

**ACQUISITION AND DONATION AGREEMENT
FOR
RETENTION PROPERTY**

This **ACQUISITION AND DONATION AGREEMENT FOR RETENTION PROPERTY** (“**Agreement**”) is made and entered into as of the ____ day of _____, 2017 (the “**Effective Date**”), by and between **WEST COLONIAL INN, INC.**, a Florida corporation (“**Owner**”) and the **CITY OF ORLANDO, FLORIDA** (“**City**”).

WITNESSETH:

WHEREAS, Owner is the owner of that certain parcel of real property located on West Arlington Street in the City, which is more particularly described on Exhibit “A” attached hereto (“**Property**”); and

WHEREAS, over fifty (50) years ago, Owner granted a drainage easement to Orange County, Florida (“**Orange County**”) pursuant to the terms of that certain Drainage Easement, effectively dated March 13, 1962, recorded in the Official Records of Orange County, Florida under Official Records Book 1028, Page 507 (“**Easement**”); and

WHEREAS, the City wishes to acquire and maintain the Property for drainage purposes and has indicated to Owner its desire to acquire the Property, including, if necessary, through the use of its eminent domain powers; and

WHEREAS, Owner is willing to make a charitable contribution of the Property to the City; and

WHEREAS, in order to determine the fair market value of the Property, the Owner has commissioned an appraisal by the appraisal firm of Pinel & Carpenter, Inc., which appraisal firm has, as of the date of this Agreement, determined that the fair market value of the Property is One Hundred Nine Thousand and NO/100 Dollars (\$109,000.00), which amount when revised (if necessary) in the final appraisal (“**Appraisal**”), shall be referred to as the “**Appraised Value**”; and

WHEREAS, in order to avoid the need for condemnation of the Property by the City, Owner has agreed to make an in-kind donation to the City through a bargain sale of the Property for a price equal to the Appraised Value (“**Donation**”) on the conditions that the City (i) maintain the Property for drainage and/or other municipal purposes and (ii) acquire the Property under threat of condemnation for the amount and on the terms described in this Agreement.

NOW, THEREFORE, in consideration of the premises hereof and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Incorporation of Recitals:** The recitals to this Agreement are incorporated herein and are true and correct.

2. **Acquisition of Property:** Subject to the terms of this Agreement, Owner hereby agrees to convey to City and City agrees to acquire from Owner the Property. The exact legal description for the Property is attached hereto as **Exhibit “A”** and made a part hereof.

3. **Terms of Acquisition:** The Appraised Value of the Property shall consist of the Donation, which is in the currently estimated amount of One Hundred Nine Thousand and NO/100 Dollars (\$109,000.00), but which will be adjusted as necessary based on the Appraisal. The City acknowledges that Owner intends to treat the sale of the Property as a bargain sale for charitable purposes, and City agrees to sign the property receipt acknowledgement on IRS Form 8283 for Owner’s federal income tax return. However, City makes no representation as to the extent or existence of Owner’s right to claim a charitable contribution for a bargain sale to City hereunder. Owner will be solely responsible for compliance with the gift value substantiation requirements under the Internal Revenue Code of 1986, as amended.

4. **Due Diligence Period:** The City and the Owner shall each have a period of thirty (30) days following the Effective Date hereof (the **“Due Diligence Period”**) in which to conduct any tests, inspections, surveys, evaluations, studies, or similar analyses or examinations of the Property in the case of the City, and to satisfy itself that any Donation and bargain sale for charitable purposes is properly structured in the case of the Owner (the **“Due Diligence Activities”**), in each party’s sole and absolute discretion. In furtherance of the intent hereof, the Owner shall, at or before three (3) business days following the date hereof, deliver to the City, to the extent within Owner’s possession or control (and to the extent that such material can be brought into Owner’s possession or control with reasonable effort and diligence) and without any representation or warranty by Owner regarding the contents, surveys, soils information, results of environmental inspections, copies of leases, notices from tenants or licensees under leases or licenses in the possession or control of such party concerning the Property for the City’s use in conducting the Due Diligence Activities (the **“Property Information”**). The City acknowledges and agrees that, except for any express representations and warranties of the Owner contained in this Agreement, the Property is being conveyed in **“AS IS, WHERE IS”** condition. Owner grants to the City the right of access during the term of this Agreement, subject to the rights of respective third party rights associated with the Property, for the purpose of conducting the Due Diligence Activities. Each party agrees to defend the other party from the claims of third parties relating to damage or personal injury occasioned by such party’s right of access and conduct of Due Diligence Activities and to pay for the cost of any loss or damage to the applicable property or to the other party resulting therefrom. In the event that this Agreement is terminated by either party as provided for herein, the Property shall be returned to Owner in substantially the same condition as it was in on the date hereof, normal wear and tear and damages or changes by third parties excepted. The obligations set forth in the immediately preceding two sentences shall survive the termination of this Agreement for a period of one (1) year.

5. **Termination During Due Diligence Period:** Each party shall have the absolute right during the Due Diligence Period to terminate this Agreement for any or no reason. In order to so terminate, the party electing to terminate shall send written notice of such termination to the other party in the manner set forth in Paragraph 16, below, at or before the expiration of the Due Diligence Period (a **“Termination Notice”**). In the event of such termination, the City shall return the Property Information received by it, together with a copy of the results of Due Diligence Activities conducted by it, if any, to the Owner; whereupon, this Agreement shall be terminated

and all parties shall be released from any further obligation or liability hereunder, except any as is stated to survive the termination hereof. Failure of either party to send a Termination Notice in the manner and within the time set forth herein shall waive the right to terminate this Agreement pursuant to this Paragraph 5 and the parties shall proceed to Closing in accordance with the terms of this Agreement.

6. **Title, Survey and Conveyance:** Concurrent with the Effective Date hereof, City, at City's expense, shall obtain and cause to be delivered a copy to the Owner a Commitment for an owner's title insurance policy on ALTA Form B (a "**Commitment**") in the amount of the Appraised Value of the Property, issued by a national title insurance company and/or its agents ("**Title Company**") reasonably acceptable to the Owner, evidencing that the applicable conveying party is vested with fee simple marketable title to the applicable property free and clear of all monetary liens and encumbrances, except for Ad Valorem real property taxes and general assessments; but subject to restrictions, reservations, limitations, easements and conditions of record, if any (the "**Permitted Exceptions**"). The Commitment shall include legible hard copies of the exception documents set forth in the Commitment.

- a. **Title Examination and Objection Procedure.** The City shall have fifteen (15) days following receipt of the Commitment in which to review the matters set forth in the applicable Commitment and send written notice (a "**Title Objection Notice**") to the Owner specifying those exceptions to title revealed in the Commitment which are not acceptable to the City ("**Title Objections**"). Failure to send a Title Objection Notice within the foregoing period shall constitute acceptance of the matters set forth in the applicable Commitment.
- b. **Title Curative Provisions.** Notwithstanding anything in this Agreement to the contrary, except for matters first appearing and affecting title following the effective date of the applicable Commitment (a "**Post-Commitment Exception**"), neither party shall have the obligation to take affirmative action to cure any Title Objection set forth in a Title Objection Notice, but may do so in its sole discretion. Owner shall have no obligation to cure a Post-Commitment Exception unless it is a mortgage or other encumbrance executed by Owner. In the event a Title Objection Notice is received, the Owner shall have ten (10) days thereafter in which to notify the City in writing whether it shall take curative action with respect to the Title Objection(s) set forth in the applicable Title Objection Notice. Failure by Owner to send a notice as to which items it will cure shall be deemed an election by Owner to not cure any Title Objections. In the event the Owner elects to take curative action with respect to less than all Title Objection(s) noted in the Title Objection Notice (a "**Non-Cure Notice**"), the City's sole rights shall be either (i) to terminate the Agreement, whereupon following delivery of the Property Information to the Owner, the Agreement shall be terminated and all parties shall be released from further obligation or liability hereunder except any stated to survive termination hereof or, (ii) to waive the Title Objections the Owner has not agreed to cure (whereupon such waived Title Objections shall become Permitted Exceptions). In the event the City receives a Non-Cure Notice, it shall have the longer of five (5) working days following receipt thereof or until the expiration of the Due Diligence Period in which to elect to terminate this Agreement by written

notice to the Owner (a “**Title Termination Notice**”). Failure to send a Title Termination Notice shall constitute an election to waive the Title Objection(s) the Owner has not agreed to cure.

- c. Time for Cure. In the event the Owner elects to cure some or all of the Title Objection(s) raised by the City, unless the Agreement has been otherwise terminated, the Owner shall have up to thirty (30) days following its election to cure (or such longer time as may be agreed by the parties) in which to accomplish curative action to the satisfaction of the Title Company, such that it will delete the applicable Title Objection(s) from the Commitment. In the event curative action is not successful for one or more of the Title Objections the Owner has agreed to cure, the City shall have the right, exercised in writing within fifteen (15) days following the latter of receipt of notice from the Owner that it was unable to cure all such Title Objections or the expiration of the applicable curative period, either to terminate the Agreement or to take title as it then is, subject to such uncured Title Objection(s) and close this transaction. Failure to terminate by written notice shall constitute an election to waive any such uncured Title Objections. The Closing shall be extended as necessary to accommodate times for cure of Title Objections, as set forth in this Paragraph 6.
- d. Survey. The City shall have the right (but not the obligation), at its own expense, to have the property to be received by it surveyed by a surveyor licensed in the State of Florida prepared in accordance with ALTA requirements (“**Survey**”). Any such survey shall be obtained within thirty (30) days following the Effective Date and shall be certified to City, Owner, and the Title Company. To the extent the Survey reveals matters that are not Permitted Exceptions, the City shall have five (5) days following receipt thereof in which to send a Title Objection Notice to the Owner. Title Objections set forth in a Title Objection Notice sent in accordance herewith shall be dealt with in the same manner and in the same times as any other Title Objections under this Paragraph 6.
- e. Municipal Lien Search and Open Permit Search. The City may conduct a municipal lien search or open permit search, at the City’s expense, but Owner will have no obligation to clear items that would be disclosed by such a search, and the property will be conveyed with defects appearing therein.
- f. Form of Conveyance. The conveyance shall be by Special Warranty Deed, subject only to the Permitted Exceptions for each property as specified in this Agreement.

7. Closing: Unless extended by mutual agreement of the parties, the closing (“**Closing**”) contemplated by this Agreement shall take place on a normal business day within 10 days following the conclusion of the Due Diligence Period on a day and time, and at a place in the City mutually agreed upon by City and Owner (“**Closing Date**”). In the event that Owner and City do not otherwise agree on a Closing Date, the Closing shall be conducted at the law offices of Baker & Hostetler LLP (“**Closing Agent**”). The Closing Date shall be extended as necessary to accommodate curative periods set forth in Paragraph 6, above.

8. **Owner's Obligations at Closing:** At the Closing, subject to performance by City of its obligations under this Agreement, Owner shall do the following:

- a. Execute, acknowledge and deliver to City a special warranty deed conveying good, insurable and marketable title to the Property to City, subject only to the Permitted Exceptions (and the standard printed exceptions be contained in the Commitment received by City, except to the extent the same can be deleted by virtue of the Owner's Affidavit required of Owner or the Survey, if any, obtained by City). The special warranty deed shall be in statutory form for recording and may, at Owner's option, separately describe the portion of the Property being acquired by City under threat of Condemnation and the portion being donated to the City by Owner;
- b. Execute, acknowledge and deliver to City and the Title Company an owner's affidavit ("**Owner's Affidavit**") in sufficient form and substance so as to allow the Title Company to insure the gap at Closing and remove the parties-in-possession exception and delete all standard exceptions, other than the survey exception, from the title policy to be issued pursuant to the Commitment delivered to the City, with exception Owner shall not be obligated to sign an affidavit with a false statement, and shall not be required to expend any funds to cure any item that needs to be cured in order to make a term within a standard Owner's Affidavit true;
- c. Execute and deliver instruments satisfactory to City and the Title Company reflecting the proper power and authorization for the conveyance of the Property from the Owner to City hereunder;
- d. Deliver to City and the Title Company a FIRPTA affidavit in form and substance reasonably acceptable to both City and the Title Company;
- e. Execute and deliver to City and Closing Agent the closing statement ("**Closing Statement**") for the transaction setting forth the financial aspects thereof and authorizing and instructing the Closing Agent to make disbursements and deliveries in accordance therewith; and
- f. Deliver to City all other documents as may be reasonably required by this Agreement.

9. **City's Obligations at Closing:** At the Closing, subject to performance by Owner of its obligations under this Agreement, City shall do the following:

- a. Execute and deliver to Owner and Closing Agent the Closing Statement for the transaction setting forth the financial aspects thereof and authorizing and instructing the Closing Agent to make disbursements and deliveries in accordance therewith;
- b. Execute and deliver to Owner IRS Form 8283, acknowledging receipt of the Property from Owner and the date of such receipt; and

- c. Deliver to City all other documents as may be reasonably required by this Agreement.

10. **Closing Costs and Prorations:** The parties shall pay closing costs and expenses for the transactions contemplated hereby, as follows:

- a. **City Closing Costs.** The City shall pay for the cost of: (i) documentary stamps due with respect to the transfer of the Property to City, if any; (the parties hereby acknowledge that the Property is being acquired under threat of condemnation and therefore the transaction is exempt from the assessment of documentary stamp taxes;) (ii) the Owner's title insurance policy to be delivered to City with respect to the Property; (iii) the Survey for the Property obtained by City, if any; (iv) attorneys' fees for counsel to City; (v) recording the deed of conveyance to the Property and any curative documents, and (vi) any other costs or expenses incurred by City in connection herewith.
- b. **Owner Closing Costs.** The Owner shall pay for the cost of: attorneys' fees for counsel to Owner and any other costs or expenses incurred by Owner in connection herewith.
- c. **Prorations.** All items susceptible of proration shall be prorated as of the Closing Date, recognizing that the City, as a unit of local government, is exempt from some items typically susceptible to proration (such as taxes and certain assessments) and that in such case, Owner shall be responsible for paying any Ad Valorem Taxes or Non-Ad Valorem assessments due and payable as of the Closing Date. Taxes, if any, shall be based on the actual taxes due with respect to the Property if the current tax bills are available. If the current tax bills are not available, taxes, if any, shall be estimated and prorated based upon the prior year's tax bills, with due allowance for known changes and assuming the maximum discount for early payment is taken.

11. **Representations and Warranties:** Except as expressly set forth herein or elsewhere in this Agreement, each party acknowledges and agrees that the transfer contemplated by this Agreement is without representation or warranty of any kind or nature. All representations and warranties are made to the best of the knowledge and belief of the party making the same, except as may be otherwise stated, and without investigation except as it relates to such party's own records. Unless specifically stated otherwise, representations and warranties shall be true as of the Effective Date hereof and as of the Closing Date. The parties represent and warrant to one another as follows:

- a. **By Owner:** Owner makes the following representations and warranties to City with respect to the Property:
 - (i) **Due Organization.** As of the Closing Date, Owner shall be a dissolved corporation who will convey this property as part of winding up its corporate affairs.
 - (ii) **Owner's Authority, Validity of Agreements.** Owner has full right, power, and authority to enter into and carry out the transactions contemplated by

this Agreement and to carry out its obligations hereunder. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Owner has/have the legal power, right, and actual authority to bind Owner to the terms hereof and thereof.

By City. City makes the following representations and warranties to Owner with respect to the Property:

- (iii) Due Organization. City is constituted as a municipal government, organized, validly existing, and in good standing under the laws of the State of Florida.
 - (iv) City's Authority, Validity of Agreements. City has full right, power, and authority to enter into and carry out the transactions contemplated by this Agreement and to carry out its obligations hereunder. The individual(s) executing this Agreement on behalf of City has/have the legal power, right, and actual authority to bind City to the terms hereof and thereof. This Agreement is, and all other instruments, documents and agreements to be executed, and delivered by City in connection with this Agreement shall be, duly authorized, executed, and delivered by City and the valid, binding, and enforceable obligations of City (except as enforcement may be limited by bankruptcy, insolvency, or similar laws) and do not, and as of the Closing Date will not, result in any violation of, or conflict with, or constitute a default under, any provisions of any agreement of City or any mortgage, deed of trust, indenture, lease, security agreement, or other instrument, covenant, obligation, or agreement to which City or the Property is subject, or any judgment, law, statute, ordinance, writ, decree, order, injunction, rule, ordinance, or governmental regulation or requirement affecting City or the Property.
- b. Survival. Except as otherwise expressly indicated, all of the representations, warranties and covenants of the parties set forth in this Agreement shall survive the Closing and delivery of the respective special warranty deeds for a period of three (3) years and shall expire thereafter.

12. Real Estate Commission/Brokers. Owner and City shall each be responsible for any fees, claims, commissions or similar matters attributable to any broker, agent, finder, or similar party employed by it with respect to the transactions contemplated by this Agreement. Each party agrees to pay and hold the other harmless against any and all liability, cost, damage, and expense (including, but not limited to, attorneys' fees and costs of litigation and appeals) either shall suffer or incur because of any claim by any broker or agent claiming to have dealt with the other party in connection herewith, whether or not meritorious, for any commission or other compensation with respect to this Agreement or to the transactions contemplated hereby. This Paragraph 12 shall survive Closing or termination of this Agreement for a period of two (2) years.

13. Condemnation. If, prior to Closing or the earlier termination of this Agreement, any proceedings, judicial, administrative or otherwise, relating to the taking, or to a proposed

taking, of any portion of the Property (by anyone other than City) or the Property, by eminent domain, condemnation or otherwise, are commenced (a “**Taking Proceeding**”), or if any portion of the Property is taken pursuant to a Taking Proceeding then promptly following receipt of any written notice of the Taking Proceeding, the Owner shall deliver to the City notice thereof (the “**Condemnation Notice**”) and either party shall have the option, in its sole and absolute discretion, and within 5 days of one party sending the other a Condemnation Notice, to terminate this Agreement. If neither party terminates, the parties will proceed to Closing in accordance with the terms of this Agreement, without adjustment, but at the Closing the Owner shall assign to the City all of its right, title, and interest in and to any awards that have been or may be made with respect to such Taking Proceeding (if the award is paid prior to Closing, such amount shall be delivered to the other party at Closing). If this Agreement is not terminated pursuant to this Section 13, following a Closing, the City shall have the right to contest the condemnation and/or the award resulting therefrom.

14. **Casualty.** Prior to the Closing and notwithstanding the pendency of this Agreement, the entire risk of loss or damage by earthquake, hurricane, tornado, flood, landslide, fire, sinkhole, or other casualty with respect to the Property shall be borne and assumed by Owner. If, prior to the Closing, any material portion of the Property is damaged as a result of any earthquake, hurricane, tornado, flood, sinkhole, landslide, fire, or other casualty, the Owner, with respect to the Property, shall notify City of such fact within a reasonable time after the Owner has actual knowledge thereof. In such event, the City shall have the option to terminate this Agreement upon written notice to Owner given within ten (10) days after receipt of any such notice of damage from the Owner. Prior to any termination of this Agreement, the City shall have the right to participate in the adjustment of any applicable insurance claim. If the City waives the right to terminate this Agreement and elects to proceed with the Closing, then (a) at and as a condition precedent to the City’s obligation to proceed with the Closing, must either: (i) pay to the City at the time of Closing the amount of any insurance proceeds actually received by the conveying party under its hazard insurance policy covering the applicable property; or (ii) if no insurance proceeds have been received, assign to the City, by written instrument reasonably satisfactory to the City, all rights or claims to the insurance proceeds payable under the applicable hazard insurance policy; and (b) the parties shall proceed to the Closing pursuant to the terms hereof without further modification of the terms of this Agreement.

15. **Remedies.** Except with respect to a failure to consummate the Closing on the Closing Date, for which there shall be no notice and opportunity to cure, neither party shall be in default hereunder unless and until the party against whom a default is alleged has been given not less than five (5) days prior written notice from the party alleging a default and the alleged default has not been cured within the aforesaid five (5) day period (unless a longer cure period is provided for elsewhere herein).

- a. **Prior to Closing.** In the event of an uncured default by a party prior to Closing, the sole remedies of the non-defaulting party shall be either: (i) to terminate this Agreement, whereupon the Property Materials shall be returned to the Owner and all parties shall be relieved of all further obligation or liability hereunder; or (ii) to sue for specific performance of the defaulting party’s obligations hereunder, which suit must be filed, if at all, in the Circuit Court of Orange County, Florida on or before ninety (90) days following the expiration of the cure period, if any, for the

alleged default. The foregoing shall not limit the non-defaulting party's right to recover attorneys' fees pursuant to subparagraph 15.c, below.

- b. Following Closing. Nothing contained in this Paragraph 15 shall limit or prevent the non-defaulting party from enforcing such party's rights that survive the Closing or the termination of this Agreement, as applicable, provided that such party was unaware of the breach of any such obligation, including representations and warranties of the defaulting party, at the time of Closing.
- c. Attorney's Fees. In the event that either party hereto brings an action or proceeding against the other party to enforce any of the covenants, conditions, agreements, or provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover all reasonable costs and expenses of such action or proceeding, including, without limitation, reasonable attorneys' fees, charges, disbursements, and the fees and costs of expert witnesses. If any party secures a judgment in any such action or proceeding, then any costs and expenses (including, but not limited to, attorneys' fees and costs) incurred by the prevailing party in enforcing such judgment, or any costs and expenses (including, but not limited to, attorneys' fees and costs) incurred by the prevailing party in any appeal from such judgment in connection with such appeal shall be recoverable separately from and in addition to any other amount or relief included in such judgment. The preceding sentence is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.

16. **Notices:** Any notices required or permitted hereunder shall be in writing and shall be deemed to have been properly and timely delivered if such notice is (i) delivered by overnight courier or electronic means, in which case the notice shall be deemed delivered one (1) business day after delivery to the overnight courier or by electronic means; (ii) mailed, certified or registered mail, return receipt requested, in which case the notice shall be deemed delivered three (3) days after it is deposited in the mail and postmarked by the U.S. Postal Service. All notices must be addressed to the parties as follows:

If to Owner: West Colonial Inn, Inc.
 1999 W. Colonial Drive, Suite 20
 Orlando, Florida 32804
 Attention: Mr. Whit Duncan
 Telephone: (407) 402-5378
 Email: rwduncan@crescent-resources.com

With a copy to: Joseph Ort, Esq.
 1305 West Plant Street
 Winter Garden, FL 34787
 Telephone: (407) 656-4500
 Email : Joe@ortlawfirm.com

If to City: Real Estate Manager
 City of Orlando

400 S. Orange Avenue
Orlando, Florida 32801
Attn: Laurie Botts
Telephone: (407) 246-2653
Facsimile: (407)246-3129
Email: laurie.botts@cityoforlando.net

With a copy to: City Attorney's Office City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
Attn: Roy Payne, Esq.
Telephone: (407) 246-3478
Facsimile: (407) 246-2854
Email: roy.payne@cityoforlando.net

Closing Agent: Baker & Hostetler LLP
Attn: Gregory D. Lee, Esquire
200 South Orange Avenue, Suite 2300
Orlando, Florida 32801
Telephone: (407) 649-4096
Facsimile: (407) 841-0168
Email: glee@bakerlaw.com

or at such other addresses, or to the attention of such other person or persons designated by Owner or City by notice given as herein provided.

17. **Miscellaneous Provisions.**

- a. **Governing Law; Venue.** This Agreement and the legal relations between the parties hereto shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida, without regard to its principles of conflicts of law. Venue for any action brought to interpret or enforce this Agreement shall, unless otherwise specifically be required hereunder, be any applicable state or federal court located in Orange County, Florida.
- b. **Entire Agreement.** This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, letters of intent, term sheets, negotiations, and discussions, whether oral or written, of the parties, and there are no warranties, representations, or other agreements, express or implied, made to either party by the other party in connection with the subject matter hereof except as specifically set forth herein.
- c. **Modification; Waiver.** No supplement, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall be deemed or shall

constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

- d. Expenses. Subject to the provision for payment of the Closing Costs in accordance with the terms of this Agreement and of any other provision of this Agreement, whether or not the transactions contemplated by this Agreement shall be consummated, all fees and expenses incurred by any party hereto in connection with this Agreement shall be borne by such party.
- e. Severability. Any provision or part of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall, as to such situation and such jurisdiction, be ineffective only to the extent of such invalidity and shall not affect the enforceability of the remaining provisions hereof or the validity or enforceability of any such provision in any other situation or in any other jurisdiction.
- f. Successors and Assigns. All of the parties' rights, duties, benefits, liabilities, and obligations under this Agreement shall inure to the benefit of, and be binding upon, their respective successors. Notwithstanding the foregoing to the contrary, neither party shall have no right to assign its rights under this Agreement, without the prior written consent of the other party thereto, which may be granted or withheld in such party's sole and absolute discretion. In no instance will the City be permitted to assign this Agreement to another entity, as making a tax deductible charitable donation of the Property to specifically the City is a material inducement to Owner entering into this Agreement, and Owner would not otherwise have made this Agreement with a different party.
- g. Headings. The paragraph and subparagraph headings of this Agreement are for convenience of reference only and shall not be deemed to modify, explain, restrict, alter, or affect the meaning or interpretation of any provision hereof.
- h. Construction. As used in this Agreement, the masculine, feminine, and neuter gender and the singular or plural shall each be construed to include the other whenever the context so requires. This Agreement shall be construed as a whole and in accordance with its fair meaning, without regard to any presumption or rule of construction causing this Agreement or any part of it to be construed against the party causing the Agreement to be written. The parties acknowledge that each has had a full and fair opportunity to review the Agreement and to have it reviewed by counsel.
- i. Further Assurances. In addition to the actions recited herein and contemplated to be performed, executed, and/or delivered by Owner and City, Owner and City agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered at the Closing or after the Closing any and all such further acts, instruments, deeds, and assurances as may be reasonably and required to consummate the transactions contemplated hereby provided that they are consistent with the intent of this Agreement.

- j. Business Day. As used herein, the term “Business Day” shall mean a day that is not a Saturday, Sunday, National or State holiday, or a day on which commercial banks in the State of Florida are authorized or required by applicable law to close. In the event that the date for the performance of any covenant or obligation under this Agreement shall fall on a day that is not a Business Day, the date for performance thereof shall be extended to the next Business Day thereafter.
- k. Counterparts; Electronic Delivery; Faxing. This Agreement may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument. The parties agree that they may reflect and confirm their agreement to be bound hereby, and their execution and delivery of this Agreement, by transmitting a signed copy hereof by email or by facsimile to the other party hereto, and to the persons entitled to copies of notices to such recipient pursuant to this Agreement. Alternatively, they may email or fax to such persons only the signature page of this Agreement and any pages that have been modified from the form of this Agreement either (a) received by the faxing or emailing party from the other party or its attorneys, or (b) transmitted by the faxing or emailing party (or its attorney) to the other party hereto (in either such circumstance, the “Original Proposed Document”), which act shall constitute their representation and warranty that, except as reflected in such email or facsimile transmission, the emailing or faxing party has executed this Agreement without change from the Original Proposed Document.
- l. Time of the Essence. Time shall be of the essence with respect to all matters contemplated by this Agreement.

Remainder of this page intentionally left blank.

Signature page(s) follow(s).

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

OWNER:

WEST COLONIAL INN, INC., a Florida corporation

By: _____
Name: _____
As its: _____

CITY:

CITY OF ORLANDO

By: _____
Laurie Botts, Real Estate Division
Manager

ATTEST:

By: _____
City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

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

Begin 67.23 feet South 0 degrees 33' West and 30 feet North 89 degrees 45' 46" East from the North quarter corner of Section 28, Township 22 South, Range 29 East, Orange County, Florida, run thence South 0 degrees 33' West 705.43 feet, to the North right of way line of West Arlington Avenue; thence run along said North line of said West Arlington Avenue North 89 degrees 42' 40" East 631.22 feet; thence North 0 degrees 17' 30" East 244.10 feet; thence South 89 degrees 48' 23" West 200 feet; thence South 0 degrees 17' 30" West 14.63 feet; thence South 84 degrees 34' 11" West 146.77 feet; thence North 42 degrees 37' 36" West 72.41 feet; thence North 89 degrees 42' 30" West 32.54 feet; thence North 0 degrees 17' 30" East 434.68 feet to the South right of way line of S.R. 50. Thence run along said right of way line of said Road No. 50 South 89 degrees 45' 46" West 200.14 feet to the point of beginning.

Less and Except that part platted as Landmark Hotel, according to the plat thereof, as recorded in Plat Book 54, Pages 23 and 24, Public Records of Orange County, Florida.