

RENT DEFERRAL AGREEMENT

THIS RENT DEFERRAL AGREEMENT (this “**RDA**”) is made and entered into as of the 14th day of August, 2020, (the “**Effective Date**”), by and between the CITY OF CORAL GABLES, a municipal corporation existing under the laws of the State of Florida (“**Landlord**”), and BILTMORE HOTEL LIMITED PARTNERSHIP, a Florida limited partnership (“**Tenant**”).

W I T N E S S E T H:

WHEREAS, Landlord and Tenant entered into that certain Amended and Restated Lease Agreement, dated as of July 29, 1999 (the “**Lease**”), relating to the lease of certain premises located at 1200 Anastasia Avenue, Coral Gables, Florida 33134 and consisting of the Biltmore Hotel, the Country Club Building, and the Conference Center (collectively, the “**Premises**”), as such Premises are more particularly described in the Lease;

WHEREAS, due to Covid-19 (the “**Corona VIRUS Pandemic**”) the Governor of the State of Florida, by Executive Order, declared a State of Emergency for the State of Florida directing the temporary closure or reduced operation of certain businesses;

WHEREAS, the Miami-Dade County Mayor, by its own Executive Order, mandated that all hotels in Miami-Dade County cease or modify their business operations, including but not limited to, the adoption of certain social distancing guidelines and temporary limitations on the acceptance of new reservations, except to specific classes of individuals;

WHEREAS, as a result of the foregoing State of Florida and Miami-Dade County Executive Orders the Biltmore Hotel in complying with such orders temporarily ceased all operations and further vacated the Premises, in a responsible and appropriate manner, of all its existing guests at that time;

WHEREAS, Tenant acknowledges that the Biltmore Hotel has now re-opened to guests, as permitted under current state and county regulations, and is accepting future reservations for group meetings and events.

WHEREAS, Tenant acknowledges that due to the aforementioned unforeseen circumstances not of its doing Tenant is currently in default under the Lease for failure to pay the full amount of Rent (as defined in the Lease) due on July 1, 2020, in accordance with Section 4 of the Lease in the amount of \$177,547.35 (the “**Past Due Rent**”);

WHEREAS, prior to said rent due date Tenant and the Landlord City Manager engaged in several conversations in regard to the aforementioned restrictions on the operation of the Biltmore Hotel and deferment of the Rent due;

WHEREAS, Tenant has requested a payment plan and Landlord has agreed to accept such payment plan for Tenant to pay the Past Due Rent without any penalties or interest assessed thereon, as particularly set forth herein;

WHEREAS, Landlord has agreed not to exercise any of the default remedies available to Landlord under the Lease, provided Tenant complies with the payment plan set forth herein;

NOW, THEREFORE, for and in consideration of the mutual premises, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties hereto, the parties for themselves and their successors and assigns hereby covenant and agree as follows:

1. **Incorporation of Recitals.** The above recitals are true and correct and are incorporated herein as if set forth in full.

2. **Defined Terms.** All capitalized terms not defined in this RDA shall have the same meanings as set forth in the Lease. All references in the Lease and herein to the term "**Lease**" shall mean the Lease as related to this RDA.

3. **October 1, 2020 Payment.** Tenant hereby agrees to pay to Landlord the next scheduled payment in the amount of \$177,547.35 due on October 1, 2020, without reduction or delay. Such payment shall be credited towards the Rent due on October 1, 2020 only.

4. **Payment Plan.** On January 1, 2021, Tenant agrees to pay to Landlord the then scheduled payment in the amount of \$177,547.35¹, plus fifty percent (50%) of the Past Due Rent. Therefore, Tenant hereby agrees to make a payment to Landlord in the total amount of \$266,321.03², without reduction or delay, on January 1, 2021. Subsequently, on April 1, 2021, Tenant agrees to pay to Landlord the then scheduled payment in the estimated amount of \$177,547.35³, plus the remaining fifty percent (50%) portion of the Past Due Rent. Therefore, Tenant hereby agrees to make a payment to Landlord in the estimated total amount of \$266,321.02⁴, without reduction or delay, on April 1, 2021.

5. **Default.** Tenant acknowledges that, again due to the aforementioned unforeseen circumstances not of its doing, it is currently in default under the Lease and will remain in default under the Lease until the outstanding balance of Past Due Rent is paid in full. In the event that Tenant fails to timely pay to Landlord the amounts stipulated herein and/or afterwards any amounts due under the Lease therein, Landlord shall have the right, at its option, to exercise any of the remedies available to Landlord under Section 19.2 of the Lease, or at law or equity.

6. **COVID-19.** As additional consideration for Landlord entering into this RDA, Tenant will retain reasonably detailed records of any operations and business activity conducted at Tenant's premises, any losses suffered by Tenant as a result of the pandemic, mitigating measures, and any efforts made to obtain any newly available local and federal assistance ("**Assistance**") for which Tenant may qualify that provides funds for rent payments, including,

¹ This figure is an estimate of the scheduled payment due on January 1, 2021 and is subject to CPI adjustment. The actual amount may vary.

² This figure is the sum of the estimated scheduled payment due on January 1, 2021, subject to CPI adjustment, plus fifty percent (50%) of the Past Due Rent. The actual amount may vary.

³ This figure is an estimate of the scheduled payment due on April 1, 2021 and is subject to CPI adjustment. The actual amount may vary.

⁴ This figure is the sum of the estimated scheduled payment due on April 1, 2021, subject to CPI adjustment, plus fifty percent (50%) of the Past Due Rent. The actual amount may vary.

without limitation new emergency funds through governmental or other assistance related to the COVID-19 Public Health Emergency; and Tenant agrees to promptly share such records and information with Landlord. Further, Tenant shall use reasonable efforts to apply for and pursue any such new Assistance available to Tenant and shall notify Landlord in writing of the details of any such Assistance received. Landlord shall apply any funds from such Assistance received by Tenant and provided to Landlord for prior or Past Due Rent.

7. **Ratification.** Except as modified by this RDA, all of the terms, covenants and conditions of the Lease are confirmed and approved and shall remain in full force and effect.

8. **Counterparts.** This RDA may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document. This RDA may be executed by each party upon a separate copy, and one or more execution pages may be detached from one copy of this RDA and attached to another copy in order to form one or more counterparts. Signature pages exchanged by electronic transmission shall be fully binding.

[Signature Page Follows]

The parties below have caused this Rent Deferral Agreement to be executed under seal as of the date and year first above written.

WITNESSES

AS TO LANDLORD:

LANDLORD:

CITY OF CORAL GABLES,
a Florida municipal corporation

Print Name:

Address:

By: _____

Name: Peter J. Iglesias

Title: City Manager

Date: _____

Print Name:

Address:

Approved for Form and Legal Sufficiency:

By: _____

Name: Miriam Soler Ramos

Title: City Attorney

Date: _____

Attestation of Signatures:

By: _____

Name: Billy Y. Urquia

Title: City Clerk

Date: _____

[Additional Signature Page Follows]

WITNESSES

AS TO TENANT:

Print Name:

Address:

Print Name:

Address:

TENANT:

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

By: 

Name: Jim Pelletier

Title: Chief Financial Officer

Date: Aug 14 2020