

## **PARKING MANAGEMENT AGREEMENT**

THIS PARKING MANAGEMENT AGREEMENT (hereinafter, the “**Agreement**”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2025 (hereinafter, the “**Effective Date**”), by and between the CITY OF CORAL GABLES, a municipal corporation existing under the laws of the State of Florida (hereinafter, the “**City**”), and THE BILTMORE HOTEL LIMITED PARTNERSHIP, a Florida limited partnership (hereinafter, the “**Operator**”). For ease of reference, an entity hereunder may be referred to individually as a “**Party**” or collectively as the “**Parties**”.

### **WITNESSETH:**

WHEREAS, the City and the Operator are parties to that certain Amended and Restated Lease Agreement between the Biltmore Hotel Limited Partnership, a Florida limited partnership, and the City of Coral Gables, a Florida municipal corporation, dated July 29, 1999, as amended by that certain First Amendment thereto dated January 2, 2001, as amended by that certain Second Amendment thereto dated March 29, 2022 (as may be further amended from time to time, collectively, the “**Lease**”).

WHEREAS, the Lease permits the Operator to use the parking lot located to the west of the Premises (as defined in the Lease) (“**West Parking Lot**”), as depicted on Exhibit “A” attached hereto and made a part hereof, for overflow parking for the Premises.

WHEREAS, during the Lease term, the West Parking Lot has been open to the public free of charge.

WHEREAS, the Operator advised the City of its concerns that the West Parking Lot is often used by those not patronizing the Premises, which created a shortage of parking for the Premises, and requested that the Operator be able to charge for parking at the West Parking Lot.

WHEREAS, the Operator and the City agree that necessary improvements to the West Parking Lot shall be funded by the proceeds of the parking charges.

WHEREAS, in accordance with the City of Coral Gables, Florida Resolution No. 2025-[ ] dated, the City has agreed to allow the Operator to implement and manage a paid parking system at the West Parking Lot, so long as the Operator utilizes the proceeds of the parking charges for improvements to the West Parking Lot or the renovation of the Premises, subject to and in accordance with the terms and conditions of this Agreement.

### **AGREEMENT**

NOW THEREFORE, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Operator agree that the foregoing recitals are true and correct and incorporated herein, and further agree to enter into this Agreement as of the Effective Date, and further covenant and agree as follows:

**1. PURPOSE:** The Operator shall have the right to implement and manage a paid parking system at the West Parking Lot subject to, and in accordance with, the terms and conditions of this Agreement and the Lease, and with all applicable laws, ordinances, codes, orders, rules, and regulations of all governmental authorities having jurisdiction over the West Parking Lot (collectively, “**Laws**”). The Operator shall use the West Parking Lot primarily for surface parking by daily self-

parking users, who pay the applicable parking charges (unless exempted under this Agreement), on a first-come, first-served basis.

**2. “AS IS” CONDITION:** The City makes no representation or warranty with respect to the condition or suitability of the West Parking Lot. The Operator acknowledges and agrees that it is utilizing the West Parking Lot as of the Effective Date hereof as permitted under the Lease, has had the opportunity to inspect the West Parking Lot, is familiar with its condition, and accepts the West Parking Lot in its present “AS IS,” “WHERE IS,” and “WITH ALL FAULTS” condition, without any representations or warranties of any kind, express or implied, from the City.

**3. PARKING CHARGES:**

- (a) **Conversion Condition:** Notwithstanding anything contained herein to the contrary, in no event shall the Operator charge for parking at the West Parking Lot until approval by the National Park Service of the change in use of the remaining portion of the West Parking Lot from public park to historic surplus property, as evidenced by a conveyance deed from GSA to the City (“**Conversion Condition**”). The Operator agrees to reasonably cooperate with the City in connection with the Conversion Condition.
- (b) **Maximum Parking Charges; Exclusions from Parking Charges:** The Operator shall initially charge patrons for parking at the West Parking Lot at the following rates: (i) a maximum of \$4.00 per hour (but not less than \$4.00 per hour), and (ii), up to a maximum of \$30.00 for the day. In the event that the City increases its rates for municipal parking spaces, then the foregoing parking rates may be increased, subject to prior written approval by the City Manager, accordingly to remain consistent with such City rates. Notwithstanding the foregoing, the following parties shall be permitted to park in the West Parking Lot free of charge (collectively, the “**Exempted Parties**”):
- (1) City of Coral Gables Officials on municipal business,
  - (2) Biltmore Golf Course members,
  - (3) Biltmore Club and Fitness members,
  - (4) Biltmore executive office tenants,
  - (5) Coral Gables Garden Club personnel for Garden Club meetings or their specific related business purposes,
  - (6) Employees of the Operator,
  - (7) Operator’s contracted group or corporate businesses that were previously established to provide free parking for their attendees, with prior written approval by the City Manager,
  - (8) Specialty type events, such as the MODA-Miami annual car auction, the City’s annual July 4<sup>th</sup> holiday celebration(s), the Operator’s Centennial celebration, or some other similar type of event, with prior written approval by the City Manager,
  - (9) Certain VIPs as designated by Operator, with prior written approval by the City Manager,
  - (10) Patrons of the Biltmore golf course (up to six (6) hours of free parking for patrons playing a round of golf with verified paid receipt and up to two (2) hours of free parking for patrons using the driving range with verified paid receipt).

No party shall be permitted to park in the West Parking Lot without paying the required

parking charges except for (i) the Exempted Parties, and (ii), any other party expressly approved in writing in advance by the City. All exemptions to the parking charges granted by the Operator shall be hereinafter referred to collectively as, the “**Exemptions**”.

- (c) **Parking Charge Collection:** To charge the patrons of the West Parking Lot for parking, the Operator shall utilize electronic systems accessible via smartphone application. Operator has advised that it will utilize both PayByPhone and ParkMobile, consistent with the electronic payment options that the City generally provides to the patrons of the City’s parking lots.
- (d) **Parking Revenue:** One hundred percent (100%) of the revenue generated from the operation and management of the West Parking Lot, including, without limitation, parking fees charged to patrons, enforcement-related charges, fees from any charging stations, any revenue received from smartphone applications (collectively, “**Parking Revenue**”) shall be used for the costs of Initial Improvements (as defined below) to the West Parking Lot. Upon completion of the Initial Improvements to the City’s satisfaction, then one hundred percent (100%) of the Parking Revenue shall be used towards the costs of restoration type work for the Premises in accordance with the Restoration Plan (as defined below), and subject to the terms and conditions of the Lease. The Parking Revenue shall not be used for any other purpose without the express prior written consent of the City, which may be withheld in the City’s sole discretion. The Operator shall deposit all Parking Revenue into a separate, dedicated bank account of its choosing established solely for such purpose and shall not commingle such funds with other revenues or accounts. All disbursements related to the use of such Parking Revenue shall be made from this separate account.
- (e) **Restoration Plan:** Within eighteen (18) months from the date that the Conversion Condition is satisfied, the Operator shall deliver to the City its proposed plan for the restoration work of and to the Premises that describes in sufficient detail the restoration projects to be completed and the order of priority for such projects (“**Restoration Plan**”), which final Restoration Plan shall be mutually agreed to by the City and the Operator in writing. In no event shall the Operator use any Parking Revenue towards the costs of restoring the Premises prior to the mutual written approval by the City and the Operator of the final Restoration Plan. The final Restoration Plan can only be amended by mutual written approval by the City and the Operator.

**4. IMPROVEMENTS:** The Operator agrees to perform the following improvements to the West Parking Lot at the Operator’s sole cost and expense (subject to the collection and corresponding application of the Parking Revenue): drainage, paving, striping, landscaping, irrigation, lighting and any other improvements proposed by Operator to the City or reasonably required by the City, including but not limited to improvements necessary to meet minimum drainage requirements(collectively, “**Initial Improvements**”) to the City’s satisfaction. Within twelve (12) months from the date that the Conversion Condition is satisfied, the Operator shall deliver to the City, for the City’s review and approval, the proposed plans and drawings for the Initial Improvements. Upon the City’s written approval of such plans and drawings, the Operator shall promptly and diligently complete the Initial Improvements to the satisfaction of the City. Any and all other improvements, alterations, or additions (collectively, “**Alterations**”, and together with the Initial Improvements, the “**Improvements**”) to the West Parking Lot shall be subject to the City’s prior written consent, which the City may withhold in its sole discretion. Any and all Improvements shall be performed in a good and workmanlike manner by licensed contractors and subcontractors, and shall be completed in accordance with all Laws. The Operator shall be solely

responsible to obtain any necessary permits for the Improvements, however, the City shall waive the permits costs related thereto. Except for approved electric charging facilities established or enacted thereon, if applicable, any and all Improvements to the West Parking Lot shall become the property of the City upon the expiration or earlier termination of this Agreement. The Operator shall deliver to the City within five (5) business days of execution thereof, copies of all contracts for labor, materials, or services relating to the West Parking Lot. The Operator shall cause each contractor and subcontractor to deliver an unconditional waiver and release of lien upon receipt of final payment for any such Improvements' work, and shall cause each contractor to deliver a final payment affidavit confirming that all subcontractors, suppliers, and laborers have been paid in full. The Operator shall promptly deliver copies of such waivers and affidavits to the City within five (5) business days after the Operator's receipt.

**5. OPERATION; MAINTENANCE; TAXES:** The Operator shall be solely responsible to operate and manage the West Parking Lot in accordance with this Agreement, including, without limitation, to provide and oversee any personnel necessary for such operation and management. The Operator shall, at its sole cost and expense, maintain, repair, and as necessary, make replacements to the West Parking Lot, including, but not limited to the pavement, wheel stops, signage, and any other equipment or improvements thereon. The Operator shall regularly provide, at its sole cost and expense, sweeping, cleaning, washing and landscaping services necessary to keep the West Parking Lot free of dirt and debris and in a clean, safe and sanitary condition, and to properly maintain the landscaping in the condition set by the City regulatory code. The Operator is solely responsible for, and shall pay before delinquency, any and all taxes and assessments assessed against the West Parking Lot or any personal property placed in, upon or about the West Parking Lot by or on behalf of the Operator. The Operator has advised the City that the Operator has elected to engage Parkify to provide parking management services for the West Parking Lot for purposes of this Agreement's activities. In the event that the Operator elects to replace Parkify or engage another parking management or operations service company for the West Parking Lot, the Operator shall provide prior written notice to the City.

**6. SIGNAGE:** The Operator shall only affix signs indicating the charging requirements that are now required in the West Parking Lot, in compliance with all Laws. Notwithstanding the foregoing, the Operator shall be required to install signage in the West Parking Lot as required by Sec. 74-84 of the City of Coral Gables Code of Ordinances, identifying the West Parking Lot as private. If requested by the City, the Operator shall remove all of its signs upon the expiration or earlier termination of this Agreement and immediately repair any damage to the West Parking Lot cause by, or resulting from, such removal.

**7. ENFORCEMENT PLAN:** The Operator acknowledges and agrees that any electronic enforcement system utilized for the West Parking Lot must integrate with the payment method, including, without limitation, PayByPhone and ParkMobile, and establish an exemption list for enforcement purposes. As part of parking enforcement, the Operator shall cause the West Parking Lot to be manually checked with handheld devices at least four (4) times per day. Any users of the West Parking Lot that are not permitted to be exempted from parking charges pursuant to the terms of this Agreement and have failed to pay the required parking rates for the time using the West Parking Lot shall be issued citations with fines pursuant to a fine schedule which shall be approved by the City in writing. Booting and towing shall only be allowed as provided in Chapter 74, Article III of the City Code. Placement of stickers for repeat offenders must be done in such manner to avoid impacting driver's visibility. The enforcement procedures shall optimize the Parking Revenue, subject to the terms and conditions of this Agreement and Laws. The enforcement procedures of the West Parking Lot shall be reviewed by the City every six (6) months, and the Operator shall, at its sole cost and expense, make any and all adjustments to the enforcement procedures reasonably required by the City.

**8. TERM, TERMINATION:** The term of this Agreement (the "**Term**") shall commence on the Effective Date and shall expire on the date that the term of the Lease expires or earlier terminates, unless

earlier terminated in accordance herewith. The City shall have the right to terminate this Agreement for any reason or no reason at all upon sixty (60) days prior written notice to the Operator at any time during the Term. Upon the expiration or earlier termination of this Agreement, the Operator shall leave the West Parking Lot in good condition and repair, reasonable wear and tear and prior approved electric charging facilities excepted, free of trash, debris, and any temporary structures or equipment.

**9. NO LIENS OR CODE VIOLATIONS.** The Operator shall keep the West Parking Lot and all parts thereof at all times free of any and all code violations, mechanic's liens and any other lien for labor, services, supplies, equipment or material purchased or procured, directly or indirectly, by or for the Operator. The Operator further agrees that it will promptly pay and satisfy all code violations, liens of contractors, subcontractors, mechanics, laborers, materialmen, and other items of like character. In the event any such lien shall be made or filed, the Operator shall bond against or discharge the same within ten (10) days after the same has been made or filed. The Operator shall promptly, but in no event more than thirty (30) days after notice from the applicable governmental authority, remove any and all code violations affecting the West Parking Lot.

**10. RECORDS:** The Operator shall maintain complete and accurate books and records of all Exemptions granted, Parking Revenue collected, and disbursements made from such Parking Revenue in accordance with generally accepted accounting principles ("GAAP"). Within thirty (30) days following the end of each calendar quarter, the Operator shall provide the City with a report, in form reasonably acceptable to the City, itemizing (i) total Parking Revenue collected, (ii) all Exemptions granted and the applicable Exemption category for each Exemption, and (iii) all disbursements made from the Parking Revenue, including, but not limited to, a description of how each expenditure relates to the Initial Improvements, restoration of the Premises or any other projects approved by the City in writing and the specific improvements made therewith. Within sixty (60) days after the end of each calendar year, the Operator shall submit to the City a certified financial statement for the operation and management of the West Parking Lot, prepared in accordance with GAAP, in form reasonably acceptable to the City, detailing (i) total Parking Revenue collected, (ii) all Exemptions granted and the applicable Exemption category for each Exemption, and (iii) all disbursements made from the Parking Revenue, including, but not limited to, a description of how each disbursement relates to the Initial Improvements, restoration of the Premises or any other projects approved by the City in writing and the specific improvements made. The City and its authorized representatives shall have the right, upon at least five (5) business days' prior written notice and during the Operator's regular business hours, to review, inspect and audit the Operator's books, records and supporting documentation relating to the operation and management of the West Parking Lot, including, but not limited to, receipts of Parking Revenue, disbursements of Parking Revenue, Exemptions, parking citations, and parking fines. If such audit reveals that the Operator (a) used more than three percent (3%) of the Parking Revenue in violation of the terms of this Agreement, or (b) granted Exemptions that result in a reduction of more than three percent (3%) of Parking Revenue without proper documentation or in violation of the terms of this Agreement, then, in addition to all other rights and remedies available to the City under this Agreement, the Operator shall promptly reimburse the City for the costs of conducting the audit. The City's right to audit shall survive the expiration or earlier termination of this Agreement.

**11. INSURANCE:**

(a) The Operator, at its sole cost and expense, shall obtain and keep continuously in force at all times during the Term the following:

(1) Commercial General Liability insurance, including broad form coverage, for bodily injury, death and property damage, relating to the West Parking Lot and all appurtenances of the West Parking Lot on an occurrence basis with a minimum combined single limit of \$1,000,000.00 per occurrence combined single limited for bodily injury and property damage, with a \$2,000,000.00 general

aggregate limit, for injuries to, or illness or death of, persons and damage to property occurring on or about the West Parking Lot or otherwise arising out of or relating to the Operator's use, operation or management of the West Parking Lot.

(2) Worker's Compensation Insurance for all employees of the Operator, including statutory limits for employer's liability insurance contained in Florida Statutes Section 440; and

(3) Automobile Liability insurance covering all owned, non-owned and hired vehicles of the Operator, with a combined single limit of not less than \$1,000,000 per occurrence. If vehicles are not owned or leased (long term) by the contractors, then only hired and non-owned coverage applies.

The policies required hereunder shall be primary and non-contributory with any policy of the City. All insurance required hereunder shall (i) name the City, as an additional insured and loss payee party, and (ii) be provided by A.M. Best or equivalent rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida. The Operator shall furnish to the City certificates of insurance and copies of the underlying policies on or prior to the Effective Date and promptly upon request at any time during the Term of this Agreement. The City shall receive at least thirty (30) days' notice prior to the cancellation of any insurance policy required herein.

(b) The Operator shall include or cause to be included in each contract for work to be performed at the West Parking Lot on behalf of the Operator the following insurance requirements:

(1) Commercial General Liability insurance, including products liability & completed operations coverage, personal and advertising injury, and personal injury and property damage liability with limits no less than \$1,000,000.00 per occurrence for bodily injury and property damage, and \$5,000,000.00 in the aggregate. Said policy or policies shall name the City and the Operator as an additional insured.

(2) Worker's Compensation Insurance for all employees of contractors including statutory limits for employer's liability insurance contained in Florida Statutes Section 440.

(3) Automobile Liability insurance covering all owned, non-owned and hired vehicles with a combined single limit of not less than \$1,000,000 per occurrence. If vehicles are not owned or leased (long term) by the contractors, then only hired and non-owned coverage applies.

Evidence of insurance of all contractors working for the Operator under this Agreement shall be maintained and kept for a period of time no less than the applicable statute of limitations for any claim that could be brought against the Operator or the City. These records shall be made available to the City upon request. Evidence of insurance shall be in the form of a standard Certificate of Insurance naming the City and the Operator as additional insureds, and the insurance policies shall be provided by A.M. Best or equivalent rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida

**12. NO LIABILITY FOR DAMAGE OR LOSS.** The Operator and all users of the West Parking Lot shall park their vehicles at their own risk. All users are responsible for securing their vehicles and retaining their keys. The City shall have no responsibility or liability whatsoever for any injury, damage, theft, vandalism, fire, or loss to any vehicle or its contents, however caused, including, without limitation, by third parties, weather events, or the actions or omissions of the Operator or its agents, employees or contractors. The use of the West Parking Lot does not create a bailment or custodial relationship between the City and any party, and the City disclaims any duty to monitor or protect vehicles or personal property on

in the West Parking Lot.

**13. WAIVER OF SUBROGATION.** Notwithstanding anything to the contrary in this Agreement, the City and the Operator mutually waive their respective rights of recovery against each other and each other's officers, directors, constituent partners, agents and employees, to the extent any loss is or would be covered by any insurance policies required to be carried under this Agreement or otherwise carried by the waiving party, and the rights of the insurance carriers of such policy or policies to be subrogated to the rights of the insured under the applicable policy. The Operator shall cause its insurance policy to be endorsed to evidence compliance with such waiver.

**14. INDEMNITY; HOLD HARMLESS:** The Operator shall defend, indemnify and hold harmless the City, its elected and appointed officials, attorneys, administrators, consultants, agents, and employees (collectively, "**City Parties**") from and against any and all suits, actions, claims, costs, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs at trial and all other levels) of any kind or nature whatsoever relating to (i) the use, operation and management of the West Parking Lot by the Operator, its agents, employees, contractors, invitees, or customers; (ii) any breach of this Agreement by the Operator; or (iii) the negligence or willful misconduct of the Operator, or its agents, employees or contractors. Likewise, the City shall defend, indemnify, and hold the Operator harmless from and against any and all suits, actions, claims, costs, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs at trial and all other levels) of any kind or nature whatsoever relating to the negligence or willful misconduct of City Parties.

**15. CASUALTY OR CONDEMNATION.** In the event of a casualty or condemnation affecting the West Parking Lot, either the City or the Operator may elect to terminate this Agreement by giving not less than thirty (30) days' written notice to the other Party of such termination. If neither Party elects to terminate this Agreement, then the Operator shall, at its sole cost and expense, be responsible for restoring the West Parking Lot to a condition substantially similar to that which existed immediately prior to such casualty or condemnation; provided, however, that any prior approved electric charging facilities by City shall remain. In the event of taking of any portion of the West Parking Lot by condemnation, the City shall be entitled to the entire award.

**16. RELATIONSHIP OF PARTIES:** Nothing herein contained to the contrary shall be deemed or construed by the Parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the Operator and the City, it being expressly understood and agreed that no provisions contained in this Agreement nor any act or acts of the Parties hereto shall be deemed to create any relations between the Operator and the City other than the relationship of owner and parking manager. This Agreement does not create any tenancy, occupancy or possessory rights, and does not convey any interest in real property to the Operator, its officers, employees, agents or invitees claiming through the Operator.

**17. ASSIGNMENT:** The Operator shall not, directly or indirectly, assign, transfer, mortgage, pledge or otherwise encumber or dispose of this Agreement or its rights or obligations hereunder.

**18. DEFAULT:** Each of the following events shall constitute an event of default under this Agreement:

- (1) If the Operator fails to use the Parking Revenue in accordance with this Agreement;

- (2) If the Operator charges for parking in the West Parking Lot in excess of the maximum limits set forth in Section 3 of this Agreement;
- (3) If the Operator charges for use of the West Parking Lot prior to the Conversion Condition; and
- (4) If the Operator shall default in the performance of or compliance with any of the terms, covenants, agreements, conditions or provisions of this Agreement and such default shall continue for a period thirty (30) days after written notice thereof is given by the City to the Operator.

In addition to all other remedies at law or in equity, upon or after the occurrence of an event of default by the Operator, the City may immediately terminate this Agreement upon an event of default by the Operator. An event of default by the Operator under this Agreement shall also constitute an event of default under the Lease, and vice versa, and the City shall be entitled to exercise any and all rights and remedies available to it under this Agreement and the Lease in the event of such event of default.

**19. NO WAIVER:** Failure of the Parties to declare any event of default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but the Parties shall have the right to declare any such event of default at any time and take such action as might be lawful or authorized hereunder, in law and/or in equity. No waiver of any term, provision, condition or covenant of this Agreement, or the failure by the Parties to insist upon strict performance of one or more covenants or conditions of this Agreement, shall be deemed to imply or constitute a further waiver by the Parties of any other term, provision, condition or covenant of this Agreement.

**20. NOTICE:** Any notice to be given as provided for in this Agreement shall be in writing and shall be sent by United States certified mail, postage prepaid, return receipt requested, addressed to the respective Party at the addresses set forth below, or hand delivered or sent by a nationally recognized overnight courier. Either Party, from time to time, by such notice, may specify another address to which subsequent notice shall be sent. Any notice given by mail shall be deemed given on delivery or refusal.

**THE CITY:** City of Coral Gables  
Attn: City Manager  
405 Biltmore Way  
Coral Gables, FL 33134

With copies to: City of Coral Gables  
Attn: City Attorney  
405 Biltmore Way  
Coral Gables, FL 33134

Holland and Knight, LLP  
Attn: Vivian de las Cuevas-Diaz, Esq  
701 Brickell Avenue, Suite 3300  
Miami, FL 33131  
Phone: 305-789-7452  
Email: vivian.cuevas@hklaw.com

**THE OPERATOR:** The Biltmore Hotel  
Attn: General Manager or Managing Director



1200 Anastasia Avenue  
Coral Gables, FL 33134  
Phone: 305-445-1926

**21. INVALIDITY OF PROVISION; GOVERNING LAW:** If any term or provision of this Agreement or the application thereof to any person or circumstance 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 enforceable to the fullest extent permitted by law. This Agreement shall be construed in accordance with the laws of the State of Florida and venue shall be in Miami-Dade County.

**22. TIME OF ESSENCE:** It is understood and agreed between the Parties hereto that time is of the essence of all the terms and provisions of this Agreement.

**23. SUCCESSORS AND ASSIGNS:** All terms and provisions of this Agreement to be observed and performed by the Parties shall be applicable to and binding upon their respective heirs, personal representatives, successors and assigns, subject, however, to the restrictions as to assignment as provided herein.

**24. ATTORNEYS' FEES:** The Parties shall bear their own costs in the drafting, reviewing, and execution of this Agreement. Additionally, in the event of a lawsuit, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and expenses and costs incurred by the prevailing party pertaining thereto (including costs and fees relating to any appeal) and in enforcement of any remedy.

**25. MISCELLANEOUS:** The terms the City and the Operator as herein contained shall include singular and/or plural, masculine, feminine and/or neuter, heirs, successors, personal representatives and/or assigns wherever the context so requires or admits. The terms and provisions of this Agreement are expressed in the total language of this Agreement and the Article or article headings are solely for the convenience of the reader and are not intended to be all-inclusive and shall not be deemed to limit or expand any of the provisions of this Agreement. All references to days herein shall mean calendar days unless otherwise expressly noted. All exhibits attached to this Agreement, if any, are hereby incorporated in and made a part hereof. Neither this Agreement nor any memorandum or short form thereof shall be recorded in the Public Records of Miami-Dade County, Florida. The Operator certifies that it is not acting directly or indirectly for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and that they are not engaged in this transaction, directly or indirectly on behalf of any such person, group, entity or nation. The Operator agrees to defend, indemnify and hold harmless the City from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification; this indemnity shall survive expiration or earlier termination of this Agreement. The City shall not be deemed to be in default hereunder unless the City has failed to cure its default within thirty (30) days following its receipt of written notice thereof from the Operator or such reasonable time thereafter if the default is not reasonably susceptible to cure within thirty (30) days, so long as the City commences to cure within thirty (30) days and diligently prosecutes such cure to completion. In the event of a conflict between this Agreement and the Lease as it relates to the West Parking Lot, this Agreement shall control.

**26. EFFECTIVE DATE:** Submission of this instrument for examination does not constitute

an offer, right of first refusal, reservation of or option for the West Parking Lot. This instrument becomes effective only upon execution and delivery by both the City and the Operator.

**27. FORCE MAJEURE:** Whenever a period of time is herein provided for performance of any act or thing, neither the City nor the Operator shall be liable or responsible for any delays due to Force Majeure. The term “**Force Majeure**” shall include the inability to perform or fulfil any obligations under this Agreement as a result, directly or indirectly, of forces beyond its control, including, without limitation, “Acts of God,” labor disputes (whether lawful or not), material or labor shortages, restrictions by any governmental or utility authority, civil riots, acts of war, terrorism, civil or military disturbances, interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, health care and public safety emergencies, pandemics, and natural disasters or catastrophes, such as earthquakes, floods, tornados, hurricanes or other damaging wind events, but shall not mean financial inability.

**28. ENTIRE AGREEMENT:** This Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by an agreement in writing signed and sealed by the City and the Operator. The Parties acknowledge and agree that they have not relied upon any statement, representation, prior written or prior or contemporaneous oral promises, agreements or warranties except such as are expressed herein.

**29. DRAFTING OF AGREEMENT:** The drafting and negotiation of this Agreement have been participated in by each of the Parties, and for all purposes, therefore, this Agreement shall be deemed to have been drafted jointly by each of the Parties.

**30. COUNTERPARTS:** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute but one and the same instrument.

**31. SURVIVAL:** All provisions of this Agreement intended by their terms to survive expiration or earlier termination shall survive including, but not limited to, all indemnification obligations contained herein.

**32. SUBORDINATION:** The Operator’s rights under this Agreement shall always be subordinate to the operation and effect of any applicable lender’s mortgage, deed of trust, ground lease, or other security instrument now or hereafter placed upon or governing the West Parking Lot by the City. This clause shall be self-operative, and no further instrument of subordination shall be required.

**33. AUTHORITY TO EXECUTE:** The Parties hereby represent and warrant to the City that this Agreement has been duly authorized by all of its members, directors, and shareholders, as applicable, and further represents and warrant that this Agreement has been duly executed and delivered and constitutes a legal, valid and binding agreement enforceable in accordance with its terms.

**34. SOVEREIGN IMMUNITY:** The Operator and the City acknowledge that the Florida Doctrine of Sovereign Immunity bars all claims against the City other than claims arising out of this Agreement. Specifically, the Operator acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Lease. Furthermore, the Operator understands that it has no right and will not make any claims based upon any of the following: (i) claims based upon any alleged breach by the City of warranties or representations not specifically set forth in this Lease; (ii) claims based upon negligence or any tort arising out of this Agreements; (iii) claims upon alleged acts or inaction by the City, its elected officials, attorneys, administrators, consultants, agents, or any City employee; or (iv) claims based upon an alleged waiver of any of the terms of this Agreement. Nothing in

this Agreement is intended to operate as a waiver of the City's sovereign immunity, as set forth in the Florida Constitution and Florida Statutes Chapter 768.28.

**35. FLORIDA PUBLIC RECORDS LAW:** Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such statute. The Operator acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the Landlord for such disclosure and/or production. The Operator also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Tenant agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

**36. WAIVER OF TRIAL BY JURY.** THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN CIVIL COURT TO RESOLVE THE DISPUTE. THE CITY AND THE OPERATOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE LOT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.

**37. ARBITRATION.** Any controversy or claim arising out of or relating to this Agreement, or any breach thereof, shall be submitted exclusively to binding arbitration before, and in accordance with, the Commercial Rules of the American Arbitration Association, where such judgment upon the award may be entered in any court having jurisdiction thereof; provided, however, that this clause shall not be construed to limit any rights that the Parties may have to apply to any court of competent jurisdiction for injunctive or other relief. This arbitration provision shall be deemed self-executing, and if either Party fails to appear at any properly noticed arbitration proceeding, an award may be entered against such Party notwithstanding said failure to appear.

[SIGNATURES FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have signed, sealed and delivered this Parking Management Agreement at Miami-Dade County, Florida, as of the day and year first above written.

**CITY:**

**CITY OF CORAL GABLES**, a  
municipal corporation of the State of Florida

By: \_\_\_\_\_  
\_\_\_\_\_  
City Manager

ATTEST:

BY: \_\_\_\_\_  
\_\_\_\_\_  
City Clerk

Approved as to form and legal sufficiency.

By: \_\_\_\_\_  
Cristina M. Suárez  
City Attorney

ATTEST/WITNESS:

By: \_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_

**OPERATOR:**

**THE BILTMORE HOTEL LIMITED  
PARTNERSHIP**, a Florida limited partnership

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

[Signature page to Parking Management Agreement]

**Exhibit A**

Description of West Parking Lot

[to be inserted]