

**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 4th day of June, 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 June, 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(b) of the Overpass Agreement is hereby amended as follows”
“(b) Workers Compensation Insurance ~~in its own name~~”
3. Paragraph 22(d) of the Overpass Agreement is hereby amended as follows:

“(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.”

4. Paragraph 22(f) of the Overpass Agreement is hereby amended as follows:

“(f) Subject to the last sentence of this Paragraph 22(f), DEVELOPER shall deliver to CITY’s Risk Manager ~~duplicate copies of 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 ~~renewal policy~~ 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.

5. Paragraph 27 of the Overpass Agreement is hereby amended as follows:
 - (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.
 - (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."

6. 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.

7. 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 supersede and prevail over any conflicting terms and conditions set forth in the Overpass Agreement.

8. By execution hereof the parties ratify and confirm the Overpass Agreement, as amended.

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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: _____
John P. ("Jack") Seiler, Mayor

[Witness type or print name]

By: _____
Lee R. Feldman, City Manager

ATTEST:

[CORPORATE SEAL]

Jonda K. Joseph, City Clerk

Approved as to form:

Robert B. Dunckel, Assistant City Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by **John P. ("Jack") Seiler**, 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 BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by **Lee R. Feldman**, 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)