



**INSTR # 100915930**  
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BROWARD COUNTY  
DEPUTY CLERK 1038

This instrument prepared by  
and return to:  
Robert B. Dunckel,  
Asst. City Attorney  
City of Fort Lauderdale  
P.O. Drawer 14250  
Ft. Lauderdale, FL 33302-4250

AGREEMENT

THIS IS AN AGREEMENT, entered into on 17th day of October,  
2000, between:

CITY OF FORT LAUDERDALE, a  
municipal corporation of the State  
of Florida, its successors and  
assigns, hereinafter referred to  
as "City",

and

CASTILLO GRAND, L.L.C., a Florida  
Limited Liability Company, its  
successors and assigns,  
hereinafter referred to as  
"Developer".

WHEREAS, pursuant to Motion, adopted at its meeting of  
October 19, 2000, the City Commission of City authorized the  
proper City officials to execute this Agreement.

WHEREAS, the Developer has requested the City to grant  
a permit to construct a Pedestrian Overpass for public  
traverse from the West side of State Road A-1-A at or near  
Valencia Street and the St. Regis Hotel East across State  
Road A-1-A to the beach;

WHEREAS, the construction and operation of the  
Pedestrian Overpass will benefit the St. Regis Hotel  
Property and the St. Regis Hotel, both of which are owned by  
Developer;

WHEREAS, the City's Property and Right-Of-Way Committee  
has recommended approval of the Pedestrian Overpass at this  
location and this Agreement, subject to Developer securing  
all necessary permits and approvals required by governmental  
regulatory agencies having jurisdiction over the Premises  
and the Pedestrian Overpass; and

WHEREAS, the City has found that the construction of such Pedestrian Overpass in the location proposed is in the best interest of the public, subject to certain terms and conditions.

In consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **Recitals.** The above recitals are true and correct.

2. **Defined Terms.** The following terms, as used and referred to herein, shall have the meaning as set forth below, unless the context indicates otherwise.

*St. Regis Hotel* means that development approved by the City Commission January 19, 2000 under Resolution No. 00-9 (Planning & Zoning Board Case No. 126-R-99).

*St. Regis Hotel Property* means the real property owned by Developer and upon which the St. Regis Hotel shall be developed, such real property being described in **Exhibit "A"** attached hereto.

*City Property* means that portion of the City owned real property East of State Road A-1-A, the situs of the Easternmost landing of the Pedestrian Overpass, the Sketch and Legal Description for which is set forth at **Exhibit "B"** attached hereto and made a part hereof.

*Day(s).* In computing any period of time expressed in day(s) in this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

*Effective Date* means the effective date of this Agreement, which shall be the date upon which authorization for the proper City officials to execute this Agreement is granted by the City Commission.

*Pedestrian Overpass* means all those structures and St. improvements consisting of a stairwell/elevator area on the

West side of State Road A-1-A at or near Valencia Street and the South property line of the St. Regis Hotel Property, a pedestrian walkway continuing to the Easternmost side of the St. Regis Hotel Property across State Road A-1-A with a minimum 18.0 foot vertical height above grade, connected to an elevator area East of State Road A-1-A on City Property. The Site Plan for the Pedestrian Overpass is set forth at **Exhibit "C"** attached hereto and made a part hereof. The Site Plan shall be on file in the Office of the City Engineer. The term Pedestrian Overpass shall include all structures and improvements within the Premises used for the Perpetual Public Pedestrian Easement.

*Perpetual Public Pedestrian Easement* means easement rights granted herein by Developer to City for public pedestrian passage, which such easement rights shall include the right, but not necessarily the obligation, to construct, maintain, repair and reconstruct any and all improvements deemed necessary or appropriate by City for the safe and efficient use by the public for pedestrian passage. Such easement rights shall also include easements over, across and upon such portions of the St. Regis Hotel Property as are necessary to effectuate the rights of useage to the Perpetual Public Pedestrian Easement. The Perpetual Public Pedestrian Easement Area shall be the Premises, the Sketch and Legal Description for which is set forth at **Exhibit "D"** attached hereto and made a part hereof. The Perpetual Public Pedestrian Easement shall survive termination of this Agreement.

*Person* means any individual, firm, partnership (general or limited), corporation, company, association, joint venture, joint stock association, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or association, or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee or other person acting in a similar representative capacity for or on behalf of such Person.

*Premises* means the real property, including air space, within which the Pedestrian Overpass improvements shall be constructed, operated and maintained for the purpose of accommodating the Perpetual Public Pedestrian Easement.

**3. Term.** The term of this Agreement is for a period of fifty (50) years from the Effective Date hereof, unless sooner terminated or extended as hereinafter provided.

**4. Annual Inspection Fee.** Developer agrees to pay to City for each year of the Agreement Term; annually in

advance on or before the first day of January of each year, an annual inspection fee determined by the City Manager.

**5. Representations.** Developer represents and warrants to City the following:

(a) that it is the fee simple owner of the St. Regis Hotel Property;

(b) that it is an entity authorized to do business in the State of Florida;

(c) that it has adequate financial resources to construct the improvements specified herein and that it has adequate financial resources to perform all other obligations imposed by this Agreement;

(d) that it has the requisite business skill and ability to perform the obligations imposed upon it by this Agreement, including but not limited to the obligation to operate the Pedestrian Overpass for the purposes intended; and

(e) that it shall obtain all of the permits and approvals from all applicable governmental agencies having jurisdiction over the Premises and the construction and operation of the Pedestrian Overpass, including, but not limited to, any final Site Plan approvals required by City, any applicable City Engineering Permits, and the approvals of the State of Florida to construct the Pedestrian Overpass over the State's right-of-way and within the Coastal Construction Setback Line, all prior to the issuance of a building permit from the City or any other regulatory agency having jurisdiction over the Pedestrian Overpass for any portion of the Pedestrian Overpass which requires approval.

(f) that Developer shall not bargain, sell, transfer or assign the St. Regis Hotel Property, except in conjunction with an assignment of all its rights and obligations under this Agreement.

**6. Condition of Premises.** Developer has had an ample opportunity to inspect the Premises and Developer agrees to accept such in "as is" condition and suitable for the intended purposes set forth herein.

**7. Construction of Improvements.** The Premises shall be used as the site for the construction and maintenance of the Pedestrian Overpass for the public, and shall be used



for no other purpose whatsoever, unless otherwise approved by the City Commission of City. Developer shall construct the Pedestrian Overpass in accordance with the following terms and conditions:

(a) Developer shall prepare construction plans and specifications based on the site plan approved by the City under the its Uniform Land Development Regulations. The plans and specifications shall incorporate all of the conditions and features required by the City's Property and Right-Of-Way Committee, unless otherwise superceded by the City Commission or final DRC conditions. The plans and specifications shall contain a schedule of construction. The aforementioned plans and specifications shall be approved in accordance with the laws, regulations and rules of all governmental entities with jurisdiction over the construction and maintenance of the Pedestrian Overpass. The plans and specifications shall be approved by the City Engineer and placed and remain on file in the Office of the City Engineer.

(b) Developer shall obtain all applicable building permits, engineering permits and approvals for the construction of the Pedestrian Overpass and commence construction thereof not later than one hundred eight (180) days after the Effective Date of this Agreement, unless the time for commencement is extended by the City Manager. Further, Developer agrees to complete construction of the structure on or before issuance of the Certificate of Occupancy for the St. Regis Hotel. Failure to commence and complete construction within the aforementioned periods of time may be treated as a default by Developer and the default, termination and remedies provisions of this Agreement shall take effect.

(c) Developer shall be responsible for all costs and fees associated with the planning, permitting and construction of the Pedestrian Overpass. City permit fees may require special assessment for inspection and coordination of connections to and alterations of existing or future City facilities that may be required. The Developer agrees that the location and finish grades of the improvements shown on the Site Plan will be indicated on the site and approved by City prior to commencement of construction.

(d) Developer agrees that it will replace any and all public improvements which are damaged as a result of the construction of the Pedestrian Overpass utilizing the same quality of materials and workmanship as approved by the City Engineer.

(e) Before the commencement of the construction of the Pedestrian Overpass, Developer shall obtain and provide to City or require its contractor to furnish a surety bond in a form, content and amount acceptable to City and payable to City in a sum equal to the cost of constructing the Pedestrian Overpass which guarantees to City the completion of the construction of the Pedestrian Overpass and which guarantees the performance of the work necessary to complete the Pedestrian Overpass as well as full payment of all suppliers, materialmen, laborers or subcontractors employed to provide services to complete the Pedestrian Overpass, from a surety company having at least an A Best's Policy holder's rating and a Class VII Best's Financial Size Category. The Developer has entered into a contract for construction of the Pedestrian Overpass in the amount of \$1.0 million and agrees to provide a bond in at least this amount. Developer agrees to deliver or cause to be delivered the form of the surety bond to be provided and any other documentation requested by City reasonably necessary to show that Developer has the ability to meet the requirements of providing a surety bond as provided herein, at least five(5) days prior to the issuance of the last of the building permit, engineering permit or other permit or approval required for the construction of the Pedestrian Overpass. City shall notify Developer in writing in the event the surety bond is not acceptable to City within three (3) days of the City's receipt of same specifying the defects. City's approval of the surety bond will not be withheld unreasonably. Such bond shall remain in effect for one (1) year after completion of the project and Developer will correct any defective or faulty work or materials which appear within one (1) year after completion of the Bridge.

(f) City hereby approves the location of that portion of the Pedestrian Overpass on City Property described in **Exhibit "B"** and over those portions of City owned or publicly dedicated property located within, above or beneath the Premises. The Pedestrian Overpass and all improvements and structures associated therewith and constructed within the Premises shall be the property of the Developer and shall become the property of City only upon termination of this Agreement as provided herein.

**8. Use of Premises.** The Premises and Pedestrian Overpass shall be used exclusively for the Perpetual Public Pedestrian Easement. Unless otherwise directed by the City Manager, the Pedestrian Overpass shall be open to the public between the hours of sunrise to 2:00 AM Sunday through Thursday and 3:00 AM Fridays and Saturdays or as modified by the City Manager. In no event shall the Pedestrian Overpass

be opened solely for the use of the Developer and if the Pedestrian Overpass is open for use, it shall be open for the use of the public.

**9. Grant of Perpetual Public Pedestrian Easement.** Developer hereby grants, bargains and conveys unto City a Perpetual Public Pedestrian Easement over, under, above, within and through the Premises.

(a) This Agreement is contingent upon Developer furnishing unto City a title insurance commitment and title insurance policy on Attorneys' Title Insurance Fund or Commonwealth Title Insurance Co. insuring the City's easement rights in and to the Perpetual Public Pedestrian Easement. The title insurance commitment and policy shall reflect that the City's easement rights are not inferior or subordinate to any liens or encumbrances and shall be further subject to the approval of the City Attorney as to form and content.

(b) Developer shall deliver the title insurance commitment to City thirty (30) days after the Effective Date of this Agreement. The City Attorney shall have fifteen (15) days to examine same and notify Developer of any objections to or defects in the commitment. Developer shall have sixty (60) days to deliver to City an endorsement eliminating the objections or defects specified by the City Attorney. After issuance of an endorsement to the commitment, if any is required, Developer shall deliver the title insurance policy to City, in a form and content acceptable to the City Attorney.

(c) In no event shall construction of the Pedestrian Overpass commence any sooner than ten (10) days after the delivery of the title insurance policy.

(d) In the event Developer fails to deliver to City the title insurance commitment and title insurance policy within the time(s) specified above, this Agreement shall automatically terminate, become null and void and be of no further force and effect and the parties shall be relieved of any further obligation or responsibility each to the other.

**10. Compliance with Regulations of Public Bodies.** Developer shall, at its own cost and expense, construct, operate, maintain and repair the Pedestrian Overpass and perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the Premises and Pedestrian Overpass in order to comply with health and sanitary requirements, fire hazard requirements,

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zoning requirements, building code requirements, City of Fort Lauderdale Engineering Standards, environmental requirements and other similar regulatory requirements.

**11. Inspection.** LESSOR or its agents, servants, employees, and officials shall have the right to enter the Pedestrian Overpass the buildings and improvements constructed or landscaping planted thereon, at all reasonable hours for the purpose of inspecting the same, or for any other purposes not inconsistent with the terms or spirit of this Agreement.

**12. Bonding of Improvements.** After initial construction of the Pedestrian Overpass, Developer shall furnish to City a statutory payment and performance bond pursuant to Chapter 713, Florida Statutes written by a corporate surety company listed on the U.S. Department of Treasury's currently approved list of acceptable sureties on Federal Bonds, as found in the U.S. Treasury's Circular No. 570, as same may be updated from time to time, in the full amount of any contract entered into by Developer for any significant capital improvement in excess of Ten Thousand (\$10,000.00) and no/100 dollars associated with the maintenance and repair obligations of Developer, with said bonds being executed and issued by a Resident Agent licensed by and having offices in the State of Florida representing such corporate surety at the time such significant capital improvements are constructed, said bonds being conditioned upon the full and faithful performance by Developer or Developer's contractor of such contract and full payment to all laborers and materialmen supplying labor or material for such improvements. City shall be a co-obligee under the bonds.

**13. Repairs and Maintenance.** Developer shall not commit or suffer waste or injury to the Premises or the Pedestrian Overpass constructed thereon. Developer shall, at its own cost and expense, at all times cause the Pedestrian Overpass to be adequately lighted and air-conditioned, safely and securely maintained, kept in good condition, repair, clean, and free of rubbish and other hazards to persons using the Pedestrian Overpass. Developer further covenants and agrees, to make or cause to be made any and all repairs or replacements, ordinary or extraordinary, structural or otherwise, necessary to keep in good physical order, appearance and condition the Premises and Pedestrian Overpass, inside and outside, including but not limited to, repairs to and replacement of foundation, walls, roofs, floors, ceilings, wires or conduits for electricity, and fixtures. All repairs and replacements shall be at least of equal quality and class to the original



work and shall be approved by the City Engineer. The color of the Pedestrian Overpass shall be white unless otherwise approved by the City Manager. When making such repairs, replacements and maintenance Developer shall comply with all laws, ordinances, codes, regulations and State and City Engineering standards then in effect. Such maintenance and repair shall include but not be limited to:

- (a) Removal of all papers, debris, filth and refuse;
- (b) Washing walls and floors and sweeping Pedestrian Overpass areas;
- (c) Maintaining only such signs as approved by the City Commission which such approval may be denied in the City's sole and unfettered discretion;
- (d) Providing cleaning, maintenance, lighting, air-conditioning and elevator service as needed;
- (e) Maintenance of the Pedestrian Overpass free from any obstructions not required for their intended use;
- (f) Removing any signs not permitted by City;
- (g) Providing reasonable security; and
- (h) Painting and repairing Pedestrian Overpass.

**14. Emergencies.** Within sixty (60) days of the Effective Date of this Agreement, Developer shall provide in writing to the City an emergency contact name and phone number. If an emergency situation arises with respect to the Pedestrian Overpass where the Pedestrian Overpass or any condition thereof presents an imminent threat to the health or safety of Persons or property, the City shall make reasonable efforts to provide telephone notice to the contact person. If, following that notice, the Developer fails to take timely action to correct the emergency situation, and allowing the emergency situation to continue would pose an imminent threat to health or safety to Persons or property, City may undertake such limited actions as are necessary to eliminate the emergency; and City shall be entitled to recover its costs of cure from Developer in accordance with provisions hereof.

**15. Alterations.** Developer may, at its sole cost and expense, at any time and from time to time, make such changes, alterations, replacements, improvements or additions in and to the Premises, and the structures and improvements thereon, including the demolition of any

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structure and improvements or structures that hereinafter may be situated or erected within the Premises, provided, however, that the plans and specifications for any such change, alteration, replacement, improvement or addition shall be approved in the same manner as the initial plans for construction were approved and as required by this Agreement.

**16. Damage to Public Property.** In the event the construction, operation, maintenance, repair, demolition or reconstruction of the Pedestrian Overpass or Premises causes any damage whatsoever to any public property, including but not limited to, damage to State Road A-1-A and the public beach areas, erosion of sand, or damage to the sidewalk areas on either side of State Road A-1-A, then Developer shall be responsible for the cost of repair and shall, at City's option, make said repairs or reimburse City for the cost of same.

**17. Modification of State Road A-1-A.** In the event the governing authority having jurisdiction over State Road A-1-A wishes to modify the configuration of State Road A-1-A during the term of this Agreement and such roadway modification requires alteration or modification of the Pedestrian Overpass or any part thereof, Developer agrees to expeditiously make such modification at its sole cost and expense upon notice by the governing authority.

**18. Condemnation.** In the event the Premises or Pedestrian Overpass, or any portion(s) thereof, or are taken by any public authority (including the City) under the power of eminent domain, or is sold to a public authority under threat or instead of eminent domain, then upon such a taking this Agreement shall cease as of the day that the public authority takes possession or title, whichever is earlier and Developer hereby waives any property rights, past, present or future, that it has, had or may have, under this Agreement.

(a) All compensation awarded or paid on a total or partial taking of the Premises or Pedestrian Overpass including the value of the Pedestrian Overpass and all improvements will belong to and be the property of the City without any participation by the Developer. The Developer agrees that it shall have no claim to any such award based on the Developer's agreement with the City or its construction, ownership, operation and maintenance of the Pedestrian Overpass.

(b) The Developer agrees that it will not prosecute any claim independently or otherwise against the public

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authority or the City in connection with the taking, including, but not limited to any actions for inverse condemnation, or deprivation of private property rights under Florida's Bert J. Harris Act or any deprivation of constitutional rights.

**19. Taxes, Assessments; Operating Costs and Utility Charges.**

(a) Developer shall pay or cause to be paid all real estate taxes, assessments and other similar payments, usual or unusual, extraordinary as well as ordinary, which shall during the term be imposed upon, become due and payable, or become a lien upon the Pedestrian Overpass or Premises or any part of it, but specifically limited to such taxes or assessments which accrue after the Effective Date hereof, by virtue of any present or any future law of the United States of America or of the State of Florida or of any county or municipal authority. Developer shall, upon request, exhibit receipt for such payments to the City annually. Further, subject to subparagraph (b) below, as of the Effective Date hereof, Developer shall pay or cause to be paid all operating expenses, such as those for heat, light, electricity, charges for water and sewer, and all costs attributable to the maintenance and operation of all improvements to be erected on the Premises.

(b) The Developer shall have the right to review, by legal proceedings, any taxes, assessments or other charges imposed upon it. If any such taxes, assessments or other charges shall be reduced, canceled, set aside or to any extent discharged, the Developer shall pay the amount that shall be finally assessed or imposed against the Premises or Pedestrian Overpass or adjudicated to be due and payable on any disputed or contested items.

(c) If, as a result of any legal proceedings pursuant to the provisions of subparagraph (b) hereof, there is any reduction, cancellation, setting aside or discharge of any tax or assessment, the refund shall be payable to Developer, and if such refund be made to the City, then and in that event the City shall regard such refund as held in trust for the benefit of Developer and shall immediately pay over the same to the Developer. The term "legal proceedings" as used in this Paragraph shall be construed to include appropriate appeals from any judgments, decrees or orders, and certiorari proceedings.

(d) Developer agrees to promptly pay when due all operating, construction, maintenance and servicing charges, expenses and costs, including telephone, gas, electricity,

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cable, telecommunications, water, sewer, sewer connection, and all other expenses incurred in the use and operation of the Pedestrian Overpass. The accrual of utilities and operating costs under this subparagraph prior to termination of the Agreement shall survive the termination of the Agreement.

**20. Liens Against the Premises, Perpetual Public Pedestrian Easement, Pedestrian Overpass or City Property.** Except as may be expressly provided otherwise herein, Developer shall have no power or authority to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of City in and to the Premises, Perpetual Public Pedestrian Easement, Pedestrian Overpass or City Property, and no Person shall ever be entitled to any lien, directly or indirectly derived through or under the Developer, or its agents, servants, employees, contractors or officers or on account of any act or omission of said Developer, which lien shall be superior to City's right, title and interest in and to the Premises, Perpetual Public Pedestrian Easement, Pedestrian Overpass or City Property. All Persons contracting with the Developer, or furnishing materials or labor to said Developer, or to its agents or servants, as well as all Persons shall be bound by this provision of the Agreement. Should any such lien be filed, Developer shall discharge the same within thirty (30) days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. Developer shall not be deemed to be the agent of City, so as to confer upon a laborer bestowing labor upon the Premises, Perpetual Public Pedestrian Easement, Pedestrian Overpass or City Property, or upon a materialman who furnishes material incorporated in the construction and improvements upon the foregoing, a construction lien pursuant to Chapter 713, Florida Statutes or an equitable line upon the City's right, title and interest in and to the foregoing. These provisions shall be deemed a notice under Section 713.10(1), Florida Statutes of the "non-liability" of the LESSOR.

**21. Damage and Destruction.** If during the term of this Agreement the structure or improvements owned by Developer within the Premises or Pedestrian Overpass shall be damaged, destroyed or deteriorated in whole or in part by fire, casualty, obsolescence, failure to maintain or any other cause, and whether or not such destruction or damage is covered by any insurance policy on the Pedestrian Overpass, Developer shall give to City immediate notice thereof, and Developer shall:

(a) seek the necessary permits and approvals from City and any other regulatory agency with jurisdiction over the

Pedestrian Overpass to repair, replace and rebuild the same or cause the same to be repaired, replaced or rebuilt as nearly as possible to their original condition; or

(b) to the extent that such destruction or damage affected the structures and improvements of the Pedestrian Overpass, or any part thereof, if Developer elects to remove such structures and improvements, or any part thereof, Developer shall seek the necessary permits and approvals from City and any other regulatory agency with jurisdiction over the Pedestrian Overpass to promptly replace said structures and improvements with new structures and improvements having the same general character and conditions (as nearly as may be possible under the circumstances) as the structures and improvements originally constructed; or

(c) seek the approval of City to remove the structure.

All such repair, restructure and replacement shall be hereafter referred to as "Restoration". The cost of Restoration shall be paid solely by Developer.

**22. Insurance.** At all times during the term of this Agreement, the Developer, at its expense, shall keep or cause to be kept in effect the following:

(a) Fire and All Risk Property coverage (including flood) on the structure, improvements, fixtures and machinery contained within the Pedestrian Overpass in an amount equal to not less than ninety percent (90%) of its full insurable value. The deductible shall be no more than ten percent (10%) of the value of the structure.

(b) Workers' Compensation Insurance in its own name.

(c) A Commercial General Liability Insurance Policy, in standard form, insuring Developer and City as an additional insured, against any and all liability for bodily injury or property damage in the amount of not less than Five Million Dollars (\$5,000,000.00) in respect to injuries or death attributable to any one occurrence. This policy shall not be affected by any other insurance carried by City. The minimum limits of coverage shall be adjusted every five (5) years, on the anniversary date of this Agreement, in accordance with the increase or decrease in the Consumer Price Index for "All Urban Consumers, U.S. City Average (1982 - 1984 = 100)" (hereinafter, CPI) published by the Bureau of Labor Statistics of the United States Department of Labor, or any comparable successor or substitute index designated by City. For the purposes of

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this subparagraph, the beginning CPI figures shall be the most recently published index figures in effect as of the Effective Date hereof. On the date(s) of adjustment, the adjusting figures shall be the most recently published figures in effect on the subject adjustment date(s).

(d) With the exception of Workers' Compensation and Commercial Liability coverage, all such insurance to be provided by Developer herein shall name the Developer and City as insureds as their respective interests may appear. The All Risk Policy shall include the City's interest as a loss payee. All such policies of insurance shall also provide for the adjustment of claims under such policies by Developer.

(e) Any and all net insurance proceeds received by or on account of Developer, as the case may be, shall be deposited with the Developer's first mortgagee, in an interest bearing trust fund for the benefit of Developer and City, and said funds shall be used for the purpose of reconstruction or repair, as the case may be, of any of the structures or improvements within the Pedestrian Overpass so damaged or destroyed. Such reconstruction and repair work shall be done in strict conformity with all applicable building and zoning codes and regulations or standards promulgated by any governmental agency having jurisdiction over the Pedestrian Overpass. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then, and in such event, such funds shall be used as far as the same will permit in paying the cost of said reconstruction or repair, and any difference shall be paid by Developer.

(f) Developer shall deliver to City's Risk Manager duplicate copies of all insurance policies required herein and proof of full payment thereof within thirty (30) days after the Effective Date hereof. From time to time, Developer shall procure and pay for renewals of insurance required herein before it expires. Developer shall deliver to City the renewal policy at least twenty (20) days before the existing policy expires. All of the policies of insurances provided for in this Agreement:

(i) shall be in the form and substance approved by the Insurance Department of the State of Florida ("DOI"),

(ii) shall be issued only by companies licensed by DOI,

(iii) shall be with a carrier having an A Best's

Rating of not less than A, Class VII,

(iv) shall bear endorsements showing the receipt by the respective companies of the premiums thereon or shall be accompanied by other evidence of payment of such premiums to the insurance companies, including evidence of current annual payment, if on any installment payment basis, and

(vi) shall provide (i) that they may not be canceled by the insurer for thirty (30) days after service of notice of the proposed cancellation upon City and shall not be invalidated as to the interest of City by any act, omission or neglect of Developer and (ii) a waiver of subrogation as to Developer's claims against City.

In any case where the original policy of any such insurance shall be delivered to the Developer, a duplicate original of such policy shall thereupon be delivered to City. All insurance policies shall be renewed by Developer and certificates evidencing such renewals, bearing endorsements or accompanied by other evidence of the receipt by the respective insurance companies of the premiums thereon, shall be delivered to City, at least twenty (20) days prior to their respective expiration dates.

(g) If Developer fails to obtain and maintain insurance as provided in this Agreement and such failure shall continue for a period of fifteen (15) days after notice by City, City may, but shall not be obligated to, effect and maintain any such insurance coverage and pay premiums therefor, with the ultimate cost and expense thereof to be the responsibility of Developer.

(h) The obligation of collection upon the insurance policies furnished and provided for by Developer, or obtained by City by reasons of the failure of Developer to obtain them, shall be upon Developer, but City shall cooperate in such collection (but without expense to City) in such reasonable degree as may be requested by Developer.

(i) Until the expiration or sooner termination of this Agreement, title to and ownership of (subject to the City's superior Perpetual Public Pedestrian Easement rights) any structures or improvements situated or erected with the Premises or Pedestrian Overpass by Developer and the structure, equipment and other items installed by Developer thereof and any alterations, changes or additions thereto, shall remain with Developer. Subject to the provisions of the Internal Revenue Code, City agrees that Developer, as

between City and Developer, shall be entitled to the tax deduction for depreciation for any structure or structures, equipment or other items, improvements, additions, changes or alterations which Developer constructs and installs.

**23. Indemnity.** The Developer shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including attorney's fees or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations under this Agreement, the grant to the City of the Perpetual Public Pedestrian Easement or any restrictions contained therein, the City's permit for the construction of the Pedestrian Overpass, the location, construction, repair, maintenance use or occupancy of the Premises or Pedestrian Overpass, or the breach or default by Developer of any covenant or provision of this Agreement except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the City, its officers, agents and employees. Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the Pedestrian Overpass or other improvements within the Premises, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity. The Developer further agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the City, Developer shall assume and defend not only itself but also the City in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to City, provided that the City (exercisable by the City's Risk Manager) shall retain the right to select counsel of its own choosing.

The City makes no representations upon which the Developer may rely with regard to the ability of the Developer to use the Premises as provided herein and the Developer shall indemnify the City against any claims it or anyone else may have with regard to any actions of the City in connection with the Premises, Pedestrian Overpass, this Agreement or any combination of same.

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**24. Defaults.** In the event any one or more of the following events shall occur:

(a) Developer shall default in making payment to City of any cost or fees, as and when the same shall become due and payable, and such default in payment shall continue for a period of fifteen (15) days after notice by City; or

(b) Developer shall fail to pay any tax, assessment, rate or charge or other governmental imposition or any other charge or lien against the Pedestrian Overpass or Premises which Developer is required to pay, at least ten (10) days prior to the expiration of any grace period allowed by law or by the governmental authority imposing the same and such default shall continue for a period of fifteen (15) days after notice by City; or

(c) Developer shall file a petition to be declared bankrupt, or insolvent or be adjudicated or declared bankrupt or insolvent by any court, or Developer files for reorganization under the Federal Bankruptcy Act, or for the appointment of a receiver or trustee for all of Developer's property; or Developer enters into an arrangement with creditors; or if Developer's creditors institute Bankruptcy proceedings or receivership proceedings which are not dismissed within one hundred eighty (180) days after same are instituted. However, this provision has no effect so long as all of the other provisions of this Agreement are being performed; or

(d) Developer fails to repair, replace or maintain the Premises or Pedestrian Overpass in accordance with the terms of this Agreement and such failure continues for a period of fifteen (15) days after notice by City; or

(e) Developer obstructs public passage for a period in excess of twenty-four (24) continuous hours or for more than two (2) days within any calendar year, unless such closure is approved by the City Manager as necessary to conduct maintenance, repairs or replacement in accordance with this Agreement. If in the opinion of the City Manager it is reasonably determined that the Pedestrian Overpass is unsafe due to Developer's failure to maintain, repair or replace any improvements in accordance with the terms of this Agreement and as a result City determines that the Pedestrian Overpass must be closed to the public until said repairs, maintenance or replacements have been made, such closure shall be considered an obstruction by Developer of public passage as provided herein; or

(f) Developer shall default in complying with any

*ABD*

other agreement, term, covenant or condition of this Agreement and such default in compliance shall continue for a period of thirty (30) days after notice by City specifying the claimed default, and Developer shall not, in good faith, have commenced within said thirty (30) day period, to remedy such default and diligently and continuously proceed therewith; then, if any of the above-referenced events should occur, City may serve a written fifteen (15) day notice of cancellation and termination of this Agreement, and upon the expiration of fifteen (15) days, the Developer, at City's direction shall either:

- (1) quit and surrender to the City the Premises and Pedestrian Overpass and each and every part thereof, and City may enter into or repossess the Premises and Pedestrian Overpass, such structures and improvements and each and every part thereof, in accordance with Florida law, or
- (2) within thirty (30) days of notice by City, commence the removal of the Pedestrian Overpass and all structures and improvements within the Premises and complete removal within thirty (30) days of commencement, and, at the option of the City, restore the Premises to the same condition it was in as of the Effective Date hereof. Developer shall then quit the Premises and return same to the City. City shall advise Developer if there are any improvements it does not wish Developer to remove, and except for the provisions of Paragraph 26, this Agreement shall terminate. In the event Developer fails to take the actions provided in subparagraph (2), then this Agreement shall terminate and the provisions of Paragraph 26 shall take effect.

#### 25. Termination.

(a) In the event of termination of this Agreement by City, all of the rights, estate and interest of Developer in the Premises, the Pedestrian Overpass, the improvements therein and thereon, the equipment and fixtures owned by Developer therein, and all fees, issues and profits thereof, whether then accrued or to accrue, all insurance policies and all insurance moneys paid or payable thereunder, vest in and belong to City. Further, City shall have the option to demolish the Pedestrian Overpass at the cost of Developer.

(b) Upon the expiration of the term of this Agreement, City shall have the option to:

- (1) extend the term of this Agreement or enter into a new agreement with Developer; or
- (2) take title to and possession of the Pedestrian Overpass and Developer shall peaceably surrender same; or
- (3) within thirty (30) days of notice by City Developer shall to commence and shall complete removal of the Pedestrian Overpass sixty (60) days thereafter and all structures and improvements on the Premises and restore the Premises to the same condition it was in on the Effective Date hereof at Developer's expense.

#### 26. Remedies of City.

(a) In the event the Developer fails to construct, maintain, make repairs, demolish or take such actions as provided in this Agreement and such default(s) shall continue for a period of thirty (30) days after notice by City, City has the option and right to take such action which was required to be taken by the Developer at Developer's sole cost and expense. Developer shall then be liable for payment to the City for all reasonable and necessary costs and expenses incurred by City in connection with the performance of the action or actions plus a surcharge of fifty percent (50%) for amounts up to One Thousand Dollars (\$1,000) and ten percent (10%) for amounts over One Thousand Dollars (\$1,000) and Developer shall reimburse City within sixty (60) days following written demand therefor. Interest shall accrue on the unpaid amount at the rate of twelve (12.0%) percent per annum, compounded monthly, but in no event shall interest exceed the highest amount allowed by Florida law. The demand shall include reasonable documentation supporting the expenses incurred by City. If a dispute arises as to the need for, or amount due to the City for repairs or maintenance undertaken by the City in accordance with this Agreement, and such dispute is not resolved within forty-five (45) days after the date that the City makes the original written demand for payment, the Developer shall pay to City the undisputed amount and shall provide the City with a bond or other security acceptable to the City for the disputed amount pending a resolution of the dispute by negotiation or litigation. In addition to any other remedies available to City, City shall be entitled to recover from Developer all costs of collection, including

*BD*

reasonable attorneys' fees and court costs incurred at all tribunal and appellate levels, provided the City ultimately prevails in such proceedings.

(b) If Developer does not make the payments required by subparagraph (a) above within the sixty (60) day period set forth therein, then the City shall have a right to record a Claim of Lien upon the St. Regis Hotel Property, which Lien may be for all reasonable and necessary costs and expenses of any cure undertaken by the City in accordance with subparagraph (a) above, the cost of any interim insurance policy as provided herein, and reasonable attorneys' fees and costs associated therewith. The Lien shall be effective upon the recording of a Claim of Lien in the Public Records of Broward County, Florida, which Claim of Lien shall state all amounts due and owing to the City. The Lien may be foreclosed by City in the same manner as provided by law for foreclosure of mortgage liens. The Lien shall continue until payment to the City of the amounts set forth in the Lien (at which time the City shall record a satisfaction of such lien). In addition to the Lien, the City shall have all other rights and remedies granted to it at law or in equity for Developer's failure to reimburse the City pursuant to subparagraph (a) above. Developer shall be entitled to pursue all legal and equitable remedies to contest the amount or existence of any such lien.

(c) In the event that the City has provided the notice described in subparagraph (a), but the Developer has failed to cure or to commence and diligently pursue cure of the default(s), and the City cures such default(s), makes such repairs or undertakes such protection or maintenance or take other actions described herein, and the Developer fails to make payment in accordance with subparagraph (a), the Developer shall be in default under this Agreement. Such a default shall not arise where Developer has paid the undisputed amount and secured any disputed amount, or where the Developer pays the costs of cure as set forth in subparagraph (b) above prior to a judicial determination of a default. Upon judicial determination of such a default the City shall be entitled to a judgment of specific performance of this Agreement and the City shall have the right to exercise the options provided herein.

## 27. Unity of Title; Assignment.

(a) Developer agrees, for itself and its successors and assigns, that fee simple ownership of the St. Regis Hotel Property and Developer's right, title, interest, obligations and responsibilities under this Agreement shall be irrevocably bound together during the term of this

Agreement, it being the intent of the parties that this Agreement and Developer's right, title, interest, obligations and responsibilities under this Agreement shall be deemed a covenant running with the St. Regis Hotel Property during the term of this Agreement.

(b) Developer may not sell, transfer or assign this Agreement or any interest herein, without the prior written consent of City, which such consent shall be given to the assignee or transferee of Developer's fee simple interest in the St. Regis Hotel Property and shall be given in a recordable form and shall be recorded by Developer or Developer's assignee or transferee. Such consent shall be conditioned upon Developer's assignee or transferee assumption of all obligations arising under this Agreement, past, present and future, and Developer shall be fully released and relieved from all liability and obligation hereunder. Developer shall not assign or attempt to assign any portion of this Agreement prior to completion of construction of the Pedestrian Overpass and St. Regis Hotel. Assignment of this Agreement shall only be made to the fee simple owner of the St. Regis Hotel Property.

**28. Liens.** If any construction or other liens or orders for the payment of money shall be filed against the Premises or Pedestrian Overpass or any structure or improvements therein by reason of or arising out of any labor or material furnished, or alleged to have been furnished, or to be furnished, to or for the Developer at the Premises, the Developer shall, within thirty (30) days after written notice from the City, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. The Developer shall also defend on behalf of the City, at the Developer's sole cost and expense, any action, suit or proceedings, which may be brought thereon or for the enforcement of such lien, liens, or orders, and the Developer shall pay any damage and discharge any judgment entered therein and save harmless City from any claim or damage resulting therefrom.

**29. Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**30. Relationship of Parties.** The relationship between the parties hereto shall be solely as set forth herein and neither party shall be deemed the employee, agent, partner or joint venturer of the other.

**31. RADON NOTIFICATION.** As of January 1, 1989, Section 404.056, Florida Statutes, requires provision of the following notification concerning radon gas:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has assignee or transferee shall expressly assume all the accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and buildings in Florida. Additional state information regarding radon and radon testing may be obtained from your county public health unit."

**32. Choice of Laws; Venue.** This Agreement shall be governed by the laws of the State of Florida. In the event of litigation between the parties, venue for any such litigation shall be in Broward County, Florida.

**33. Compliance with Governing Laws.** The parties shall comply with all applicable laws, ordinances, and codes of the United States of America, the State of Florida and all local governments having jurisdiction, in carrying out the rights and responsibilities provided in this Agreement.

**34. Entire Agreement.** This Agreement, together with any other agreements entered into contemporaneously herewith, constitutes and represents the entire agreement between the parties hereto and supersedes any prior understandings or agreements, written or verbal, between the parties hereto respecting the subject matter herein. This Agreement may be amended, supplemented, modified or discharged only upon an agreement in writing executed by all of the parties hereto. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, subject, however, to the limitations contained herein. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**35. Interpretation of Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. If any Lease provision, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Agreement, or the application of the remainder of the provisions, shall not be affected. Rather, this Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this Lease are solely for convenience of reference and are not to affect



its interpretation. Each covenant, agreement, obligation or other provision of the Lease is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Lease, unless otherwise expressly provided. All terms and words used in this Lease, regardless of the number or gender in which they are used, are deemed to include any other number and other gender as the context requires.

**36. Notices.** Whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to any matter set forth in this Agreement, each such notice, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by mailing the same by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below, or at such other address or addresses and to such other person or firm as City may from time to time designate by notice as herein provided.

All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder forty-eight (48) hours after the time that the same shall be deposited in the United States mails, postage prepaid, in the manner aforesaid, provided, however, that for any distance in excess of five hundred (500) miles, air mail service or Federal Express or similar carrier shall be utilized, if available.

City: City Manager  
 City of Fort Lauderdale  
 100 North Andrews Avenue  
 Fort Lauderdale, FL. 33301

With copy to: City Attorney  
 City of Fort Lauderdale  
 P.O. Drawer 14250  
 Ft. Lauderdale, FL 33302-4250

Developer: John McDonald,  
 Member  
 Castillo Grand, L.L.C.  
 1500 N. Federal Highway,

Suite 200  
Fort Lauderdale, FL. 33308

Copy to: F. Ronald Mastriana  
Mastriana & Christiansen, P.A.  
1500 N. Federal Highway  
Suite 200  
Ft. Lauderdale, FL 33304

37. **Successors.** This Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

38. **Recording.** This Agreement shall be conditioned upon recordation of the Agreement in the Public Records of Broward County, Florida. City shall record the Agreement, subject to Developer reimbursing City for the cost thereof. A copy of the recorded Agreement shall be provided to Developer and filed with the City Clerk's Office of the City of Fort Lauderdale.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

WITNESSES:

Kathleen Edwards  
KATHLEEN EDWARDS  
Nancy Ball  
Nancy Ball  
[Witness-print or type name]

Yvonne Brackett Buck  
Yvonne BRACKETT Buck  
[Witness-print or type name]

(CORPORATE SEAL)

CITY OF FORT LAUDERDALE

By [Signature]  
Mayor

By [Signature]  
City Manager

ATTEST:

Nancy Ball  
Assistant City Clerk

*ABD*



Approved as to form:

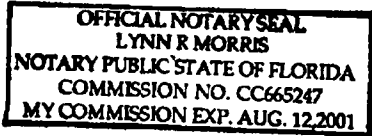
Paul B. Dunsif  
City Attorney

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this March 21, 2001, by JIM NAUGLE, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

Lynn R Morris  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)



LYNN R MORRIS  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires: 8/12/2001

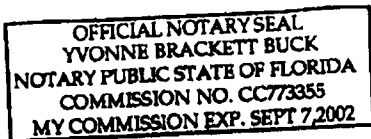
CC665247  
Commission Number

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this March 21st, 2001, by F.T. JOHNSON, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

Yvonne Brackett Buck  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)



Yvonne Brackett Buck  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires: 9-7-2002

CC 773355

overpass Agreement  
City/Castillo Grand

*CB*

Commission Number

WITNESSES:

[Signature]  
John W. Scovel, Jr.  
[Witness print/type name]

[Signature]  
Daniel Sieloff  
[Witness print/type name]

[CORPORATE SEAL]

CASTILLO GRAND, L.L.C., a  
Florida Limited Liability  
Company,

By [Signature]  
John McDonald / PARTNER  
[Print/type name & title]

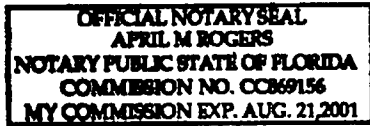
ATTEST:

\_\_\_\_\_

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me  
this MARCH 20, 2001,  
by JOHN McDONALD as W/A of  
CASTILLO GRAND, L.L.C., a Florida Limited Liability Company.  
He/She is personally known to me or has produced  
W/A as identification and did  
not (did) take an oath.

(SEAL)



[Signature]  
Notary Public, State of  
Florida (Signature of Notary  
taking Acknowledgment)

April M. Rogers  
Name of Notary Typed,  
Printed or Stamped

[Handwritten initials]

My Commission Expires:

Commission Number

L:\AGMTS\BEACH\2OVERPAS.WPD

*ZBO*

EXHIBIT "A"

ST. REGIS HOTEL PROPERTY

Parcel 1

Lots 1, 2, 3, 4, 5, 6, 7, 8, 12, and 13, Block 3, LAUDER-DELMAR, according to the Plat thereof, recorded in Plat Book 7, Page 30, of the Public Records of Broward County, Florida;

TOGETHER WITH that portion of the North one-half (N ½) of Valencia Avenue, now vacated per City of Fort Lauderdale Ordinance No. C-94-10, lying adjacent to said Lots 5, 12 & 13;

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County, Florida and containing 76,713 sq. ft. or 1.7611 acres, more or less.

Parcel 2

Lot 9, Block 3, LAUDER-DELMAR, according to the Plat thereof, recorded in Plat Book 7, at Page 30 of the Public Records of Broward County, Florida, LESS AND EXCEPT the lands conveyed to the City of Fort Lauderdale described in Special Warranty Deed recorded in Official Records Book 24212, Page 873 of the Public Records of Broward County, Florida; said lands lying, situate and being in the City of Fort Lauderdale, Broward County, Florida.



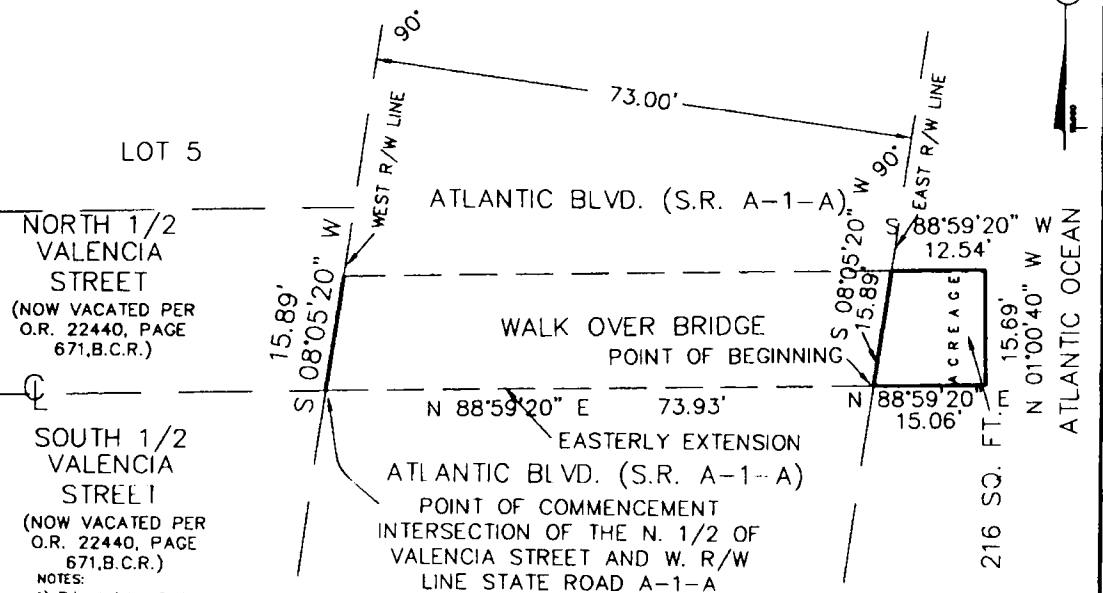
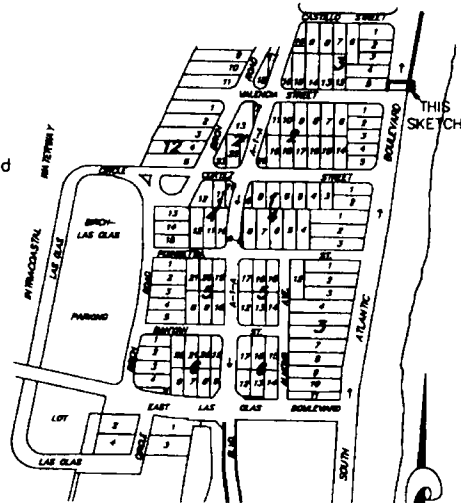
SCALE 1" = 20'

SKETCH AND DESCRIPTION  
EAST LIMITS OF WALKOVER BRIDGE

A portion of Section 6, Township 50 South, Range 43 East, Broward County, Florida, more fully described as follows:  
COMMENCING at the intersection of the South line of the North one-half (N 1/2) of Valencia Street (Now vacated per Official records Book 22440, Page 671, of the public records of Broward County, Florida and the West right-of-way of Atlantic Boulevard (State Road A-1-A); thence North 88°59'20" East, a distance of 73.93 feet to the POINT OF BEGINNING; thence continuing North 88°59'20" East, a distance of 15.06 feet; thence North 01°00'40" West, a distance of 15.69 feet; thence South 88°59'20" West, a distance of 12.54 feet; thence South 08°05'20" West, on the East right-of-way line of Atlantic Boulevard (State Road A-1-A), a distance of 15.89 feet to the POINT OF BEGINNING.

THE VERTICAL LIMITS OF ABOVE DESCRIBED PARAMETRICAL BOUNDARY IS BETWEEN 0.0 N.G.V.D. ON LOWER AND 59.5 N.G.V.D. ON UPPER LIMITS.

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County, Florida, and containing 216 square feet or 0.0050 acres more or less.



- NOTES:
- 1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
  - 2) Underground improvements if any not located.
  - 3) This drawing is not valid unless sealed with an embossed surveyors seal.
  - 4) Boundary information does not infer title or ownership.
  - 5) Bearings shown refer to State Plane Coordinate Grid System Florida Mercator East Zone as shown in Miscellaneous Map Book 6, Page 10, Broward County Records.

LEGEND

- ELEV. = ELEVATION
- O/S = OFFSET
- W/MCL CAP = WITH McLAUGHLIN ENGINEERING CO. CAP
- CL = CENTERLINE OF RIGHT-OF-WAY
- F.P.L. = FLORIDA POWER AND LIGHT CO.
- S.B.T. = SOUTHERN BELL TELEPHONE
- B.C.R. = BROWARD COUNTY RECORDS
- D.C.R. = DADE COUNTY RECORDS
- O.R. = OFFICIAL RECORDS BOOK
- PG. = PAGE
- R/W = RIGHT-OF-WAY
- P.O.C. = POINT OF COMMENCEMENT
- P.O.B. = POINT OF BEGINNING

CERTIFICATION

CERTIFIED CORRECT.  
Dated at Fort Lauderdale, Florida this 12th day of October, 2000.  
Revised this 23rd day of October, 2000.  
Revised parametrical boundary this 20th day of March, 2001.

McLAUGHLIN ENGINEERING COMPANY  
*Jerald A. McLaughlin*  
JERALD A. McLAUGHLIN  
Registered Land Surveyor No. 5269  
State of Florida.



FIELD BOOK NO. \_\_\_\_\_

DRAWN BY: JMMj

JOB ORDER NO. T-4385

CHECKED BY: JAM

E:\SUR\T4385.DWG

EXHIBIT "B"

OK T.I 3/20/01

EXHIBIT "C"

SITE PLAN  
FOR  
PEDESTRIAN OVERPASS

The Site Plan for Pedestrian Overpass is shown on the Castillo Grand Site Plan, P&Z Case No. 126-R-99, Sheets A1-1, A2-1, A2-4, A0-8 and A0-9 as approved by the City Commission. The Site Plan is on file in the City of Fort Lauderdale, Construction Service Bureau and is incorporated herein by reference.

L:\AGMTS\BEACH\C\_2OVERP.WPD





ENGINEERING \* SURVEYING \* PLATTING \* LAND PLANNING  
400 N.E. 3rd AVENUE FORT LAUDERDALE, FLORIDA 33301  
PHONE (954) 763-7611 \* FAX (954) 763-7615

SCALE 1" = 20'

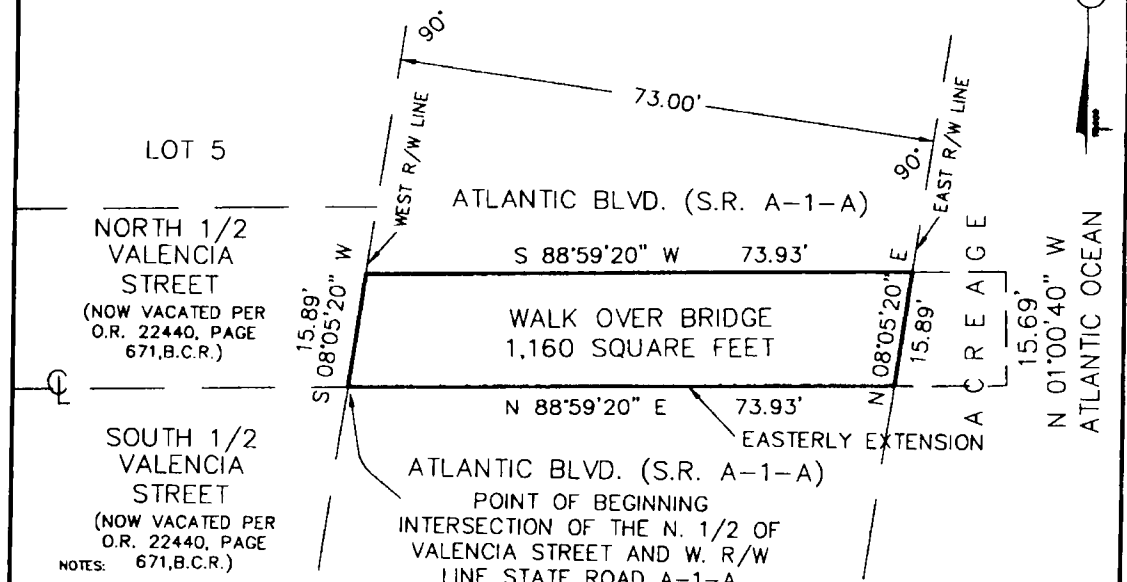
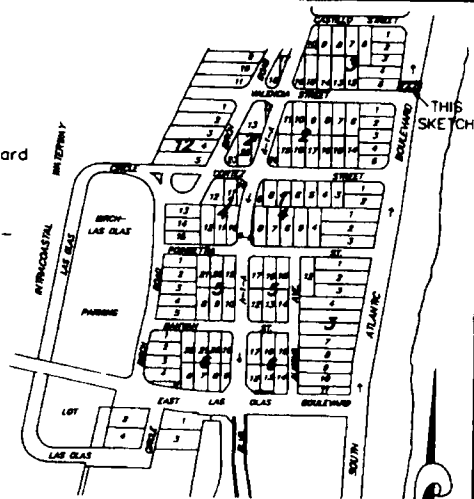
SKETCH AND DESCRIPTION  
WALKOVER BRIDGE OVER RIGHT-OF-WAY

A portion of Section 6, Township 50 South, Range 43 East, Broward County, Florida and being a portion of Atlantic Boulevard (State Road A-1-A), more fully described as follows:

BEGINNING at the intersection of the South line of the North one-half (N 1/2) of Valencia Street (Now vacated per Official records Book 22440, Page 671, of the public records of Broward County, Florida and the West right-of-way of Atlantic Boulevard (State Road A-1-A); thence North 88°59'20" East, a distance of 73.93 feet; thence North 08°05'20" East, on the East right-of-way line of Atlantic Boulevard (State Road A-1-A), a distance of 15.89 feet; thence South 88°59'20" West, a distance of 73.93 feet; thence South 08°05'20" West, on the West right-of-way line of Atlantic Boulevard (State Road A-1-A) a distance of 15.89 feet to the POINT OF BEGINNING.

THE VERTICAL LIMITS OF ABOVE DESCRIBED PARAMETRICAL BOUNDARY IS BETWEEN 34.5 N.G.V.D. ON LOWER AND 50.5 N.G.V.D. ON UPPER LIMITS.

Said lands situate, lying and being in City of Fort Lauderdale, Broward County, Florida, and containing 1,160 square feet or 0.0266 acres more or less.



NOTES: 671, B.C.R.)

- 1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements, road reservations or rights-of-way of record by McLaughlin Engineering Company.
- 2) Underground improvements if any not located.
- 3) This drawing is not valid unless sealed with an embossed surveyors seal.
- 4) Boundary information does not infer title or ownership.
- 5) Bearings shown refer to State Plane Coordinate Grid System Florida Mercator East Zone as shown in Miscellaneous Map Book 6, Page 10, Broward County Records.

LEGEND

- ELEV.= ELEVATION
- O/S= OFFSET
- W/McL. CAP= WITH McLAUGHLIN ENGINEERING CO. CAP
- E = CENTERLINE OF RIGHT-OF-WAY
- F.P.L.= FLORIDA POWER AND LIGHT CO.
- S.B.T.= SOUTHERN BELL TELEPHONE
- B.C.R.= BROWARD COUNTY RECORDS
- D.C.R.= DADE COUNTY RECORDS
- O.R.= OFFICIAL RECORDS BOOK
- P.C.= PAGE
- R/W= RIGHT-OF-WAY
- P.O.C.= POINT OF COMMENCEMENT
- P.O.M.= POINT OF BEGINNING

CERTIFICATION

CERTIFIED CORRECT.

Dated at Fort Lauderdale, Florida this 12th day of October, 2000.  
Revised this 23rd day of October, 2000.  
Revised this 20th day of March, 2001.

McLAUGHLIN ENGINEERING COMPANY

*Jerald A. McLaughlin*  
JERALD A. McLAUGHLIN  
Registered Land Surveyor No 5269  
State of Florida.



FIELD BOOK NO. \_\_\_\_\_

DRAWN BY: JMMjr \_\_\_\_\_

JOB ORDER NO. T-4385 \_\_\_\_\_

CHECKED BY: JAM \_\_\_\_\_

E:\SUR\T4385.DWG

EXHIBIT "D"

T-5 3/20/01



SCALE 1" = 30'

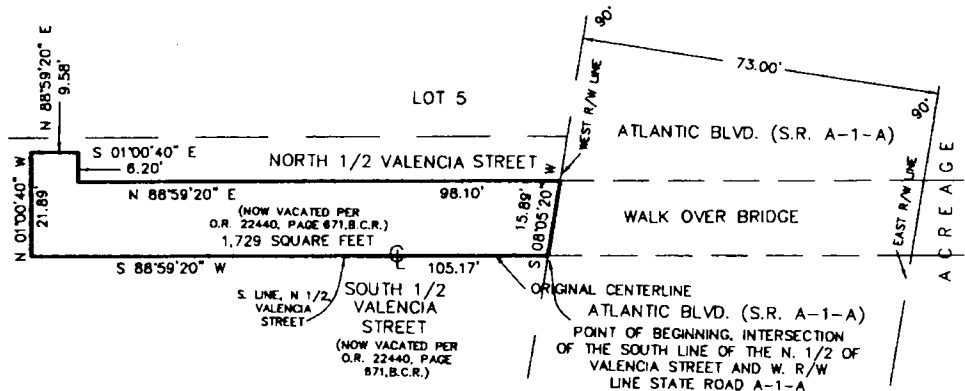
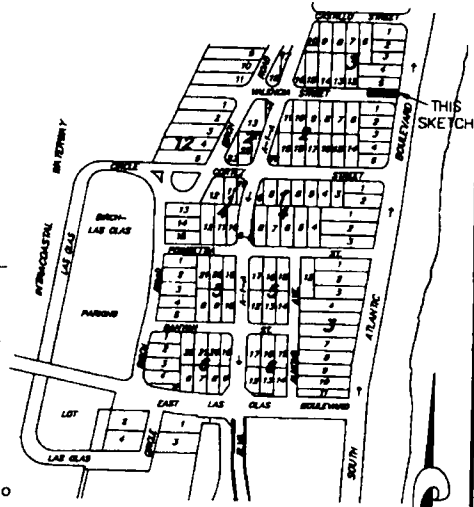
SKETCH AND DESCRIPTION  
WEST SIDE OF WALK OVER BRIDGE

A portion of the North one-half (N 1/2) of Valencia Street, now vacated per Official Record Book 22440, Page 671, Broward County Records, lying in Section 6, Township 50 South, Range 43 East, more fully described as follows:

BEGINNING at the intersection of the South line of the North one-half (N 1/2) of Valencia Street (Now vacated per Official records Book 22440, Page 671, of the public records of Broward County, Florida and the West right-of-way of Atlantic Boulevard (State Road A-1-A); thence South 88°59'20" West, on the South line of said North one-half (N 1/2) of Valencia Street, a distance of 105.17 feet; thence North 01°00'40" West, a distance of 21.89 feet; thence North 88°59'20" East, a distance of 9.58 feet; thence South 01°00'40" East, a distance of 6.20 feet; thence North 88°59'20" East, a distance of 98.10 feet; thence South 08°05'20" West, on the West right-of-way line of Atlantic Boulevard (State Road A-1-A) a distance of 15.89 feet to the POINT OF BEGINNING.

THE VERTICAL LIMITS OF ABOVE DESCRIBED  
PARAMETRICAL BOUNDARY IS BETWEEN  
12.5 N.G.V.D. ON LOWER AND 50.5 N.G.V.D.  
ON UPPER LIMITS.

Said lands situate, lying and being in City of Fort Lauderdale,  
Broward County, Florida, and containing 1,729 square feet or 0.0397  
acres more or less.



NOTES:

- 1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
- 2) Underground improvements if any not located.
- 3) This drawing is not valid unless sealed with an embossed surveyors seal.
- 4) Boundary information does not infer title or ownership.
- 5) Bearings shown refer to State Plane Coordinate Grid System Florida Mercator East Zone as shown in Miscellaneous Map Book 6, Page 10, Broward County Records.

LEGEND

- ELEV. = ELEVATION
- O/S = OFFSET
- W/Mc. CAP. = WITH McLAUGHLIN ENGINEERING CO. CAP
- CL = CENTERLINE OF RIGHT-OF-WAY
- F.P.L. = FLORIDA POWER AND LIGHT CO.
- S.B.T. = SOUTHERN BELL TELEPHONE
- B.C.R. = BROWARD COUNTY RECORDS
- D.C.R. = DADE COUNTY RECORDS
- O.R. = OFFICIAL RECORDS BOOK
- PG. = PAGE
- R/W = RIGHT-OF-WAY
- P.O.C. = POINT OF COMMENCEMENT
- P.O.B. = POINT OF BEGINNING

CERTIFICATION

CERTIFIED CORRECT.

Dated at Fort Lauderdale, Florida this 12th day of October, 2000.  
Revised this 23rd day of October, 2000.  
Revised Limits this 12th day of March, 2001.  
Revised this 20th day of March, 2001.

McLAUGHLIN ENGINEERING COMPANY

JERALD A. McLAUGHLIN  
Registered Land Surveyor No. 5269  
State of Florida.



FIELD BOOK NO. \_\_\_\_\_

DRAWN BY: JMMjr

JOB ORDER NO. T-4385

CHECKED BY: CEA

E:\SUR\T4385.DWG

EXHIBIT "D" T-5 3/20/01



THIS INSTRUMENT PREPARED BY  
AND RETURN TO:  
Robert B. Dunckel, Assistant City Attorney  
City of Fort Lauderdale  
P.O. Drawer 14250  
Fort Lauderdale, FL 33302-4250



Space Reserved for Recording Information

**FIRST AMENDMENT  
TO  
"OVERPASS AGREEMENT"**

THIS FIRST AMENDMENT TO "OVERPASS AGREEMENT" is entered into this 10th day of June, 2003, by and between:

CITY OF FORT LAUDERDALE, a municipal corporation, its successors and assigns, P.O. Drawer 14250, Fort Lauderdale, Florida 33302-4250, hereinafter, "City"

and

CASTILLO GRAND, L.L.C., a Florida Limited Liability Company, its successors and assigns, 2455 E. Sunrise Boulevard, Suite 916, Fort Lauderdale, Florida 33304, hereinafter "Developer"

WHEREAS, on January 19, 2000 the City Commission of the City adopted Resolution No. 00-9 granting Developer a Beach Development Permit for construction of a Hotel and ancillary improvements ("Hotel Project"); said Beach Development Permit being amended by administrative approval May 20, 2003

WHEREAS, ancillary to the Hotel Project, the City and Developer entered an Agreement dated October 17, 2000, which was recorded March 22, 2001 at Official Records Book 31401, Page 1869 of the Public Records of Broward County, Florida (hereinafter, "Overpass Agreement") pursuant to which Developer was to construct certain improvements in public rights-of-way under the jurisdiction of the City of Fort Lauderdale and the State of Florida, Department of Transportation,

Overpass Agreement / First Amendment  
Castillo Grand, LLC / City

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said improvements consisting primarily of a pedestrian overpass and streetscape improvements; and

WHEREAS, Developer is now about to close on financing for the construction of the Hotel Project and improvements under the Overpass Agreement and is in need of amending the Overpass Agreement in order to comply with requirements of the construction lenders;

NOW, THEREFORE, in consideration of the mutual covenants exchanged herein and other good and valuable considerations, the receipt and sufficiency of which the party hereto do hereby stipulate, City and Developer agree as follows:

- 1. The foregoing recitals are true and correct.
- 2. That Paragraph 7 (b) of the Overpass Agreement is amended to read as follows:
  - 7. Construction of Improvements.

...

(b) Developer shall obtain all applicable building permits, engineering permits and approvals for the construction of the Pedestrian Overpass and commence construction thereof not later than one hundred eighty (180) days after the Effective Date of this Agreement Amendment, unless the time for commencement is extended by the City Manager. Further, Developer agrees to complete construction of the structure on or before issuance of the Certificate of Occupancy for the St. Regis Hotel. Failure to commence and complete construction within the aforementioned periods of time may be treated as a default by Developer and the default, termination and remedies provisions of this Agreement shall take effect.

- 3. That Paragraph 27 of the Overpass Agreement is amended to read as follows:

27. Unity of Title; Assignment

(a) Developer agrees, for itself and its successors and assigns that fee simple ownership of the St. Regis Hotel Property and Developer's right, title, interest, obligations and responsibilities under this Agreement shall be irrevocably bound together during the term of this Agreement, it being the intent of the parties that this Agreement and Developer's right, title, interest, obligations and responsibilities under this Agreement shall be deemed a covenant running with the St. Regis Hotel Property during the term of this Agreement.

(b) Developer may not sell, transfer or assign this Agreement or any

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Castillo Grand, LLC / City

interest herein, without the prior written consent of City, which such consent shall be given to the assignee or transferee of Developer's fee simple interest in the St. Regis Hotel Property and shall be given in a recordable form and shall be recorded by Developer of Developer's assignee or transferee. Such consent shall be conditioned upon Developer's assignee or transferee assumption of all obligations arising under this Agreement, past, present and future, and ~~assignor or transferor~~ Developer shall be fully released and relieved from all liability and obligation hereunder. ~~Developer shall not assign or attempt to assign any portion of this Agreement prior to completion of construction of the Pedestrian Overpass and St. Regis Hotel.~~ Assignment of this Agreement shall only be made to the fee simple owner of the St. Regis Hotel Property.

4. The Effective Date of this First Amendment shall be June 10, 2003, the date execution hereof is authorized by the City Commission.

5. This First Amendment to Overpass Agreement shall be recorded at Developer's sole cost and expense in the Public Records of Broward County, Florida and a copy thereof shall be filed with the City Clerk's Office and the City Attorney's Office of the City.

6. In the event and to the extent of conflict between the terms and conditions of this First Amendment and the terms and conditions of the Overpass Agreement, the terms and conditions of this First Amendment shall supersede and prevail over and to the extent of any conflict with the terms and conditions of the Overpass Agreement.

7. Subject to the terms hereof, City and Developer ratify and confirm the Overpass Agreement, as amended in this First Amendment.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

WITNESSES:

Safceea B. Ali  
Safceea B. Ali  
[Witness-print or type name]

Gail Ingram  
Gail Ingram  
[Witness-print or type name]

CITY OF FORT LAUDERDALE

By [Signature]  
Mayor

By [Signature]  
City Manager

Overpass Agreement / First Amendment  
Castillo Grand, LLC / City

ATTEST:

(CORPORATE SEAL)

[Signature]  
City Clerk

Approved as to form:

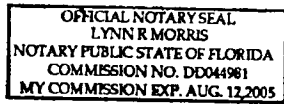
[Signature]  
City Attorney

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 6-13, 2003, by JIM NAUGLE, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

[Signature]  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)



Lynn R Morris  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires: 8/12-05

DD044981  
Commission Number

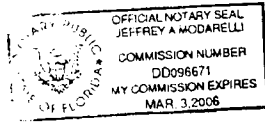
STATE OF FLORIDA:

Overpass Agreement / First Amendment  
Castillo Grand, LLC / City

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 6/13, 2003, by F.T. JOHNSON, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)



[Signature]  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)

Jeffrey A. Modarelli  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires: 3/6/06  
DD096671  
Commission Number

WITNESSES:

[Signature]  
F. BONALDI MASCIARANO  
[Witness print/type name]

CASTILLO GRAND, L.L.C., a Florida Limited Liability Company,

By [Signature]  
John M. Jones MD  
[Print/type name & title] MEMBER

[Signature]  
ROBERT B. DUVALL  
[Witness print/type name]

ATTEST:

[CORPORATE SEAL]

Overpass Agreement / First Amendment  
Castillo Grand, LLC / City

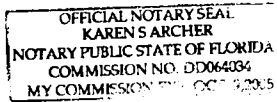
STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of June, 2003, by John McDonald Member of CASTILLO GRAND, L.L.C., a Florida Limited Liability Company. He/She is personally known to me or has produced Drivers License as identification and did not (did) take an oath.

(SEAL)

Karen S. Archer  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)

KAREN S ARCHER  
Name of Notary Typed,  
Printed or Stamped



My Commission Expires:

\_\_\_\_\_  
Commission Number

LAAGMTS\BEACHAMEND(1).WPD

Overpass Agreement / First Amendment  
Castillo Grand, LLC / City

This Instrument Was Prepared By and  
After Recording, Return to:  
Robert B. Dunckel, Esq.  
Assistant City Attorney  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301

**SECOND AMENDMENT  
TO  
“OVERPASS AGREEMENT”**

THIS SECOND AMENDMENT TO “OVERPASS AGREEMENT” (this “Second Amendment”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 by and between:

**CITY OF FORT LAUDERDALE**, a municipal corporation, its successors and assigns, 100 North Andrews Avenue, Fort Lauderdale, FL. 33301 (hereinafter, “CITY”)

and

**CASTILLO GRAND, L.L.C.**, a Florida Limited Liability Company, its successors and assigns, 2455 E. Sunrise Boulevard, Suite 916, Fort Lauderdale, FL 33304 (hereinafter, “DEVELOPER”)

WHEREAS, execution of this Second Amendment to “Overpass Agreement” was authorized by adoption of a motion by the City of Fort Lauderdale City Commission at their Regular Meeting held \_\_\_\_\_, 2013; and

WHEREAS, CITY and DEVELOPER entered into an Agreement dated October 17, 2000, recorded March 22, 2001 at Official Records Book 31401, Page 1869 of the Public Records of Broward County, Florida, pursuant to which Developer was to construct certain improvements in public rights-of-way under the jurisdiction of the City of Fort Lauderdale and the State of Florida, Department of Transportation, said improvements consisting primarily of a pedestrian overpass and streetscape improvements (the “Initial Overpass Agreement”); and

WHEREAS, the Initial Overpass Agreement was amended by that certain First Amendment to “Overpass Agreement” dated June 10, 2003, recorded June 17, 2003 at Official Records Book 35393, Page 1347 of the Public Records of Broward County, Florida (the Initial Overpass Agreement, as so amended, the “Overpass Agreement”); and

WHEREAS, CITY and DEVELOPER desire to further amend the Overpass Agreement as set forth herein.

NOW, THEREFORE, that in consideration of the foregoing, and the mutual covenants exchanged herein and other good and valuable considerations, to which the receipt and sufficiency are stipulated between the parties, CITY and DEVELOPER agree as follows:

1. The foregoing recitals are true and correct.

2. Paragraph 22(d) of the Overpass Agreement is hereby deleted and replaced in its entirety with the following:

“(d) With the exception of Worker’s Compensation and General Commercial Liability Insurance coverage, all such insurance to be provided by DEVELOPER under this Agreement shall name the DEVELOPER and CITY as insureds or additional insureds, as their respective interests may appear. The All Risk Policy shall include CITY’s interest as a loss payee. All such policies of insurance shall also provide for the adjustment of claims under such policies by DEVELOPER.”

3. Paragraph 22(f) of the Overpass Agreement is hereby deleted and replaced in its entirety with the following:

“(f) Subject to the last sentence of this Paragraph 22(f), DEVELOPER shall deliver to CITY’s Risk Manager certificates of insurance for all insurance policies required herein and proof of full payment therefor within thirty (30) days after the Effective Date hereof. From time to time, DEVELOPER shall procure and pay for renewals of this insurance before it expires. DEVELOPER shall deliver to CITY the certificates of insurance at least twenty (20) days before the existing policy expires. All of the policies of insurance provided for in this Agreement:

(i) shall be in the form and substance approved by the Insurance Department of the State of Florida (“D.O.I.”),

(ii) shall be issued only by companies licensed by the D.O.I.,

(iii) shall be with a carrier having an A Best’s Rating of not less than A-, class VII,

(iv) shall bear endorsements showing the receipt by the respective companies of the premiums thereon or shall be accompanied by other evidence of payment of such premiums to the insurance companies, including evidence of current annual payment, if on any installment payment basis, and

(v) shall provide (i) that they may not be canceled by the insurer for thirty (30) days after service of notice of the proposed cancellation upon CITY and shall not be invalidated as to the interest of CITY by any act, omission or neglect of DEVELOPER and (ii) waiver of subrogation as to DEVELOPER’s claims against CITY.

In any case where the original policy of any such insurance shall be delivered to DEVELOPER, a duplicate original or certificate of such policy shall



thereupon be delivered to CITY. All insurance policies shall be renewed by DEVELOPER, and certificates evidencing such renewals, bearing endorsements or accompanied by other evidence of the receipt by the respective insurance companies of the premiums thereon, shall be delivered to CITY, at least twenty (20) days prior to their respective expiration dates.

Notwithstanding the foregoing, DEVELOPER shall not be required to deliver copies of any insurance policies to CITY provided that (a) reasonably satisfactory certificates evidencing such insurance policies are delivered to CITY; and (b) copies of such insurance policies are made available to CITY for review upon reasonable advance notice.

4. Paragraph 27 of the Overpass Agreement is hereby amended to add the following as Paragraph 27(c):

“(c) Notwithstanding the foregoing, DEVELOPER may collaterally assign this Agreement to any institutional lender that holds a first mortgage lien on the St. Regis Hotel Property (“Mortgage Lender”) and may transfer or assign DEVELOPER’s interest in this Agreement to such Mortgage Lender upon foreclosure or acceptance of a deed in lieu of foreclosure of such first mortgage lien. Upon such transfer or assignment upon foreclosure or deed in lieu of foreclosure, CITY shall recognize the Mortgage Lender as the DEVELOPER under this Agreement and such Mortgage Lender shall be entitled to all of the rights and privileges of DEVELOPER under this Agreement.”

5. This Second Amendment shall be recorded at DEVELOPER’s sole cost and expense, in the Public Records of Broward County, Florida and a copy thereof shall be filed with the City Clerk’s Office of the City of Fort Lauderdale.

6. In the event and to the extent of conflict between the terms and conditions of this Second Amendment and the terms and conditions of the Overpass Agreement, then, to the extent of conflict, the terms and conditions of this Second Amendment shall supercede and prevail over any conflicting terms and conditions set forth in the Overpass Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

WITNESSES:

CITY OF FORT LAUDERDALE

\_\_\_\_\_  
\_\_\_\_\_  
[Witness type or print name]

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
\_\_\_\_\_  
[Witness type or print name]

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

ATTEST:

[CORPORATE SEAL]

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida, who is personally known to me or has produced \_\_\_\_\_ (state) driver's license or \_\_\_\_\_ as identification.

My Commission Expires:

\_\_\_\_\_  
Notary Public (Signature)

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
(Printed Name)

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida, who is personally known to me or has produced \_\_\_\_\_ (state) driver's license or \_\_\_\_\_ as identification.

My Commission Expires: \_\_\_\_\_

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
(Printed Name)

EXECUTED IN THE PRESENCE OF:

CASTILLO GRAND, L.L.C., a Florida Limited Liability Company

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

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

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

Title: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ as \_\_\_\_\_ of CASTILLO GRAND, L.L.C., a Florida Limited Liability Company, on behalf of the limited liability company, who is personally known to me or has produced \_\_\_\_\_ (state) driver's license or \_\_\_\_\_ as identification.

My Commission Expires: \_\_\_\_\_

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
(Printed Name)