purchase, real property immediately adjacent to the City Parcel located at 801 E. Strawbridge Avenue, a description of which is attached hereto as Exhibit "B" (the "Option Parcel," and together with the City Parcel, the "Project Site"); and

WHEREAS, the MRA sets forth the terms by which the Developer will redevelop the Project Site to include the Hotel Facility and the Walkway Improvements and will design and construct the Off-Site Infrastructure (collectively, described and defined in the MRA as the "Project"); and

WHEREAS, the Developer has represented to the City and the Agency that but for financial and other assistance from the City and the Agency as described in the MRA, the

Project is not financially feasible and the Developer will not proceed; and

WHEREAS, the financial and other assistance to be provided by the City includes conveyance of the City Parcel and, upon and after the exercise of the option to purchase, the Option Parcel to the Developer for construction of the Hotel Facility, a description of which property is described and defined in the MRA as the "Transfer Parcel" and which legal description is attached hereto as the exhibit titled Transfer Agreement Ex. 1; and

WHEREAS, the MRA contemplates execution of this Transfer Agreement to provide for conveyance of the Transfer Parcel to the Developer; and

WHEREAS, the City is authorized to facilitate and effectuate community redevelopment in the Redevelopment Area and is expressly authorized by the Act to dispose of and convey real property within the Redevelopment Area for uses in accordance with the Redevelopment Plan; and

WHEREAS, the parties understand and agree that the City has provided notice of its intent to dispose of and transfer the Transfer Parcel pursuant to section 163.380 of the Act, inviting proposals from parties interested in undertaking redevelopment of the Project Site in accordance therewith in order to identify the best redevelopment of the Transfer Parcel and having no other proposals from any other interested parties; and

WHEREAS, the City hereby determines that the Developer's proposal for redevelopment of the Project Site in accordance with the Conceptual Project Plan, including transfer of the Transfer Parcel to the Developer, is in the public interest and in furtherance of the redevelopment purposes of the Act and the objectives set forth in the Redevelopment Plan; and

WHEREAS, the parties acknowledge that redevelopment activities in the Redevelopment Area must be coordinated to insure their compliance and consistency with the Act and the Redevelopment Plan, and the parties mutually agree to cooperate to achieve such coordination; and

WHEREAS, the Developer and the City desire to enter into this Agreement in furtherance of their understandings and agreements so as to memorialize the full and complete agreement between the parties with respect to the transfer of the Transfer Parcel to the Developer.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

Section 1. Conditions Precedent to City's Obligation to Exercise Option. Subject to the terms and conditions set forth herein and in the MRA, the City will exercise the purchase option to acquire the Option Parcel.

(A) Within thirty (30) days of the execution of this Agreement, the Developer shall provide the City with a down payment in the amount of Fifty Thousand Dollars and 00/100 (\$50,000.00) (the "Initial Downpayment"), which shall be non-refundable and applied to the Purchase Price for the Transfer Parcel at Closing.

(B) The City determined that the Developer's proposal advances the redevelopment objectives set forth in the Redevelopment Plan and subject to City Code §2-645 and as such, the City and Developer agree to convey the Transfer Parcel from the City to the Developer as set forth in Section 11 of this Agreement. The determination and approval of the conveyance of the Transfer Parcel to the Developer shall be evidenced by a resolution to be recorded with the deed pursuant to City Code.

(C) The Developer has provided the City with a title commitment of the Transfer Parcel issued by First American under Commitment No. 3020-843024 with an effective date of March 24, 2017, with the intent that the parties may rely upon such title search to proceed with this Agreement. The known title exceptions that are not objectionable to Developer pursuant to the title search are listed as follows: Taxes due and owing for the year of Closing, and all subsequent years (the "Permitted Exceptions").

Section 2. Conditions Precedent to the City's Obligation to Sell Transfer Parcel.

(A) The Preconstruction Period as defined in the MRA begins on the Effective Date and ends on the Commencement Date.

(B) At least 10 days prior to the Closing, the Developer shall provide the approved loan commitment from its Project lender as evidence to the satisfaction of the City that the Developer has secured financing for the Project and shall close on such financing in connection with the Closing.

(C) Prior to or in connection with the Closing, the Developer shall have site plan and construction/engineering plans substantially approved, Structural Foundation, Underground MEP (Mechanical Electrical and Plumbing) and Underground Fire permits substantially approved and all other building permits submitted and pending approval.

Section 3. Manner of Conveyance of Transfer Parcel. The Transfer Parcel shall be conveyed to the Developer by deed as set forth herein and delivered at the Closing.

(A) The City shall provide to the Developer "good and marketable title" for the Transfer Parcel, free and clear of liens or encumbrances which materially affect the value thereof. For purposes hereof, "good and marketable title" means such title as is insurable by such title insurer as the Developer may select (the "Title Company"), to insure title to the Transfer Parcel under its standard ALTA owner's title insurance policy currently in use at standard rates, subject only to standard exceptions, the permitted title exceptions, and any exceptions set forth in the title commitment.

(B) At least twenty (20) days prior to the Closing, the Developer will order and obtain, at its sole cost and expense, a title insurance commitment issued by the Title Company (the "Commitment"), which Commitment shall be effective through the Closing.

(C) The Developer shall have ten (10) days from the date of receipt of the Commitment in which to review the Commitment and to decide whether to accept a deed from the City subject to the exceptions set forth in the Commitment. The Developer shall not have the right to object to the Permitted Exceptions, but only to those exceptions that are on the original commitment that are not Permitted Exceptions or revealed on the Commitment as new exceptions from the original commitment provided to the City, as referenced in Section 1(D) above. If the Developer does not elect to accept the alleged defect(s), then the Developer may, at its option, terminate this Agreement by giving written notice of termination to the City. In the alternative, the Developer may waive the alleged defect(s) set forth in the Commitment and accept title to the Transfer Parcel subject to the alleged defect(s) without any payment or consideration therefor, and without any adjustment or modification to the terms of this Agreement. In no event shall the City be required to remove or cure the exceptions set forth in the Commitment. In the event of termination by the Developer, the City will be under no further obligation

hereunder, and each party shall bear its own costs and expenses. From and after the Effective Date through the Closing, the City agrees to not record any encumbrances against the Transfer Parcel without the prior written consent of the Developer, which consent shall be in Developer's sole and absolute discretion. The parties acknowledge that neither the City nor the Agency currently own the Option Parcel.

Section 4. Consideration for Transfer Parcel.

(A) The consideration to be provided by the Developer to the City in exchange for the Transfer Parcel includes the construction and completion of the Project including construction of the Hotel Facility and provision of the Walkway Improvements, all at Developer's expense, and provision of the Offsite Improvements, all as provided in and in accordance with the MRA and the Transaction Documents.

Regardless of the aforementioned, the City's conveyance of the Transfer parcel to the Developer shall be complete and unrestricted, free and clear of all encumbrances, except as may be set forth in the Commitment and approved by the Developer pursuant to the terms hereof, once the Developer has paid or provided the consideration set forth in Section 4(B) provided for below for such transfer regardless of whether the Developer commences or completes the construction of the Project, and the City shall have no claim of a reverter associated with the Transfer Parcel. The City shall be deemed to have received full and fair consideration for the conveyance of the Transfer Parcel to the Developer.

(B) The additional consideration given by the Developer to the City for the conveyance of the Transfer Parcel to the Developer, which will occur prior to completion of the Project, shall be as follows, and the conveyance is expressly conditioned on Developer providing the following consideration:

1. The Developer shall execute and record a declaration of restriction on the Transfer Parcel as set forth in Section 11.D. of this Agreement; and

2. The Developer shall pay to the City a nonrefundable deposit toward impact fees for the Project in the amount of \$368,784.00 which amount reflects an estimated 50% of the impact fees due for water, wastewater, and transportation, for the Project, subject to the terms and conditions set forth in Section 5 of this Agreement (the "Impact Fee Deposit"). Developers' pre-payment of the capacity reservation fee (water

and sewer impact fees) and the mobility fee deposit shall be credited against the Impact Fee Deposit at Closing; and

3. The Developer shall pay to the City a purchase price in the amount of Five Hundred Thousand Dollars (\$500,000) less the Initial Downpayment (the "Purchase Price"); and

4. The Developer shall assign to the City all construction plans related to or associated with the Off-Site Infrastructure prepared or obtained during the Preconstruction Period such that the plans may be reused by the City without cost or charge. At the time of such assignment, the Developer shall deliver all construction and design plans related to the Off-Site Infrastructure complete as of the date of assignment and any costs and expenses related to such plans shall have been paid in full.

(C) The City hereby determines that the consideration given for the Transfer Parcel is in the public interest for uses in accordance with the Redevelopment Plan. In making such determination, the City has taken into account and given consideration to the long-term benefits to be achieved by the City and Agency resulting from disposal of the Transfer Parcel, the uses provided in the Redevelopment Plan, the restrictions upon use of the Transfer Parcel and the covenants, conditions and obligations assumed by the Developer hereunder and under the MRA, and the objectives of the Redevelopment Plan for remediating and preventing the recurrence of blighted conditions in the Redevelopment Area.

Section 5. Impact Fees; Deposit

(A) Impact Fees. The Developer, by virtue of the MRA and the Transaction Agreements, with regard to payment of any type or amount of special assessment, permit fee, Development review fee, or impact fee, assessed by the City, shall not be: (i) exempted from payment; or (ii) vested with regard to the amount or fee computation method of said fee(s) or assessment due to paid. The Developer shall be responsible for paying all capacity reservation fees and charges and impact fees. Capacity reservation fees are non-refundable. Pursuant to City Code, as amended from time to time, impact fees shall be assessed against the Hotel Facility, including water impact fees, wastewater impact fees, transportation impact fees, and public facilities impact fees, (the "Impact Fees"). The Developer and the City agree that all water impact fees, wastewater impacts fees and transportation impact fees shall be due and payable as a condition of issuance of any

building permit for the Hotel Facility. The Developer and City further agree that all public facilities impact fees shall be due and payable as a condition of the issuance of the Certificate of Occupancy for the Hotel Facility. As used in this Agreement and the MRA, references to “transportation impact fees” shall reflect transportation impacts fees or mobility impact fees, as the case may be.

(B) Deposit for Impact Fees. As consideration for the City’s conveyance of the Transfer Parcel, the Developer shall pay to the City at Closing the nonrefundable Impact Fee Deposit due for the Hotel Facility, which Impact Fee Deposit may be applied by the Developer as credit against the Impact Fees required to be paid for the Hotel Facility. Developer’s pre-payment of the capacity reservation fee (water and sewer impact fees) and the mobility fee deposit shall be credited against the Impact Fee Deposit at Closing. In the event the Developer, its successors or assigns, does not complete the Project within one year after the Completion Date, as the same may be extended pursuant to the terms of the MRA, then to the extent the Impact Fee Deposit was applied by the Developer to pay the Impact Fees, the Developer hereby agrees that the City, in its sole discretion, may (i) reallocate such Impact Fees in the amount of the Impact Fee Deposit to the City as consideration for the Transfer Parcel and any active or future redevelopment of the Transfer Parcel will require the respective owner to pay then-current impact fees, charges and assessments; and (ii) the balance of the Impact Fee Deposit, if any, shall be forfeited to the City. This section shall survive termination of this Agreement.

(C) If the Developer does not commence construction of the Project by the Commencement Date, as the same may be extended pursuant to the terms of the MRA, the City shall retain the Impact Fee Deposit paid by the Developer and any active or future redevelopment of the Transfer Parcel will require the respective owner to pay then-current impact fees, charges and assessments. This section shall survive termination of this Agreement.

Section 6. City’s Representations and Warranties. The City hereby makes the following representations and warranties, each of which is true as of the date hereof and all of which will be true on and as of the Closing Date (as such term is defined in Section 12(A) hereof), subject to the alleged defect(s) set forth in Section 3 of this Agreement and the Commitment:

(A) Authority of the City. The City has the power and authority to enter into this Agreement and to agree to the terms and conditions set forth herein, and the individual executing this Agreement on behalf of the City is duly authorized to do so and upon his execution of the Agreement shall bind the City to the terms and conditions hereof, all subject to approval of this Agreement by the City's governing board.

(B) No Special Assessments. To the best of the City's knowledge, the Transfer Parcel is free from special assessments.

(C) Regulatory and Governmental Status of Transfer Parcel.

(1) To the best of the City's knowledge, there are no outstanding orders, requirements or demands of any federal, state or local government agency or of any other governmental body, including a court of competent jurisdiction (collectively, an "Authority") that have not been complied with, with respect to the Transfer Parcel.

(2) To the best of the City's knowledge, there are no proceedings, litigation or claims pending before an Authority with respect to the Transfer Parcel.

(3) The City Council of the City has approved transfer of the Transfer Parcel to the Developer and has completed the prerequisites for such transfer set forth in Section 163.380 of the Act.

(D) Leases. To the best of the City's knowledge, there are no leases affecting the City Parcel. Between the date hereof and the Closing Date, the City will not make any new leases affecting the City Parcel or any part thereof. The parties understand and agree that the Option Parcel is leased by the Agency from a third party with an option for the Agency to purchase the Option Parcel. The intent of this Agreement is that the option is exercised and the existing lease terminate with the conveyance of the Option Parcel to the City or the Agency, as the case may be, and in any event prior to conveyance of the Transfer Parcel to the Developer.

(E) Condemnation Proceedings. To the best of the City's knowledge, there are no condemnation proceedings against the Transfer Parcel or any part thereof and the City has received no notice, oral or written, of the desire of any public authority or other entity to take or use the Transfer Parcel or any part thereof.

Section 7. Developer's Representations and Warranties; Conditions to Closing. The Developer hereby makes the following representations and warranties, each of which is true as of the date hereof and all of which will be true on and as of the Closing Date:

(A) Bankruptcy. The Developer nor any affiliated company nor any principals of the Developer have filed, voluntarily or involuntarily, for bankruptcy relief within the last six months under the laws of the United States Bankruptcy Code, nor has any petition of bankruptcy or receivership been filed against the Developer, any affiliated company, or any of the principals of the Developer within the last twelve (12) months.

(B) Authority. The Developer has the power and authority to enter into this Agreement and to agree to the terms and conditions set forth herein, and the individual executing this Agreement on behalf of the Developer is duly authorized to do so and upon his execution of this Agreement shall bind the Developer to the terms and conditions hereof.

(C) Professional Ability. The Developer represents and warrants that it is experienced in commercial and property development and has the professional knowledge and ability to develop the Transfer Parcel in accordance with the terms of this Agreement and to complete the construction of the Project and redevelopment of the Project Site within the time frame contemplated herein and in the MRA.

(D) Financing. At or concurrent with the Closing on the Closing Date, the Developer shall have the financial capability to perform its obligations hereunder, including, without limitation, the ability to construct the Project as and when required, and to redevelop the Project Site as contemplated hereunder and under the MRA.

(E) Prior to the Closing, the Developer will provide the Design Documents to the City and Agency for review to ensure compliance and consistency with the Act and the Redevelopment Plan, as provided by the MRA.

(F) Prior to or in connection with the Closing, the Developer shall have site plan and construction/engineering plans substantially approved, Structural Foundation, Underground MEP (Mechanical Electrical and Plumbing) and Underground Fire permits substantially approved and all other building permits submitted and pending approval.

The foregoing representations, warranties and covenants of the Developer shall survive the Closing under this Agreement and any termination of this Agreement for a period of three (3) years after the Completion Date but in no event shall they survive later than December 31, 2024. The Developer hereby agrees to indemnify, defend and hold the City harmless from and against any and all loss, cost or damage incurred by the City on account of any of the foregoing representations and warranties being or becoming untrue or false, or on account of the Developer's breach thereof. Such indemnification obligation shall survive the Closing hereunder and any termination of this Agreement.

Section 8. Breach of Representations and Warranties. If any of the representations and warranties contained in this Agreement are not true and correct both on the effective date of this Agreement and again as of the Closing Date, the performing party may elect to terminate this Agreement by providing written notice thereof to the other party, in which event this Agreement shall be of no further force or effect (except for those specific paragraphs surviving termination and without prejudice to any right or remedy either party may have as a result of any breach of the representations and warranties contained herein), or the City and the Developer may elect to close notwithstanding same.

Section 9. Inspections; Right of Entry. The Developer shall have sixty (60) days after the effective date of this Agreement (the "Inspection Period"). During such Inspection Period, the City hereby grants permission to the Developer or its agents to enter upon the City Parcel and, subject to authorization of its fee simple owner, the Option Parcel for the purpose of environmental due diligence investigations, surveying, architectural and engineering studies, including but not limited to soil tests, soil and groundwater analysis, structural analysis, and surveys. Developer or Developer's agents may not conduct any inspection so as to cause damage to the Transfer Parcel, except damage reasonably resulting from soil borings, but in any event if any damage occurs, Developer shall protect the general public from access to the damaged area and shall restore the Transfer Parcel to its pre-inspection condition not later than 2 business days after the damage occurs. Without limiting the City's remedies, these obligations to protect the public and to restore will be secured by the City's reasonable right of set off against the Initial Downpayment. The Developer agrees to indemnify, defend (by counsel reasonably satisfactory to City), save, and hold harmless the City and the Agency and their officers, agents and employees from and against any and all losses, claims,

damages, liabilities, or expenses (including reasonable attorneys' fees and costs through all appellate levels and postjudgment proceedings) related to, growing out of, or arising from the entry on or investigation of the Transfer Parcel by Developer and any agents of Developer. Before entering the Transfer Parcel for inspection purposes, Developer and any agents of Developer so entering the Transfer Parcel must furnish City with proof of liability insurance covering such claims, damages, losses, or expenses and provide 24-hours notice prior to entering the Transfer Parcel for such inspections. The provisions of this section will survive the Closing or the termination of this Agreement.

If the Developer is dissatisfied with its inspections in any respect, it may terminate this Agreement by giving notice to the City within the Inspection Period. If the Developer does not provide such written notice of termination on or before the last day of the Inspection Period, it shall have no further right to terminate this Agreement under this Section 9.

Section 10. Permits, Approvals and Consents. This Agreement is not contingent upon the Developer obtaining any of the governmental permits, approvals and consents necessary for construction of the Project. The Developer will be solely responsible for seeking and obtaining such permits, approvals and consents after the Closing.

Section 11. Deliveries at Closing. The parties shall deliver the following items at Closing:

(A) The special warranty deed conveying the Transfer Parcel to the Developer substantially in the form of the exhibit titled "Transfer Agreement Ex. 2" attached hereto and incorporated herein by reference.

(B) The City shall execute appropriate owner's affidavits attesting to the absence of mechanic's or materialman's liens, and such other instruments and documents as the Developer's counsel may reasonably request for the purpose of confirming proper and lawful execution and delivery of closing documents and conveyance of the Transfer Parcel to the Developer in accordance with this Agreement.

(C) The Developer will deliver such affidavits, settlement statements and other agreements as the City's counsel may reasonably request for the purpose of confirming

the proper and lawful execution and delivery of closing documents and conveyance of the Transfer Parcel in accordance with this Agreement.

(D) The Declaration of Restriction by the Developer in the form of the declaration attached hereto as the exhibit titled "Transfer Agreement Ex. 3".

(E) The Developer shall pay to the City the Purchase Price as set forth herein, which Purchase Price is to be paid by wire transfer; and

(F) The Developer shall pay to the City the nonrefundable Impact Fee Deposit subject to the terms and conditions set forth in Section 5 herein; and

(G) The assignment by the Developer of the construction plans for the Off-Site Infrastructure as set forth herein in a form reasonably acceptable to the City.

(H) The Option Parcel is encumbered by that certain Right of Way Easement granted to the City and recorded in Official Records Book 2056, Page 159 of the Public Records of Brevard County, Florida. The City Parcel may be encumbered by that certain Right of Way Easement granted to the City and recorded in Official Records Book 2056, Page 155 of the Public Records of Brevard County, Florida. The Developer requests that these easements (to the extent they encumber the Transfer Parcel) be reduced to a width of approximately 1.8 feet which is intended to be that portion of the easements that is located between the Hotel Facility building improvements and the south boundary line of the Option Parcel and the City Parcel, as applicable, effective upon the conveyance of the Transfer Parcel to the Developer and such easement to be reserved in the Deed to the Developer conveying the Transfer Parcel to the Developer. This Agreement shall be considered an application by the Developer to vacate the easements as needed and as requested and the City agrees to process such application pursuant to Chapter 52 of the City Code in good faith. In the event the Developer's request is granted, the City shall provide the Developer a certified copy of the ordinance adopted by the City reflecting the same. The City's approval to vacate the aforementioned right of way easements effective as of the date the Transfer Parcel is conveyed to the Developer is a condition precedent to Developer's obligation to close on the acquisition of the Transfer Parcel.

Section 12. Closing; Conditions to Closing.

(A) Closing Date. Subject to satisfaction of all Closing Conditions set forth in Section 12(B) below, the consummation of the transactions contemplated by this Agreement (the "Closing") will occur at a mutually agreed upon time and place, but not later than the expiration of the Preconstruction Period (the "Closing Date")

(B) Conditions to Closing. The obligation of the City and the Developer to consummate the Closing is subject to the satisfaction, as of the Closing Date, of each of the following "Conditions to Closing" (any of which may be waived in whole or in part in writing by the parties at or prior to Closing):

(1) All of the warranties and representations of the City and the Developer contained in this Agreement shall be true and correct; and

(2) The option to purchase the Option Parcel will have been exercised and the City is the fee simple owner of the Option Parcel; and

(3) The City and the Developer shall have performed their respective obligations and/or cured any notice of default under this Agreement within all applicable cure periods.

In the event that any of the foregoing Conditions to Closing have not been achieved on or prior to the Closing Date, either party may terminate this Agreement by providing written notice thereof to the other party, the City shall retain the Initial Downpayment, and this Agreement shall be of no further force or effect.

Section 13. Closing Costs. At Closing, the Developer shall pay all closing costs related to the conveyances contemplated herein, including but not limited to documentary stamps and recording fees. The Developer shall be responsible for any ad valorem property taxes determined to be legally due and payable by the Brevard Country Tax Collector on the Transfer Parcel after the conveyance thereof. The City represents and warrants that there are no ad valorem taxes currently assessed against the City Parcel.

Section 14. No Transfer or Encumbrance; Default.

(A) Except as provided for hereinbelow in Section 14(C), prior to the earlier to occur of the following: (i) the completion of construction of the Project on the Project Site, or (ii) the date the MRA is terminated by any one of the parties as provided for in the MRA, Developer will not assign, transfer, sell, convey or otherwise dispose of the

Transfer Parcel without the prior written consent of the City. The Developer agrees that any purported assignment, transfer, sale, conveyance or other disposition without such prior written consent of the City shall be null and void.

(B) Other than as expressly permitted as set forth below in Section 14(C), a default under this Agreement shall constitute any instance in which the Developer, directly or indirectly, (i) creates, incurs, assumes, or permits to exist any mortgage, pledge, lien (other than a mechanics lien), security interest or other charge or encumbrance against any interest (including, without limitation, any leasehold interest) it now or hereafter owns in the Transfer Parcel, or (ii) assigns, transfers, sells, conveys or otherwise disposes of the Transfer Parcel without the prior written consent of the City prior to the date set forth in Section 14(A) above. Any default under this Agreement shall be a default under the MRA and all documents executed in connection therewith.

(C) Notwithstanding the foregoing, Developer shall have the right to mortgage or pledge its interest in the Transfer Parcel in favor of any financing lender(s), which may include, but not be limited to, providers of preferred equity or mezzanine financing, for the development of the Project Site and such mortgages or pledges shall not constitute a default. Additionally, there may be mechanic's liens filed against the Transfer Parcel in connection with the construction of the Project.

Section 15. Completion Covenant. The Developer acknowledges and agrees that the City would not enter into this Agreement or agree to transfer and convey the Transfer Parcel to the Developer without the Developer's express agreement to construct the Project and redevelop the Project Site on the Transfer Parcel, in accordance with the Conceptual Project Plan, the Redevelopment Plan and the Act, and to complete such redevelopment in accordance with the terms of the MRA including but not limited to completing construction of the Project by the Completion Date as provided for therein. The Developer hereby covenants and agrees with the City to complete construction of the Project by the Completion Date, as the same may have been extended pursuant to the terms of the MRA.

Regardless of the aforementioned, the City's conveyance of the Transfer Parcel to the Developer shall be complete and unrestricted, free and clear of all encumbrances except as may be set forth in the Commitment and approved by the Developer pursuant to the terms hereof, once the Developer has paid or delivered the consideration set forth

in Section 4 for such transfer regardless of whether the Developer commences or completes the construction of the Project, and the City shall have no claim of reverter associated with the Transfer Parcel and the City shall be deemed to have received full and fair consideration for the conveyance of the Transfer Parcel to the Developer.

Section 16. Construction of the Off-Site Infrastructure and the Walkway Improvements. To induce the City to enter into this Agreement, and as a condition thereof, after the Closing, the Developer agrees to perform the covenants and obligations set forth in the Master Redevelopment Agreement, including construction of the Off-Site Infrastructure as set forth in the Off-Site Infrastructure Agreement and provision of the Walkway Improvements.

Regardless of the aforementioned, the City's conveyance of the Transfer Parcel to the Developer shall be complete and unrestricted, free and clear of all encumbrances except as may be set forth in the Commitment and approved by the Developer pursuant to the terms hereof, once the Developer has paid or delivered the consideration set forth in Section 4 for such transfer regardless of whether the Developer commences or completes the construction of the Project, and the City shall have no claim of reverter associated with the Transfer Parcel and the City shall be deemed to have received full and fair consideration for the conveyance of the Transfer Parcel to the Developer.

Section 17. Developer's Assurances to City.

(A) The Developer shall pay the Impact Fee Deposit at or prior to Closing, which Impact Fee Deposit paid to the City shall be non-refundable in accordance with Section 5(B). In the event that the Developer fails to pay the Impact Fee Deposit at or prior to Closing, then Developer shall be deemed in default of the MRA, and this Agreement shall terminate automatically as of the Closing Date, and the City as its sole remedy under this Agreement for such default shall retain the Initial Downpayment as set forth in Section 1(A) of this Agreement.

(B) The Developer shall pay all other building permit fees and costs which are due to be paid pursuant to this Agreement and the MRA prior to the expiration of the Preconstruction Period, which other fees and costs to the City shall be non-refundable. In the event that the Developer fails to pay all such permit fees and costs within ten (10) days of the City's conveyance of the Transfer Parcel to the Developer, then Developer shall be deemed in default of the MRA (subject to all applicable cure periods) and the

City as its sole remedy under this Agreement for such default shall retain the consideration set forth in Section 4 of this Agreement, including the declaration of restriction, the nonrefundable Impact Fee Deposit, the Purchase Price and the assignment of construction plans for the Off-Site Infrastructure, subject to the timing limitations more particularly provided for in Section 5 above.

(C) In the event that the Developer (i) fails to commence construction of the Project prior to the expiration of the Preconstruction Period pursuant to the MRA; or (ii) fails to complete construction of the Project on or before the Completion Date as set forth in the MRA; then Developer shall be deemed in default of the MRA and the City as its sole remedy under this Agreement for such default shall retain the consideration set forth in Section 4 of this Agreement, including the declaration of restriction, the nonrefundable Impact Fee Deposit, the Purchase Price and the assignment of construction plans for the Off-Site Infrastructure, subject to the timing limitations more particularly provided for in Section 5 above.

(D) Regardless of whether the Developer satisfies its obligations in this Section 17 or not, the City shall have no right, claim or cause of action to any further or continuing interest in the Transfer Parcel after it has conveyed the Transfer Parcel to the Developer.

Section 18. Disclaimer of Warranties. Except to the extent of the express representations and warranties set forth in this Agreement, the City has not made and does not make any warranty or representation, express or implied as to the merchantability, quantity, quality, physical condition or operation of the Transfer Parcel, the suitability or fitness of the Transfer Parcel or any improvements hereon, if any, for any specific or general use or purpose, or any other matter affecting or relating to the Transfer Parcel, its development or use including but not limited to, the Transfer Parcel's compliance with any environmental laws, technical building codes, the City of Melbourne's land development code or code of ordinances. Neither party is relying on any statement or representations made by the other not embodied herein. The Developer hereby expressly acknowledges that no such warranties and representations have been made, except as expressly set forth in this Agreement. The Developer acknowledges that the Developer will have ample opportunity prior to the Closing Date to inspect, investigate, and evaluate the Transfer Parcel, and that such opportunity will be sufficiently adequate to enable the Developer to make the Developer's own determination with respect to merchantability, quantity, quality, physical condition or

operation of the Transfer Parcel, suitability or fitness of the Transfer Parcel or any improvements thereon, if any, for any specific or general use or purpose, or any other matter affecting or relating to the Transfer Parcel, its development or use, including without limitation, the Transfer Parcel's compliance with any environmental laws, technical building codes, the City's land development code or code of ordinances. The Developer further acknowledges the Developer will have ample opportunity to inspect the Transfer Parcel and be thoroughly familiar and satisfied therewith prior to the Closing Date and agrees to take the Transfer Parcel in its physical condition, "AS IS, WHERE IS, WITH ALL FAULTS" as of the Closing Date. The City shall not be liable or bound in any manner by any verbal or written statement, representation or information made or given by anyone pertaining to the Transfer Parcel, unless specifically set forth in this Agreement. In particular, but without in any way limited the foregoing, the Developer hereby releases the City from any and all responsibility, liability and claims for or arising out of the presence on or about the Transfer Parcel (including in the soil, air, structures and surface and subsurface water) of any materials, wastes or substances that are or become regulated under or that are or become classified as toxic or hazardous, under any Environmental Law, including without limitations, petroleum, oil, gasoline or other petroleum products, byproducts or waste. As used herein, "Environmental Law" shall mean as amended and in effect from time to time, any federal, state or local statutes, ordinance, rule, regulation, judicial decision, or the judgment or decree of a governmental authority, arbitrator or other private adjudicator by which the Developer or the Transfer Parcel is bound, pertaining to the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, any Hazardous Materials Transportation Act, as amended, the Clean Air Act, as amended and in the statutes together with the rules adopted and guidelines promulgated pursuant thereto, and all similar statutes together with rules adopted and guidelines promulgated pursuant to the foregoing

Section 19. In the event that the Developer for any reason determines in its sole and absolute discretion that the Transfer Parcel is not suitable for its intended purposes or if the Developer does not elect to accept a deed from the City subject to the alleged defect(s) to title set forth in the Commitment, and this Agreement is terminated, then the City will be under no further obligation hereunder, the City shall retain the Initial Downpayment and each party shall bear its own costs and expenses.

Section 20. Miscellaneous. The City and the Developer agree to the following miscellaneous terms:

- (A) This Agreement shall be governed by Florida law.
- (B) Any written notices contemplated hereunder shall be given in the manner and at the addresses of the parties set forth in the MRA.
- (C) This Agreement may be executed in counterparts, each of which shall be an original but, when taken together, shall be deemed to constitute a single instrument.
- (D) If any party takes any action to enforce this Agreement, each party shall bear its own fees and expenses, except to the extent otherwise set forth herein.

Section 21. Effective Date. This Agreement shall be effective upon the Effective Date defined in the MRA.

*Transfer Agreement
Dated 08/07/18*

IN WITNESS WHEREOF, the City and the Developer, by and through the undersigned, have entered into this Transfer Agreement as of the date set forth below each of their respective signatures.

CITY OF MELBOURNE, FLORIDA

[City Seal]

By: _____
Michael A. McNees, City Manager

Attest:

City Clerk
Dated: _____

801 STRAWBRIDGE HOTEL, LLC

By: _____
Name: _____
Title: _____

Dated: _____

Exhibits

Transfer Agreement Ex. 1 – Transfer Parcel
Transfer Agreement Ex. 2 - Special Warranty Deed
Transfer Agreement Ex. 3 - Declaration of Restriction

TRANSFER PARCEL

Lot 16, Block 32, Camps Plat of Melbourne, according to the plat thereof, as recorded in Plat Book 1, Page 54, of the Public Records of Brevard County, Florida.

Lots 12 and 13, Block 32, Camps Plat of Melbourne, according to the plat thereof, as recorded in Plat Book 1, Page 54, of the Public Records of Brevard County, Florida.

THIS INSTRUMENT RETURN TO:
Laura Minton Young, Esq.
Dean Mead
7380 Murrell Road, Suite 200
Viera, Florida 32940

Property Appraiser ID #: _____

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made this ____ day of _____, 201_, by and between the **CITY OF MELBOURNE FLORIDA**, a Florida municipal corporation, as "Grantor", whose principal address is 900 East Strawbridge Ave., Melbourne, Florida 32901; and **801 STRAWBRIDGE HOTEL, LLC**, a _____ limited liability company with a principal place of business at _____ (as "Grantee").

WITNESSETH:

THAT the Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, to it in hand paid by the Grantee, the receipt whereof is hereby acknowledged, hereby grants, bargains, sells, alienates, remises, releases, conveys and confirms unto the Grantee, their heirs, successors, and assigns forever, the following described real property, located and situate in the County of Brevard, State of Florida, to wit:

Lot 16, Block 32, Camps Plat of Melbourne, according to the plat thereof, as recorded in Plat Book 1, Page 54, of the Public Records of Brevard County, Florida.

Lots 12 and 13, Block 32, Camps Plat of Melbourne, according to the plat thereof, as recorded in Plat Book 1, Page 54, of the Public Records of Brevard County, Florida.(hereafter, the "Real Property").

The property described herein does not constitute the constitutional homestead of the Grantor herein.

This deed is given subject to the following exceptions:

[EXCEPTIONS TO BE ADDED BASED ON UPDATED TITLE COMMITMENT PURSUANT TO THE TRANSFER AGREEMENT (STRAWBRIDGE HOTEL PROJECT)]

TOGETHER WITH ALL the tenements, hereditaments, and appurtenances thereto belonging or in any way appertaining.

TO HAVE AND TO HOLD unto the same in fee simple forever.

The Grantor hereby covenants with the Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey this land; that the Grantor hereby specially warrants that title to the land is free from encumbrances made by Grantor, and Grantor will defend the same against the lawful claims of all persons claiming by, through, or under Grantor, but against none other.

RESERVATION OF EASEMENTS

GRANTOR hereby reserves unto itself and its assigns and successors-in-interest or title, and, to any extent required, Grantee, by acceptance hereof, hereby gives and grants unto Grantor, and its assigns and successors-in-interest or title, the following non-exclusive right of way easement: a _____ foot (_____) wide right of way easement along the southern boundary of the Property described and depicted on Exhibit "A", attached hereto and made a part hereof. This easement is made for the purpose of giving and granting to the Grantor, its successors, legal representatives and assigns, an easement over, under and across said lands for a public alleyway including but not limited to use for public ingress and egress and public utilities.

The Grantor hereby disclaims any and all mineral rights reserved by Section 270.11, Fl. Statutes.

IN WITNESS WHEREOF, the Grantor has caused this Special Warranty Deed to be executed the day and year first above written.

Signed, sealed and delivered
in the presence of:

GRANTOR:

CITY OF MELBOURNE, FLORIDA,
a Florida municipal corporation

Witness #1

Print Name

By: _____

Michael A. McNees
City Manager

(City Seal)

Witness #2

Print Name

Attest: _____

Cathleen A. Wysor
City Clerk

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this _____ day of _____, 201_, by Michael A. McNees as City Manager. He is personally known to me.

Notary Public

My Commission Expires:

THIS INSTRUMENT RETURN TO:
City Clerk
City of Melbourne
900 East Strawbridge Avenue
Melbourne, Florida 32901

Property Appraiser ID #: _____

DECLARATION OF RESTRICTION

THIS DECLARATION OF RESTRICTION is made this _____, 2018 by **801 STRAWBRIDGE HOTEL, LLC**, a _____ limited liability company with a principal place of business at _____ (hereinafter, "Developer").

WHEREAS, Developer and the City of Melbourne, Florida, a Florida municipal corporation (hereinafter, the "City") entered into a Master Redevelopment Agreement regarding the Project (the "MRA") on _____, 2018; and

WHEREAS, as part of the MRA, the City and Developer agreed to enter into a Transfer Agreement, wherein the City agreed, pursuant to certain terms and conditions, to convey a parcel of land for the Project (hereinafter, the "Transfer Parcel" as further described below); and

WHEREAS, the Developer is the fee simple owner of the following parcel of land located south of Strawbridge Avenue and west of Waverly Street, described as lying and situate in Section __, Township 28 South, Range 37 East, Brevard County, Florida and being more particularly described as follows:

Lot 16, Block 32, Camps Plat of Melbourne, according to the plat thereof, as recorded in Plat Book 1, Page 54, of the Public Records of Brevard County, Florida.

Lots 12 and 13, Block 32, Camps Plat of Melbourne, according to the plat thereof, as recorded in Plat Book 1, Page 54, of the Public Records of Brevard County, Florida.

(collectively hereinafter, the "Project Property"); and

WHEREAS, pursuant to the Transfer Agreement, the Developer agreed to place certain restrictions on the Project Property.

NOW, THEREFORE, the Developer hereby declares that the Project Property is and shall be hereafter held, transferred, sold, conveyed, used and occupied subject to the provisions set forth in this Declaration.

1. Acknowledgements. Each and all of the foregoing recitals are acknowledged to be true and correct and the same are hereby incorporated herein.

2. Restrictions. Developer hereby agrees to restrict the use of the Project Property as follows:

At no time may the Project Property, or any part thereof, be used for the following:

- i. A so-called "head shop" or similar business that sells smoking or drug paraphernalia;
- ii. a package store;
- iii. an exotic dance hall, theatre or studio; a bingo hall or other establishment providing games of chance or gambling of any kind; or
- iv. a so-called "flea market."

The restrictions contained in this section are perpetual and continue in effect after the expiration of the restriction contained in this paragraph.

3. Covenant Running With the Land in Favor of the City. Developer agrees that this restriction on the Project Property shall be deemed a covenant running with the land in favor of the City of Melbourne, and shall remain in full force and effect, and be binding upon the undersigned, its successors and assigns until such time as the same may be released by the City of Melbourne.

EXECUTED as of the date first written above.

Signed and sealed
in the presence of:

DEVELOPER:

801 STRAWBRIDGE HOTEL, LLC,
a Wyoming limited liability company

Signature of Witness #1

Name Printed/Typed

Signature of Witness #2

Name Printed/Typed

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing Declaration of Restriction was acknowledged before me this
_____, 201__ by _____, as
_____ of **801 STRAWBRIDGE HOTEL, LLC**, a Wyoming limited
liability company on behalf of the company, who is personally known to me or produced
_____ as identification.

My commission expires:

Notary Public

JOINDER OF THE AGENCY

The MELBOURNE DOWNTOWN COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163, Florida Statutes, with a principal place of business at 900 E. Strawbridge Avenue, Melbourne, Florida 32901, does hereby join in and consent to the foregoing Transfer Agreement for Strawbridge Hotel Project.

**MELBOURNE DOWNTOWN COMMUNITY
REDEVELOPMENT AGENCY**

By: _____
Michael A. McNees, City Manager

Attest:

Cathleen A. Wysor, City Clerk

EXHIBIT "I"

REDEVELOPMENT INCENTIVE AGREEMENT

REDEVELOPMENT INCENTIVE AGREEMENT
(STRAWBRIDGE HOTEL PROJECT)

THIS REDEVELOPMENT INCENTIVE AGREEMENT (STRAWBRIDGE HOTEL PROJECT) (this "Agreement") is made and entered into this August __, 2018 by and between the **CITY OF MELBOURNE, FLORIDA**, a municipal corporation with a principal place of business at 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (the "City"); and the **MELBOURNE DOWNTOWN COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163, Florida Statutes, with a principal place of business at 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (the "Agency"); and **801 STRAWBRIDGE HOTEL, LLC**, a Wyoming limited liability company with a principal place of business at 1234 S. Greenway Drive, Coral Gables, Florida 33134 (the "Developer").

W I T N E S S E T H:

WHEREAS, the City, the Agency and Developer have entered into that certain Master Redevelopment Agreement (the "MRA") concurrently with this Redevelopment Incentive Agreement; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings set forth in the MRA; and

WHEREAS, by Ordinance No. 82-53, the City Council established the redevelopment trust fund into which tax increment is deposited each year by affected taxing authorities, all in accordance with section 163.387 of the Act; and

WHEREAS, the Redevelopment Plan describes the lack of hotel facilities in the Redevelopment Area and identifies that adequate hotel lodging is required if the Redevelopment Area is to achieve significant rehabilitation; and

WHEREAS, the Redevelopment Plan provides for a public-private development program to encourage private investment in the Redevelopment Area, specifically eliciting hotel and retail uses; and

WHEREAS, the MRA sets forth the terms by which the Developer will redevelop the Project Site located within the Redevelopment Area to include the Hotel Facility;

WHEREAS, the Developer intends to make a capital investment in real property improvements for the Project within the Redevelopment Area of approximately \$35,000,000.00, including all hard and soft costs (excluding personal property) associated with the design, permitting, remediation, construction and development of the Hotel

Facility and parking; and

WHEREAS, the Developer has represented to the City and the Agency that but for financial and other assistance from the City and the Agency as described in the MRA, the Project is not financially feasible and the Developer will not proceed; and

WHEREAS, the Agency is authorized by the Act to effectuate community redevelopment in the Redevelopment Area through expenditure of the tax increment deposited by affected taxing authorities into the redevelopment trust fund established by City Ordinance No. 82-53 (described and defined in the MRA as the "Tax Increment"); and

WHEREAS, the Agency has determined that the expenditures provided for in this Agreement are for a valid public purpose, and the Agency has further determined that such expenditures are consistent with Part III, Chapter 163, Florida Statutes (the "Act"), and the Redevelopment Plan; and

WHEREAS, the parties acknowledge that redevelopment activities in the Redevelopment Area must be coordinated to insure their compliance and consistency with the Act and the Redevelopment Plan, and the parties mutually agree to cooperate to achieve such coordination.

WHEREAS, the MRA contemplates execution of this Redevelopment Incentive Agreement providing for reimbursement of a portion of ad valorem tax increment financing paid; and

WHEREAS, the use of the Project Site as a hotel will create a minimum of 42 new jobs in the City and improve the general economic environment of the Redevelopment Area; and

WHEREAS, this Agreement is neither a general obligation of the City, nor is it backed by the full faith and credit of the City;

NOW THEREFORE, in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, the Agency and the Developer agree as follows:

Section 1. Recitals; Definitions.

(A) The foregoing recitals are true and correct and are incorporated into and made part of this Agreement as if fully set forth herein.

(B) As used herein, the following terms shall be defined as follows, unless the context clearly indicates to the contrary:

“Grant Period” means the term that shall begin on the first day of the tax year

immediately following the Completion Date and shall continue for nineteen (19) tax years thereafter for a total of twenty (20) consecutive tax years during which period the Tax Increment Recapture is paid to the Developer pursuant to the terms and conditions of this Agreement.

“Project Site” or “Property” means the real property described in the attached Exhibit “1”, generally referred to as 801-809 East Strawbridge Avenue, located within the Redevelopment Area and comprised of the City Parcel and the Option Parcel.

“Tax Increment Recapture” means a yearly grant payment made by the Agency to the Developer for each eligible tax year during the Grant Period in the amount equal to a portion of the Tax Increment generated by the Project Site.

Section 2. Grant.

(A) Section 163.387 of the Act authorizes "area reinvestment agreements" between a community redevelopment agency and private parties pursuant to which the increment computed for a specific area is reinvested in services or public or private projects, or both, including debt service, supporting one or more projects consistent with the community redevelopment plan that is identified in the agreement to be constructed within that area. It is the express intent of the parties hereto that this Agreement shall constitute and be construed as an area reinvestment agreement within the meaning of the Act.

(B) In order to attract the Project to the Redevelopment Area and as an incentive and support to the Developer to locate the Project within the Redevelopment Area, the Agency has agreed to award the Developer an annual grant consisting of a portion of the Tax Increment generated by the Project for a period of twenty years. The purpose of this Agreement is to create new jobs within the City and to improve the general economic environment of the Redevelopment Area.

(C) The Agency shall pay the Developer the Tax Increment Recapture described in Section 4 subject to the terms and conditions of this Agreement, including but not limited to, the Qualifying Conditions set forth in Section 5 and the Annual Payment Conditions set forth in Section 6.

Section 3. Term. The term of this Agreement shall commence, if at all, upon the date the Project is completed as provided in Section 2.13C. of the MRA, and shall continue for a period of twenty (20) tax years unless earlier terminated.

Section 4. Tax Increment Recapture.

(A) The Agency will make an annual grant payment to the Developer for each tax year during the Grant Period in an amount equal to a portion of the Tax Increment generated by the Property, as determined below.

1. For the first three (3) tax years following the Completion Date, the Tax Increment Recapture payment to the Developer shall equal seventy-five percent (75%) of the Tax Increment (exclusive of debt service millage) generated and actually paid by or on behalf of the Property.

2. Thereafter, through the remainder of the Grant Period, the Tax Increment Recapture payment to the Developer shall equal fifty percent (50%) of the Tax Increment (exclusive of debt service millage) generated and actually paid by or on behalf of the Property.

3. The Tax Increment for the Property shall be confirmed annually by the City Manager based on a reasonable application of the following formula: the difference between (i) the amount of ad valorem taxes levied each year on the Property by each taxing authority which contributes Tax Increment to the Trust Fund, exclusive of any amount from any debt service millage; and (ii) the amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for each such taxing authority, exclusive of any debt service millage, upon the total of the assessed value of the Property as shown upon the assessment roll for the year of the Completion Date.

4. The amount of the annual Tax Increment Recapture will be based on ad valorem real property tax revenue received by the Agency each year by March 15 and deposited into the Trust Fund.

5. The annual Tax Increment Recapture will not exceed the annual Tax Increment (exclusive of debt service millage) generated by the Hotel Facility.

Section 5. Qualifying Conditions.

A. The Developer, the Agency and the City understand and agree that the Developer qualifying for payment of the Tax Increment Recapture is conditioned upon all of the following: (i) the Developer completing the Project on or before the Completion Date as defined in the MRA; and (ii) the Developer has completed the Off-Site Improvements as provided for in the Off-Site Infrastructure Agreement, and (iii) no event of default by the Developer of the MRA or the Transaction Documents, after proper notice is delivered to the Developer, is continuing beyond all applicable cure periods (collectively, the "Qualifying Conditions").

B. The Developer, the Agency and the City understand and agree that the payment of the Tax Increment Recapture is conditioned upon Developer completing construction of the Project on or before the Completion Date and pursuant to the terms and conditions of the MRA and the Transaction Documents. The intent of this requirement is to provide for the Project improvements to be eligible for and reflected for the 2022 ad valorem property tax roll at the latest. The Developer shall prove

eligibility for the 2022 ad valorem property tax roll or sooner tax year if the Project is completed sooner by submitting to the Agency copies of Certificates of Occupancy and Certificates of Completion for the Project and the release of liens and proof of payment for Off-site Improvements, all as identified and set forth in Section 2.7(C) of the MRA indicating completion prior to January 1, 2022. Failure of the Developer to complete construction of the Project on or before the Completion Date, as the same may be extended pursuant to the terms of the MRA, shall be deemed a material breach of this Agreement such that neither the City nor the Agency shall be required to pay the Tax Increment Recapture to the Developer.

C. The Developer, the Agency and the City understand and agree that for the Project to be deemed complete, the parties have additional obligations to establish agreed ownership and responsibility for the Offsite Improvements. As a condition of the Agency's payment of the Tax Increment Recapture, the Developer shall comply with the Offsite Improvements Agreement. Failure of the Developer to comply with the Offsite Improvements Agreement shall be deemed a default of this Agreement by the Developer such that neither the City nor the Agency shall be required to pay the Tax Increment Recapture to the Developer.

D. To qualify for Tax Increment Recapture, by April 30 of the year following the Completion Date, the Developer must timely submit "sufficient documentation" of proof of compliance with the Qualifying Conditions to the City Manager for consideration. The City Manager, in his sole but reasonable discretion, shall determine whether the Developer has satisfied the Qualifying Conditions. "Sufficient documentation" of proof of compliance with the Qualifying Conditions shall be as follows: (i) for the completion of the Hotel Facility, a copy of the certificates of occupancy or certificates of completion, as applicable, issued by the City; (ii) documentation that all of the obligations of Developer under the Off-site Infrastructure Agreement have been met; and (iii) for any letters of default issued to the Developer by the City as of December 31st of the year of completion of the Project, the Developer shall provide proof that any such events of default have been cured within all applicable cure periods. It is not a condition for qualifying for the Tax Increment Recapture that the City accept ownership of the Transferrable Improvements, as defined in the Off-Site Infrastructure Agreement, provided that the Developer has complied with Section 4(B) of the Off-Site Infrastructure Agreement. The City Manager shall provide the Developer with his written determination as to whether the Developer has satisfied the Qualifying Conditions within thirty (30) days after his receipt of the Developer's submittal of the sufficient documentation for the same. In the event the City Manager determines that the Developer has not satisfied the Qualifying Conditions, the City Manager shall provide the Developer with a written explanation of how the Developer has not satisfied the Qualifying Conditions, and the Developer shall have until April 30th of the

year following the completion of the Project to submit or supplement its submittal to the City with additional “sufficient documentation” that confirms the Developer has satisfied the Qualifying Conditions as of the Completion Date, subject to all applicable cure periods.

Section 6. Annual Payment Conditions.

A. As a condition to receiving the annual Tax Increment Recapture, for each applicable tax year, the Developer shall comply with all of the following payment conditions:

- (i) The Hotel Facility was in operation on the Project Site within the Redevelopment Area for the applicable tax year, subject to the following provisions:
 - a. The Hotel Facility will maintain in inventory a minimum of 130 available hotel rooms of its total every year, subject to the exceptions noted in (b), (c), and (d) below.
 - b. The Hotel Facility may undergo a closure for a maximum of 180 days as a result of any events of Force Majeure (a “Force Majeure Closure”) for any related repairs, construction or reconstruction of improvements necessary to bring the property to a condition substantially similar to the one prior to the event of Force Majeure.
 - c. If the Hotel Facility undergoes renovations (unrelated to an event of Force Majeure as described above) necessary to maintain the property operating as a hotel of similar or higher caliber as the day it opened, it may undertake a “Partial Closure”. A “Partial Closure” shall be defined as up to 50% of the hotel’s room inventory taken out of inventory for a period of up to 12 months. Alternatively, to allow for renovation work to be completed during periods of lower occupancy, a “Partial Closure” may also be defined as two separate periods of up to 6 months in two consecutive years during each of which up to 50% of the hotel’s room inventory is taken out of inventory. The Developer may qualify to receive a Tax Increment Recapture during a maximum of two “Partial Closures” during the Term of this Agreement.
 - d. In lieu of a “Partial Closure”, the property may undertake a “Substantial Closure” once during the 20-year term of this Agreement if the Hotel Facility undergoes

renovations necessary to maintain the property operating as a hotel of similar or higher caliber as the day it opened. A "Substantial Closure" shall be defined as more than 50% of its room inventory taken out of inventory for a period of up to 12 months.

e. In the event of any "Partial Closure" or "Substantial Closure" due to renovations that started in the applicable tax year, any Tax Increment Recapture Payment to the Developer for that tax year shall be withheld until the renovation is completed, the closure period ends, and a minimum of 130 hotel rooms are back in inventory.

- (ii) Ad valorem property taxes due and owing on the Project Site are paid in full as required by law.
- (iii) No event of default of this Agreement for which the Developer has received a written notice thereof from the City or the Agency continues beyond all applicable cure periods.
- (iv) Forty-two (42) full-time equivalent employees are employed to work at the Hotel Facility on the Property, minimally supported by a certificate of compliance of employment executed by the Developer. A Substantial Closure or Partial Closure shall not impact this requirement such that all forty-two (42) employees shall be retained during such closures.
- (v) Developer complies with the payment request procedure set forth in this Section 6.
- (vi) The Property generates a Tax Increment (exclusive of debt service millage).
- (vii) The Trust Fund itself is in effect and not subject to any sunset provisions that have already come into effect as provided for by the Redevelopment Plan, as amended from time to time, or made applicable by amendment or repeal of any provision of the Act.
- (viii) The Developer is current on all of its payment obligations arising under the Third Party Loan Agreement. In the event the Developer is delinquent with respect to its payment obligations on the Third Party Loan Agreement at the time the annual Tax Increment Recapture payment is otherwise due to the Developer, the Agency shall forward such grant payment to the City for application to the City's debt obligation to HUD associated with this Project.
- (ix) The Developer is in compliance with any other obligations arising

under the Third Party Loan Agreement. In the event the Developer is delinquent with respect to its other obligations on the Third Party Loan Agreement at the time the annual Tax Increment Recapture payment is otherwise due to the Developer, the Agency shall forward such grant payment to the City for application to the City's debt obligation to HUD associated with this Project.

- (x) The Developer is not in default, beyond any applicable cure periods, of any material obligations arising under the MRA and the Transaction Documents, which expressly survived the completion of the Project, as evidenced by Developer having received a notice of default from the City. If the Developer is in default of a material obligation in the MRA or the Transaction Documents for which it has received written notice of, the Agency shall forward the Tax Increment Recapture payment for that year to the City for application to the City's debt obligation to HUD associated with this Project.

(collectively, the "Annual Payment Conditions").

B. The City Manager will determine in his sole but reasonable discretion whether the Project has satisfied the Annual Payment Conditions and will confirm the amount of the annual Tax Increment Recapture to be paid to the Developer pursuant to the formula set forth above in Section 4 above.

C. For any tax year that one or more of these Annual Payment Conditions is not met, the Developer shall lose its eligibility for a Tax Increment Recapture for that year, but may be eligible to receive a subsequent year's Tax Increment Recapture at a later date provided the applicable thresholds are met and the request for a subsequent year's Tax Increment Recapture is submitted pursuant to this Section 6 and provided this Agreement is not terminated as provided for below.

D. Annual procedure for payment.

1. In order to be eligible for an annual payment of Tax Increment Recapture for a particular tax year, the Developer must timely submit to the City Manager for consideration a request for payment by April 30th following the applicable tax year and such submittal shall be supported by "sufficient documentation of proof of compliance" with the Annual Payment Conditions. The City Manager may in its sole discretion reject submittals after April 30 of the tax year in question. For purposes of this Section 6, the following will constitute "sufficient documentation of proof of compliance" with the Annual Payment Conditions: (i) for Subsection 6A.(i) Developer must certify that the Hotel Facility has been in operation for the applicable tax year and any dates and

reasons for any “Force Majeure Closure”, “Partial Closure” or a “Substantial Closure” and shall certify the number of hotel rooms taken out of inventory for such closures for that tax year in question, (ii) for Subsection 6A.ii., the Developer must provide a paid receipt from the tax collector, (iii) for Subsection 6A.(iii), (vii), (viii) and (ix), Developer shall certify that it has not received a written notice of default under any of those agreements, or if it has, Developer shall provide a copy of such notice of default with a certification that the default was cured within all applicable cure periods. In the event Developer has appealed the value of the ad valorem real property taxes that the County has assessed relative to the Property, no Tax Increment Recapture will be due until after any such appeal has been completed and the full amount of the ad valorem property taxes have been paid by Developer.

2. Promptly following receipt of a completed submittal from the Developer, the City Manager shall make a reasonable determination that Developer has complied with the Qualifying Conditions and the Annual Payment Conditions. The City Manager shall provide the Developer with his written determination as to whether the Developer has satisfied the Qualifying Conditions and the Annual Payment Conditions and an estimate of the amount of the Tax Increment Recapture within thirty (30) days after his receipt of the Developer’s submittal of the sufficient documentation for the same. In the event the City Manager determines that the Developer has not satisfied the Qualifying Conditions or the Annual Payment Conditions, the City Manager shall provide the Developer with a written explanation of how the Developer has not satisfied the Qualifying Conditions or the Annual Payment Conditions, and the Developer shall have until April 30th of the year following the tax year in question to submit or supplement its payment application with additional “sufficient documentation” confirming that Developer has satisfied the Qualifying Conditions and the Annual Payment Conditions within all applicable cure periods. If the City Manager determines that the Developer has satisfied the Qualifying Conditions and the Annual Payment Conditions, the City Manager shall process the annual Tax Increment Recapture within ninety (90) days following the receipt by the City of the taxes paid on the Project Site for the subject tax year, which taxes, once paid by the property owner to the Brevard County Tax Collector, are disbursed to the City by the Brevard County Tax Collector pursuant to the laws of the State of Florida. The payment of the Tax Increment Recapture shall be from the Agency to the Developer by wire transfer pursuant to wiring instructions provided by the Developer.

Section 7. Default; Termination.

A. This Agreement may be terminated by the City and/or Agency prior to funding the entire Grant Period upon the occurrence of any of the following events of default: (i) the Developer fails to satisfy the Qualifying Conditions; (ii) ad valorem taxes

on the Project Site are unpaid in any given year, except if a tax assessment challenge has been timely filed and is pending (iii) Developer fails to complete the Project by the Completion Date, as the same may be extended pursuant to the MRA, (iv) The Trust Fund expires subject to any sunset provisions as provided for by the Redevelopment Plan, as amended from time to time, or made applicable by amendment or repeal of any provision of the Act; (v) Developer fails to be in compliance with any monetary payment obligation of Developer in the Third Party Loan Agreement; (vi) Developer (or its affiliate(s) designated to own and operate the Project ("Designee")) becomes insolvent or there is commenced a voluntary or involuntary proceeding under federal bankruptcy laws or any other insolvency or similar laws by or against Developer or its Designee which is not dismissed within ninety (90) days thereafter if an involuntary proceeding; (vii) Developer or its Designee becomes subject to the appointment of or taking of possession by a receiver, trustee, custodian (or similar official) of any substantial part of Developer's or its Designee's property, or (viii) any assignment for the benefit of creditors of Developer's or Designee is made by Developer or its Designee, without prior permission granted by the Agency.

B. The City and/or Agency may terminate this Agreement as a result of a material default by Developer under Section 7A or another material provision of the MRA (or the Transaction Documents) which expressly permits the City and/or Agency to terminate this Agreement.

Section 8. Approvals; Consents.

A. All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting by a party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any other act, except as expressly set forth herein to the contrary.

B. Unless expressly provided otherwise, all consents and approvals which may be given by a party under this Agreement shall not (whether or not so indicated elsewhere in this Agreement) be unreasonably withheld, delayed, or conditioned by such party and shall be given or denied within a reasonable time.

C. Unless expressly provided otherwise, where this Agreement requires approval by the City or the Agency, the City Manager of the City is authorized to grant or deny such requests.

D. Except to the extent set forth in Section 7.14 of the MRA, any amendments to this Agreement will require the approval of the City Council for the City and the governing body of the Agency.

Section 9. Recordkeeping.

A. Developer, for itself and its successors and assigns, agrees and grants permission to the City and/or Agency, or its designated agent, upon at least five (5) business days prior notice, to conduct on-site visits of the Hotel Facility during normal business hours to verify compliance with this Agreement. Developer, for itself and its successors and assigns, agrees to provide the City and/or Agency, or its designated agent, upon at least twenty-one (21) days prior notice, business records to verify compliance with this Agreement, including employment and wage records. City and/or Agency shall maintain such records as confidential to the extent permitted by Chapter 119, Florida Statutes. Such inspections and disclosure of records shall not be unreasonably withheld when required in order to verify compliance with the terms of this Agreement. Notwithstanding the foregoing, if the City's request for records is in response to a public records request that was filed with the City pursuant to Chapter 119, Florida Statutes, Developer shall respond to the City with the records so requested with all deliberate speed.

B. Developer shall provide access to all public records made or received by the Developer in conjunction with the Tax Increment Recapture payment(s) and this Agreement pursuant to the provisions of Chapter 119, Florida Statutes, except to the extent materials are deemed confidential by state or federal law.

Section 10. Other Provisions.

A. **Enforcement of Agreement; Attorneys' Fees.** Any party to this Agreement may at any time or from time to time proceed to protect and enforce all rights available to it under this Agreement by suit in equity, action at law, writ of mandamus, or by any other appropriate proceeding, whether for specific performance of any covenant or agreement contained in this Agreement, or damages, or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations. In the event of any litigation arising out of this Agreement, each party shall be responsible for bearing its own attorneys' fees and costs.

B. **Damage or Destruction/Insurance.** The Developer will bear all risk of loss, whether from casualty, theft, or other events, to the Project contemplated by this Agreement prior to completion of the Project, and will be solely responsible for obtaining any insurance necessary to protect against such risk.

C. **Governing Law and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to principles of conflict of laws. Venue in case of any suit filed to enforce the provisions of this Agreement will be in the Middle District of Florida, if filed in federal court, and in the state courts in and for Brevard County, if filed in state court.

D. **References.** The captions of this Agreement are for the purpose of convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement. The use herein of the words "successors and assigns" or "successors or assigns" of City and Agency or Developer shall be deemed to include the heirs, legal representatives, and assigns of the parties. All references in this Agreement to the term, "herein," "hereunder" and words of similar import shall refer to this Agreement, as distinguished from the paragraph, Section, or Article within which such term is located.

E. **Successors and Assigns.** The agreements, terms, covenants, and conditions herein shall be binding upon, and inure to the benefit of the City, the Agency, the Developer, and their respective successors and assigns.

F. **Disclaimer as to Governmental Authority.** Nothing in this Agreement shall be construed, interpreted, or applied in such a manner as will constitute contracting away or waiver of any governmental police power by the Agency or the City. The Developer is responsible at all times for complying with all applicable federal, state, and local laws.

G. **Third Parties.** This Agreement is solely for the benefit of the Developer, the Agency, and the City, and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Developer, the Agency, and the City any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement. Nothing contained in this Agreement shall limit or impair the Developer's right to protect its rights from interference by a third party.

H. **Assignment.** No party hereto may assign, transfer or license all or any portion of its rights under this Agreement or any monies to become due hereunder without the prior written approval of the other parties, provided, however, the Developer shall have the right to collaterally assign this Agreement and all of its obligations and rights hereunder to its lender for the Project without the prior written consent of the City or the Agency. After the completion of the Project, the Developer shall also have the right but not the obligation to assign this Agreement to a successor-in-title of the Hotel Facility with the prior written consent of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed. The City Manager shall approve or deny the assignment of this Agreement within thirty (30) days after Developer's written request for approval of such assignment. So long as the successor-in-title to the Hotel Facility is of the same or comparable financial stability as Developer and has the same or comparable experience in owning or managing a hotel facility of the same caliber as the Hotel Facility, the City Manager shall approve any such

Developer request for assignment thereto. In the event the City Manager denies the requested assignment, the Developer shall have the right to seek approval of such assignment directly by City Council. In the event this Agreement is assigned to a successor-in-title to the Hotel Facility, the Parking Agreement shall also be assigned to the same party. Any assignment of this Agreement must be to the owner of the Project Site and must include assignment of all unperformed obligations of the Master Redevelopment Agreement and the other Transaction Documents. In no event shall this Agreement be assigned separate and apart from the Master Redevelopment Agreement.

I. **Waiver of Jury Trial.** Each party hereto waives all right to trial by jury in any claim, action, proceeding or counterclaim the party may have against the other parties hereto regarding any matters arising out of or in any way connected with this Agreement.

J. **Severability.** If any portion of any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent determined by law.

K. **Time of Essence.** Time is of the essence in each and every instance hereunder with respect to the covenants, undertakings, and conditions to be performed hereunder by the parties.

L. **Effective Date.** This Agreement shall be effective upon the Effective Date defined in the MRA.

[Signature page follows.]

Each party is signing this Redevelopment Incentive Agreement on the date stated opposite that party's signature.

CITY OF MELBOURNE, FLORIDA

[Seal]

By: _____

Michael A. McNees
City Manager

Attest:

City Clerk

**MELBOURNE DOWNTOWN COMMUNITY
REDEVELOPMENT AGENCY**

[Seal]

By: _____

Michael A. McNees, City Manager

Attest:

Cathleen A. Wysor, City Clerk

801 STRAWBRIDGE HOTEL LLC

By: _____

Name: _____

Title: _____

Exhibit

Exhibit 1 – Legal description of the "Project Site"

EXHIBIT 1

LEGAL DESCRIPTION OF PROJECT SITE

The property is described as situate and lying in the State of Florida, County of Brevard, to-wit:

Lots 12 and 13, Block 32, Camps Plat of Melbourne, according to the plat thereof, as recorded in Plat Book 1, Page 54, of the Public Records of Brevard County, Florida. Parcel ID #: 28-37-03-FC-32-12

AND

Lot 16, Block 32, Camps Plat of Melbourne, according to the plat thereof, as recorded in Plat Book 1, Page 54, of the Public Records of Brevard County, Florida. Parcel ID # 28-37-03-FC-32-16

EXHIBIT "J"

OFF-SITE INFRASTRUCTURE AGREEMENT

OFF-SITE INFRASTRUCTURE AGREEMENT
(STRAWBRIDGE HOTEL PROJECT)

This **OFF-SITE INFRASTRUCTURE AGREEMENT (STRAWBRIDGE HOTEL PROJECT)** (hereinafter, this "Agreement") is made and entered into this _____, 2018 by and between the **CITY OF MELBOURNE, FLORIDA**, a Florida municipal corporation with a principal place of business at 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (the "City"); and the **MELBOURNE DOWNTOWN COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163, Florida Statutes, with a principal place of business at 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (the "Agency"); and **801 STRAWBRIDGE HOTEL, LLC**, a Wyoming limited liability company with a principal place of business at 1234 S. Greenway Drive, Coral Gables, Florida 33134 (the "Developer").

WITNESSETH:

WHEREAS, the City, the Agency and Developer have entered into that certain Master Redevelopment Agreement (the "MRA") concurrently with this Off-site Infrastructure Agreement; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings set forth in the MRA; and

WHEREAS, the City owns certain real property in the Redevelopment Area located at 809 E. Strawbridge Avenue; and

WHEREAS, the Agency has a leasehold interest in, as well as an option to purchase, real property immediately adjacent to the City Parcel located at 801 E. Strawbridge Avenue (together with 809 E. Strawbridge, described and defined in the MRA as the "Project Site"); and

WHEREAS, the MRA sets forth the terms by which the Developer will redevelop the Project Site to include the Hotel Facility and the Walkway Improvements and will design and construct the Off-site Improvements (collectively, described and defined in the MRA as the "Project"); and

WHEREAS, the Project is further described in the Conceptual Project Plan described and defined in the MRA; and

WHEREAS, the MRA describes certain financial and other assistance to be provided by the City and the Agency to the Developer as an inducement and consideration for the Developer to proceed with redevelopment of the Project Site,

including design and construction of certain off-site infrastructure improvements (collectively, described and defined herein as the "Off-site Improvements") located within the Alley Parcel (defined below); and

WHEREAS, the MRA contemplates execution of this Off-site Infrastructure Agreement providing for construction of the Off-site Improvements by the Developer; and

WHEREAS, the parties acknowledge that redevelopment activities in the Redevelopment Area must be coordinated to insure their compliance and consistency with the Act and the Redevelopment Plan, and the parties mutually agree to cooperate to achieve such coordination; and

WHEREAS, the Developer and the City desire to enter into this Agreement in furtherance of their understandings and agreements so as to memorialize the full and complete agreement between the parties with respect to the design, construction and completion of the Off-site Improvements by the Developer.

NOW THEREFORE, in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, the Agency and the Developer agree as follows:

Section 1. Developer's Provision of Public Improvements.

(A) Subject to the terms and conditions of this Agreement and the MRA, the Developer agrees to permit, design, engineer, construct, equip, and otherwise complete the Off-site Improvements consistent with this Agreement, the Conceptual Project Plan and the MRA.

(B) Definitions.

"Alley Parcel" means the real property located adjacent to the Project Site, a depiction of which is attached hereto as Exhibit "1".

"Right-of-Way Parcel" means the real property located within the Alley Parcel, a depiction of which is attached hereto as Exhibit "2".

(C) Off-site Improvements.

(1) The Off-site Improvements include: (i) stormwater infrastructure associated with retention and conveyance of stormwater for the Alley Parcel; (ii) resurfacing of the entire Alley Parcel to meet City right-of-way standards; (iii) a solid waste enclosure area on the Alley Parcel for adequate shared solid waste disposal at the current capacity; and (iv) underground power lines, all as more particularly set forth in the Conceptual Project Plan and subject to the terms and conditions of this Agreement (the "Off-site Improvements").

(2) The parties agree that a significant portion of the Alley Parcel is owned by third parties other than Developer and that authorization from such third parties is necessary to construct and maintain the Off-site Improvements. The Developer agrees to use its best efforts to obtain signed, written agreements with these third party owners and easements (to the extent needed) on the Alley Parcel from the underlying property owners (i) to allow the Developer to construct the Off-site Improvements on the Alley Parcel; and (ii) to create a public right-of-way on the Right-of-Way Parcel in a form acceptable to the City Attorney.

(3) Except as provided for below in this Section 1(C)(4) or Section 6(C), if the Developer obtains the agreements and all of the easements described in subsection (C)(2) hereinabove and Section 5 hereinbelow (to the extent needed) (which easements may be held in escrow pursuant to the terms of the separate agreements with the adjacent property owners) on or before the date that is the later to occur of the following: (i) September 30, 2018, and (ii) 60 days after the MRA is approved and signed by City Council (the "First Deadline"), the Developer shall construct the Off-site Improvements on the Alley Parcel pursuant to the terms and conditions of this Agreement and such construction will be scheduled to start at the beginning of the construction for the Hotel Project Site. The parties shall agree upon the final detailed description and plan of the Off-site Improvements on the Alley Parcel, which shall be approved by the Agency, as evidenced by the signature of the Community Development Director of the City of Melbourne, and the Developer by the First Deadline.

(4) If the Developer does not obtain the agreements and easements described in subsection (C)(2) hereinabove and Section 5 hereinbelow (to the extent needed) on or before the First Deadline, then the Developer shall have until the "Second Deadline", defined as the date that is the earlier to occur of the following: (i) ten (10) days prior to the closing on the Transfer Parcel, and (2) six (6) months after the MRA is approved and signed by City Council to obtain all necessary agreements and easements with the adjacent property owners and the sign-off of the description and plan for the Off-Site Improvements by the city; provided, however, that the Developer cannot commit to schedule the construction of the Off-Site Improvements at the beginning of the construction for the Hotel Project Site. Regardless of whether the agreements and easements are in place by the First Deadline, Developer will schedule the loading zone striping and signage on Waverly Place prior to or at the beginning the Hotel Project Site construction.

(5) In the event the Developer is unable to obtain all necessary agreements and easements from the adjacent property owners by the Second Deadline, (i) the Developer shall not be required to construct the Off-site Improvements on the Alley Parcel; (ii) the Off-site Improvements shall be deleted from the Conceptual Project

Plan; and (iii) this Off-site Infrastructure Agreement shall be deemed terminated and null and void, it being the intention of the parties that the City shall be granted the public right-of-way easement on the south boundary of the Project Site and the power lines necessary for development of the Project Site shall be underground despite termination of this Off-site Infrastructure Agreement.

(D) Stormwater System. In addition to any City Development Regulations pursuant to the City's police powers, the stormwater system to treat the stormwater located on the newly paved alley area shall be subject to the following conditions:

(1) The design shall reflect an underground vault manufactured by a company reasonably approved by the City Engineer of the City of Melbourne, which vault shall meet the following minimum criteria in addition to all City Development Regulations: the sediment floor as approved by the City Engineer of material constructed for that use; the clean-out pipe shall be a minimum of 24 inches in diameter; the system shall be easily accessible for operation and maintenance; be designed such that it can be maintained with an existing City jet/vacuum truck; and the system must have a separate component designed for sediment accumulation and this area designated for sediment accumulation must consist of a non-fabric floor unless maintenance of the area is to occur less frequently than once every twelve (12) years; and

(2) The stormwater system shall accommodate the current capacity of stormwater on the Alley Parcel, which capacity shall be determined by a certified engineer and approved by both the Developer and the City prior to the commencement of the construction of the Off-site Improvements in the Alley Parcel. Cost assumptions in the Budget (as defined below) are only based on the current drainage capacity of the Alley Parcel and the existing runoff onto the Alley Parcel, it does not include stormwater drainage run-off of the Project Site or any of the existing or future development of buildings or lots adjacent to the Alley Parcel; and

(3) The entire stormwater system shall be located entirely within the Right-of-Way Parcel; and

(4) The entire stormwater system constituting the Off-site Improvements shall be independent of the stormwater system serving the Hotel Facility.

(E) Power Lines and Other Utilities. In addition to any City Development Regulations pursuant to the City's police powers, the power lines that constitute Off-site Improvements shall be subject to the following conditions:

(1) The design shall be an underground system of power lines.

(2) If agreed to by the Developer and the adjacent property owner(s), underground electrical power lines shall be installed to serve properties adjacent to the

Alley Parcel, which the connection of the lines to the buildings shall be at the expense of the property owner serviced thereby.

(3) If agreed to by the Developer and the adjacent property owner(s), underground sewer private service lines shall be installed to serve properties adjacent to the Alley Parcel and shall be located within a private easement among the applicable adjacent property owners, which installation shall be at the expense of the property owner serviced thereby.

(4) All utilities shall be located within a private utility easement benefiting and burdening the property owners adjacent to the Alley Parcel which easement may be within the Right-of-Way Parcel so long as the location of utilities meets the following minimum criteria in addition to all City Development Regulations: the placement of utilities within the Right-of-Way Parcel shall not conflict with the configuration and design of the stormwater system and maintenance thereof and shall comply in all respects with the requirements of the applicable utility provider.

(F) Solid Waste. In addition to any City Development Regulations pursuant to the City's police powers, the solid waste improvements that constitute Off-site Improvements shall be subject to the following conditions:

(1) Property owners adjacent to the Alley Parcel that will utilize the solid waste improvements shall execute a shared dumpster agreement in a form acceptable to the City Attorney. The parties acknowledge and understand that the Developer does not intend to utilize the solid waste improvements and will not be entering into a shared dumpster agreement with any of the adjacent property owners or the City.

(2) Property owners adjacent to the Alley Parcel will execute a cross-access easement located on the Alley Parcel to allow adequate access for solid waste disposal by a solid waste disposal truck.

(3) The Developer shall install solid waste enclosure within the shared dumpster area, adequate to enclose the shared dumpster.

(4) The solid waste enclosure shared dumpster area shall be located entirely within the Right-of-Way Easement without encroaching on passage of vehicular traffic through the length of the Right-of-Way Easement.

(G) Alley Parcel Surface. The Developer shall construct the entire Alley Parcel adequate to meet City right-of-way standards.

Section 2. Construction Requirements. In constructing the Off-site Improvements, the Developer will comply with the following requirements:

(A) Construction Deadline. Developer will complete construction of the Off-

site Improvements within six (6) months after the construction of the same commences. Notwithstanding the deadline set forth above, in the event the construction of the Off-site Improvements will not be complete within that time period, Developer has the right to request an extension or extensions of such time frame from the City, the approval of which shall be in the discretion of the City Manager, without the necessity of approval from City Council, and such approval by the City Manager shall not be unreasonably withheld, conditioned or delayed. The time frame provided for herein with any and all approved extensions shall be referred to as the "Off-site Project Duration". Notwithstanding anything stated herein to the contrary, the commencement of the work for the loading zone and signage on Waverly Place and any and all work necessary, and/or required to provide electric service and lines associated with the construction for the Hotel Facility shall not constitute the commencement of the Off-Site Project Duration. The parties agree, that it is not the intent of this Agreement to prevent the Developer from commencing and/or completing the work required for the development of the hotel project.

(B) Construction Plans. The Developer shall ensure that the approved construction plans of the Off-site Improvements conform to the Conceptual Project Plan and Section 1 of this Agreement in all Material respects.

(C) General Procedural Requirements for Construction. The Developer must construct the Off-site Improvements in accordance with applicable federal, state, and local laws and regulations, including where applicable the City Development Regulations (as defined in the MRA) for such construction, and in addition must comply with the following requirements:

(1) The construction will be managed by the Developer and/or the general contractor or construction manager engaged by the Developer for the Off-site Improvements.

(2) Prior to commencing construction of the Off-site Improvements, the Developer must submit to the City appropriate development applications for development permits or other entitlements. The City shall accept from the Developer for processing and review all such applications, provided that such applications are submitted in accordance with all City Development Regulations and all fees are timely and properly paid. All required permits and development approvals must be obtained prior to commencing construction. Nothing in this Agreement shall be construed to waive or modify applicable City Development Regulations.

(3) The City shall cooperate with the Developer in securing for the Developer all development permits which may be required by the City or any other governmental agency for construction of the Off-site Improvements, provided, however, the Developer shall be solely responsible for obtaining any development approvals and

permits required by any governmental agency for construction and completion of the Off-site Improvements, including but not limited to the payment of any costs and fees associated therewith.

(4) The design for the Off-site Improvements shall be prepared by a professional engineer registered in the State of Florida regularly engaged in the field of civil engineering. The final design proposed by the Developer shall conform to the City's Development Regulations, the Conceptual Project Plan in all Material respects, and to the Redevelopment Plan. It shall be the Developer's obligation to furnish to the City accurate information with regard to matters of engineering and construction. The Developer is responsible for compliance with the conditions of all permits and approvals, City ordinances, and approved construction documents. Construction of the Off-site Improvements must comply with construction plans, as approved by the City.

(5) During construction, all safety regulations of the City shall be observed, and Developer must take measures, including placing and display of safety devices that may be necessary in order to safely conduct the public around the construction area, including the Alley Parcel.

(6) Nothing in this section or Agreement shall obligate the City to waive any development regulations, accelerate review, or expend moneys except as provided in Section 6 herein.

(7) The Developer shall submit to the City all final contractor affidavits and lien waivers of all contractors and subcontractors evidencing that said construction work for the Off-site Improvements has been paid in full.

(D) Inspection. The City reserves the right to inspect the Off-site Improvements at any time during the Construction Period. In the event the Off-site Improvements are not constructed in accordance with the City Development Regulations and the final approved construction plans, the Developer shall correct such work at Developer's expense. In the event the Off-site Improvements are not constructed in accordance with the Conceptual Project Plan in all Material respects, the Developer understands and agrees that the City is not obligated to accept ownership, operation, and maintenance of such Public Improvements.

Section 3. Additional Construction Requirements for the Off-site Improvements. The parties agree that the Developer will construct the Off-site Improvements on property owned and used by third parties and for which the City has or will have right-of-way easements over, and the Developer understands and agrees to obtain proper authorization from such third parties and the City prior to obtaining a permit for the construction of the Off-site Improvements. As such, in addition to the

general construction requirements in Section 2 of this Agreement, Developer will comply with the following additional requirements in constructing the Off-site Improvements:

(A) Materials. The Developer agrees that it shall furnish all materials and equipment, obtain and pay for all required permits and perform all of the work in the manner and to the full extent set forth in the Conceptual Project Plan, the approved construction plans for the Off-site Improvements, this Agreement, and the City Development Regulations applicable to the Off-site Improvements.

(B) Schedule for Completion; Intent to Proceed. Within sixty (60) days after the Developer obtains the required agreements from the adjacent property owners and sign-off of the Off-Site Improvement plan and description by the City, the Developer will present to the City a final schedule for construction of the Off-site Improvements including the estimated completion date for the City's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. The City shall approve such schedule within ten (10) days after its receipt thereof or shall provide the Developer in writing a statement of the reasons why such schedule is not approved within such time period. After the schedule is approved by the City, the Developer's work on the Off-site Improvements can be commenced upon providing a ten (10) day notice to the City of the Developer's intent to proceed. The Developer shall use its best efforts to complete the work on the Off-site Improvements in accordance with the approved schedule.

(C) Use of the Alley Parcel.

(1) The parties expressly understand and acknowledge that the construction of the Off-site Improvements will cause disruption to the public and the adjacent property owners, including, but not limited to, lack of available parking, limited closures of right of ways, the Alley Parcel and sidewalks, and increased noise levels associated with projects of this type. The Developer shall conduct the work so as to insure the least obstruction to access practicable, and shall provide for the reasonable convenience of the general public and of residents along and adjacent to the work in a reasonable manner while accounting for both public safety and the constructability of the Project. As part of the planning and design of the Off-site Improvements, the Developer agrees to work directly with the adjacent property owners in creating the logistics plan for the Alley Parcel during the Off-site Project Duration. The Developer shall not restrict access to the Alley Parcel beyond the expiration of the Off-site Project Duration. Materials and equipment for the Off-site Improvements shall be stored on the Project Site.

(2) To the extent required by applicable City Development Regulations, it shall be the responsibility of the Developer to contact in writing the Fire and Police Departments having jurisdiction in the area where the work is being performed to obtain from them a summary of the information which is required to be provided to them while

work is in progress. It shall then be the Developer's responsibility to provide them with all such data.

(D) Materials, Services and Facilities. It is understood that the Developer shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence and temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

(E) Warranty of Title. No material, supplies, or equipment to be installed for the work shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. The Developer warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the premises together with all public improvements and appurtenances constructed or placed thereon by the Developer to the City free from any claims, liens, or charges, and further agrees that neither the Developer nor any person, firm or corporation furnishing any materials or labor for any work covered by this Agreement shall have any right to a lien upon the premises or any public improvements or appurtenances thereon, provided that this shall not preclude the Developer from installing metering devices and other equipment of utility companies or private service lines of adjacent properties, the title to which is commonly retained by the utility company or adjacent property owner, as the case may be. In the event of the installation of any such metering device or equipment, the Developer shall advise the City as to the owner and location thereof. Notwithstanding anything stated hereinabove to the contrary, if any lien shall at any time be filed against the Alley Parcel arising out of the construction of the Off-site Improvements by the Developer, the Developer shall either cause the same to be vacated and cancelled of record within thirty (30) days after the date of the filing thereof or, if Developer in good faith determines that such lien should be contested, Developer shall furnish such security, by bond or otherwise, as may be necessary or be prescribed by law to release the same as a lien against the Alley Parcel or any interest therein, and to prevent any foreclosure of such lien during the pendency of such contest.

(F) Inspection and Testing of Materials. Unless otherwise specifically provided for in the specifications, the inspection and testing of materials and finished articles to be incorporated in the work at the site shall be made by bureaus, laboratories, or agencies approved by the City. The Developer shall furnish evidence satisfactory to the City that the materials and finished articles have passed the required tests prior to the incorporation of such materials and finished articles in the work. The Developer shall promptly segregate and remove rejected materials and finished articles from the site of

the work.

(G) Developer's Responsibility for Work. Until completion of the Off-site Improvements by the Developer, it shall be under the charge and care of the Developer, and the Developer shall take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, including but without being limited to injury or damage arising from the execution or from the non-execution of the work. The Developer shall rebuild, repair, restore and make good, at the Developer's own expense, all injuries or damages to any portion of the work occasioned by any of the above causes before its completion and acceptance.

(H) General Guarantee. Neither any specification in the MRA or the Transaction Documents, nor partial or entire use or occupancy of the premises by the City shall constitute an acceptance of work not done in accordance with this Agreement or relieve the Developer of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Developer shall remedy any defects in the work and pay for any damage to other work resulting therefrom which shall appear within a period of two (2) years from the date of issuance of a Certificate of Completion for the work. The City will give notice of observed defects with reasonable promptness.

(I) Protection of Monuments. The Developer shall protect from any damage or movement all survey permanent reference markers, bench marks, triangulation points, section corners, etc. If the Developer destroys or moves any monument through carelessness, the Developer shall have such monuments restored and/or replaced by approved and qualified personnel, at the Developer's expense in accordance with all applicable rules and regulations.

(J) Assignment of Warranties. Developer will assign any and all warranties for workmanship, manufacture and materials associated with or related to the Transferrable Improvements (defined below) to the City upon conveyance of the Transferable Improvements to the City. Such assignment shall not release Developer of any obligations in this Agreement.

(K) Maintenance Bond. Upon completion of the Off-site Improvements, the Developer shall furnish to the City a maintenance bond in the amount of Twenty Thousand Dollars (\$20,000.00), representing approximately ten percent (10%) of the total cost of the construction of the Off-site Improvements guaranteeing all the material, equipment and workmanship for a period of two (2) years after the date of issuance of a Certificate of Completion for the work, and the Developer will make good or replace at its own expense any material, equipment or workmanship that proves defective within the above period. This obligation is not assignable.

(L) Utilities. The Developer will be required to coordinate all work when

necessary with the various utility companies in order that utility service may be maintained. The Developer shall exercise due caution when working adjacent to such utilities. Any damage to the utilities resulting from the Developer's operations shall be repaired at the Developer's expense. Any work involving conflict with utility companies shall be coordinated with them at the preconstruction conference.

(M) Public Complaints. The Developer shall in good faith endeavor to answer and satisfy public complaints within a reasonable time and shall notify the City of all such complaints and the measures the Developer took to resolve, if possible. The Developer shall provide a telephone number and name to which complaints can be orally made.

(N) Water and Electricity. Water and electricity as may be required for construction and other purposes connected with this project shall be secured and purchased by the Developer.

(O) Clean-Up. The Developer shall be responsible for a general clean-up of the site of all construction operations. Trash, debris and excess materials must be hauled away and the premises cleaned.

Section 4. Ownership and Operation.

(A) City Ownership, Operation, and Maintenance.

(1) Stormwater Facilities for Alley. Subject to the conditions herein, provided the stormwater system complies with the requirements of this Agreement, then upon completion of the Off-site Improvements, the City and Developer agree that the stormwater system serving the Alley Parcel shall be owned, operated and maintained by the City.

(2) Solid Waste Improvements. Subject to the conditions herein, provided the solid waste enclosure complies with the requirements of this Agreement, upon completion of the Off-site Improvements, the City and Developer agree that the solid waste enclosure of the Off-site Improvements shall be the owned, operated and maintained by the City.

(3) The improvements described in this subsection (A) (1) and (2) shall be collectively referred to as the "Transferable Improvements."

(4) The City shall accept the Transferable Improvements within thirty (30) days after the following conditions have been met: (i) Developer has obtained a Certificate of Completion for the Transferable Improvement, the issuance of which shall not be unreasonably withheld, conditioned or delayed as required by the City Development Regulations; (ii) the Transferable Improvement is constructed consistent with the Conceptual Project Plan and the final approved construction plans in all Material respects; and (iii) that the Developer complies with City Development

Regulations for acceptance of public infrastructure by private developers, including but not limited to the provision of sealed as-built plans, a written release of all liens or any other encumbrance associated with the work, and a two-year maintenance bond (as set forth in Section 3(K) above) warranting the Off-site Improvements against defects in workmanship and materials and errors in design (including omissions) or construction; and (iv) the Developer provides the City with an easement on the Right-of-Way Parcel in a form acceptable to the City Attorney as referenced Section 5 below.

(5) For as long as Developer has not satisfied the above conditions, the City shall not be obligated to accept the Transferable Improvements by bill of sale, and shall not be obligated for any expenses associated with ownership, operation and maintenance of the Transferable Improvements. Additionally, for as long as Developer has not satisfied the above conditions, Developer, and all subsequent owners of the Hotel Project Site, and the owners of the Alley Parcel shall be obligated to operate and maintain the Transferable Improvements, and shall be solely responsible for any associated expenses. This provision shall survive the termination of this Agreement and is not assignable, except to any subsequent owner of the Project Site.

(6) Developer shall provide for any necessary transfer of the Transferable Improvements to the City by bill of sale as part of the consideration of this Agreement.

(7) Once the Transferable Improvements are accepted and conveyed to the City, the City shall be solely responsible for the expenses associated with ownership, operation and maintenance, subject to any maintenance bond issued for such Transferable Improvement and the 2-year warranty set forth in Section 3(K) above. Nothing herein shall require the City to operate or maintain Off-site Improvements that have not been conveyed to and accepted by the City by bill of sale.

(B) Adjacent Owner Ownership, Operation, and Maintenance.

(1) As part of the agreements between the Developer and the adjacent property owners, the adjacent property owners being served by the Transferrable Improvements, shall agree to also be mutually and jointly responsible for operation and maintenance of any Transferable Improvement not accepted by and conveyed to City by bill of sale as set forth in Section 4(A) above.

(2) As part of the agreements between the Developer and the adjacent property owners, the adjacent property owners being served by the stormwater improvements shall agree to execute a stormwater maintenance agreement in a form acceptable to the City Attorney pertaining to the stormwater improvements and facilities constructed by Developer which are not accepted by the City.

(3) These provisions shall survive the termination of this Agreement.

Section 5. Easements. Upon completion of the Off-site Improvements and concurrent with the approval and acceptance of the Transferable Improvements by the City, if any:

(A) Easements to City. To the extent not already granted, the Developer shall provide the City the appropriate easements granted by the adjacent property owners over, under and upon the portion of the Right-of-Way Parcel owned by such applicable adjacent property owner authorizing public use as a right-of-way, including vehicular and pedestrian access and use for solid waste disposal and drainage infrastructure. The Developer shall provide the City with the appropriate easement from the adjacent property owners on the Alley Parcel over the portion of the Alley Parcel owned by such adjacent property owner to allow access to the solid waste dumpsters. Such easements shall be in a form acceptable to the City Attorney.

(B) Due to the limited width of the Right-of-Way Parcel and the size of the stormwater system located therein, the private utilities, if approved to be constructed and paid for by the applicable adjacent property owners, shall not be located within the Right-of-Way Parcel (unless otherwise approved in writing by the City Manager as referenced in Section 1(E) herein). As part of the agreements between the Developer, or its assignee, with the adjacent property owners, the adjacent property owners shall agree to provide the appropriate utility easements required by the utility provider, Florida Power & Light ("FP&L"), for the mutual benefit of all properties adjacent to the Alley Parcel for private utilities within the Alley Parcel.

(C) All such easements shall run with the land and be binding upon successors in interest and title to the subject property, and shall be recorded in the Public Records of Brevard County at the cost of the Developer. The Developer will be responsible for providing the form of easements to the City for review and for providing the legal descriptions and sketches of the Alley Parcel, Right of Way Parcel and the various easement areas for which the easements provided for herein will be granted to either to the City or to FP&L. The cost associated with such easements (including but not limited to engineering, planning or design work, surveying costs, legal fees and costs incurred by the Developer, recording fees and any costs associated with underground power lines or private improvements for the adjacent property owners) shall not be included in the Budget for the Off-Site Improvements and shall not be at the expense of the City. Nothing herein shall prohibit the Developer from agreeing to cost-sharing for those costs with the adjacent property owner by separate agreement.

Section 6. Scope of Work, Cost of Construction; Payment for Off-site Improvements.

(A) Scope of Work. The parties agree that the scope of the work for the Off-

site Improvements shall include the Material elements of the Off-Site Improvements as set forth in the Conceptual Project Plan and the requirements of Section 1 of this Agreement.

(B) Budget. Attached hereto as Exhibit "3" is the proposed construction cost budget presented by the Developer (the "Budget"). The Budget is based upon assumptions regarding the work and the condition of the Alley Parcel made by the parties in order to estimate the cost of construction provided for in the Budget. The parties understand and agree that the Budget is not final and is subject to revision in order to reflect the estimated costs determined upon substantial approval of the permits for the Off-site Improvements as set forth below in subsection (D) below. The Reimbursement Cost shall not exceed the Budget, as revised pursuant to subsection (D) below. In no event shall the Budget (as revised) or the Reimbursement Amount include engineering, planning or design work, surveying costs, legal fees and costs, recording fees or any costs associated with underground power lines or private improvements.

(C) Payment. Subject to the conditions set forth herein, upon completion of all Off-site Improvements in compliance with the requirements of this Agreement, the Agency agrees to reimburse the Developer for the actual costs of the completed Off-site Improvements previously approved for reimbursement in writing by the City Manager. Reimbursement by the City shall be issued within the statutory time period set forth in the Florida Prompt Payment Act (ss. 218.70-218.80, Florida Statutes) (the FPPA") such time period shall not begin until the Developer has submitted a request for reimbursement in writing and after the conditions in Section 4(A)(4) and Section 6(E) are met. The parties agree that the Florida Prompt Payment Act shall apply to the Reimbursement Amount in this Agreement regardless of the fact that the cost for same may be less than the statutory requirement of \$200,000.00 for construction costs.

(D) Reimbursement limitation; Increase in Budgeted Cost and Scope of Work.

- (1) The reimbursement from the Agency to the Developer shall be limited to no more than \$195,000.00 (the "Reimbursement Amount"). Upon substantial approval of the permits for the Off-site Improvements and prior to commencement of the work, if the estimated cost for the Improvements will be less than or equal to \$195,000 then the City Manager may approve the agreed scope of work and the Budget as final and the Reimbursement Amount of up to \$195,000.00 shall be eligible for reimbursement pursuant to this Agreement.
- (2) If the estimated cost for the Improvements increases beyond \$195,000.00 due to changes in the scope of work that require an increase in the Budget, then the Developer will be responsible for the first Ten Thousand dollars (\$10,000.00) in such budget adjustments, the Budget shall be revised to

reflect the Developer's contribution. The City Manager may approve the agreed scope of work and the Budget (revised to reflect the additional Developer contribution) as final and the Reimbursement Amount of up to \$195,000.00 shall be eligible for reimbursement pursuant to this Agreement.

- (3) Any increase of the estimated cost for the Improvements beyond \$205,000.00, shall require an amendment to this Agreement, subject to approval by City Council and the Agency. If such increase to the Budget and the Reimbursement Amount is not approved by City Council and the Agency within ninety (90) days after the Developer delivers to the City notice of the change in the scope of work that requires an increase in the Budget, then any of the parties hereto may agree to terminate this Agreement, with the exception of any provision that expressly survives any such termination, and the Developer's obligation to construct the Off-site Improvements shall cease and be of no further force or effect.
- (4) The Budget, as revised, shall be subject to approval by the City Manager in writing prior to commencement of the work on the Off-site Improvements. Accordingly, notwithstanding anything to the contrary herein, in no event shall the City reimburse the Developer for any costs or expenses not approved in writing by the City Manager (subject to City Council and Agency approval, as the case may be to comply with spending limitations of the City Manager) prior to start of the work.
- (5) Additionally, in the event the construction of the Off-site Improvements becomes physically impossible to construct within the ROW Parcel and/or the Alley Parcel in compliance with the requirements of this Agreement, all applicable City Land Use Regulations and regulations and requirements of all applicable utility companies, as reasonably determined by the Developer's Engineer and the City Engineer or as a result of Force Majeure (as defined in the MRA), then any of the parties hereto may agree to terminate this Agreement, with the exception of any provision that expressly survives any such termination, and the Developer's obligation to construct the Off-site Improvements shall cease and be of no further force or effect. In the event the construction of the Off-Site Improvements has commenced and this Agreement is terminated by any of the parties as provided for hereinabove in this subsection (5), the City shall reimburse the Developer for those actual costs approved by the City pursuant to this Agreement, accounted for in the Budget and incurred by the Developer for the construction of the Off-Site Improvements only)(expressly

excluding and excepting costs to the extent any work performed related to the FP&L work for the Hotel Facility or the adjacent property owners). Prior to termination of the Agreement pursuant to this subsection (5), at the option of the City, the Developer shall return the Alley Parcel to a safe and usable condition, except that the City may exercise the option if at all only if the parties agree to modify the Budget to reflect the costs of returning the Alley Parcel to a safe and usable condition such that the costs incurred by the Developer would be eligible for reimbursement pursuant to the terms of this Agreement.

- (6) Regardless of whether this Agreement is terminated as permitted herein and in Section 1(C)(5) hereinabove, the Developer agrees to provide the engineering, planning and design work (including surveying work) for the construction of the Off-Site Improvements complete as of the time of termination and shall transfer and/or assign all such engineering, planning and design work to the City for its benefit and use as the City sees fit. This subsection shall survive termination of this Agreement.

(E) Procedure. The Developer shall submit a single request for reimbursement for all Off-site Improvements to the Agency and the City.

(F) Payment conditions.

(1) The request for reimbursement shall be supported by (i) proof of costs incurred by Developer for the Off-site Improvements and (ii) proof of payment by the Developer of such costs, all in a form reasonably acceptable to the City Manager or his designee.

(2) The Developer shall have complied with the ownership and operation requirements set forth in Section 4 above.

(3) The easements from the adjacent property owners on the Alley Parcel and the Right-of-Way Parcel as set forth in Section 5 above shall be recorded in the Public Records of Brevard County Florida.

(4) The private utility easements, if any, located within the Alley Parcel as set forth in Section 5 above shall be recorded in the Public Records of Brevard County Florida.

Section 7. Insurance. The Developer shall be insured against all losses and injury caused by the construction and installation of the Off-site Improvements authorized by this Agreement. The Developer will bear all risk of loss, whether from casualty, theft, or other events, to the Off-site Improvements contemplated by this Agreement and will be solely responsible for obtaining any insurance necessary to protect against such risk.

Section 8. Reimbursement for Property Damage; Indemnification. During and after the construction of the Off-site Improvements contemplated by this Agreement, the Developer shall reimburse the City for all damages to property owned or under the control of or used by the City caused by said installation or construction. The Developer agrees to re-store all areas damaged by the construction and all physical damage which shall be done to any of the aforementioned property owned by the City, through any act or omission by the Developer or any contractor, subcontractor, or person in the course of any employment in the construction of the facilities authorized by this Agreement. The Developer agrees to indemnify the City and hold it harmless for any Claims as provided for in Section 11 below.

Section 9. Tools, Machinery, Equipment. The City assumes no liability or responsibility for the care, safety, or preservation of any tools, machinery, equipment, material, or supplies used by the Developer and all risks thereof are assumed by the Developer.

Section 10. Protection of Persons and Property. The Developer at all times shall take all reasonable precautions to protect persons and property as required by the MRA, this Agreement, and all applicable laws, codes, regulations or City Development Regulations.

Section 11. Indemnity. To the extent permitted by law, the Developer agrees to protect, defend, reimburse, indemnify and hold the City, its affiliates, and the agents, officers, directors and employees of each of them (the "City Parties"), free and harmless from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorneys' fees) and causes of action of every kind and character ("Claims") arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained, arising out of or in connection with the Developer's construction of the Off-site Improvements and performance under this Agreement by the Developer or the Developer's Agents (defined below), the condition of the Alley Parcel under the Developer's control, the Developer's acts, omissions or operations hereunder or any breach of the terms of this Agreement by the Developer or Developer's Agents, for damage or injury caused by events occurring prior the date the City finally accepts the Off-site Improvements, whether such damage or injury is known or unknown at that time; provided, however, that the Developer shall not be responsible to the City Parties for the actions or omissions of the City Parties. The Developer's indemnification includes all deliverers, suppliers, and furnishers of material or anyone acting for, on behalf of or at the request of the Developer (the "Developer's Agents"). The Developer voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00), and such other good and valuable consideration provided by the City in support of this indemnification. This clause shall

survive termination of this Agreement. Nothing contained in this Agreement shall constitute or be construed as a waiver of the City's limitations on liability set forth in Section 768.28, Florida Statutes, and other law.

Section 12. Third Parties. This Agreement is solely for the benefit of the Developer, the Agency, and the City, and except for the Agency, no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Developer, the Agency, and the City any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement. Nothing contained in this Agreement shall limit or impair the Developer's right to protect its rights from interference by a third party.

Section 13. Assignment. Except as provided for hereinbelow, no party hereto may assign, transfer or license all or any portion of its rights under this Agreement or any monies to become due hereunder without the prior written approval of the other; provided, however, the Developer shall have the right to (i) assign all of the Developer's obligations, warranties and rights under this Agreement, except for those obligations, warranties or rights that are expressly prohibited in this Agreement from being assigned, to a single purpose entity managed by Developer, or (ii) collaterally assign this Agreement and all of its obligations and rights hereunder and to its lender(s) for the Project, without the prior written consent of the City or the Agency.

Section 14. Controlling Law. This Agreement shall be construed, interpreted, and controlled according to the laws of the State of Florida.

Section 15. Waiver of Jury Trial. Each party hereto waives all right to trial by jury in any claim, action, proceeding or counterclaim the party may have against the other parties hereto regarding any matters arising out of or in any way connected with this Agreement.

Section 16. Compliance with Laws. The Developer will be solely responsible for obtaining all permitting, zoning, building, and other approvals required in conjunction with construction of the Off-site Improvements. The City agrees to cooperate with Developer with respect to obtaining any required approvals; however in entering into this Agreement the City expressly reserves its police power to review and determine all requested zoning and permit approvals in accordance with the City's obligations under federal, state, and local law. The Developer is responsible at all times for complying with all applicable federal, state, and local laws.

Section 17. Severability. If any portion of any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any

extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent determined by law.

Section 18. No Modification. This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations, and representations between the parties having been incorporated herein. No course of prior dealings between the parties or their officers, employees, agents, or affiliates shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Agreement other than those specifically set forth herein. This Agreement can be modified or amended only by a writing signed by the parties hereto.

Section 19. Time of Essence. Time is of the essence in each and every instance hereunder with respect to the covenants, undertakings, and conditions to be performed hereunder by the parties.

Section 20. Effective Date. The Effective Date of this Agreement shall be the date upon which all parties have executed this Off-site Infrastructure Agreement.

Each party is signing this Off-site Infrastructure Agreement on the date stated opposite that party's signature.

CITY OF MELBOURNE, FLORIDA

[Seal]

By: _____

Michael A. McNees
City Manager

Attest:

City Clerk

**MELBOURNE DOWNTOWN COMMUNITY
REDEVELOPMENT AGENCY**

[Seal]

By: _____

Michael A. McNees, City Manager

Attest:

Cathleen A. Wysor, City Clerk

801 STRAWBRIDGE HOTEL LLC

By: _____

Name: _____

Title: _____

Exhibits

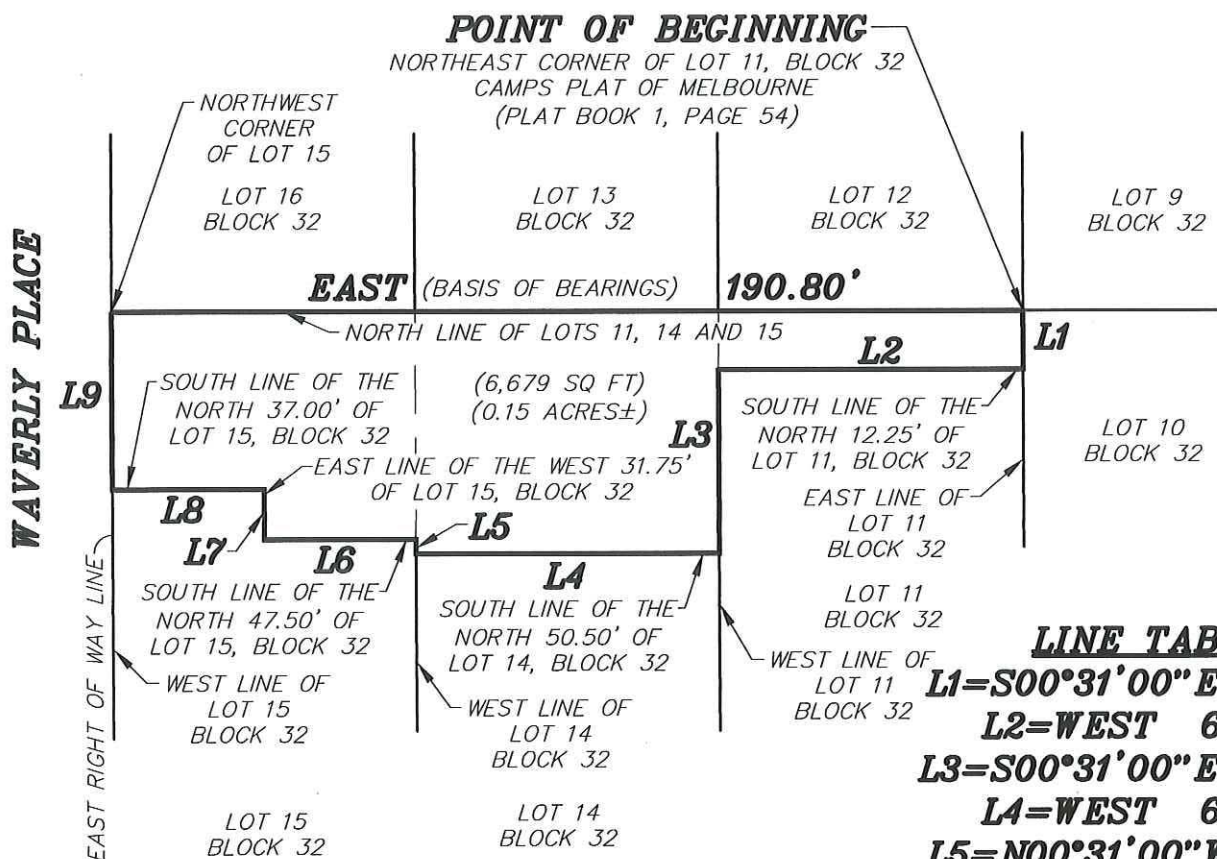
Exhibit 1 – Sketch and legal description of the Alley Parcel

Exhibit 2 – Sketch and legal description of the Right-of-Way Parcel

Exhibit 3 – Construction Budget

Sketch and Legal Description of the Alley Parcel

Off-site Infrastructure Agreement
Exhibit "1"



LINE TABLE

L1	=S00°31'00" E	12.25'
L2	=WEST	63.60'
L3	=S00°31'00" E	38.25'
L4	=WEST	63.60'
L5	=N00°31'00" W	3.00'
L6	=WEST	31.85'
L7	=N00°31'00" W	10.50'
L8	=WEST	31.75'
L9	=N00°31'00" W	37.00'

ALLEY IMPROVEMENT AREA

DESCRIPTION: A PORTION OF LOTS 11, 14 AND 15, BLOCK 32, CAMPS PLAT OF MELBOURNE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 54, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF SAID LOT 11 AND RUN S00°31'00"E, ALONG THE EAST LINE OF SAID LOT 11, A DISTANCE OF 12.25 FEET TO A POINT OF THE SOUTH LINE OF THE NORTH 12.25 FEET OF SAID LOT 11; THENCE WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 63.60 FEET TO A POINT ON THE WEST LINE OF SAID LOT 11; THENCE S00°31'00"E, ALONG SAID WEST LINE, A DISTANCE OF 38.25 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 50.50 FEET OF SAID LOT 14; THENCE WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 63.60 FEET TO A POINT ON THE WEST LINE OF SAID LOT 14; THENCE N00°31'00"W, ALONG SAID WEST LINE, A DISTANCE OF 3.00 FEET, TO A POINT ON THE SOUTH LINE OF THE NORTH 47.50 FEET OF SAID LOT 15; THENCE WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 31.85 FEET TO A POINT ON THE EAST LINE OF THE WEST 31.75 FEET OF SAID LOT 15; THENCE N00°31'00"W, ALONG SAID EAST LINE, A DISTANCE OF 10.50 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 37.00 FEET OF SAID LOT 15; THENCE WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 31.75 FEET TO A POINT ON THE WEST LINE OF SAID LOT 15, ALSO BEING ON THE EAST RIGHT OF WAY LINE OF WAVERLY PLACE; THENCE N00°31'00"W, ALONG SAID WEST LINE AND SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 37.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 15; THENCE EAST, ALONG THE NORTH LINES OF SAID LOTS 11, 14 AND 15, A DISTANCE OF 190.80 FEET TO THE POINT OF BEGINNING.

SKETCH OF DESCRIPTION ONLY! THIS IS NOT A SURVEY!

AAL LAND SURVEYING SERVICES, INC.

SKETCH OF DESCRIPTION

1. THIS SKETCH AND DRAWING HAVE BEEN PREPARED TO CONFORM WITH APPLICABLE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.
2. BEARINGS ARE BASED ON ASSUMED DATUM AND ON THE LINE SHOWN AS BEING THE BASIS OF BEARINGS.

SHEET 1 OF 1

SCALE: 1" = 40'

JOB # 37442-SOD

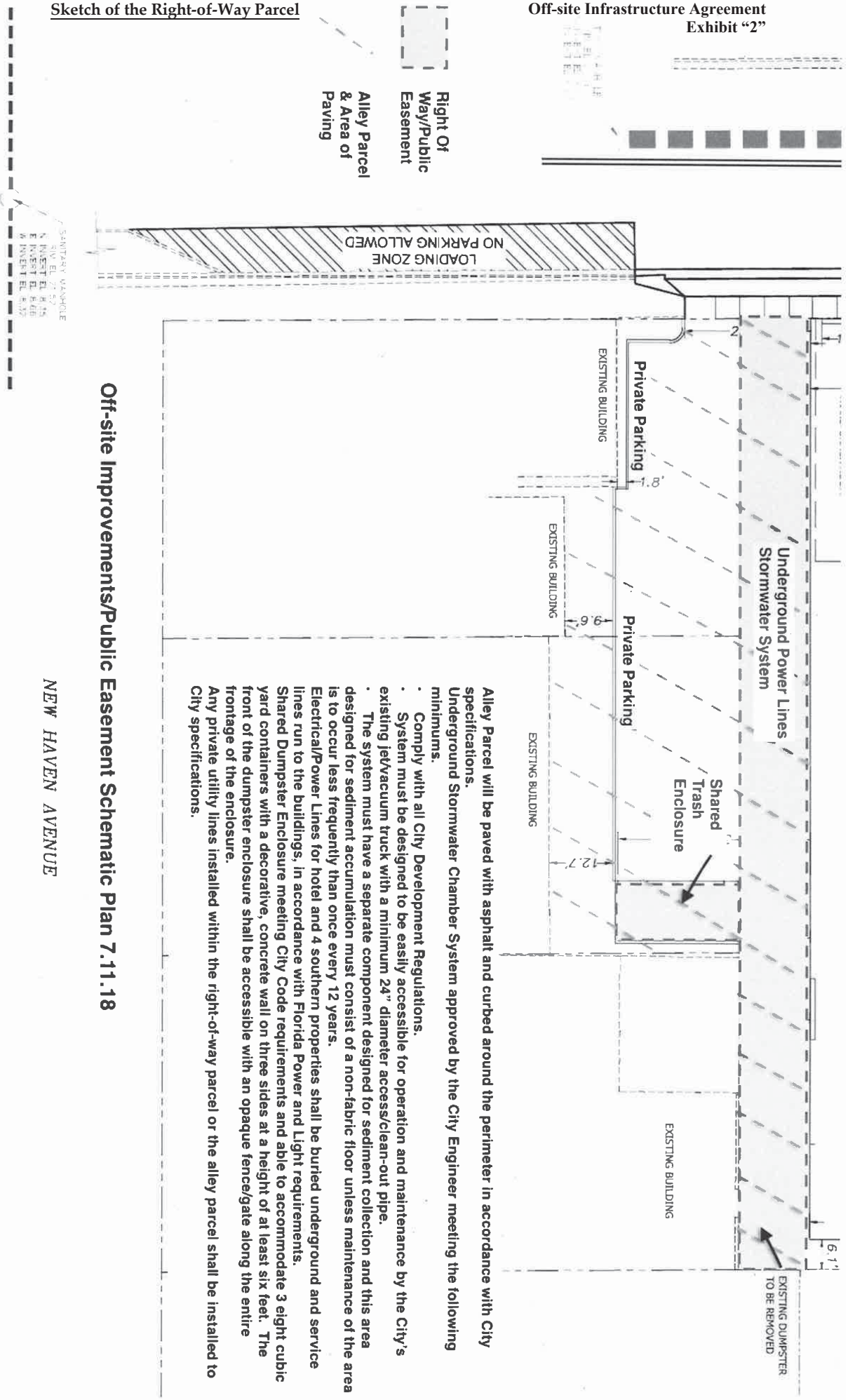
DATE: 07-10-18

SECTION 3, TOWNSHIP 28 S, RANGE 37 E

L.B. #6623

ANDREW W. POWSHOK
P.L.S. No. 5383

3970 MINTON ROAD
WEST MELBOURNE, FL. 32904
(321) 768-8110



Alley Parcel will be paved with asphalt and curbed around the perimeter in accordance with City specifications.

Underground Stormwater Chamber System approved by the City Engineer meeting the following minimums.

- Comply with all City Development Regulations.
- System must be designed to be easily accessible for operation and maintenance by the City's existing jet/vacuum truck with a minimum 24" diameter access/clean-out pipe.
- The system must have a separate component designed for sediment collection and this area is to occur less frequently than once every 12 years.

Electrical/Power Lines for hotel and 4 southern properties shall be buried underground and service lines run to the buildings, in accordance with Florida Power and Light requirements.

Shared Dumpster Enclosure meeting City Code requirements and able to accommodate 3 eight cubic yard containers with a decorative, concrete wall on three sides at a height of at least six feet. The front of the dumpster enclosure shall be accessible with an opaque fence/gate along the entire frontage of the enclosure.

Any private utility lines installed within the right-of-way parcel or the alley parcel shall be installed to City specifications.

Off-site Improvements/Public Easement Schematic Plan 7.11.18

NEW HAVEN AVENUE

SANITARY MANHOLE
R/W EL. 27.57
N INVERT EL. 18.15
E INVERT EL. 18.68
W INVERT EL. 18.72



**Off-site Improvements Preliminary Budget
May-18**

	\$
Site work Allowance	145,000
Demo, Stormwater chamber system, paving, dumpster enclosures	
General Conditions	14,000
GC Fees	36,000
OH&P, fees, 2 year bond, insurance	
TOTAL	195,000

Cost Basis and Exclusions:

1. Preliminary budget is based on 5.23.18 quote received from Brandon Development Enterprises, Inc. and 5.22.18 quote received from Certified General Contractors, Inc.
2. This is a preliminary budget based on the scope, drawings and other clarifications provided to both contractors for pricing- Off-site Improvements Pricing Scope May 2018 document and subject to change based on final approved scope and design.
3. Scope does not include any underground electrical or sanitary sewer work.

Off-Site Improvement Scope of Work for Contractor Preliminary Pricing- May 2018

Nothing herein shall be considered acceptance of the scope of work by the City. The information herein is to be used only for purposes of understanding the proposed budget submitted by the Developer. The parties understand and agree that the actual scope of work must comply with the MRA and the Off-Site Improvements Agreement.

For purposes of the quote obtained by the Developer, the “Off-Site Improvements” will include the following four components:

1. Storm Drainage System- this system is to run from the existing inlet location on the 812 E. New Haven property across the 808, 806, 804, 802, and 800 parcels, drain out to Waverly, and be sized appropriately to meet the storm water needs for the easement area and the parking area that is to be newly paved.
2. Shared Trash Solution- this arrangement is to include the removal of the existing enclosure on the northeast side of the 812 parcel. A new enclosure, meeting City Code, will be built to house two, 8-yard waste management containers and 1 cardboard recycling container, to be located in the Shared Trash Area for the use of all four properties from 812 west to Waverly. This new enclosure will be positioned so that its northern edge is aligned with the northern edge of the existing 812 building and, its eastern edge abuts to the west wall of the 812 building.
3. Paving – the area encompassing the public easement and the private parking areas, as shown on the exhibit, will be paved and graded to improve its appearance and functionality.
4. Underground Electrical Lines - all overhead power lines in the alley will be moved underground. This work will be contracted to FP&L.

Attachments:

5.8.18 Concept Civil Site Plan for Off-Site Improvements

44 x 12 Cultec specifications for storm water chamber system- *included for preliminary sizing information only, final specifications must conform to city requirements and the agreement*

Assumptions and Clarifications to the Current Scope/Pricing:

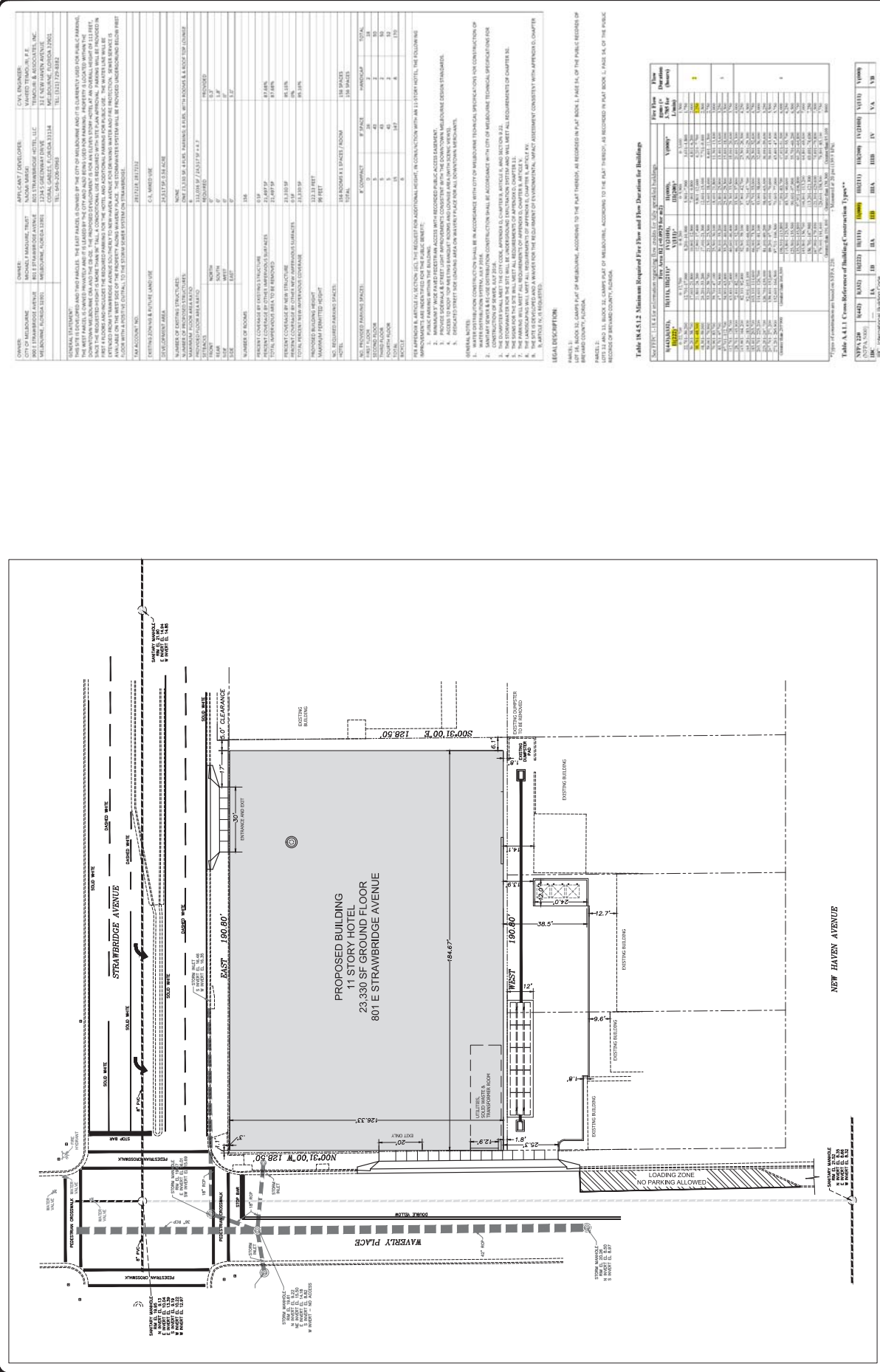
- a. Impact fees are excluded.
- b. FPL underground power relocation costs are excluded (to be paid directly by Developer).
- c. A two (2) year performance and payment bond is included.
- d. All fees, insurance, general conditions and permits required to complete the scope of work are included.
- e. Minimal landscaping (removal of existing trees and add back possible hedges or grass along neighbor property buildings) is assumed.
- f. The schedule and contract for this scope of work is assumed to be independent of the hotel project. Current estimated start is December 2018 or early 2019.
- g. Materials and workmanship must comply with city codes and other city requirements for this type of public work.
- h. Work to include Maintenance of Traffic (MOT) and road closures as necessary.

Potential Additional Work excluded in the Current Scope/Pricing:

- I. Storm Drainage: If a property owner wants to connect her or his building drainage directly into the storm drainage system, the property owner will be responsible for funding and coordinating with the hotel developer in a timely manner any additional work that will need to be completed

at the same time as the easement work. The trenching work for the main drain will be part of the public easement improvement scope.

- II. Sewer System: If a property owner wants to connect into the sewer or grease trap main line on Waverly, the property owner will be responsible for funding and coordinating with the hotel developer in a timely manner any additional work that will need to be completed at the same time as the easement work. Only the trenching work will be part of the public easement improvement scope.
- III. Power, Data and Phone: the costs and completion of any relocation and/or replacement of existing power, data and phone connections/ meters for each property building required to complete the plan described in this letter will be the responsibility of each property owner. In addition, any electrical, data or phone upgrades within each property required by code or by FP&L or other providers will also be the responsibility of each property owner.



^a This table was edited to exclude codes not adopted by the State.