

CITY OF CORAL GABLES, FLORIDA

RESOLUTION 2011-

RESOLUTION AUTHORIZING EXECUTION BY THE CITY OF THE FOLLOWING AGREEMENTS: (1) SETTLEMENT AND RELEASE AGREEMENT WITH THE BILTMORE HOTEL LIMITED PARTNERSHIP AND (2) FIRST AMENDMENT TO THE MANAGEMENT AGREEMENT FOR BILTMORE AND GRANADA PUBLIC GOLF COURSES WITH THE BILTMORE HOTEL GOLF MANAGEMENT LLC

Whereas, the City has negotiated a Settlement and Release Agreement (“Settlement Agreement”) with the Biltmore Hotel Limited Partnership (“Developer”) related to the Biltmore Hotel lease, a copy of which has been presented to the City Commission;

Whereas, among other beneficial components of the Settlement Agreement, the Developer would make an immediate settlement payment of \$4,283,655.18 to compensate the City for past due rent related to the Biltmore Hotel;

Whereas, the City has negotiated a First Amendment to the Management Agreement for the Biltmore and Granada Public Golf Courses (“First Amendment”) with The Biltmore Hotel Golf Management LLC (“Manager”), a copy of which has been presented to the City Commission;

Whereas, among other beneficial components of the First Amendment, the Manager would make an immediate settlement payment of \$650,000 to the City;

NOW THEREFORE BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

Section 1. The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

Section 2. That the City Commission authorizes the City Attorney to execute the Settlement Agreement in substantially the form presented to the City Commission.

Section 3. That the City Commission authorizes the City Manager to execute the First Amendment to the Golf Course Management Agreement in substantially the form presented to the City Commission.

Section 4. That the settlement payments due to the City upon execution of these agreements (\$4,283,655.18 under the Settlement Agreement and \$650,000 under the First Amendment) are conditions precedent to these agreements taking effect.

Section 5. That the City Attorney is authorized to take any actions he deems appropriate in the event that the Developer or Manager do not make the above settlement payments, or in the event that all necessary parties do not fully execute or consent to these agreements.

Section 5. That this Resolution shall become effective upon the date of adoption herein.

PASSED AND ADOPTED THIS 27TH DAY OF SEPTEMBER, 2011.

(Moved by _____, Seconded by _____)
(Passed _____ / _____ vote)

APPROVED:

JAMES C. CASON
MAYOR

ATTEST:

WALTER FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

CRAIG E. LEEN
CITY ATTORNEY

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made by and between the Biltmore Hotel Limited Partnership, a Florida limited partnership ("Developer") and the City of Coral Gables, a Florida municipal corporation (each individually, "Party" and collectively, "Parties").

Recitals

A. City and Developer are parties to an Amended and Restated Lease executed February 10, 1986 and amended and restated on July 29, 1999 and amended on January 2, 2001 (the "Lease")

B. Disputes have arisen between the Parties under the Lease, which they wish to resolve and settle as hereinafter stated.

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged by the Parties, it is hereby agreed as follows:

1. Upon the execution of this Agreement by the Parties, Developer shall pay to the City, by wire transfer or other means acceptable to City, the sum of \$4,283,655.18, which is in full payment and settlement of the Rent due from Developer under the Lease which is set forth in Exhibit A, together with all accrued interest thereon and applicable sales tax.

2. Developer Release

(a) Except for the City's obligations under the Lease and related agreements, and the exceptions described below, Developer forever releases and discharges the City and its officers, Commissioners, managers, employees, predecessors, successors, agents, assigns, attorneys, and insurers ("City Releasees") from any and all known and discovered claims, whether past or present, demands, obligations, actions, causes of action, rights, compensation, costs, attorneys' fees, liabilities, expenses, and damages of any and every kind and nature whatsoever, whether based on a tort, contract, equity, statute or any other theory of recovery, law or equity, and which Developer has had, may have, now has, on account of, or in any way arising out of the Lease and related agreements and the operation of, investment in or agreements and contracts, oral or written, related to the Lease and the Biltmore Hotel from the beginning of time to the date of these presents.

(b) Without limitation on the foregoing, but subject to the exceptions below, this general release includes the release and waiver of any right of Developer to seek repayment of any Rent payments paid to the City prior to the date of this Agreement, including the payment made simultaneously with the execution of this Agreement. By executing this general release, Developer is not waiving or releasing any rights, claims or defenses which may arise after the date of this Agreement, including but not limited to: (i) the right to assert and claim that a default has occurred or arisen after the date of this Agreement; (ii) any claim or assertion under Federal or State law and related regulations, including the interpretation of Federal laws as to "excess income", as such laws may apply to future Rent or other obligations; (iii) the position that the Developer did not assume under the Lease or any other document the obligation or responsibility

to renovate or rehabilitate the Premises and the buildings and improvements therein (excluding certain renovations of the Country Club Building described in the Lease) and is not responsible for payment of renovation and rehabilitation of the Premises; (iv) the right to challenge fire assessments previously billed by the City for the Biltmore; or (v) the right to claim that, under the Lease, the City is responsible for the renovations and rehabilitation of the Premises arising after the effective date of this Agreement.

3. City Release

(a) Except for the Developer's obligations under the Lease and related agreements, City forever releases and discharges the Developer and its officers, partners, managers, employees, predecessors, successors, agents, assigns, attorneys, and insurers ("Developer Releasees") from any and all known and discovered claims, whether past or present, demands, obligations, actions, causes of action, rights, compensation, costs, attorneys fees, liabilities, expenses, and damages of any and every kind and nature whatsoever, whether based on a tort, contract, equity, statute of any other theory of recovery, law or equity, and which City has had, may have, or now has on account of, or in any way arising out of the Lease and related agreements and the operation of, investment in or agreements and contracts, oral or written, related to the Lease and the Biltmore Hotel from the beginning of time to the date of these presents.

(b) Without limitation on the foregoing, but subject to the exceptions below, this general release includes the release and waiver of any right of the City to claim that any Rent which has accrued prior to the date hereof has not been paid. By executing this general release, the City is not waiving or releasing any rights, claims or defenses which may arise after the date of this Agreement, including but not limited to:

(i) the right to assert and claim that a default has occurred or arisen after the date of this Agreement;

(ii) the claim that Developer owes, as an Imposition, under the Lease, fire assessments against the Premises from 2009 forward; or

(iii) the right to claim that, under the Lease, the Developer is responsible for the renovations and rehabilitation of the Premises.

4. Developer and City will devote adequate human resources and devote best efforts to execute the Indemnity, Access and Funding agreement related to the \$1.5 million Miami-Dade County grant within 30 days following the date of this Agreement. That agreement will not require GALIC involvement or escrows. If the Indemnity, Access and Funding agreement cannot be completed within 30 days due to issues arising from Miami-Dade County, the Parties will continue best efforts until completion, but neither Developer nor City shall be liable for breaching the 30 days time-frame requirement.

5. Remedies for Breach. The Parties each shall be entitled to initiate, bring or prosecute any suit, action or grievance against the other in any federal, state, county or municipal court, or any arbitral forum for a breach of this Agreement and further agree that if a trier-of-fact finds that a Party has breached any of the terms of this Agreement, then said Party shall be liable

for the payment of all damages, costs and expenses, including attorneys' fees, incurred by the other Party.

6. No Admission of Liability. Nothing in this Agreement constitutes or shall be construed as an admission of liability on the part of the Parties, or any of them.

7. Warranty of Understanding; Voluntary Nature of Agreement. The Parties acknowledge that they have carefully read and fully understands all of the provisions of this Agreement, that they know and understand the rights they are releasing by signing this Agreement. The Parties further acknowledge that in entering into this Agreement, they have relied upon their own judgment, belief, and knowledge of the nature, extent, and duration of any losses and damages, and no representations or statements regarding said losses or damages, or regarding any other matters, made by Parties or any other persons representing them, have been relied upon by either Party to any extent whatsoever in entering into this Agreement.

8. Severability/Modification. The provisions of this Agreement are fully severable. Therefore, if any provision of this Agreement is for any reason determined to be invalid or unenforceable, such invalidity or unenforceability will not affect the validity or enforceability of any of the remaining provisions. Furthermore, any invalid or unenforceable provisions shall be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, or, if such provision cannot under any circumstances be modified or restricted, it shall be excised from the Agreement without affecting the validity or enforceability of any of the remaining provisions. The Parties agree that any such modification, restriction or excision may be accomplished by their mutual written agreement or, alternatively, by disposition of a court or other tribunal.

9. Integration. This Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matters addressed in it, and supersedes all prior or contemporaneous agreements, understandings, and representations, oral and written, with respect to those subject matters.

10. Waiver and Amendment; Successors and Assigns. No waiver or amendment of any of the provisions of this Agreement shall be valid and enforceable unless agreed to, in writing, by both Parties. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their successors and assigns.

11. Paragraph Headings; Execution; Choice of Law. Paragraph headings herein are for convenience and reference only and in no way define, limit or enlarge the rights and obligations of the Parties under this Agreement. This Agreement may be signed in single or multiple counterparts, all of which, when taken together, shall constitute the original. This Agreement and any amendments to this Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to conflicts of law principles.

12. Notices. All notices, demands, requests for approvals, approvals, statements and other communications which may be required to be given by either party to the other shall be in writing and shall be deemed given and if delivered by hand against receipt or sent by certified or registered mail, postage prepaid, return receipt requested:

To City: City of Coral Gables
405 Biltmore Way
P.O. Drawer 141549
Coral Gables, Florida 33134
Attn: City Manager

With a copy to: W. Reeder Glass
Holland & Knight LLP
Suite 2000, One Atlantic Center
1201 West Peachtree Street, N.E.
Atlanta, Georgia 30309-3400

And City of Coral Gables
405 Biltmore Way
P.O. Drawer 141549
Coral Gables, Florida 33134
Attn: City Attorney

To Biltmore: c/o The Biltmore Hotel
1200 Anastasia Avenue
Coral Gables, Florida 33134
Attn: T. Gene Prescott. Robert Kay

With a copy to: S. Daniel Ponce, Esq.
Legon Ponce & Fodiman, P.A.
1111 Brickell Avenue, Suite 2150
Miami, Florida 33131

such other address as from time to time may be designated by the party receiving the notice.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers on _____, 2011, but intending for the changes set forth herein to be binding and effective from _____, 2011.

ATTEST:

CITY OF CORAL GABLES (Seal)

By: _____
City Clerk

By: _____
Craig E. Leen
City Attorney

APPROVED AS TO FORM AND LEGAL SUFFICIENCIES:

Authority of Resolution No. _____ duly adopted by the Coral Gables City Commission on _____, 2011.

Craig E. Leen
City Attorney

THE BILTMORE HOTEL LIMITED PARTNERSHIP, a Florida limited Partnership

ATTEST:

By: SEAWAY BILTMORE, INC.
Its sole General Partner

By: _____
City Clerk

By: _____
T. Gene Prescott
President

EXHIBIT A

**CITY OF CORAL GABLES
SCHEDULE OF BILTMORE HOTEL OUTSTANDING RENT
 (With Sales Tax and Interest)**

LESSEE	INVOICE NO.	RENT	SALES TAX	LOANS	BALANCE
Biltmore Complex Biltmore Rent ("Rent")					
	01949			\$ 368,269.00	\$ 368,269.00
	01997	\$ 140,340.00	9,823.80		150,163.80
	02052	954,736.00	66,831.52		1,021,567.43
	02369	140,340.00	9,823.80		150,163.80
	02415	140,340.00	9,823.80		150,163.80
	02567	140,340.00	9,823.80		150,163.80
	02728	140,340.00	9,823.80		150,163.80
	02827	544,555.00	38,118.85		582,673.85
	02829	140,340.00	9,823.80		150,163.80
	02972	140,340.00	9,823.80		150,163.80
	03100	141,728.00	9,920.96		151,648.96
	03279	141,728.00	9,920.96		151,648.96
	03414	141,728.00	9,920.96		151,648.96
	03451	604,689.33	42,328.08		647,017.41
	03559			11,074.22	11,074.22
	03560			3,230.25	3,230.25
				6,057.44	<u>6,057.44</u>
	Interest through 12/___/2012	423,919.18			<u>423,919.18</u>
TOTAL					<u><u>\$4,569,902.36</u></u>

FIRST AMENDMENT ("AMENDMENT") TO THE MANAGEMENT AGREEMENT FOR BILTMORE AND GRANADA PUBLIC GOLF COURSES ("MANAGEMENT AGREEMENT") BETWEEN THE BILTMORE HOTEL GOLF MANAGEMENT LLC, A FLORIDA LIMITED LIABILITY COMPANY ("MANAGER") AND THE CITY OF CORAL GABLES, A FLORIDA MUNICIPAL CORPORATION ("CITY") DATED AS OF JANUARY 20, 2004

This Amendment made and entered into this ____ day of _____, 2011 by and between The Biltmore Hotel Golf Management, LLC, a Florida limited liability company, (the "Manager") and the City of Coral Gables, a Florida municipal corporation ("City"). The City and Manager are sometimes hereinafter referred to as a Party or as Parties.

R E C I T A L S

Manager requested the City to discount certain amounts accrued pursuant to the terms of the Management Agreement in exchange for a lump sum payment, by Manager to the City upon execution of this Amendment, of \$650,000 and the other terms and provisions contained herein.

The City has agreed to discount the amounts specified hereinafter under the terms and conditions set forth herein.

The City and Manager have also agreed to other concessions and amendments to the Management Agreement, which are set forth hereinafter.

Now, therefore, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged by the parties, it is hereby agreed as follows:

1. Amounts Subject to Discount. The amounts of unpaid Base Fees accrued under the Management Agreement through the date hereof, which are hereby discounted by the City, are set forth on Exhibit A hereto. For purposes of this Amendment, the Base Fees being discounted are defined as "Management Fees."
2. Lump Sum Payment. In settlement of the past due Management Fees and in consideration for all the other concessions, modifications and provisions contained herein, Manager shall pay to the City, upon execution of this Amendment, a lump sum payment of \$650,000.
3. Default. If Manager fails to timely pay any quarterly installment of Base Fees or Fixed Fees, such failure shall be treated under the Management Agreement as the occurrence of a monetary default, in which event the City may declare such failure as a default under the Management Agreement and the City may issue a notice of default to Manager, whereupon the Manager shall have the cure periods and rights provided for in the Management Agreement. Interest shall accrue on such unpaid amounts, from their due date until paid, at the rate provided by statute (or otherwise) for a money judgment obtained in a court of record in the State of Florida on such due date.

4. Section 3.1. Basic Compensation.

- (a) Section 3.1(a)(i) of the Management Agreement is hereby amended by changing "Three Hundred Thousand Dollars (\$300,000)" to One Hundred Sixty Thousand Dollars (\$160,000). Notwithstanding anything to the contrary in the Management Agreement, the Base Fee shall not be adjusted for CPI changes until October 1, 2013.
- (b) Section 3.1(a)(ii) of the Management Agreement pertaining to Percentage Fees is hereby deleted.
- (c) Section 3.1(a)(iv) of the Management Agreement shall be modified by deleting the last sentence thereof and adding the following:

"The first quarterly payment of the Base Fee (\$40,000) after the date hereof shall be due and payable on October 1, 2013."
- (d) Section 3.1(a)(v) of the Management Agreement is modified by deleting the words "Percentage Fees." All other references to Percentage Fees in the Management Agreement are hereby deleted.
- (e) Section 3.1(b) of the Management Agreement shall be deleted in its entirety.

5. Lender's Approval. Simultaneously with the execution of this Amendment by the Manager and the City, and pursuant to the Consent by Lender attached hereto, Great American Life Company ("GALIC"), which is a Qualified Mortgagee under the Amended and Restated Lease dated July 29, 1999 between The Biltmore Hotel Limited Partnership, as Developer ("Developer"), and the City (as amended, the "Lease") and to which a collateral assignment of the Management Agreement was made by Manager, hereby consents to this Amendment, subject to the limitations and qualifications that (i) nothing contained in the Management Agreement, this Amendment or the Lease shall be deemed or construed to cross default the Lease and the Management Agreement; and (ii) notwithstanding anything contained in the Management Agreement or this Amendment to the contrary, the Qualified Mortgagee reserves any and all rights it may now or hereafter have to claim that in the event that it elects to realize upon the collateral assignment of the Management Agreement, under no circumstances whatsoever is the Qualified Mortgagee then obligated to pay or to assume liability for that portion of the Fixed Fees attributable that portion of the Loans set forth on the Amortization Schedule attached hereto as Exhibit B-2.

6. Agreement To Resolve Golf Management Agreement Disputed Amounts. There are two issues pertaining to the Management Agreement that remain unresolved:

- (a) A claim by the Manager for reimbursement of \$382,000.00, representing the balance of the Manager's and Developer's out-of-pocket disbursements to replace and/or reconstruct the bridges on the Biltmore Golf Course; and
- (b) A claim by the City that the Manager owes quarterly fees totaling \$169,192.84 for the third and fourth quarters of 2007 invoiced by the City for the period when the Golf Course was closed for bridge replacements and reconstruction.

The City and Manager hereby resolve these claims as follows:

- (a) The City waives any right to collect the quarterly fees for the third and fourth quarters of 2007 and
- (b) Manager hereby waives and releases any right or claim for payment or reimbursement of the out of pocket disbursements and other claims, fees and expenses arising from the replacement or construction of the bridges.

7. One Time Deferral. No further deferrals or forbearances under the Management Agreement are contemplated or agreed to by the City and this Amendment establishes no precedent or right to future deferrals or forbearances.

8. Fixed Fees. Section 3.1(c) of the Management Agreement is hereby amended and restated in its entirety as follows:

(c) City borrowed and made available to Manager Five Million Dollars (\$5,000,000) (the "Funds") through two loans (the "Loans") from the Lender's to the City (the "Lender") which Manager hereby reaffirms its agreement to repay, as provided herein, for application toward improvements of and renovations to the Golf Course. City is required to repay the Loans in two separate amortization schedules, which are attached hereto as Exhibit B (the "Amortization Schedules"). For and in consideration of City's borrowing and making available to Manager the Funds, the adequacy of such consideration being hereby acknowledged by Manager, Manager hereby reaffirms its agreement and to pay, and hereby assumes liability to City for the repayment of the Funds and agrees to pay to City each year as fixed fees (the "Fixed Fees") the amounts borrowed by City together with interest and amortization due on account of the Loans. The due dates for each Fixed Fee payment by Manager shall be ten (10) days prior to the dates for payment set forth in the Amortization Schedules or as established, from time to time, by City and the Lender for repayment of the Loans. If the Amortization Schedules are modified by City and Lender, the modified schedules shall be attached hereto in replacement of Exhibit B. No delay, modification, abandonment, insufficiency of funds, operational or economic issues related to the Biltmore Golf Course, or other circumstances, or claimed breach or other event, or facts arising under the Management Agreement or from or modifications of the Loans, shall justify or entitle Manager not to pay, in a timely manner, the Fixed Fees amounts. Specifically, Manager's obligation to pay Fixed Fees accrued hereunder when City received the Funds from Lender as opposed to when the Funds were disbursed. Manager hereby acknowledges that the City has transmitted to Manager, in a timely manner, the Funds.

9. Remedies. The last paragraph in Section 11.1 of the Management Agreement is amended in its entirety and restated as follows:

"In addition to the right to terminate this Agreement in the event of an uncured default by Manager, City shall be entitled to injunctive relief, without the requirement to prove that it has an adequate remedy of law, to seek specific performance and to sue Manager for damages resulting from the default.

10. Release and Waiver of Claim as to Reformation and Enforceability. In consideration of the agreements by the City to waive prior defaults and reinstate the Management Agreement in good standing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the Manager, Manager hereby remises, releases, acquits, satisfies and forever waives any right, claim or demand, manner of action and causes of action from the beginning of time to the date hereof that prior to the date hereof there has been a default as provided herein or failure to perform by City under the terms of the Management Agreement or any waiver or modification by the City of the terms of the Management Agreement and any claim or allegation that the Management Agreement is not in good standing and not in full force and effect in accordance with its stated terms.

11. Mutual General Release.

- (a) Except for (a) the City's obligations arising after the date hereof under the Management Agreement and related agreements, and (b) any claims relating to environmental conditions existing prior to commencement of the Management Agreement Manager forever releases and discharges the City and its officers, Commissioners, managers, employees, predecessors, successors, agents, assigns, attorneys, and insurers, ("City Releasees"), from any and all past and present, known and unknown, discovered and undiscovered, claims, demands, obligations, actions, causes of action, rights, compensation, costs, attorneys' fees, liabilities, expenses, and damages of any and every kind and nature whatsoever, whether based on a tort, contract, equity, statute or any other theory of recovery, law or equity, whether known or unknown, and which Manager has had, may have, or now has in any way arising out of the operation of, investment in or agreements and contracts, oral or written, related to the Management Agreement from the beginning of time to the date of these presents; provided, however, that if the City asserts any claim against the Manager or with respect to the Management Agreement that is released pursuant to this Amendment, the Manager shall have the right to assert, by way of defense or counterclaim, any matter otherwise covered by this release.
- (b) Except for the Manager's obligations under the Management Agreement and related agreements arising after the date hereof, City forever releases and discharges the Manager and its officers, partners, managers, employees, predecessors, successors, agents, assigns, attorneys, and insurers, ("Manager Releasees"), from any and all past and present, claims, demands, obligations, actions, causes of action, rights, compensation, costs, attorneys' fees, liabilities, expenses, and damages of any and every kind and nature whatsoever, whether based on a tort, contract, equity, statute or any other theory of recovery, law or equity, and which City has had, may have, or now has in any way arising out of the operation of, investment in or agreements and contracts, oral or written, related to the Management Agreement from the beginning of time to the date of these presents but in each case, only to the extent that the events, occurrences or state of facts underlying the same was known to or discovered by the City on or prior to the date hereof.

12. Covenant Not To Sue. Manager and City each covenant, agree and warrant that it will not commence or maintain any suit, action or proceedings with respect to any rights or claims released in this Amendment, including but not limited to those specifically described in paragraphs 6, 10 and 11 herein. Manager and City each acknowledge and agree that the City Releasees or Manager Releasees, as the case may be, will suffer irreparable harm in the event Manager or City breaches the aforesaid covenant and agreement not to sue, and that monetary damages would be inadequate to remedy the breach and, accordingly, that this covenant not to sue shall be specifically enforceable by injunction against the Manager or the City, as the case may be. In the event of any litigation arising out of this paragraph, the prevailing party shall be entitled to recover from the breaching party its reasonable attorneys' fees and court costs.

13. Assumption of Risk. Manager acknowledges that part of the consideration given for this Amendment is the waiver and the release of any and all known and unknown waivers, losses, claims, injuries, costs, expenses, and damages relating to the subject matter of the waivers and releases described in paragraphs 6, 10, and 11("Releases"). Manager hereby voluntarily and knowingly assumes the risk of any mistake of fact, and/or law, either mutual or unilateral, with respect to said waivers, losses, claims, injuries, costs, expenses, and damages.

14. Reliance by Manager and City. In entering into this Amendment, Manager and City represent that it has relied upon the advice of attorneys of its own choice, concerning the legal consequences of this Amendment, that the terms of this Amendment have been completely read by and explained to it by its attorneys, and that the terms of this Amendment are fully understood and voluntarily accepted.

15. Capitalized Terms. All capitalized terms hereunder shall have the same meaning and definition as provided in the Management Agreement.

16. Notices. All notices, demands, requests for approvals, approvals, statements and other communications which may be required to be given by either party to the other shall be in writing and shall be deemed given and if delivered by hand against receipt or sent by certified or registered mail, postage prepaid, return receipt requested:

To City:

City of Coral Gables
405 Biltmore Way
P.O. Drawer 141549
Coral Gables, Florida 33134
Attn: City Manager

With a copy to:

W. Reeder Glass
Holland & Knight LLP
Suite 2000, One Atlantic Center
1201 West Peachtree Street, N.E.
Atlanta, Georgia 30309-3400

And

City of Coral Gables
405 Biltmore Way

P.O. Drawer 141549
Coral Gables, Florida 33134
Attn: City Attorney

To Manager:

1200 Anastasia Avenue
Coral Gables, Florida 33134
Attn: T. Gene Prescott

With a copy to:

S. Daniel Ponce, Esq.
Legon Ponce & Fodiman, P.A.
1111 Brickell Avenue, Suite 2150
Miami, Florida 33131

Or at such other address as from time to time may be designated by the party receiving the notice.

17. Entire Agreement. This Amendment, together with the other writings signed by the parties expressly stated to be supplementary hereto and together with any instruments to be executed and delivered pursuant to this Amendment, constitutes the entire agreement between the parties and supersedes all prior understandings and writings, pertaining to the Amendment and the specific terms and conditions contained herein and may be changed only by a writing signed by the parties hereto. In interpreting this Amendment, no weight will be given to whether the provision in question was drafted by one Party or the other.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their duly authorized officers on _____, 2011, but intending for the changes set forth herein to be binding and effective from _____, 2011.

ATTEST:

CITY OF CORAL GABLES (Seal)

By: _____
City Clerk

By: _____
Patrick Salerno
City Manager

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Authority of Resolution No. _____ duly adopted
by the Coral Gables City Commission on
_____, 2011.

Craig E. Leen
City Attorney

THE BILTMORE HOTEL GOLF
MANAGEMENT, LLC,
a Florida limited liability company

By: _____
T. Gene Prescott
President

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

Acknowledgement of City of Coral Gables

BEFORE ME, the undersigned authority, this day personally appeared, PATRICK SALERNO, City Manager and WALTER FOEMAN, City Clerk, respectively, of the City of Coral Gables, a municipal corporation of the State of Florida, who did acknowledge to and before me, that they executed the above and foregoing instrument for the uses and purposes therein expressed, with due authority in that behalf.

WITNESS my hand and official seal this _____ day of _____, 2011.

Notary Public
My Commission Expires:

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

Acknowledgement of The Biltmore Hotel Golf Management LLC, a Limited Liability Company

BEFORE ME, personally appeared T. GENE PRESCOTT, President, of THE BILTMORE HOTEL GOLF MANAGEMENT, LLC, a Florida limited liability company, to me, well known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to and before me that he executed the same for the purposes therein expressed, with due authority from said limited liability company.

WITNESS my hand and official seal this _____ day of _____, 2011.

Notary Public
My Commission Expires:

Consent by Lender (GALIC)

The undersigned, Great American Life Insurance Company, being a Qualified Mortgagee under the Lease, and the holder of a collateral assignment of the Manager's benefits arising under the Management Agreement does, hereby consent to this Amendment of the Management Agreement to which this Consent is attached.

Great American Life Insurance
Company

By: _____

Its: _____

#9645817_v8

EXHIBIT A
CITY OF CORAL GABLES
SCHEDULE OF OUTSTANDING MANAGEMENT FEES

LESSEE	INVOICE NO.	AMOUNT	DUE DATE	BALANCE
Golf Course-Biltmore				
Biltmore Golf Course Base Fee ("Management Fees")				
Quarterly	01993	\$ 92,387.73	January 30, 2009	
	02002	84,596.42	April 30, 2009	
	02375	92,387.73	July 30, 2009	
	02414	92,387.73	October 30, 2009	
	02568	92,387.73	January 31, 2010	
	02726	92,387.73	April 30, 2010	
	02828	92,387.73	July 30, 2010	
	02971	92,387.73	October 31, 2010	
	03099	92,892.42	January 30, 2011	
	03280	92,892.42	April 30, 2011	
	03416	92,892.42	July 30, 2011	
		92,892.42	October 30, 2011	
		<u>\$1,102,879.21</u>		<u>\$1,102,879.21</u>

EXHIBIT B
AMORTIZATION SCHEDULE

EXHIBIT B-1

Sunshine State Governmental Financing Commission
 City of Coral Gables
 Revenue Bonds, Series 2004B-1
 \$1.535 Million Golf Course Improvements

Period Ending	Principal	Interest	Total
10/1/2011	\$ -	\$ -	\$ -
10/1/2012	45,000.00	68,545.00	113,545.00
10/1/2013	50,000.00	66,295.00	116,295.00
10/1/2014	50,000.00	63,795.00	113,795.00
10/1/2015	55,000.00	61,295.00	116,295.00
10/1/2016	55,000.00	58,545.00	113,545.00
10/1/2017	60,000.00	55,740.00	115,740.00
10/1/2018	65,000.00	52,620.00	117,620.00
10/1/2019	65,000.00	49,126.26	114,126.26
10/1/2020	70,000.00	45,616.26	115,616.26
10/1/2021	75,000.00	41,766.26	116,766.26
10/1/2022	80,000.00	37,416.26	117,416.26
10/1/2023	80,000.00	32,776.26	112,776.26
10/1/2024	85,000.00	28,136.26	113,136.26
10/1/2025	90,000.00	23,206.26	113,206.26
10/1/2026	95,000.00	17,918.76	112,918.76
10/1/2027	100,000.00	12,337.50	112,337.50
10/1/2028	110,000.00	6,462.50	116,462.50
	<u>\$ 1,230,000.00</u>	<u>\$ 721,597.58</u>	<u>\$ 1,951,597.58</u>

EXHIBIT B-2

Sunshine State Governmental Financing Commission
 City of Coral Gables
 2007 Sunshine Improvement Loan
 \$3.5 Million Golf Course Improvements

<u>Period Ending</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
10/1/2011	\$ -	\$ -	\$ -
10/1/2012	86,000.00	170,027.00	256,027.00
10/1/2013	91,000.00	165,452.00	256,452.00
10/1/2014	96,000.00	160,611.00	256,611.00
10/1/2015	101,000.00	155,504.00	256,504.00
10/1/2016	106,000.00	150,130.00	256,130.00
10/1/2017	112,000.00	144,491.00	256,491.00
10/1/2018	118,000.00	138,533.00	256,533.00
10/1/2019	124,000.00	132,255.00	256,255.00
10/1/2020	131,000.00	125,658.00	256,658.00
10/1/2021	138,000.00	118,689.00	256,689.00
10/1/2022	145,000.00	111,348.00	256,348.00
10/1/2023	153,000.00	103,634.00	256,634.00
10/1/2024	161,000.00	95,494.00	256,494.00
10/1/2025	169,000.00	86,929.00	255,929.00
10/1/2026	178,000.00	77,938.00	255,938.00
10/1/2027	188,000.00	68,468.00	256,468.00
10/1/2028	198,000.00	58,467.00	256,467.00
10/1/2029	208,000.00	47,933.00	255,933.00
10/1/2030	219,000.00	36,867.00	255,867.00
10/1/2031	231,000.00	25,217.00	256,217.00
10/1/2032	243,000.00	12,928.00	255,928.00
	\$ 3,196,000.00	\$ 2,186,573.00	\$ 5,382,573.00