

3A2

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: July 7, 2015 Consent Regular
 Ordinance Public Hearing

Department: County Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends a motion to:

A) approve an Insurance Proceeds and Condemnation Awards Escrow Agreement with Bank Hapoalim B.M. (Senior Lender) for the Convention Center Hotel; and

B) receive and file

1) a Letter to Bank Hapoalim B.M. dated June 25, 2015, regarding the Landlord Estoppel Agreement; and

2) a Memorandum of Landlord Estoppel Agreement.

Summary: At the October 30, 2012, Board of County Commissioners (BCC) meeting, the Board approved the Hotel Lease for the Convention Center Hotel. At the May 22, 2014, Zoning Meeting, the Board approved a Landlord Estoppel Agreement (Agreement) (R2014-0981) for the Convention Center Hotel. The Memorandum of Estoppel Agreement was an attachment to the Agreement and was executed for the purpose of giving public notice of the existence of the Agreement. The letter was contemplated in Paragraph 10 of the Agreement and provides certain assurance with respect to the executed project documents. The Insurance Proceeds and Condemnation Awards Escrow Agreement was contemplated in the hotel lease and appoints the Senior Lender as escrow agent for the purpose of receiving, holding and disbursing net insurance proceeds and net condemnation awards, and stipulates how the proceeds will be disbursed. District 7 (HF)

Background and Justification: On July 22, 2014, the BCC approved the Second Amendment to the Development Agreement (R2014-0982) and the Second Amendment to the Hotel Lease (R2014-1090). On June 4, 2013, the BCC approved an Amendment to the Development Agreement (R2013-0707) and an Amendment to the Hotel Lease (R2013-0706). On October 30, 2012, the Board of County Commissioners (BCC) approved agreements to facilitate the construction and operation of the Convention Center Hotel and Garage. On July 24, 2012, the BCC conceptually approved the Terms and Conditions of the hotel Agreements. On April 12, 2011, the BCC conceptually approved a subsidy in the amount of \$27 Million for the development of a 400 room Hilton Convention Center Hotel to The Related Companies, L.P. and directed Staff to begin negotiations with Related. On March 9, 2010, the BCC approved the Selection Committee's number one ranking of The Related Companies, L.P. to develop and operate the Hotel.

Attachments:

- 1. Insurance Proceeds and Condemnation Awards Escrow Agreement with Bank Hapoalim B.M.
- 2. Letter to Bank Hapoalim B.M. dated June 25, 2015, regarding the Landlord Estoppel Agreement
- 3. Memorandum of Landlord Estoppel Agreement

Approved by:  6-29-15
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	\$0	\$0	\$0	\$0	\$0
Operating Costs	0	0	0	0	0
External Revenues	0	0	0	0	0
Program Income (County)	0	0	0	0	0
In-Kind Match (County)	0	0	0	0	0
NET FISCAL IMPACT	\$0	\$0	\$0	\$0	\$0
# Additional FTE Positions (Cumulative)	0	0	0	0	0
Is Item Included in Current Budget:	Yes	_____	No	_____	_____

Budget Account No: _____

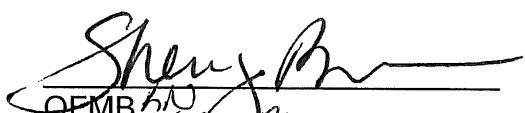
Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

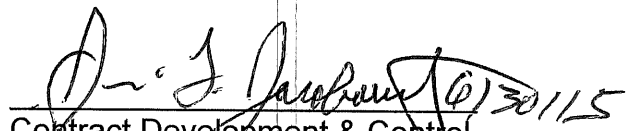
Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development & Control Comments:

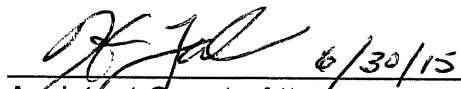


 OPMB ^{h10}
 6/20/15
OK
6/20/15



 Contract Development & Control
 6-30-15 *B. Wheeler*
 6/30/15

A. Legal Sufficiency:



 Assistant County Attorney
*Escrow Agreement not signed by
 other parties at time of CAD review*

A. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

**INSURANCE PROCEEDS AND CONDEMNATION AWARDS
ESCROW AGREEMENT**

THIS INSURANCE PROCEEDS AND CONDEMNATION AWARDS ESCROW AGREEMENT (this "**Agreement**") is made as of the ____ day of _____, 2015, by and between **BANK HAPOALIM B.M.** ("**Senior Lender**") and **THE COUNTY OF PALM BEACH, FLORIDA**, a political subdivision of the State of Florida ("**Landlord**") and **CITYPLACE HOTEL, LLC**, a Delaware limited liability company ("**Borrower**").

BACKGROUND:

A. Landlord is the owner of fee title to the land described on Exhibit A attached hereto (the "**Hotel Land**"), which land is located in Palm Beach County in the State of Florida. The Hotel Land and the Improvements (defined below) now or hereafter constructed thereon are collectively referred to herein as the "**Hotel Property**."

B. Landlord has leased the Hotel Property to Borrower, pursuant to the provisions of that certain Hotel Lease dated as of November 30, 2012, by and between Landlord and Borrower, as amended by Amendment to Hotel Lease dated June 14, 2013 by and between Landlord and Borrower, as further amended by Second Amendment to Hotel Lease dated July 22, 2014 by and between Landlord and Borrower, recorded in Official Records Book 27476, Page 769, Public Records of Palm Beach County, Florida (collectively, the "**Hotel Lease**"). A Memorandum of Hotel Lease by and between Landlord and Borrower with respect to the Hotel Lease has been recorded in Official Records Book 25952, Page 1516 of the Public Records of Palm Beach County, Florida.

C. CityPlace South Tower, LLC, a Florida limited liability company ("**CityPlace South Tower**") is the owner of fee title to the land described in Exhibit B attached hereto (the "**Garage Land**"), which land is located in Palm Beach County in the State of Florida. The Garage Land and the Improvements (defined below) now or hereafter constructed thereon are collectively referred to herein as the "**Garage Property**."

D. CityPlace South Tower has leased the Garage Property to Borrower pursuant to the provisions of that certain Garage Lease Agreement dated January 9, 2014 by and between CityPlace South Tower and Borrower (the "**Garage Lease**"). A Memorandum of Garage Lease by and between CityPlace South Tower and Borrower with respect to the Garage Lease has been recorded in Official Records Book 26596, Page 150, of the Public Records of Palm Beach County, Florida.

E. Borrower has agreed to develop the Hotel (defined below) on the Hotel Land and the Garage (defined below) on the Garage Land pursuant to that certain Development Agreement, dated as of November 30, 2012, by and among Landlord, The Related Companies, L.P., a New York limited partnership ("**Related**") and Borrower, as amended by that certain Amendment to Development Agreement, dated as of June 4,

2013, by and among Landlord, Related and Borrower, as further amended by Second Amendment to Development Agreement dated July 22, 2014 by and among Landlord, Borrower and Related (collectively, the "**Development Agreement**").

F. Senior Lender has agreed to make a construction loan to Borrower in the original principal amount of up to Fifty Million and No/100 Dollars (U.S.\$50,000,000.00)(the "**Senior Loan**") to finance the construction by Borrower of the Hotel, in accordance with the provisions of the Hotel Lease and the Development Agreement pursuant to that certain Construction Loan Agreement dated June 3, 2014 by and between Borrower and Senior Lender (the "**Senior Loan Agreement**"), evidenced by that certain Promissory Note dated June 3, 2014 issued by Borrower to the order of Senior Lender in the principal amount of \$50,000,000.00 (the "**Senior Note**" and secured by, among other things, that certain Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (Hotel) dated June 3, 2014 made by Borrower in favor of Senior Lender recorded in Official Records Book 26831, Page 1290, as amended by that certain Spreader Agreement and Modification of Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (Hotel), dated as of April 24, 2015 by and between Borrower and Senior Lender, recorded in Official Records Book 27502, Page 165, all in the Public Records of Palm Beach County, Florida encumbering, among other things, all right, title and interest of Borrower in and to the Hotel Lease and the Hotel Property (collectively, the "**Senior Hotel Mortgage**") and that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (Garage) made by Borrower in favor of Senior Lender recorded in Official Records Book 26831, Page 1327, Public Records of Palm Beach County, Florida encumbering, among other things, all right, title and interest of Borrower in and to the Garage Lease and the Garage Property (the "**Senior Garage Mortgage**").

G. Sections 7.2(a) and 8.3 of the Hotel Lease provide that insurance proceeds in excess of \$5,000,000.00, adjusted for inflation, payable regarding a property loss with respect to the Hotel Property or the Garage Property shall be payable to a Recognized Mortgagee (defined below) pursuant to a mutually acceptable agreement between Landlord and the Recognized Mortgagee pursuant to which the Recognized Mortgagee holds such proceeds for the purpose of paying the cost of Casualty Restoration (defined below).

H. Section 9.3 of the Hotel Lease provides that a condemnation award in excess of \$1,000,000.00, adjusted for inflation, payable regarding a condemnation proceeding with respect to the Hotel Property or the Garage Property shall be payable to a Recognized Mortgagee for the purpose of paying the cost of Condemnation Restoration (defined below).

I. Section 13.2 of the Garage Lease requires that repairs to the Garage shall be made in accordance with the terms and conditions of the Development Agreement and Section 9.1 of the Garage Lease provides that the disposition of condemnation awards shall be governed by the provisions of the Hotel Lease.

J. Landlord and Borrower acknowledge and agree that Senior Lender is a Recognized Mortgagee as that term is defined and used in the Hotel Lease and the

Garage Lease and that the Senior Hotel Mortgage is a Recognized Mortgage as that term is defined and used in the Hotel Lease.

K. Landlord, Borrower and Senior Lender wish to effectuate the provisions of Sections 7.2(a), 8.3 and 9.3 of the Hotel Lease and Sections 9.1 and 13.2 of the Garage Lease by agreeing insurance proceeds regarding a property loss with respect to the Hotel Property and/or the Garage Property and a condemnation award payable with respect to a condemnation proceeding affecting the Hotel Property and/or Garage Property required by the provisions of the Hotel Lease not to be disbursed to Borrower shall be paid to, held by and disbursed by Senior Lender, subject to the terms and conditions of this Agreement.

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

Section 1. Definitions. The capitalized terms set forth in Paragraphs A through K under Background above shall have the meanings ascribed to those terms for all purposes of this Agreement. As used in this Agreement, the following capitalized terms shall have the following meanings:

“Business Day” shall have the meaning ascribed to that term in the Development Agreement.

“Casualty Restoration” shall have the meaning ascribed to that term in the Hotel Lease.

“Condemnation Restoration” shall have the meaning ascribed to that term in the Hotel Lease.

“Garage” shall have the meaning ascribed to that term in the Hotel Lease.

“Hotel” shall have the meaning ascribed to that term in the Hotel Lease.

“Improvements” shall have the meaning ascribed to that term in the Hotel Lease.

“Net Condemnation Award” shall have the meaning ascribed to that term in the Hotel Lease.

“Net Insurance Proceeds” shall have the meaning ascribed to that term in the Hotel Lease.

“Senior Loan Documents” shall mean the Senior Loan Agreement, the Senior Note, the Senior Hotel Mortgage, the Senior Garage Mortgage and all other documents or instruments executed in connection with and/or securing the Senior Loan, as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time.

Section 2. Senior Lender or Escrow Agent. Landlord and Borrower hereby appoint Senior Lender as escrow agent for purposes of receiving, holding and disbursing Net Insurance Proceeds and Net Condemnation Awards. Senior Lender accepts such appointment as escrow agent and agrees to perform its duties as escrow agent pursuant to the provisions of this Agreement.

Section 3. Net Insurance Proceeds.

(a) All Net Insurance Proceeds in an amount greater than \$5,000,000, adjusted for inflation, per occurrence, shall be paid to Senior Lender and deposited by Senior Lender in a deposit account maintained at Senior Lender. Net Insurance Proceeds received by Senior Lender and deposited in such deposit account shall be disbursed from such account only in accordance with the provisions of this Agreement. Such account shall be blocked from withdrawal by any party other than Senior Lender.

(b) Provided that Borrower (or Landlord in the event of Borrower's failure to do so) is conducting Casualty Restoration in accordance with the provisions of the Hotel Lease and, to the extent not in conflict with the Hotel Lease, the Senior Loan Documents, the Net Insurance Proceeds deposited with Senior Lender shall be disbursed by Senior Lender periodically as Casualty Restoration progresses, upon the request of Borrower, and submission by Borrower to Senior Lender and Landlord of the following items:

(i) A duly executed certificate in conformity with the requirements of Section 8.3(a)(i) of the Hotel Lease;

(ii) All items required by Section 8.3(a)(ii) of the Hotel Lease;

(iii) All items required by Section 8.3(a)(iii) of the Hotel Lease and by the Senior Loan Documents:

(c) Upon compliance by Borrower with the provisions of Article 8 of the Hotel Lease and this Agreement, Senior Lender shall pay to Borrower, or, at the option of Senior Lender, the contractor(s) performing the Casualty Restoration, the amount of the payment requested by Borrower less retainage required by the provisions of Section 8.3(c) of the Hotel Lease. Upon completion of the work covered by each applicable contract or subcontract in accordance with the provisions of the Hotel Lease or the Garage Lease, as applicable, and the Senior Loan Documents, Senior Lender shall pay to Borrower, or at the option of Senior Lender to the contractor(s) performing the Casualty Restoration, the amounts contemplated by Section 8.3(c) of the Hotel Lease including the disbursement of any applicable retainage then held by Senior Lender.

(d) Any excess amount of Net Insurance Proceeds contemplated by Section 8(d) of the Hotel Lease shall be disbursed in accordance with the provisions of the Hotel Lease and, to the extent not in conflict with the Hotel Lease, the Senior Loan Documents.

(e) Landlord, Borrower and Senior Lender acknowledge that, as provided in Section 8.3(a) of the Hotel Lease, all Net Insurance Proceeds in an amount equal to or less than \$5,000,000, adjusted for inflation, per occurrence, shall not be subject to the provisions of this Agreement.

Section 4. Net Condemnation Award.

(a) A Net Condemnation Award to be applied to the cost of Condemnation Restoration pursuant to Section 9.2(c)(i) of the Hotel Lease in excess of \$1,000,000, adjusted for inflation, shall be paid to Senior Lender and deposited by Senior Lender in a deposit account maintained at Senior Lender. A Net Condemnation Award received by Senior Lender and deposited in such account shall be disbursed from such account only in accordance with the provisions of this Agreement. Such amount shall be blocked from withdrawal by any other party.

(b) Provided that Borrower (or Landlord in the event of Borrower's failure to do so) is conducting Condemnation Restoration in accordance with the provisions of the Hotel Lease and, to the extent not in conflict with the Hotel Lease, the Senior Loan Documents, the Condemnation Award deposited with Senior Lender shall be disbursed by Senior Lender periodically as Condemnation Restoration progresses, upon the request of Borrower, and submission by Borrower to Senior Lender and Landlord of the following items:

(i) A duly executed certificate in conformity with the requirements of Section 9.3(a)(i) of the Hotel Lease;

(ii) All items required by Section 9.3(a)(ii) of the Hotel Lease;

(iii) All items required by Section 9.3(a)(iii) of the Hotel Lease and under the Senior Loan Documents.

(c) Upon compliance by Borrower with the provisions of Article 9 of the Hotel Lease and this Agreement, Senior Lender shall pay to Borrower, or, at the option of Senior Lender, the contractor(s) performing the Condemnation Restoration, the amount of the payment requested by Borrower less retainage required by the provisions of Section 9.3(c) of the Hotel Lease. Upon completion of the work covered by each applicable contract or subcontract in accordance with the provisions of the Hotel Lease or the Garage Lease, as applicable, and the Senior Loan Documents, Senior Lender shall pay to Borrower, or at the option of Senior Lender, the contractor(s) performing the Condemnation Restoration, the amounts contemplated by Section 9.3(c) of the Hotel Lease, including the disbursement of any applicable retainage then held by Senior Lender.

(d) Any excess amount of the Net Condemnation Award contemplated by Section 9.3(d) of the Hotel Lease shall be disbursed to Borrower, subject to the provisions of the Hotel Lease and, to the extent not in conflict with the Hotel Lease, the Senior Loan Documents.

(e) Landlord, Borrower and Senior Lender acknowledge that, as provided in Section 9.3(a) of the Hotel Lease, all Condemnation Awards in an amount equal to or less than \$1,000,000, adjusted for inflation, shall not be subject to the provisions of this Agreement.

Section 5. Adequacy of Funds. Senior Lender shall have no obligation to make any payments as specified in this Agreement except out of Net Insurance Awards and Net Condemnation Awards held by Senior Lender pursuant to the provisions of this Agreement. Senior Lender shall not be responsible for: (a) any failure to collect any insurance proceeds due under the terms of any policy, (b) the failure to collect any condemnation award regardless of the cause of such failure, (c) solvency of any company issuing any policy of insurance, and (d) any loss, damage or injury resulting from any failure to insure the Hotel Property or the Garage Property.

Section 6. Liability and Indemnification of Senior Lender.

(a) The duties of Senior Lender shall be limited to compliance with the written terms of this Agreement. Senior Lender shall have no duties, express or implied, except those which are expressly set forth in this Agreement and shall in no way be responsible or liable for any loss, cost or damages which may result from any act or omission to act by Senior Lender hereunder, except in the case of Senior Lender's gross negligence or willful misconduct.

(b) Senior Lender may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statements or assertion contained in such writing or instrument. Senior Lender may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. Senior Lender shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any written instrument delivered to it, nor as to the identity, authority or rights of any person executing the same.

(c) Senior Lender may consult with counsel of its own choice and shall have full and complete authorization and protection from any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel. Senior Lender shall not otherwise be liable for any mistakes of fact or error or judgment, or for any acts or omissions of any kind unless caused by its willful misconduct or gross negligence, and Borrower agrees to indemnify and hold harmless Senior Lender from any claims, demands, causes of action, liability, damages, judgments, including the costs of defending any action against it, together with reasonable attorneys' fees (including attorneys' fees for appellate proceedings) incurred by Senior Lender in connection with Senior Lender's undertakings pursuant to this Agreement, unless such act or omission is the result of the willful misconduct or gross negligence of Lender.

(d) Borrower shall be responsible to reimburse Senior Lender for all expenses incurred by it in connection with its duties under this Agreement.

Section 7. Disputes.

(a) In the event of any disagreement about the interpretation of this Agreement, or about the rights and obligations, or the propriety, of any action contemplated by Senior Lender in its capacity as escrow agent under this Agreement, Senior Lender may, at its sole discretion, file an action in interpleader to resolve such disagreement. Senior Lender shall be indemnified by Borrower for all costs, including reasonable attorneys' fees in connection with any such interpleader action.

(b) In the event Senior Lender is joined in a lawsuit, by virtue of the fact it is acting as escrow agent hereunder, Senior Lender shall, at its option, either tender the funds held by Senior Lender in dispute to the registry of the court or disburse same in accordance with the court's ultimate disposition of the cause. In such event Senior Lender shall be entitled to recover from Borrower its reasonable attorneys' fees and court costs, such fees and costs to be charged and assessed against Borrower as court costs in favor of Senior Lender.

Section 8. Resignation. Senior Lender may resign as escrow agent hereunder upon the giving of thirty (30) days written notice to Landlord and Borrower. If a successor escrow agent is not appointed within thirty (30) days after notice of resignation, Senior Lender may petition a court of competent jurisdiction to appoint a successor escrow agent. Senior Lender shall be fully relieved of all liability under this Agreement upon transfer of the funds then held by Senior Lender pursuant to this Agreement to the successor escrow agent either agreed to by Landlord, Borrower and Senior Lender or appointed by such court.

Section 9. Illegality. If any provision or remedy set forth in this Agreement for any reason is held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision or remedy of this Agreement, which shall be construed as if the invalid, illegal, or unenforceable provision or remedy had never been set forth in this Agreement, but only to the extent of the invalidity, illegality, or unenforceability.

Section 10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, successors, and assigns.

Section 11. No Third-Party Beneficiary. No person not a party hereto shall have any rights hereunder.

Section 12. Notices. All notices and communications to be given hereunder to Landlord, Borrower or Senior Lender shall be in writing, and delivered by messenger, or overnight courier, or mailed by certified mail (postage prepaid, return receipt requested), to Senior Lender, Borrower and Landlord at their addresses as specified below or to such other address as any party may specify by written notice to the other parties:

If to Landlord: County of Palm Beach, Florida
301 North Olive Avenue – 11th Floor
West Palm Beach, Florida 33401
Attn: Shannon LaRocque

Copy to: County Attorney's Office
301 North Olive Avenue – Suite 601
West Palm Beach, FL 33401

If to Senior Lender: Bank Hapoalim B.M.
1177 Avenue of the Americas
New York, New York 10036
Attention: Legal Department

If the Borrower: City Place Hotel, LLC
c/o The Related Companies
60 Columbus Circle – 19th Floor
New York, New York 10023
Attention: Gopal Rajegowda

Section 13. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida without regard for the principles of conflicts of law that would give effect to the application of the law of any other jurisdiction.

Section 14. Further Assurances. Each party to this Agreement covenants and agrees that it shall promptly execute and deliver from time to time all further instruments and documents, and shall take such further actions that may be necessary or desirable, or that any other party to this Agreement may reasonably request, in order to protect, exercise or enforce any right, remedy or interest granted or purported to be granted hereunder.

Section 15. Time. Time is of the essence with respect to every provision of this Agreement where time is a factor. Unless Business Days are specifically referenced, any reference herein to time period shall, in the computation thereof, include Saturdays, Sundays and legal holidays but any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full Business Day.

Section 16. Gender; Construction; Headings. The singular shall include the plural, the plural the singular and the use of any gender shall include all genders. Landlord and Senior Lender agree and acknowledge that each of same, together with their respective legal counsel, have contributed substantially to the preparation of this Agreement, and, as such, this Agreement shall not be interpreted more favorably against one party than any other solely upon the basis of which party actually drafted this Agreement. Headings are for convenience only and the same shall not be used for interpretation of the language herein.

Section 17. Counterparts. This Agreement may be executed in counterparts by the parties hereto, and each such counterpart shall be considered an original and all such counterparts shall be considered an original and all such counterparts shall constitute one and the same instrument. An executed counterpart of this Agreement delivered by an electronic means of communication (such as facsimile or PDF) shall be deemed an original for all purposes.

Section 18. Authority; Enforceability. Each party to this Agreement represents and warrants for the benefit of the other parties to this Agreement that this Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid, binding and enforceable obligation, enforceable against it in accordance with the terms of this Agreement.

Section 19. Amendments; Waivers. This Agreement may be amended only by a written document signed by the parties hereto. No waiver of any provision of this Agreement by any party to this Agreement shall be effective against such party unless such waiver is confirmed in writing by such party.

Section 20. Jurisdiction; Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Agreement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

Section 21. WAIVER OF JURY TRIAL. EACH OF SENIOR LENDER, BORROWER AND LANDLORD HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CONTROVERSY OR CLAIM, WHETHER ARISING IN TORT OR CONTRACT OR BY STATUTE OR LAW, BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE VALIDITY, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF), OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY IN CONNECTION HEREWITH. EACH OF SENIOR LENDER, BORROWER AND LANDLORD HEREBY ACKNOWLEDGES AND AGREES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR SENIOR LENDER'S AND LANDLORD'S ENTERING INTO THIS AGREEMENT AND THE PARTIES WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THIS PROVISION. A COPY OF THIS SECTION MAY BE ENTERED IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL.

(Signatures on next page)

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

Signed, sealed and delivered
in the presence of:

SENIOR LENDER:

BANK HAPOALIM B.M.

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

LANDLORD:

PALM BEACH COUNTY, FLORIDA,
a political subdivision of the State of Florida
By: Its Board of County Commissioners

Print Name: _____

By: _____

Name: Shelley Vana

Title: Mayor

Print Name: _____

Sharon R. Bock, Clerk and Comptroller

Print Name: _____

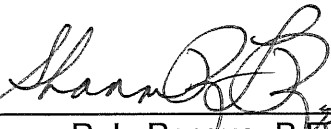
By: _____

Name: _____

Title: Deputy Clerk

Print Name: _____

APPROVED AS TO TERMS
AND CONDITIONS

By: 
Shannon R. LaRocque, P.E.
Assistant County Administrator

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Name: _____
Title: County Attorney

(Borrower signature page follows)

BORROWER:

CITYPLACE HOTEL, LLC, a Delaware
limited liability company

Print Name: _____

Print Name: _____

By: _____

Name: _____

Title: _____

EXHIBIT A

Legal Description of Hotel Land

A portion of CITYPLACE PLAT NO. 2, according to the Plat thereof as recorded in Plat Book 90, Page(s) 33-37, of the Public Records of Palm Beach County, Florida, lying in Sections 21 and 28, Township 43 South, Range 43 East, more particularly described as follows:

Tract "2", CITYPLACE PLAT NO. 2, according to the Plat thereof as recorded in Plat Book 90, Page(s) 33-37, of the Public Records of Palm Beach County, Florida.

TOGETHER WITH:

A portion of Tract "A" (FLORIDA AVENUE) as shown on CITYPLACE PLAT NO. 2, according to the Plat thereof as recorded in Plat Book 90, Page(s) 33-37, of the Public Records of Palm Beach County, Florida, and being more particularly described as follows:

Beginning at the Northwest corner of said Tract "A", said corner being on the East boundary of Tract "2" as shown on said plat, said corner also being on the South right-of-way of the east bound lane of Okeechobee Boulevard as shown on Florida Department of Transportation right-of-way map for State Road No. 704, Section 93280-0000, sheets 5, 6 and 7 of 8; thence South 58°55'53" East, a distance of 49.13 feet to the point of curvature of a circular curve to the right; thence Southeasterly and Southerly along the arc of said curve, having a radius of 233.50 feet, a central angle of 60°07'58", a distance of 245.06 feet to a point of cusp, said point being on the West boundary of said Tract "A", said point also being on the West right-of-way line of said Florida Avenue, said point also being on said East boundary of Tract "2"; thence Northerly and Northwesterly along the arc of said curve, having a radius of 50.00 feet, a central angle of 45°00'00", a distance of 39.27 feet to the point of tangency; thence North 43°47'55" West, a distance of 152.55 feet to the point of curvature of a circular curve to the right; thence Northwesterly and Northerly along the arc of said curve, having a radius of 128.00 feet, a central angle of 41°57'41", a distance of 93.74 feet to the Point of Beginning, the last three (3) courses and distances being along the West boundary of Tract "A", the last three (3) courses and distances also being along said West right-of-way of Florida Avenue, the last three (3) courses and distances also being along said East boundary of Tract "2". Said lands situate in the City of West Palm Beach, Palm Beach County, Florida.

TOGETHER WITH:

A portion of Tract "1", CITYPLACE PLAT NO. 2, according to the plat thereof, as recorded in Plat Book 90, Pages 33-37, of the Public Records of Palm Beach County, Florida, described as follows:

Commence at the Southwest corner of Tract "2", of said CITYPLACE PLAT NO. 2; thence North 01°12'05" East, along an easterly boundary of said Tract "1", a distance of 195.19 feet to the point of beginning; thence continue North 01°12'05" East, a distance of 86.30 feet; thence South 88°47'55" East, a distance of 25.05 feet; thence South 01°12'05" West, a distance of 86.30 feet; thence North 88°47'55" West, a distance of 25.05 feet to the point of beginning the last three (3) described courses being coincident said easterly boundary.

EXHIBIT B
Legal Description of Garage Land

Tract 2, Plat of CITYPLACE SOUTH TOWER, as recorded in Plat Book 111, Pages 108 to 109, of the Public Records of Palm Beach County, Florida.

G:\WPDATA\GENGOVT\HFALCON\CONVENT\CURRENT\9233048 3 (MIADOCS) (v 3) BkHapoalim CityPlace Hotel - Insurance Proceeds - Condemnation Proceeds Disbursement Agreement (3)amend.doc

July 7, 2015

Bank Hapoalim B.M.
1177 Avenue of the Americas
New York, New York 10036

Re: Landlord Estoppel by Palm Beach County, a political subdivision of the State of Florida to and for the benefit of Highbridge Principal Strategies – Real Estate Capital Solutions, L.P., a Delaware limited partnership, Highbridge Principal Strategies – Real Estate Capital Solutions Offshore Master Fund, L.P., a Delaware limited partnership, Highbridge Principal Strategies – AP Mezzanine Mezzanine Partners II, L.P., a Delaware limited partnership, Highbridge Principal Strategies – Mezzanine Partners II Delaware Subsidy, LLC, a Delaware limited liability company, Related Special Assets, LLC, a Delaware limited liability company, Bank Hapoalim B.M. and CityPlace Hotel, LLC, a Delaware limited liability company (the "Estoppel")

Ladies and Gentlemen:

This letter is delivered to you pursuant to Paragraph 10 of the Estoppel. Capitalized terms used herein but not defined therein should have the meaning ascribed to those terms in the Estoppel.

The undersigned hereby certifies to you as follows:

(a) The Settlement Documents, the PILOT Agreements, the Development Agreement, the Escrow Agreement and the Hotel Lease are, to the best of Landlord's knowledge, valid and in full force and effect and enforceable against Landlord in accordance with their terms and, to the best of Landlord's knowledge, have not been amended except as follows: (i) Second Amendment to Hotel Lease dated July 22, 2014 by and between Landlord and Tenant, recorded in Official Records Book 27476, Page 769, Public Records of Palm Beach County, Florida, and (ii) Second Amendment to Development Agreement dated July 22, 2014 by and between Landlord and Tenant. To the best of Landlord's knowledge, the Settlement Documents, the PILOT Agreements, the Development Agreement, the Escrow Agreement and the Hotel Lease have not been surrendered, cancelled, terminated or abandoned, whether in writing or pursuant to a purported oral surrender, cancellation, termination or abandonment.

(b) Neither Landlord nor, to the knowledge of Landlord, Tenant, or any other party is in default under the Settlement Documents, the PILOT Agreements, the Escrow Agreement, the Development Agreement and the Hotel Lease, and Landlord knows of no condition or event which, with the giving of notice, the passage of time, or both, would constitute a default by Tenant or any other party in the performance of its obligations thereunder. There are no outstanding notices of default given or received by Landlord under the Settlement Documents, the PILOT Agreements, the Escrow Agreement, the Development Agreement and the Hotel Lease. Landlord is not aware of any facts or circumstances which would enable Landlord or any other party to terminate the Settlement Documents, the PILOT Agreements, the Escrow Agreement, the Development Agreement and the Hotel Lease.

(c) The undersigned has approved all Architects' Consultants (as defined in the Development Agreement);

(d) All conditions set forth in Section 2.1 of the Development Agreement have been satisfied;

(e) Tenant has delivered to Landlord a payment and performance bond in accordance with Section 2.4 of the Development Agreement;

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(f) The Plans and Specifications (as defined by the Development Agreement) have been accepted by Landlord in accordance with Section 3.1(f) of the Development Agreement;

(g) All Construction Agreements comply with the provisions of the Development Agreement;

(h) All conditions precedent set forth in the Development Agreement have been satisfied to make available for disbursement of the County Subsidy (as defined in the Development Agreement) upon submission by Tenant to Landlord of Applications for Payment (as that term is defined in the Development Agreement) and compliance with the requirements of the Development Agreement with respect to such Applications for Payment; and

(i) Tenant and all Contractors (as that term is defined in the Development Agreement) are maintaining insurance in accordance with the provisions of the Development Agreement

Sincerely,

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

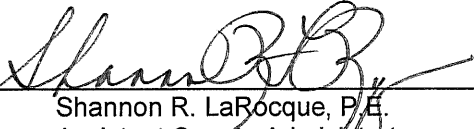
By: 
Shannon R. LaRocque, P.E.
Assistant County Administrator

Exhibit E

Memorandum of Estoppel

[attached hereto]

Prepared by and return to:
Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway, New York, New York

SPACE ABOVE THIS LINE FOR
RECORDING DATA

MEMORANDUM OF LANDLORD ESTOPPEL AGREEMENT
(COUNTY OF PALM BEACH)

This is a Memorandum (this "Memorandum") of an unrecorded Landlord Estoppel Agreement (the "Landlord Estoppel Agreement"), dated as of May 30, 2014, by PALM BEACH COUNTY, a political subdivision of the State of Florida ("Landlord"), to and for the benefit of HIGHBRIDGE PRINCIPAL STRATEGIES – REAL ESTATE CAPITAL SOLUTIONS, L.P., a Delaware limited partnership ("HPS"), HIGHBRIDGE PRINCIPAL STRATEGIES – REAL ESTATE CAPITAL SOLUTIONS OFFSHORE MASTER FUND, L.P., a Delaware limited partnership ("HPS RECS Offshore"), HIGHBRIDGE PRINCIPAL STRATEGIES – AP MEZZANINE PARTNERS II, L.P., a Delaware limited partnership ("HPS AP"), HIGHBRIDGE PRINCIPAL STRATEGIES – MEZZANINE PARTNERS II DELAWARE SUBSIDIARY, LLC, a Delaware limited liability company ("HPS Mezzanine Partners"), and RELATED SPECIAL ASSETS, LLC, a Delaware limited liability company ("Related SA"), and together with HPS, HPS RECS Offshore, HPS AP and HPS Mezzanine Partners, together with each of their successors and/or assigns, including any subsequent holders of (i) that certain Mezzanine Promissory Note in the principal amount of Seven Million Four Hundred Ninety Eight Thousand Three Hundred Thirteen and No/100 Dollars (U.S. \$7,498,313.00), dated as of June 2, 2014, executed by CityPlace Hotel Mezz, LLC, a Delaware limited liability company ("Mezzanine Note Issuer"), in favor of HPS RECS Offshore, (ii) that certain Mezzanine Promissory Note in the principal amount of Nine Hundred Fifteen Thousand Six Hundred Eighty One and No/100 Dollars (U.S. \$915,681.00), dated as of June 2, 2014, executed by Mezzanine Note Issuer in favor of HPS AP, (iii) that certain Mezzanine Promissory Note in the principal amount of Eight Million Two Hundred Eleven Thousand Seven and No/100 Dollars (U.S. \$8,211,007.00), dated as of June 2, 2014, executed by Mezzanine Note Issuer in favor of HPS Mezzanine Partners, and (iv) that certain Mezzanine Promissory Note in the principal amount of Eight Hundred Thousand Seventy Five and No/100 Dollars (U.S. \$875,000.00), dated as of June 2, 2014, executed by Mezzanine Note Issuer in favor of RSA (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time, clauses (i) – (iv), collectively, the "Mezzanine Note") and any one or more investors in the secondary mortgage market in connection with the securitization of the Mezzanine Note), and to and for the benefit of BANK HAPOALIM B.M. (together with its successors and/or assigns, including any subsequent holders of that certain Construction Loan in the original principal amount of Fifty Million and

No/100 Dollars (U.S.\$50,000,000.00), dated as of June 2, 2014, by and between Senior Lender and Tenant, the "Senior Lender", and to and for the benefit of CITYPLACE HOTEL, LLC, a Delaware limited liability company "Tenant").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby acknowledge, and give notice of, the existence of the Landlord Estoppel Agreement.

The parties have executed this Memorandum for the purpose of giving public notice of the existence of the Landlord Estoppel Agreement.

[SIGNATURE PAGE FOLLOWS]

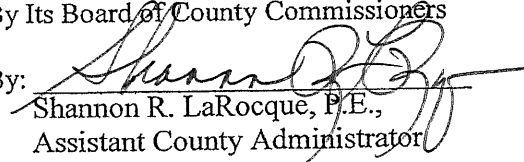
IN WITNESS WHEREOF, the parties hereto have caused this Estoppel to be executed as of the day and year first written above.

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

LANDLORD:

PALM BEACH COUNTY,
a political subdivision of the State of Florida
By Its Board of County Commissioners

By: _____
Deputy Clerk

By: 
Shannon R. LaRocque, P.E.,
Assistant County Administrator

(SEAL)

Approved as to Terms
and Conditions

Approved as to Form and Legal Sufficiency

By: 
Assistant County Administrator

By: _____
Assistant County Attorney

Exhibit A

Legal Description

The land referred to herein below is situated in the County of Palm Beach, State of Florida, and is described as follows:

HOTEL PARCEL:

A portion of CITYPLACE PLAT NO. 2, according to the Plat thereof as recorded in Plat Book 90, Page(s) 33-37, of the Public Records of Palm Beach County, Florida, lying in Sections 21 and 28, Township 43 South, Range 43 East, more particularly described as follows:

Tract "2", CITYPLACE PLAT NO. 2, according to the Plat thereof as recorded in Plat Book 90, Page(s) 33-37, of the Public Records of Palm Beach County, Florida.

TOGETHER WITH:

A portion of Tract "A" (FLORIDA AVENUE) as shown on CITYPLACE PLAT NO. 2, according to the Plat thereof as recorded in Plat Book 90, Page(s) 33-37, of the Public Records of Palm Beach County, Florida, and being more particularly described as follows:

Beginning at the Northwest corner of said Tract "A", said corner being on the East boundary of Tract "2" as shown on said plat, said corner also being on the South right-of-way of the east bound lane of Okeechobee Boulevard as shown on Florida Department of Transportation right-of-way map for State Road No. 704, Section 93280-0000, sheets 5, 6 and 7 of 8; thence South $58^{\circ}55'53''$ East, a distance of 49.13 feet to the point of curvature of a circular curve to the right; thence Southeasterly and Southerly along the arc of said curve, having a radius of 233.50 feet, a central angle of $60^{\circ}07'58''$, a distance of 245.06 feet to a point of cusp, said point being on the West boundary of said Tract "A", said point also being on the West right-of-way line of said Florida Avenue, said point also being on said East boundary of Tract "2"; thence Northerly and Northwesterly along the arc of said curve, having a radius of 50.00 feet, a central angle of $45^{\circ}00'00''$, a distance of 39.27 feet to the point of tangency; thence North $43^{\circ}47'55''$ West, a distance of 152.55 feet to the point of curvature of a circular curve to the right; thence Northwesterly and Northerly along the arc of said curve, having a radius of 128.00 feet, a central angle of $41^{\circ}57'41''$, a distance of 93.74 feet to the Point of Beginning, the last three (3) courses and distances being along the West boundary of Tract "A", the last three (3) courses and distances also being along said West right-of-way of Florida Avenue, the last three (3) courses and distances also being along said East boundary of Tract "2". Said lands situate in the City of West Palm Beach, Palm Beach County, Florida.