



HISTORIC
FRANKLIN
TENNESSEE

ITEM #3
FINANCE
08-19-10

MEMORANDUM

August 12, 2010

TO: Board of Mayor and Aldermen
FROM: City Administrator Eric S. Stuckey
Assistant City Administrator Russ Truell
SUBJECT: Estoppel Agreement for Conference Center

Purpose

The purpose of this agenda item is to consider approval of the agreement between the Marriott Hotel ownership group, as manager of the Conference Center, and the City of Franklin and Williamson County.

Background

From time to time, the ownership group of the Marriott Hotel property elects to refinance or restructure their borrowing arrangements. When that occurs, the lenders typically want an estoppel agreement to maintain the contractual relationship between the ownership group, as manager of the Conference Center, and the City/County, as owner of the Conference Center.

This agreement purports to leave all business relationships as they stand today.

Options

Approve or disapprove the agreement.

Recommendation

Staff recommends approval of the estoppels agreement with the current management of the Conference Center, subject to legal review by our Law Department.

ESTOPPEL CERTIFICATE AND AGREEMENT

TO: Midland National Life Insurance Company (“**Lender**”)
Franklin Realco, LLC (“**Borrower**”), and
Franklin Opco, Inc. (“**Operating Tenant**”)

FROM: City of Franklin, Tennessee, and Williamson County, each a political subdivision
of the state of Tennessee (“**Owners**”)

DATE: _____, 2010

RE: Franklin Marriott Cool Springs (the “**Project**”) and the Conference Center at
Cool Springs (the “**Conference Center**”)

This Estoppel Certificate and Agreement is being executed and delivered by Owners, as of the date set forth above, to each of the addressees listed above (collectively, the “Addressees”). Owners have been informed that Lender is concurrently herewith making a loan to Borrower in the original principal amount of TWENTY-FIVE MILLION AND NO/DOLLARS (\$25,000,000.00) (the “Loan”) to be secured by a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “Deed of Trust”), which will constitute a first lien on the hotel, land and personal property known as a “Franklin Marriott Cool Springs” hotel located at 700 Cool Springs Boulevard, Franklin, Tennessee, 37067.

A. Each of the Owners hereby represents, warrants and certifies to the Addressees and agrees as follows, recognizing that the Addressees will rely on the information contained herein:

1. Each of the Owners is a party to the following agreements: (1) that certain Reciprocal Easement, Operating and Use Agreement, dated December 19, 1997 (the “REA”), between Owners and Operating Tenant, as successor-in-interest (through a series of assignments) to Cool Springs Hotel Associates, LLC (“CSHA”), a true, correct and complete copy of which is attached hereto as Exhibit A; (2) that certain Conference Center Operating Agreement, dated as of October 15, 1997 (the “Operating Agreement”), between Owners and Operating Tenant, as successor-in-interest (through a series of assignments) to Stormont Trice Management Corporation, a true, correct and complete copy of which is attached hereto as Exhibit B; and (3) that certain Catering Agreement, dated as of October 15, 1997 (the “Catering Agreement”; together with the REA and the Operating Agreement, the “Agreements”), between Owners and Operating Tenant, as successor-in-interest (through a series of assignments) to CSHA, a true, correct and complete copy of which is attached hereto as Exhibit C.

2. Each of the Agreements is currently in full force and effect and has not been amended, modified or supplemented and constitutes the entire agreement among the parties thereto with respect to the subject matter thereof. There are no other agreements or representations among such parties with respect to such matter.

3. Neither Owner has given Operating Tenant a notice of default under any of the Agreements.

4. To the best knowledge of each of the Owners, Operating Tenant is not in default in the performance of any of its obligations under any of the Agreements.

5. The Project, Conference Center and the operations conducted thereon are in full compliance with the terms of the Agreements, and Owners have no defense, rights of set-off, or counterclaims against Operating Tenant under any of the Agreements.

6. Undefined initially-capitalized terms used in this paragraph 6 have the meanings assigned to them in the REA. With respect to the REA: (a) the Annual Operating Budget that has been approved for the current calendar year is attached hereto as Exhibit D; (b) there are no disagreements or disputes with respect to the Allocable Shares of the parties, nor has any such disagreement or dispute been submitted to a third party for resolution pursuant to Section 5.1 thereof; (c) the deadline for delivery to the Owners of the Annual Operating Budget for the next calendar year is [_____]; and (d) all required payments under the REA have been paid through [_____].

7. Undefined initially-capitalized terms used in this paragraph 7 have the meanings assigned to them in the Operating Agreement. With respect to the Operating Agreement: (a) the Operating Term commenced on July 1, 1999, and shall expire on June 30, 2014; (b) the Operating Fee for the current Fiscal Year is [\$_____]; (c) the balance in the CEP Reserve account as of the date hereof is [\$_____] subject to amounts to be deposited for [_____] based upon the Gross Revenues for [_____]; (d) the balance in the Agency Account as of the date hereof is [\$_____]; (e) the Annual Operating Projections that have been approved for the current Fiscal Year are attached hereto as Exhibit E; (f) the deadline for delivery to the Owners of the Annual Operating Projections for the next Fiscal year is [_____]; (g) each Fiscal Year commences on July 1 and ends on June 30; and (h) all required payments under the Operating Agreement have been paid through [_____].

8. Undefined initially-capitalized terms used in this paragraph 8 have the meanings assigned to them in the Catering Agreement. With respect to the Catering Agreement: (a) the term commenced on July 1, 1999, and shall expire on June 30, 2014; (b) the monthly fee referenced in Section 3.2 thereof for the current calendar year is [\$_____]; and (c) all required payments under the Catering Agreement have been paid through [_____].

9. There is no action, suit or proceeding, whether existing, pending or known to be threatened, including that certain civil action styled *Freeman v. Robert Ring, et al.*, referred to in the Operating Agreement and the Catering Agreement, against or affecting the Project or the Conference Center in any court or before any arbitrator, or governmental authority.

10. Owners currently have in place property and casualty insurance for the Conference Center in accordance with the certificate attached hereto as Exhibit F. At any time during the term of the Agreements, Owners will promptly confirm the continued existence of such insurance coverage upon written request by the Lender.

B. Each of the Owners hereby agree that in the event that certain Hotel Lease dated February 2, 2007 (the "Operating Lease") between Borrower and Operating Tenant is terminated and (i) Lender or an affiliated entity acquires title to the Project via foreclosure or a deed-in-lieu of foreclosure and (ii) a third party acquires the Project at a foreclosure sale (any such acquiring party, whether the Lender, an affiliate or third party, referred to as the "New Hotel Owner"), then, at the election of the New Hotel Owner, such New Hotel Owner may assume all rights and duties of the Operating Tenant under the Operating Agreement and Catering Agreement so long as New Hotel Owner demonstrates, to the reasonable satisfaction of Owners that it has substantially the same experience and qualifications as Operating Tenant had with respect to its duties under the Operating Agreement and Catering Agreement or has engaged a third party management company with such experience and qualifications.

(Signatures on next page)

This Estoppel Certificate and Agreement is executed by each of the Owners by their respective duly authorized representatives, effective as of the date first written above.

CITY OF FRANKLIN, TENNESSEE

By: _____

Name: _____

Title: _____

WILLIAMSON COUNTY

By: _____

Name: _____

Title: _____

Exhibit A

Reciprocal Easement, Operating and Use Agreement

Cool Springs Conference Center

Year-Over-Year Comparison

	2010-2011 Budget	2009-2010 Actual/Fcst	2010-2011 Variance to 2009-2010 Actual/Fcst	% +/-	% Change
INCOME STATEMENT					
REVENUES					
Rooms	5,754,049	5,271,075	482,974	9.2%	
Food & Beverage	24,000	0	0		
Other Operated Departments	6,778,049	26,520	(2,520)	-10%	
Rentals & Other Income	100%	5,297,594	480,455	0%	9.1%
Total Revenues					
EXPENSES					
Rooms	3,378,555	3,205,522	173,033		
Food & Beverage	3,378,555	3,205,522	173,033	-2.0%	5.4%
Other Operated Departments	2,399,494	2,092,072	307,422	2.0%	14.7%
TOTAL DEPARTMENTAL INCOME					
UNDISTRIBUTED OPERATING EXPENSES					
Administrative & General	514,272	467,843	46,429	0.1%	9.9%
Sales & Marketing	613,160	579,660	33,500	-0.3%	5.8%
Repairs & Maintenance	245,279	215,522	29,757	0.2%	13.8%
Utilities	323,164	311,840	11,304	-0.3%	3.6%
Total Other Expenses	1,695,874	1,574,865	120,989	-0.4%	7.7%
GROSS OPERATING PROFIT (GOP)	703,620	517,187	186,433	2.4%	36.0%
MANAGEMENT FEES					
Management Fees	333,372	323,657	9,715	-0.3%	3.0%
Incentive Management Fees	0	0	0		
INCOME BEFORE FIXED EXPENSES	370,248	193,530	176,718	2.8%	91.3%
FIXED EXPENSES					
Rent	0	0	0		
Leases	0	0	0		
Property & Other Taxes	37,569	2,788	(2,788)	-0.1%	-150.0%
Insurance	0.6%	40,170	(2,620)	-0.1%	-6.3%
Leaseback Payment	1,400	0	1,400		
Other Fixed Expenses	38,900	42,907	(4,007)	-0.1%	-9.3%
TOTAL FIXED EXPENSES	331,348	150,623	180,725	2.9%	120.0%
NET OPERATING PROFIT (EBITDA)	0	0	0		
Interest	0	0	0		
Depreciation	0	0	0		
Amortization	0	0	0		
INCOME BEFORE INCOME TAXES	331,348	150,623	180,725	2.9%	120.0%
Income Taxes	231,122	211,918	19,215	0.0%	9.1%
NET OPERATING INCOME (NOI)	100,226	(61,281)	161,507	2.9%	263.6%

ASSUMPTIONS
 (1) Nonfuel Food POCG increases to \$47.15 for Fiscal Year 2010-2011 from \$42.97 in Calendar 2009 and \$57.66 projected for fiscal year 2009-2010.
 (2) Average Checks - Increases of 2% for June through August, 3% for September through December, 5% for January through March and 7% for April through June.