

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2009-132

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE LEASE AND DEVELOPMENT AGREEMENT BETWEEN THE PALACE MANAGEMENT GROUP, LLC AND THE CITY OF CORAL GABLES, DATED JULY 14, 2008.

WHEREAS, the Palace Management Group LLC (the “Palace Group”) has requested that the City amended the Lease and Development Agreement, dated July 14, 2008; and

WHEREAS, the proposed amendment extends the Developer’s schedule by one year; and

WHEREAS, this amendment further authorizes the City Manager at his sole and exclusive discretion to grant up to a 6 months extension of time for compliance; and

WHEREAS, this amendment will provide for a Management Agreement for the City’s use of the parking lot adjacent to Melody Inn and the City Parking facility for public parking, until such time that the Developer provides notice on commencement of construction of each facility; and

WHEREAS, on March 10, 2009 this amendment was introduced to the City Commission postponing possession date (construction commencement) and ultimately the project opening by approximately one year; further stating that the delay is exclusively due to the difficulty in obtaining construction financing; and

WHEREAS, on November 12, 2007 the City Commission, after a detailed presentation approved an Ordinance authorizing the City Manager to execute a lease and Development Agreement with the Palace Management Group, LLC for the development of a Senior Housing Development and for the development of Municipal Parking Garage No. 5;

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

SECTION 1. That 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 of the City of Coral Gables authorizes the City Manager to execute an amendment to the Lease and Development Agreement between the Palace Group, LLC and the City of Coral Gables, dated July 14, 2008, in particular Exhibit "G" entitled "Developer's Schedule."

SECTION 3. That this Resolution shall become effective upon the date of its passage and adoption herein, subject to the approval by the City Attorney.

PASSED AND ADOPTED THIS SECOND DAY OF JUNE, A.D., 2009.

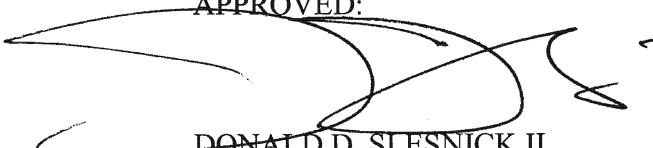
(Moved: Anderson / Seconded: Kerdyk)

(Yea: Anderson, Cabrera, Kerdyk, Withers, Slesnick)

(Unanimous: 5-0 Vote)

(Agenda Item: H-3)

APPROVED:


DONALD D. SLESNICK II
MAYOR

ATTEST:


WALTER I. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


ELIZABETH M. HERNANDEZ
CITY ATTORNEY

FIRST AMENDMENT
TO
LEASE AND DEVELOPMENT AGREEMENT

This First Amendment ("First Amendment") to Lease and Development Agreement entered into as of this ____ day of _____, 2009, by and between the CITY OF CORAL GABLES, a Florida municipal corporation ("City") and THE PALACE MANAGEMENT GROUP, LLC, a Florida limited liability company ("Developer").

W I T N E S S E T H:

WHEREAS, the City and Developer entered into that certain Lease and Development Agreement executed as of July 14, 2008 (the "Agreement" or "Lease") concerning the real property more particularly described in Exhibit "B" attached thereto and made a part thereof (the "Property"); and

WHEREAS, the parties hereto wish to amend the Lease as hereinafter provided.

NOW, THEREFORE, in consideration of the premises, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The above recitals are true and correct, and are hereby incorporated by reference.
2. Any capitalized term not otherwise defined herein, shall have the meaning ascribed thereto in the Lease.
3. Section 2.1(c)(xi) is hereby amended to read as follows:

"Reimbursement to the City of any additional expenses (including third party consultants and attorneys) incurred by the City in connection with the transaction contemplated herein must have been made by June 5, 2009 in an amount not to exceed the aggregate of \$300,000.00".
4. The last sentence of the second paragraph of Section 4.1 is hereby deleted.
5. Exhibit G to the Lease is hereby amended and restated in the form attached hereto and made a part hereof.
6. Section 3.5 is hereby amended to read in its entirety as follows:

Section 3.5. Developer's Schedule. Attached hereto as Exhibit "G" is a Schedule of Performance by the Developer ("Developer's Schedule") setting forth the outside dates and times of delivery of the various plans, preparation and filing of applications for and obtaining the various permits and public approvals and schedule for the construction of the Developer Improvements (collectively the

“Work”). The Developer shall maintain the progress of the Work in accordance with the Developer’s Schedule subject to the terms and conditions of Section 7.4 hereof; provided however, that the time periods set forth in the Developer’s Schedule shall be automatically extended day for day for each day that the City, in its capacity as landlord hereunder and not in its governmental capacity, unreasonably delays approval required from the City under this Agreement with respect to the matters set forth on such schedule. The City Manager is authorized, in his sole and exclusive discretion, to grant extensions of time for compliance with particular deadlines in the Developer’s Schedule. Said grants of extensions of time may not cumulatively result in any more than a six (6) month extension of the Possession Date required by the Developer’s Schedule.

7. A new Section 12.31 is hereby created to read in its entirety as follows:

Section 12.31. Management Agreement for Municipal Parking Spaces. Developer and City agree that City shall have the right to manage the parking spaces located on the Melody Inn Parcel and, after the Possession Date, the parking spaces located on the Parking Garage Parcel as public municipal parking facilities in accordance with the management agreement entered into between the Developer and the City which is attached and incorporated herein as Exhibit “L”.

8. All other terms, covenants, and conditions of the Lease not otherwise amended are hereby confirmed and ratified.

9. This First Amendment may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Developer has executed this First Amendment as of the date and year first above written.

ATTEST:

Name: _____

Name: _____

DEVELOPER:

THE PALACE MANAGEMENT GROUP,
LLC, a Florida limited liability company

By: _____

Name: Jacob Shaham

Title: Manager

IN WITNESS WHEREOF, the City has executed this First Amendment as of the date and year first above written.

By authority of Ordinance No.

_____ duly passed and adopted by
the Coral Gables City Commission on
_____, 2009.

ATTEST:

CITY:

CITY OF CORAL GABLES, a
Florida municipal corporation

By: _____
Name: Walter Foeman
Title: City Clerk

By: _____
Name: _____
Title: City Manager

APPROVED AS TO FORM AND
SUFFICIENCY:

By: _____
Name: Elizabeth M. Hernandez
Title: City Attorney

EXHIBIT G TO
LEASE AND DEVELOPMENT AGREEMENT
BETWEEN THE PALACE MANAGEMENT GROUP, LLC,
AND CITY OF CORAL GABLES, DATED AS OF JULY 14, 2007,
AS AMENDED BY FIRST AMENDMENT TO LEASE
DATED AS OF _____, 2009

DEVELOPER'S SCHEDULE

Execution of MOU – January 24, 2007

Drafting of Lease Agreement – October 1, 2007

Execution of Lease Agreement – November 14, 2007

Conditions to Group Lease Execution

Operational Standards for Parking Garage – March 14, 2007

Operational Standards for Retail Component – March 14, 2007

Operational Standards for Residential Building – March 14, 2007

Possession Date – January 15, 2010

Conditions to Possession Date

Formation of CDD – June 30, 2009

Final plans and specifications – August 1, 2009

General construction contract – December 15, 2009 *

Delivery of payment and performance bonds – December 15, 2009*

Loan commitments for financing – November 15, 2009

Closing on construction financing – January 15, 2010*

Public Approvals – June 30, 2009*

Demolition and building permits – January 15, 2010*

Conveyance of title to City of Melody Inn Parcel - January 15, 2010*

Supplemental Third Party Fees Reimbursement – June 5, 2009*

Commencement of Site Clearance/Demolition – January 15, 2010*

Commencement of Construction – January 15, 2010*

Construction Completed (issuance of certificate of occupancy) – December 2011*

Project opening – December 2011*

~~*Dates assume expeditious and diligent cooperation between City of Coral Gables and The Palace Management Group.~~

EXHIBIT L TO
LEASE AND DEVELOPMENT AGREEMENT
BETWEEN THE PALACE MANAGEMENT GROUP, LLC,
AND CITY OF CORAL GABLES, DATED AS OF JULY 14, 2007,
AS AMENDED BY FIRST AMENDMENT TO LEASE
DATED AS OF _____, 2009

[INSERT COPY OF EXECUTED MUNICIPAL PARKING MANAGEMENT AGREEMENT]

FIRST AMENDMENT
TO
PARKING GARAGE LEASE AND DEVELOPMENT AGREEMENT

This First Amendment (“First Amendment”) to Parking Garage Lease and Development Agreement entered into as of this ____ day of _____, 2009, by and between the CITY OF CORAL GABLES, a Florida municipal corporation (“City”) and THE PALACE MANAGEMENT GROUP, LLC, a Florida limited liability company (“Developer”).

W I T N E S S E T H:

WHEREAS, the City and Developer entered into that certain Parking Garage Lease and Development Agreement executed as of July 14, 2008 (the “Agreement” or “Lease”) concerning the real property more particularly described in Exhibit “B” attached thereto and made a part thereof (the “Property”); and

WHEREAS, the parties hereto wish to amend the Lease as hereinafter provided.

NOW, THEREFORE, in consideration of the premises, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The above recitals are true and correct, and are hereby incorporated by reference.
2. Any capitalized term not otherwise defined herein, shall have the meaning ascribed thereto in the Lease.
3. Exhibit G to the Lease is hereby amended and restated in the form attached hereto and made a part hereof.

4. Section 3.5 is hereby amended to read in its entirety as follows:

Section 3.5. Developer’s Schedule. Attached hereto as Exhibit “G” is a Schedule of Performance by the Developer (“Developer’s Schedule”) setting forth the outside dates and times of delivery of the various plans, preparation and filing of applications for and obtaining the various permits and public approvals and schedule for the construction of the Developer Improvements (collectively the “Work”). The Developer shall maintain the progress of the Work in accordance with the Developer’s Schedule subject to the terms and conditions of Section 7.4

hereof; provided however, that the time periods set forth in the Developer's Schedule shall be automatically extended day for day for each day that the City, in its capacity as landlord hereunder and not in its governmental capacity, unreasonably delays approval required from the City under this Agreement with respect to the matters set forth on such schedule. The City Manager is authorized, in his sole and exclusive discretion, to grant extensions of time for compliance with particular deadlines in the Developer's Schedule. Said grants of extensions of time may not cumulatively result in any more than a six (6) month extension of the Possession Date required by the Developer's Schedule.

5. A new Section 12.31 is hereby created to read in its entirety as follows:

Section 12.31. Management Agreement for Municipal Parking Spaces. Developer and City agree that City shall have the right to manage the parking spaces located on the Melody Inn Parcel and, after the Possession Date, the parking spaces located on the Parking Garage Parcel as public municipal parking facilities in accordance with the management agreement entered into between the Developer and the City which is attached and incorporated herein as Exhibit "M".

6. All other terms, covenants, and conditions of the Agreement not otherwise amended are hereby confirmed and ratified.

7. This First Amendment may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Developer has executed this First Amendment as of the date and year first above written.

ATTEST:

Name: _____

Name: _____

DEVELOPER:

THE PALACE MANAGEMENT GROUP,
LLC, a Florida limited liability company

By: _____

Name: Jacob Shaham

Title: Manager

IN WITNESS WHEREOF, the City has executed this First Amendment as of the date and year first above written.

By authority of Ordinance No.

duly passed and adopted by
the Coral Gables City Commission on
_____, 2009.

ATTEST:

CITY:

CITY OF CORAL GABLES, a
Florida municipal corporation

By: _____
Name: Walter Foeman
Title: City Clerk

By: _____
Name: _____
Title: City Manager

APPROVED AS TO FORM AND
SUFFICIENCY:

By: _____
Name: Elizabeth M. Hernandez
Title: City Attorney

EXHIBIT G TO
PARKING GARAGE LEASE AND DEVELOPMENT AGREEMENT
BETWEEN THE PALACE MANAGEMENT GROUP, LLC,
AND CITY OF CORAL GABLES, DATED AS OF JULY 14, 2007,
AS AMENDED BY FIRST AMENDMENT TO LEASE
DATED AS OF _____, 2009

DEVELOPER'S SCHEDULE

Execution of MOU – January 24, 2007

Drafting of Lease Agreement – October 1, 2007

Execution of Lease Agreement – November 14, 2007

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Possession Date – January 15, 2010

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Supplemental Third Party Fees Reimbursement – June 5, 2009*

Commencement of Site Clearance/Demolition – January 15, 2010*

Commencement of Construction – January 15, 2010*

Construction Completed (issuance of certificate of occupancy) – December 2011*

Project opening – December 2011*

~~*Dates assume expeditious and diligent cooperation between City of Coral Gables and The Palace Management Group.~~

EXHIBIT M TO
LEASE AND DEVELOPMENT AGREEMENT
BETWEEN THE PALACE MANAGEMENT GROUP, LLC,
AND CITY OF CORAL GABLES, DATED AS OF JULY 14, 2007,
AS AMENDED BY FIRST AMENDMENT TO LEASE
DATED AS OF _____, 2009

[INSERT COPY OF EXECUTED MUNICIPAL PARKING MANAGEMENT AGREEMENT]

**MANAGEMENT AGREEMENT
GRANTING THE CITY THE RIGHT TO USE PARKING SPACES LOCATED AT
83 ANDALUSIA AVENUE AND MUNICIPAL PARKING GARAGE NO. 5**

THIS MANAGEMENT AGREEMENT is made and entered into this ____ day of _____, 2009, by and between the PALACE MANAGEMENT GROUP, LLC, a Florida limited liability company, hereinafter called the "Palace Group", and the CITY OF CORAL GABLES, a municipal corporation, hereinafter called the "City".

RECITALS:

WHEREAS, the Palace Group owns the real property located at 83 Andalusia Avenue, Coral Gables, Florida, which is legally described on the attached Exhibit "A" and is hereinafter called the "Melody Inn Property", and is the site of twenty (20) parking spaces; and

WHEREAS, the Palace Group has entered into long term leases, dated July 14, 2008, with the City for Municipal Parking Lot No. 9 and Municipal Parking Garage No. 5 for the development of a senior housing facility and accompanying new municipal parking garage, the "Leases"; and

WHEREAS, the Leases authorize the Palace Group to take possession of Municipal Parking Lot No. 9 and Municipal Parking Garage No. 5 once certain conditions precedent have been satisfied including the conveyance of the Melody Inn Property to the City; and

WHEREAS, the intent of both the Palace Group and the City is to maximize the amount of public parking available to the residents and businesses of Coral Gables prior to, during, and after construction of the proposed senior housing facility.

WITNESSETH:

1. **PALACE GROUP'S ENGAGEMENT OF AND GRANT TO CITY.** In consideration of the mutual covenants and conditions contained herein on the part of parties and

in further consideration of the sum of Ten (\$10.00) Dollars and other valuable consideration paid by the City, the Palace Group does hereby:

- a. engage the City, as an independent contractor, to manage the twenty (20) paved parking spaces located on the Melody Inn Property and the ____ structured parking spaces located within Municipal Parking Garage No. 5, the "Parking Spaces".
- b. grant to the City the right to use the Parking Spaces as municipal off-street parking subject to the limitations of this Agreement.

2. **TERM.** The term of this Agreement shall commence upon the execution of this Agreement by both parties and shall terminate upon the mutual written agreement of the Palace Group and the City or as follows:

- a. With regards to the Melody Inn Property, within a minimum of thirty (30) days of the transmittal of written notice by the Palace Group to the City that the Palace Group requires exclusive possession of the Melody Inn Property in order to commence construction of the senior housing facility.
- b. With regards to Municipal Parking Garage No. 5, within a minimum of thirty (30) days of the transmittal of written notice by the Palace Group to the City that the Palace Group requires exclusive possession of Municipal Parking Garage No. 5 in order to commence the necessary preparations for the demolition of Municipal Parking Garage No. 5 and the construction of the new municipal parking garage facility.

3. **IMPROVEMENT OF MELODY INN PROPERTY.** The City shall undertake to improve the Melody Inn Property as legally required in order to operate it as a municipal off-street parking lot. The City shall be responsible for the costs of said improvements. The Palace Group shall cooperate with the City as necessary for the completion of said improvements.

4. **INTENT.** It is agreed by and between the parties that the main purpose and consideration for making this Agreement is to provide municipal off-street parking facilities for the area surrounding these properties and this provision shall be used as a rule and guide for any decision related to the intent of the parties to this Agreement.

5. **MISCELLANEOUS PROVISIONS.**

a. The Palace Group has the right to reserve space in Municipal Parking Garage No. 5 for accessory uses in connection with the construction of the proposed senior housing facility on the site of Municipal Parking Lot No. 9.

Such accessory uses include, but are not limited to, construction staging, storage, and offices.

b. Upon the termination of this Agreement, the City shall, at its sole expense, remove any improvements made to the Melody Inn Property and repair any damages to the premises caused by such removal.

6. **MECHANIC'S LIENS.** The City further covenants and agrees that it will not suffer or permit, during the term granted, the imposition of any mechanics' liens or other liens for work, labor, services, or materials on the Melody Inn Property and whenever and as often as such lien or liens shall be filed or shall attach, the City shall, within thirty (30) days thereafter, either pay the same or procure the cancellation thereof by giving security in any such manner as is or may be prescribed by law. The Palace Group does not subordinate in any way its title or

ownership to the Melody Inn Property to any such installment contract or financing arrangement entered into by City.

7. **INSURANCE.** The City attests that it has the implied power to maintain insurance on its operation herein and to make the Palace Group an additional insured. The City has the duty to obtain said insurance for the economic benefits of its citizens and agrees to oppose any effort to contest the validity of any portion of this paragraph or paragraph 8. City agrees to maintain and shall, within two (2) days after this Agreement is executed, furnish to the Palace Group a Certificate of Insurance that shows that insurance coverage has been obtained that meets the requirements outlined below or as otherwise agreed in writing between the City and the Palace Group:

- a. General Liability Insurance - on a comprehensive basis, in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. The Palace Group shall be named as an additional insured with respect to this coverage.
- b. Automobile Liability Insurance - covering all owned, non-owned, and hired vehicles used in connection with the Agreement, in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined.

The City further agrees to keep said insurance in force continuously throughout the term of this Agreement.

8. **INDEMNITY.** To the extent allowed by law and within the limitation of Florida Statute Section 768.28, the City agrees to indemnify and hold harmless the Palace Group for all costs, loss and expenses, and damages to persons or property, including, but limited to judgments

and attorney's fees, arising out of and in connection with the City's operation of the Melody Inn Property and Municipal Parking Garage No. 5 as municipal off-street parking facilities.

9. **ASSIGNMENT.** It is further agreed that this Agreement may not be assigned except upon written approval and consent of the City and the Palace Group.

10. **NOTICE.** Any notice given under this Agreement shall be in writing and shall be hand delivered or sent by Registered or Certified Mail, return receipt requested, to:

To the City: **City Manager
City of Coral Gables
405 Biltmore Way, 1st Floor
Coral Gables, Florida 33134**

To the Palace Group: Mr. Jacob Shaham
Palace Management Group, LLC
11355 SW 84th Street
Miami, Florida 33173

11. **ARBITRATION.** All disputes under this Agreement that can not be resolved by the parties shall be submitted to arbitration under the rules and regulations of the American Arbitration Association. Either party may invoke this paragraph after providing thirty (30) days prior written notice to the other party. All costs of arbitration shall be borne by the non-prevailing party. Any award may be enforced by a court of law.

12. **ENTIRE AGREEMENT / SENIOR HOUSING FACILITY LEASES.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties with respect to the provision and management of off-street municipal parking spaces. However, nothing in this Agreement shall be construed or interpreted to supersede any provision of the Leases. This Agreement shall be construed and interpreted and complementary to the Leases and, in the event

of any conflict between this Agreement and either of the Leases, the Lease provision shall govern.

13. **AMENDMENT.** This Agreement may only be modified or amended if the amendment is made in writing and is signed by both parties.

14. **SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

15. **WAIVER OF CONTRACTUAL RIGHT.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. The remedies hereunder are cumulative and in addition to each and every remedy available, at law, in equity or otherwise.

16. **TIME.** Time is of the essence in this Agreement.

17. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Florida.

18. **DEFAULT.** In the event that either party shall default in the performance of any of its obligations under this Agreement for more than thirty (30) days after written notice from the non-defaulting party of such default, the non-defaulting party may maintain any action against the defaulting party, at law, or in equity, as afforded by law. In addition to any other remedy available to the non-defaulting party, it may terminate this Agreement in which event the defaulting party's rights under this Agreement shall cease as of the date set forth in the

termination notice. The default notice and termination notice may be given at the same time in the same notice.

[THIS SPACE INTENTIONALLY LEFT BLANK]

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused these presents to be legally and properly executed the day and year first above written.

Witnesses:

X _____
Name: _____

X _____
Name: _____

THE PALACE MANAGEMENT GROUP,
LLC, a Florida limited liability company

By: _____
Name: Jacob Shaham
Title: Manager

THE CITY OF CORAL GABLES, a Florida
municipal corporation

Attest:

By: _____
Name: Patrick G. Salerno
Title: City Manager

Walter Foeman, City Clerk

Approved as to Form:

Elizabeth M. Hernandez, City Attorney

EXHIBIT "A"

Melody Inn Property Legal Description

Lots 44 through 47, in Block 4 of CORAL GABLES CRAFTS SECTION, according to the plat thereof as recorded in Plat Book 10, Page 40, of the Public Records of Miami-Dade County, Florida