

RESOLUTION NO. 2007-226

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY FLORIDA, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE, TO ENTER INTO THE OPERATING AGREEMENT CONSENT AND ESTOPPEL SUBSTANTIALLY IN THE FORM OF EXHIBIT "A," ATTACHED HERETO, BETWEEN ST. JOHNS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, ATRIUM FINANCE IV, LP, A DELAWARE LIMITED PARTNERSHIP, ATRIUM TRS IV, LP, A DELAWARE LIMITED PARTNERSHIP, FOR THE BENEFIT OF GERMAN AMERICAN CAPITAL CORPORATION, A MARYLAND CORPORATION

WHEREAS, St. Johns County, a political subdivision of the State of Florida had entered into various agreements with Atrium Hotels (as known as, John Q. Hotels Two, L.P.,) and other various individuals and corporation as referenced in County Resolution 95-28, and those other various agreements as recorded in the Public Records of St. Johns County; and,

WHEREAS, the County and Atrium Hotels Two, L.P. (formerly known as John Q. Hammons Hotels Two, L.P.) ("Original Operator") have entered into that certain Operating Agreement (the "Agreement") dated as of July 24, 1996, as assigned by that certain Omnibus Assignment, dated on or about the date hereof, from Original Operator to Operator, pursuant to which Agreement Operator agreed to, among other things, manage, operate and maintain the Convention Center (as such term is defined in the Agreement); and,

WHEREAS, Operator and Atrium Finance are desirous of obtaining from Lender a loan (the "Loan") secured by, among other things, a first mortgage on Operator's and Atrium Finance's interest in the adjacent hotel property, and Operator has agreed to collaterally assign its interest in the Agreement to Lender; and

WHEREAS, Lender is unwilling to make the Loan unless the County executes and delivers this Estoppel to Lender.

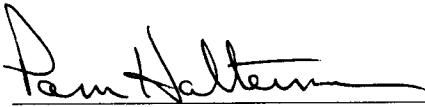
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

Section 2. The County Administrator is hereby authorized to execute the Operating Consent And Estoppel substantially in the form of Exhibit "A," attached hereto, between St. Johns County, A political Subdivision of the State of Florida, Atrium Finance IV, LP. A Delaware Limited Partnership, Atrium TRS IV, LP, a Delaware Limited Partnership, for the Benefit of German American Capital Corporation, a Maryland Corporation, after due inquiry is made.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, State of Florida, this 7th day of August, 2007

ATTEST:
Cheryl Strickland, Clerk



Deputy Clerk

Board of County Commissioners
of St. Johns County, Florida

By: 

Ben Rich, Chairman

Effective Date: 8/14/07

Rendition Date: 8/14/07

Exhibit "A"

Please refer to Agreement, as attached.

OPERATING AGREEMENT CONSENT AND ESTOPPEL

THIS OPERATING AGREEMENT CONSENT AND ESTOPPEL (this "Estoppel") is made as of the ____ day of August, 2007, by **ST. JOHNS COUNTY**, a political subdivision of the State of Florida, having an address at County Administrative Building, 4020 Lewis Speedway, St. Augustine, FL 32095 (hereinafter, the "County"), for the benefit of **ATRIUM TRS IV, LP**, a Delaware limited partnership, having an address at 6900 East Camelback Road, Suite 607, Scottsdale, Arizona 85251 (hereinafter "Operator"), and for the benefit of **GERMAN AMERICAN CAPITAL CORPORATION**, a Maryland corporation, having an address at 60 Wall Street, 10th Floor, New York, New York 10005 (hereinafter "Lender"), and for the benefit of **ATRIUM FINANCE IV, LP**, a Delaware limited partnership, having an address at 6900 East Camelback Road, Suite 607, Scottsdale, Arizona 85251 (hereinafter "Atrium Finance").

WHEREAS, the County and Atrium Hotels Two, L.P. (formerly known as John Q. Hammons Hotels Two, L.P.) ("Original Operator") have entered into that certain Operating Agreement (the "Agreement") dated as of July 24, 1996, as assigned by that certain Omnibus Assignment, dated on or about the date hereof, from Original Operator to Operator, pursuant to which Agreement Operator agreed to, among other things, manage, operate and maintain the Convention Center (as such term is defined in the Agreement); and,

WHEREAS, Operator and Atrium Finance are desirous of obtaining from Lender a loan (the "Loan") secured by, among other things, a first mortgage on Operator's and Atrium Finance's interest in the adjacent hotel property, and Operator has agreed to collaterally assign its interest in the Agreement to Lender; and

WHEREAS, Lender is unwilling to make the Loan unless the County executes and delivers this Estoppel to Lender.

NOW THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the County hereby agrees with Lender as follows:

1. The recitals set forth above are hereby incorporated herein by reference.
2. The County hereby consents to the assignment of the Agreement from Original Operator to Operator.
3. The County hereby consents to the collateral assignment of the Agreement to Lender and agrees to recognize Lender as a "Permitted Lender" under the Agreement.
4. Unless otherwise notified by Lender, any and all notices to be given to Lender as under the Agreement shall be sent to Lender at the following address:

German American Capital Corporation
60 Wall Street, 10th Floor
New York, New York 10005

Attention: Jeffrey Paige and General Counsel
Telecopy No.: (212) 797-4489

5. The County hereby certifies as follows:
- (a) The Agreement is in full force and effect in accordance with its terms and has not been further assigned, supplemented, modified or otherwise amended except as set forth in the recitals hereto and each of the obligations on the County's part to be performed to date under the Agreement (if any) have been performed..
 - (b) To the best of the County's knowledge, each of the obligations on Operator's part to be performed to date under the Agreement have been performed.
 - (c) To the best of the County's knowledge, Operator has no offsets, counterclaims, defenses, deductions or credits whatsoever with respect to the Agreement.
 - (d) Other than the Agreement (or as expressly set forth in the Agreement), there do not exist any other agreements concerning the Convention Center, whether oral or written, between the County and Operator (or their respective predecessors or successors), except as follows: Memorandum of Understanding, dated as of February 14, 1995, by and between Original Operator and County.
 - (e) Pursuant to Section 4.1 of the Agreement the initial term of the Agreement shall be for thirty (30) years, which thirty (30) years began on the "Completion Date" (as defined in the Agreement).
 - (f) County has not assigned, conveyed, transferred, sold, encumbered or mortgaged its interest in the Agreement or the Convention Center and there are currently no mortgages, deeds of trust or other security interests encumbering County's fee interest in the Convention Center and no third party has an option or preferential right to purchase all or any part of the Convention Center.

This Estoppel and the representations and agreements made herein are given with the understanding that this Estoppel constitutes a material inducement for Lender in making the Loan to Operator and Atrium Finance and that Lender shall rely hereon in making the Loan to Operator and Atrium Finance. This Estoppel and the representations and agreements made herein shall inure to the benefit of Lender, its successors and assigns and shall be binding on the County, its legal representatives, successors and assigns. This Estoppel may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the County has caused this Estoppel to be duly executed by its duly authorized representative, all as of the day and year first above written.

COUNTY:

ST. JOHNS COUNTY,
a political subdivision of the State of Florida

By: _____
Name:
Title:

