

DEVELOPMENT AGREEMENT (BAREFOOT BEACH RESORT)

THIS AGREEMENT (the "Agreement") made and entered into this 1st day of December, 2015, by and between the **CITY OF MADEIRA BEACH**, a municipal corporation of the State of Florida hereinafter referred to as "City" and **BAREFOOT BEACH RESORT SOUTH L.L.C.**, a Florida Limited Liability Company authorized to transact business in the State of Florida, hereinafter referred to as "Developer".

FOR AND IN CONSIDERATION of the mutual promises made and agreed to be kept hereunder and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the approval of certain uses by the City and conditioned on the performance in all respects of this Agreement by each of the parties, it is hereby agreed between the parties as follows:

RECITALS

1. Developer is the current fee simple owner and Developer of that certain tract of land located within the City of Madeira Beach, Pinellas County, Florida, hereinafter referred to as the "Property" and more particularly described in Exhibit "A" attached hereto and made a part hereof.

2. The following development rights are hereby approved pursuant to this Agreement on the Property:

Category	Regulations
Future Land Use	Resort Facilities Medium
Zoning	PD Planned Development
Usage	Hotel (73 rooms/suites)
Density (Units per Acre)	60 Temp Lodging/Acre Allowed 59 Temp Lodging/Acre Actual
Lot Area	53,976 sq. ft. 1.24 Acres
Lot Width	(N) 314.0 ft. (S) 87.6 ft.
Maximum Building Width (street frontage)	176.0 ft.
Building Coverage (sq. ft. & % of gross site)	16,240 sq. ft. 30%
Gross Floor Area (sq. ft.) FAR (Floor Area Ratio)	50,992 sq. ft. 0.943 FAR
Setbacks: Front (East)	20'-0" Elevator / Stair Tower / First Level 26'-0" to Main Building (East Variance / PD)
Rear (West)	11'-0" Building / Balcony Above 17'-0" to Main Building

	(West Variance / PD)
Side (North)	85.78 ft./Hotel
Side (South)	61.01 ft./Hotel
Total side combined*	146.79 ft.
Front (East)	20'-0" Elevator / Stair Towers / First Level 26'-0" Main Building (East Variance / PD)
Rear (West)	Balconies above 11'-0" Main Building 17'-0" (West Variance/PD)
Building Height	68'-8 1/2" above BFE to top of roof / 5 stories over parking (Variance/PD)
Vehicular Use Area (V.U.A.)	23,034.4 sq. ft. 43%
Impervious Surface Area (ISR)	39,275 sq. ft. 72.8% ISR
Open Space (sq. ft. and % of gross site)	14,701 sq. ft. 27.2%
Parking Lot Interior Landscape (sq. ft. and % of V.U.A.)	3,075 sq. ft. 13%
Parking	84 spaces provided
Parking Calculations/Notes: 73 tourist room/suite @ 1 space/room required = <u>73 spaces</u> <div style="text-align: right;"> Provided 84 spaces 73 required </div> Allowable compact spaces = (84 x 20%) = 16.8 spaces allowed Ancillary Rooftop Bar / Sun Deck / Fitness Room with typical and customary limited food service for hotel guests for their convenience only.	

more particularly set forth in the Final Site Plan attached hereto as Exhibit "B" (hereinafter referred to as the "**Project**").

3. The development rights set forth in this Agreement, and Final Site Plan approval are subject to the following conditions:

- a. Approval of the rezoning of subject property from R-3, General Commercial, to PD, Planned Development concurrent with the finalization of this Development Agreement.
- b. The Developer shall provide a topographic survey with sufficient elevations to show detailed offsite drainage patterns.
- c. The following items shall be included or addressed within the Final Site Plan:
 - i. Sight visibility triangles at all access drive aisles pursuant to Section 106-39 and Section 110-423, Madeira Beach Code of Ordinances.
 - ii. Note on the Landscape Plans, "When an access way intersects a public right-of-way or other access way, or when the subject property abuts the intersection of two or more public right-of-ways, all landscaping within the triangular areas described as [or] referred to as the "cross-visibility area," shall provide unobstructed cross-visibility at a level between 36 inches and eight feet. Trees and plant material trimmed in such a manner that cross visibility is not hindered will be allowed, provided they are located so as not to create a traffic hazard, as determined by the City."
 - iii. Calculation showing the Developer will meet the required minimum of ten percent interior landscaped areas, which is exclusive of perimeter landscape buffers that are required around vehicular use areas but may include perimeter landscaping that is in excess; and calculation showing a minimum of one tree for each 400 square feet or fraction thereof of required landscape area, pursuant to Section 106-34, Madeira Beach Code of Ordinances.
 - iv. Proposed development phases, if applicable, pursuant to Section 110-393, Madeira Beach Code of Ordinances.
 - v. Provide the handicap parking calculation, the three required handicapped spaces and relocation of the handicapped parking space with a blind back-out.
 - vi. Adjust the most northeast parking space, which requires a 5 foot offset back-out.
 - vii. Provide dimensioned site plan for drive aisles and parking spaces.
 - viii. Provide a grading plan for the site.

- ix. Provide stormwater outfall control details and drainage connection detail to FDOT right of way.
 - x. Provide location and dimension of nearest fire hydrant.
 - xi. Provide detailed utility connections located within the FDOT right of way; FDOT utility permits may be required.
 - xii. Provide supporting drainage calculations for proposed increase in impervious (vehicular use area) which comply with the standards of Section 98-36, Madeira Beach Code of Ordinances.
- d. All utilities serving the proposed facility shall be underground. The plans shall be noted and connectivity shown.
- e. Where necessary to accommodate proposed development, the Developer shall be responsible for the removal and/or relocation of any and all public utilities located on the subject site, including the granting of easements as may be required. This is regardless of whether the public utilities are known at the time of site plan approval or discovered subsequent to such approval. Any required relocation will require approval from the City's Community Services Department.
- f. All construction associated with this project shall be subject to the current requirements of the Florida Building Code, Madeira Beach's land development regulations, the Florida Fire Prevention Code, all other technical codes adopted by the City of Madeira Beach, and FEMA.
- g. All on-site construction activities related to erosion control shall be applied as required by the Florida Building Code and the Madeira Beach Code of Ordinances.
- h. Proof of NPDES-BMP Permit being issued to Developer.
- i. Proof of SWFWMD approval or exemption of the drainage retention plan is required prior to building permits being issued.
- j. Final approval of the City's consulting engineer of the site plan prior to building permits being issued.
- k. Final approval of the Community Services Director of the plans for solid waste collection prior to building permits being issued.
- l. Proof of FDOT Drainage Connection Permit or exemption being issued to Developer.
- m. Proof of FDOT Access Permit being issued to Developer.

n. Final approval of the Community Development Department and the City's consulting civil engineer for the site's compliance with the approved site plan prior to the Certificate of Occupancy being issued.

o. The Developer shall provide revised plans or redline current plans in response to the City's consulting reviewers' comments.

p. Final Site Construction Plans must be submitted, signed and sealed by a Florida Registered Professional Engineer, meeting the requirements of the City of Madeira Beach's Code of Ordinances.

q. Prior to building permits being issued the Developer shall provide a letter from the potable water provider (Pinellas County) stating that adequate capacity is available for the fire sprinkler demand requirements.

r. Prior to building permits being issued the Developer shall provide a letter from the sanitary sewer service provider (Pinellas County) stating there is adequate capacity.

s. The proposed Roof Deck, Fitness Room, and Bar Area shall be clearly ancillary and subordinate to the principal hotel use. The proposed facilities are intended for the convenience of the hotel guest and as such shall operate in a manner that is customary and incidental to the operation of a hotel. It is understood that the practice of providing at least limited food service is a service expected by hotel guests and a service that is routinely provided by hotels. Such restaurant shall comply with the definition of ancillary use found in Section 82-2 of the Madeira Beach Code of Ordinances and noted below. Because of its limited nature, this ancillary restaurant does not increase the need for additional parking.

Ancillary use means a use which is either: Subordinate to and serves a principal building or use; subordinate in area, extent, and purpose to the principal building or use served; contributes to the comfort, convenience, or necessities of the users or occupants of the principal building or use; and is located on the same lot as the principal building or use. Unless otherwise specified, no ancillary use shall exceed 25 percent of the gross floor area of the principal building or use.

4. All calculations for infrastructure improvements and land use requirements, such as but not limited to, drainage calculations, parking requirements and other requirements, shall be based on the site and character of the Project.

5. Developer represents that to the best of its knowledge, as of the date of the execution of this Agreement that there are no liens, encumbrances, mortgages, equitable interest or other types property interests held by any other person, firm or corporation whose legal or equitable interest in the lands constituting the Property will be affected by the matters contained in this Agreement which are not subordinated to this Agreement.

The Developer has the full right and legal authority to enter into this Agreement and to agree to and execute all the legal obligations set forth herein. The Developer further represents and warrants that it shall not cause any rights or encumbrances on the Property to arise at any time between the execution of this Agreement and the recording of this Agreement in the Public Records of Pinellas County, Florida, which are not subordinate to this Agreement.

6. The City desires to have the Project developed as a unified development with each portion of the Project being treated as an integral part of a unified development. In furtherance of the Developer's development of the Project as a cohesive whole, the Developer agrees that no subdivision of the Property shall be allowed, other than the potential sale of transient hotel units shown on the site plan as part of a hotel/condominium.

7. The parties agree that both Sections 163.3220 through 163.3243 F.S. (2015), the **Florida Local Government Development Agreement Act ("Act")** and Sections 86-141 through 86-149 of the **Code of the City of Madelra Beach ("Code")**, are fully complied with in all respects by the parties. The provisions of said Act and Code provisions are incorporated herein by reference, and in the event of any conflict between the language of this Development Agreement and the above sections of the City's Zoning Code, such conflict will be resolved in favor of the provisions of the Code in effect as of the date of this Agreement. Changes to the Code regarding life/safety matters (building codes, fire codes, etc.) shall be enforceable as of the effective date thereof. The Act, referenced Code provisions, the Final Site Plan and terms of this Agreement shall govern the development of the Property and the relationship of the parties in the terms of this Agreement. Any matters required by State Statute, the Florida Administrative Code or City Code which are not specifically addressed as part of this Agreement shall, nevertheless, be complied with by the parties. The parties and their respective successors in title shall be responsible for the obligations as more particularly set forth under the terms of this Agreement and this Agreement shall act as a covenant running with the Property and shall be enforceable by the parties hereto.

The City shall have the absolute discretion to amend and/or enforce life safety codes of general applicability that may modify the provisions of this Agreement or may impose additional burdens on the Developer as is otherwise authorized by State Statutes, City ordinances or the regulation of governmental administrative agencies. The parties agree that the legislative discretion of the City Commission to adopt such life safety codes shall be superior to any agreements contained herein and such codes may be adopted without any special notice to the Developer and that the Developer shall not be entitled to any special hearing relative to the adoption of such codes.

8. The Project shall be developed in accordance with the Final Site Plan attached hereto as Exhibit "B" and incorporated herein by reference. For this reason, the compliance by the City, Developer and respective successors in title with the Final Site Plan, as described in Exhibit "B", on a continuing basis is of critical importance to the City and Developer, and any deviation therefrom shall be deemed to be a material breach of this Agreement and of the covenants which are entered into by the parties and are recorded for the long-term protection of the public.

9. The City hereby reserves the capacity in the public facilities necessary to serve the Project.

10. The Developer and City have agreed to the provisions, restrictions, limitations and requirements which are otherwise set forth in detail in this Agreement and any exhibits attached hereto.

11. It is of paramount importance to each of the parties hereto that the Property be developed as set forth in the Final Site Plan and in this Agreement and that the development of the Property be completed on a timely basis; that the Project be completed in its entirety; that the structures constructed on the Property be constructed in substantial compliance with the terms of the Final Site Plan and this Agreement; that the uses allowed on the Property be limited as set forth in the Final Site Plan and this Agreement; and that such restrictions and controls be continued in accordance with their terms and be applicable to and binding upon the parties hereto and their respective successors and assigns.

12. The City Commission finds that the development permitted pursuant to this Agreement is consistent with the City's Comprehensive Land Use Plan and the land development regulations of the City.

THE AGREEMENT BETWEEN THE PARTIES

13. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference as fully enforceable agreements and representations by the parties hereto.

14. Authority. This Agreement is authorized by Section 163.3220, et seq. F.S. (2015) and Sections 86-141 through 86-149 of the Code of Ordinances of the City of Madeira Beach.

15. Effective Date. This Agreement shall be effective as of the day after it is fully executed and recorded in the Pinellas County public records ("Effective Date"). In the event that there is an appeal or legal proceeding challenging this Agreement or challenging the other matters affecting the purpose, intent, or the rights of the Developer or the City to develop the Property as contemplated hereby, the Effective Date of this Agreement shall be extended and shall commence upon the conclusion of such litigation, including appeals and upon all rights of appeal having expired. In the event that a Court decision materially changes any aspect of this Agreement or has made the performance of a portion of this Agreement impossible or unacceptable to one of the parties, either party may choose to terminate this Agreement upon thirty (30) days written notice to the other party and the parties shall assist each other in returning each party to the positions and legal status that it enjoyed immediately prior to the date of the entry into this Agreement; or, alternatively, the parties shall work together to restore the material benefit if such is reasonably possible.

In the event that this Agreement is subject to termination pursuant to the provisions hereof, either party may record an affidavit signed by all parties hereto or their respective successors and assigns in the Public Records of Pinellas County, Florida reflecting that such termination has occurred and that this Agreement is thereby terminated and by such affidavit, notice that the termination provisions of this Agreement pursuant to this paragraph have occurred. The party recording such affidavit shall send a copy of the recorded affidavit to the other party and this Agreement shall be terminated and shall be deemed void and of no further force and effect. In the event that the Developer's fee simple title is encumbered by any mortgages, liens or other rights of third persons which are not subordinated to the terms, conditions, covenants and restrictions set forth in this Agreement, said third party encumbrances shall be of no force and effect as to the provisions of this Agreement.

This Agreement shall be superior to any mortgages, liens or other rights of third persons. Any mortgages or liens or encumbrances on the Property created contemporaneously or after the transfer of title from the City to the Developer shall specifically provide that they are subject to and subordinate to the terms of this Agreement.

In the event that this Agreement is not executed by the Developer on or before 5:00 p.m. on the 31st day of December, 2015 this Agreement shall be null and void and of no further force and effect and any development permissions granted pursuant hereto shall no longer be valid.

16. Duration of Agreement. This Agreement shall terminate upon the earlier of the following dates: (i) the date on which construction of the Project is complete and issuance of a valid Certificate of Occupancy for the Project; or (ii) ten (10) years from the Effective Date. This time period may be extended by mutual agreement of the parties. The recordation of a valid Certificate of Occupancy by any party hereto or their successor in interest shall be conclusive evidence of the termination of this Agreement.

17. Third Party Rights. The parties represent, to their respective best knowledge, that nothing herein is barred or prohibited by any other contractual agreement to which it is a party, or by any Statute or rule of any governmental agency, or any third party's rights or by the rights of contract vendees, lien holders, mortgage holders or any other party with a direct or contingent interest in the Property, whether legal or equitable.

It shall be an absolute condition precedent to any obligation of the City under the terms of this Agreement that any mortgage holder consent to and subordinate its mortgage interest to the terms of this Agreement.

If the Developer has title to the Property prior to the execution of this Agreement, the Developer shall submit a title opinion by a title company or attorney at law certifying in writing as of the date of approval of this Agreement by the City Commission of the City of Madeira Beach as to the status of title of such lands including all lien holders, mortgagees or any other encumbrances. The City will rely on such certification. If any lienholder or mortgagee is shown by the title opinion, a satisfaction or subordination shall be received by the City of Madeira Beach prior to the time the City executes this

Agreement although the approval of the execution of this Agreement may be made by the City Commission contingent upon the receipt of such consent and subordination.

Any lienholder or mortgagee shall have the right to perform any term, covenant or condition and to remedy any default hereunder, and City shall accept such performance with the same force and effect as if furnished by Developer.

18. Law and Ordinance Compliance. The ordinances, policies and procedures of the City concerning development of the Property that are in existence as of the approval of this Agreement shall govern the development of the Project, and the same shall be in compliance with the applicable regulations of County, State and Federal agencies. No subsequently adopted ordinances, policies, or procedures shall apply to the Project except in accordance with the provisions of Section 163.3233(2), Florida Statutes (2015). Notwithstanding the foregoing, the City shall have the absolute discretion to amend and/or adopt life safety codes such as but not limited to fire codes, that may conflict with the provisions herein or may impose additional burdens on the Developer as is otherwise authorized by State Statutes or the regulations of governmental administrative agencies, provided that such life safety codes retroactively apply to all development similar to the Project in the City. The parties agree that such codes may be adopted without any special notice to the Developer and that the Developer shall not be entitled to any special hearing relative to the adoption of such codes. Failure of this Agreement to address a particular permit, condition, term, restriction, or to require a development permission shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions in any matter or thing required under existing Ordinances of the City or regulations of any other governmental agency, or any other entity having legal authority over the Property. Except as provided in this Agreement, all applicable impact fees, development review fees, building permit fees and all other fees of any type or kind shall be paid by Developer in accordance with their terms and in such amount applicable as they become due and payable net of any applicable credits for existing structure.

19. No Estoppel. The parties agree that prior to the approval of this Agreement by the City Commission, the City's interest in entering into this Agreement, the studies, surveys, environmental studies, consultant plans or investigations, the expenditure of substantial funds, the staff approval or recommendation relative to the proposed development and any other act in furtherance of this Agreement, shall not be used by the Developer or its successors in title in any way whatsoever as committing the City legally through a theory of equitable estoppel, action in reliance, or any other legal theory as to the approval of such proposed development in the event that this Agreement is not approved by the City Commission or for any other reason does not take effect in all material respects.

The parties further agree that any and all action by the Developer or its representatives in negotiation of this Agreement, including all acts or expenditures in the implementation of this Agreement or submittals to other governmental bodies shall in no way be deemed to be an action in reliance giving rise to an equitable estoppel.

20. No Partnership or Joint Venture. The City and Developer agree that the matters contained in this Agreement shall under no circumstances constitute a joint venture, partnership or agency between them. No third party shall be deemed to have any beneficial interest in this Agreement or any expectation of benefit or property rights or any other rights of any kind arising from this Agreement.

21. Final Site Plan. In order to avoid any adverse impacts from the development of the Property on the abutting property owners and on the residents of the City of Madeira Beach, the parties agree that the Property will be developed in substantial conformance with the Final Site Plan attached hereto as Exhibit "B" as such Final Site Plan may be modified by the requirements of other state and county governmental agencies having jurisdiction over the development of the Property. The appearance and use of the Property after development are the reasons that the City Commission exercised its legislative authority and entered into this Agreement. Except as may be authorized by the parties hereto, any material deviation from the commitments made by the parties herein shall be considered material defaults in this Agreement. The City of Madeira Beach shall not consent to any modification unless it deems that such is in the best interest of the public and in its discretion in reaching such decision it shall be deemed to be acting in a legislative capacity and within its sole and absolute discretion taking into account the public health, safety and welfare. The following specific requirements shall also be met:

- a. The Property shall be developed and landscaped in accordance with the Final Site Plan attached hereto as Exhibit "B" and incorporated herein. A detailed landscape plan is provided with the Final Site Plan and will be specifically adhered to. The landscaping within the Property shall be maintained by the Developer. The purpose of landscaping and the continued development and care of the landscaping on the Property is, in part, for the benefit of the abutting property owners and to screen light, noise and other possible negative aspects of the development. Such landscaping shall be provided prior to a certificate of occupancy being issued and will be maintained in good and healthy conditions at all times by the Developer.

There shall not be any material deviation from the provisions of the Final Site Plan unless such is approved by the City Commission of the City of Madeira Beach at a public hearing conducted for such purpose and this Agreement is modified in writing by the parties thereto for the purpose of agreeing to such deviation.

- b. The Property shall be developed substantially in accordance with the Final Site Plan (Exhibit "B") attached hereto and incorporated herein.
- c. All outdoor lighting on the Property shall be directed downward so as not to be disruptive to the residential neighborhoods abutting the Property and shall be oriented and shielded so that no light is cast directly on abutting property. Light cast onto abutting properties by reflection or otherwise shall be limited to an intensity that is substantially in conformance with the lighting

conditions in residential neighborhoods in the City of Madeira Beach. At no time shall the Developer allow a nuisance condition to exist on the Property.

- d. Dumpster and trash pickup will be contained within the Property and fully screened from adjacent residential properties.
- e. Ingress and egress to the Property shall be as shown on the Final Site Plan.
- f. Building heights, architectural style and location will be as shown on the Final Site Plan. The architectural style reflected as an attachment to or being part of the Final Site Plan shall be complied with in all material respects during the development of the Project.
- g. This Agreement and the Final Site Plan attached hereto specify certain minimum setbacks, building heights, sign sizes and similar dimensional requirements and agreements. No changes may be made in these agreed upon dimensional requirements or in any matter that is reflected on the Final Site Plan or addressed specifically in this Agreement through any appeal process to the Special Magistrate for a variance, special exception or other process which would serve to vary or change the terms of this Development Agreement and the Final Site Plan attached hereto. The only change which may be requested by the parties is for an amendment to this Agreement which revised amendment is legislatively considered by the City Commission and agreed to by the City Commission, set forth in writing as an amendment to this Agreement and executed by the parties hereto or their successors or assigns. The Developer, and its successors and assigns specifically waive and relinquish any right to change the terms of this Agreement through any administrative or legal process, including a decision by a court of competent jurisdiction, unless agreed to by the parties.

22. Public Infrastructure. The Developer or its successor in title, as appropriate, at its sole cost, shall design, construct and maintain, until acceptance by the City and conveyance by recordable instrument or bill of sale, as appropriate, to the City, all public infrastructure facilities and lands necessary to serve the Project, provided that said public infrastructure facilities have received construction plan approval and that all applicable review procedures have been complied with fully, inspected and accepted by the City. Public infrastructure facilities shall include those facilities to be located in rights-of-way or easement areas conveyed to the City, as shown on the approved engineering construction drawings and shall include, but not be limited to the following:

- a. Pedestrian ways, sidewalks, and crosswalks located on the Property, as shown on the Final Site Plan.
- b. Sewer collection systems, located on the Property, including any necessary pumping facilities providing for transmission of sewage flows generated by the Project.

- c. Water distribution system located on the Property including fire protection facilities and reclaimed water facilities as may be necessary to serve the Project.
- d. Stormwater drainage systems serving public facilities located on the Property, serving to conduct, transmit, channel or otherwise provide for stormwater flow from, through and to adjoining lands according to the natural site topography including retention/detention ponds or any other stormwater facilities required by the City of Madeira Beach or any other governmental agency with jurisdiction concerning such facilities. Any required easements or other rights of access to insure the continued maintenance and working condition of said retention/detention ponds shall be granted to City by the Developer or to Developer by City, as may be applicable.
- e. Street signage and pavement striping.
- f. Utility easements or rights-of-way.
- g. Other facilities deemed necessary for public use, including but not limited to off-site road and drainage facilities as identified in the site plan review process, building permit issuance process, engineering review, fire department review, or any other review process of the City or other governmental agency with jurisdiction over such development.

Public infrastructure facilities shall be complete, and approved for acceptance by the City prior to the issuance of any certificate of occupancy on the Property, or the Developer shall provide the appropriate letter of credit in a form satisfactory to the City Attorney, drawable on or through a local Pinellas County bank. Said letter of credit shall be deposited with the City to guarantee the completion of public infrastructure facilities prior to the time that certificates of occupancy are issued on the Property and public access and facilities to serve the proposed structures are available in accordance with City regulations.

23. Public Facilities. The City shall cause to be provided to the boundary of the Property the following available City owned and operated facilities, to wit: infrastructure and services for fire protection, potable water and sanitary sewer to meet domestic and fire flow levels of service as required for the Project by City and other applicable regulations.

24. Permits. Development permits, which may need to be approved and issued, include, but are not limited to the following:

- a. City of Madeira Beach building permits.
- b. Southwest Florida Water Management District surface water management permit.

- c. City of Madeira Beach Engineering construction permit.
- d. Florida Department of Environmental Protection NPDES permit.
- e. Florida Department of Health drinking water permit.
- f. Florida Department of Environmental Protection wastewater collection permit.
- g. All other approvals or permits as required by existing governmental regulations as they now exist.

Except as set forth in this Agreement, all development permits required to be obtained by the Developer for the Project will be obtained at the sole cost of the Developer and in the event that any required development permissions issued by entities other than the City are not received, no further development of the Property shall be allowed until such time as the City and the Developer have reviewed the matter and determined whether to modify or terminate this Agreement.

25. City Impact Fee Credits.

- a. Project. The City will compute and will grant certain impact fee credits for the Project to the Developer consistent with City ordinances and reflecting previous uses on the Property, which entitle the Developer to transportation, impact fee credits.

26. Recycling. The Developer and its successors-in-title will cooperate with City to encourage and promote recycling activities within the Project and such commitment will be reflected in a covenant running with the Project lands.

27. Annual Review. The City of Madeira Beach the City shall review the Project once every twelve (12) calendar months from the Effective Date.

28. Recordation. Not later than fourteen (14) days after the execution of this Agreement, the City shall record this Agreement with the Clerk of the Circuit Court in Pinellas County, Florida, and a copy of the recorded Agreement shall be submitted to the Florida Department of Economic Opportunity within fourteen (14) days after the Agreement is recorded. The burdens of this Agreement shall be binding upon, and the benefits of the Agreement shall inure to, all successors and assigns in interest to the parties to this Agreement.

29. Agreement as Covenant. This Agreement shall constitute a covenant running with the Property for the duration hereof and shall be binding upon the Developer and upon all persons deriving title by, through or under said Developer and upon its successors and assigns in title. The agreements contained herein shall benefit and limit all present and future owners of the Property, and the City for the term hereof.

30. Legislative Act. This Agreement is agreed to be a legislative act of the City in furtherance of its powers to regulate land use and development within its boundaries and, as such, shall be superior to the rights of existing mortgagees, lien holders or other persons with a legal or equitable interest in the Property and this Agreement and the obligations and responsibilities arising hereunder as to the Developer shall be superior to the rights of said mortgagees or lien holders and shall not be subject to foreclosure under the terms of mortgages or liens entered into or recorded prior to the execution and recordation of this Agreement. The execution of this Agreement or the consent to this Agreement by any existing mortgage holder, lien holder or other persons having an encumbrance on the Property shall be deemed to be in agreement with the matters set forth in this paragraph.

31. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and no modification hereof shall be made except by written agreement executed with the same formality as this Agreement. The parties agree that there are no outstanding agreements of any kind other than are reflected herein and, except as is otherwise specifically provided herein, for the term of the Agreement the Property shall be subject to the laws, ordinances and regulations of the City of Madeira Beach as they exist as of the date of this Agreement. Any reference in this Agreement to "Developer" contemplates and includes the fee simple title owners of record of the Property their heirs, assigns or successors in title and interest. Any oral agreements, agreements created by written correspondence or any other matter previously discussed or agreed upon between the parties are merged herein.

32. Enforcement. The parties agree that either party may seek legal and equitable remedies for the enforcement of this Agreement, provided however that neither the City nor the Developer may seek or be entitled to any monetary damages from each other as a result of any breach or default of this Agreement. In any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its costs and attorneys fees at mediation, trial and through any appellate proceedings.

Except as provided above, the parties agree that any legislative and quasi-judicial decisions, if any are required, by the City regarding the appropriate land use or other development regulations impacting the Property shall, in no event or under any conditions, give rise to a claim for monetary damages or attorney fees against the City and any claim for such damages or fees by the Developer or its successors or assigns are specifically waived.

33. Execution. The Developer represents and warrants that this Agreement has been executed by all persons having equitable title in the subject Property.

The City represents that the officials executing this Agreement on behalf of the City have the legal authority to do so, that this Agreement has been approved in accordance with the ordinances and Charter of the City and applicable State law, that appropriate approval of this Agreement has been received in a public hearing and that the City Commission of the City of Madeira Beach has authorized the execution of this Agreement by the appropriate City officials.

34. Severability. In the event that any of the covenants, agreements, terms, or provisions contained in this Agreement shall be found invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity of the remaining covenants, agreements, terms, or provisions contained herein shall be in no way affected, prejudiced, or disturbed thereby.

35. Estoppel Certificates. Within twenty (20) days after request in writing by either party or any lender, the other party will furnish a written statement in form and substance reasonably acceptable to the requesting party, duly acknowledging the fact that (a) this Development Agreement is in full force and effect, (b) there are no uncured defaults hereunder by City or Developer, if that be the case, and (c) additional information concerning such other matters as reasonably requested. In the event that either party shall fail to deliver such estoppel certificate within such twenty (20) day period, the requesting party shall forward such request directly to the City Manager and the City Attorney or to the Developer with copies to the Developer's general counsel by certified mail, return receipt requested or by Federal Express or other delivery service in which delivery must be signed for. In the case where the Developer is the requesting party, the Developer may in its sole discretion but without obligation, appear at a public meeting and request the estoppel certificate to insure that the City Manager and staff are aware of the request and the Developer may rely on the statement of the City Manager at such public meeting or may request that the City Manager be directed by the City Commission to respond to the estoppel certificate request in a timely manner.

36. Venue. Venue for the enforcement of this Agreement shall be exclusively in Pinellas County, Florida.

37. Default. Upon default or breach of any substantive portion of this Agreement by any party, the non-defaulting party shall provide written notice via overnight, traceable delivery service of the default and opportunity to cure within sixty (60) days to the defaulting party. Upon the failure of the Developer to cure such defaults, the City shall provide notice via overnight traceable delivery service to Developer of its intent to terminate this Agreement on a date not less than sixty (60) days from the date of such notice and upon the expiration of such period, the City, unless ordered otherwise by a court of competent jurisdiction, may revoke the then existing development permits issued by it and the Developer shall have no claim for damages against the City arising from such revocation. Alternatively, the City may proceed in court to obtain any legal or equitable remedies available to it to enforce the terms of this Agreement. In the event of any default or breach of any substantive portion of this Agreement by the City, the Developer may: (i) give written notice via overnight traceable delivery service to the City of said default with an opportunity to cure within sixty (60) days of receipt of such notice. In the event City fails to cure within said time period, the Developer may thereafter proceed in a court of competent jurisdiction to institute proceedings for specific performance or to obtain any other legal or equitable remedy to cure the default of this Agreement by the City. In any litigation arising hereunder, the prevailing party shall be entitled to recover its costs and attorneys fees at mediation, trial and through any appellate proceedings.

38. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid or by Federal Express, Air Borne Express or similar overnight delivery services, addressed as follows:

To the Developer:
Barefoot Beach Resort South, LLC
P.O. Box 10210
Forth Smith, Arkansas 72917-0210
Attention: Charles Palmer

To the City:
City of Madeira Beach
300 Municipal Drive
Madeira Beach, FL 34698
Attention: Shane Crawford,
City Manager

with copies to:

Thomas J. Trask, Esquire
City Attorney
Trask Daigneault, LLP
1001 S Fort Harrison Avenue,
Suite 201
Clearwater, FL 33756

Notice shall be deemed to have given upon receipt or refusal.

39. Binding Effect. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors and assigns in interest to the parties of this Agreement.

40. Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and their respective seals affixed as of this day of December 1, 2015.


CITY OF MADEIRA BEACH



Witness

By: 

Travis Palladeno, Mayor



Witness

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this 1st day of December, 2015 by Travis Palladeno, Mayor of the City of Madeira Beach, who ☒ is personally known to me or who produced _____ as identification.



SEA S. MARSHALL-BARLEY
NOTARY PUBLIC, STATE OF FLORIDA

Shane Crawford
Shane Crawford, City Manager

Aimee Servedio
Aimee Servedio, City Clerk

APPROVED AS TO FORM:

Thomas J. Trask
Thomas J. Trask, Esquire, City Attorney

BAREFOOT BEACH RESORT SOUTH, LLC

Brian Paul
Witness

Joanis Brigger
Witness

By: Charles Palmer
Charles Palmer, its Manager

STATE OF ~~FLORIDA~~ Arkansas
COUNTY OF ~~PINELLAS~~ Crawford

BEFORE ME, the undersigned authority, personally appeared Charles Palmer, as Manager of BAREFOOT BEACH RESORT SOUTH, LLC who ☒ is personally known to me or who produced _____ as identification and, being first duly sworn, acknowledges that he has read the foregoing and that the same is true and correct, and that he is duly authorized to execute this Agreement on behalf of BAREFOOT BEACH RESORT SOUTH, LLC this 1st day of Dec, 2015.

Janet P. Seaton

NOTARY PUBLIC, STATE OF FLORIDA

Arkansas

JANET P. SEATON
Notary Public-Arkansas
Crawford County
My Commission Expires 01-04-2021
Commission # 12380249

Exhibit "A"

Property Address: 13220 Gulf Boulevard
Madeira Beach, Florida 33708

Parcel ID Numbers: 15-31-15-02741-000-0010
15-31-15-02741-000-0020

Legal Description: LEGAL DESCRIPTION: LOT 5, 6, 7, 8 AND 9, BLOCK 6 MITCHELL'S BEACH, ACCORDING TO PLAT THEREOF AS RECORDED IN PLAT BOOK 3, PAGE 54 OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA, TOGETHER WITH ALL RIPARIAN RIGHTS APPERTAINING THERETO.

AND

LOT 11, 12 AND A PORTION OF LOT 13, BLOCK 6, MITCHELL'S BEACH, ACCORDING TO PLAT THEREOF AS RECORDED IN PLAT BOOK 3, PAGE 54 OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA, LESS THAT PORTION TAKEN BY THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF FLORIDA, BEING FURTHER DESCRIBED AS FOLLOWS: COMMENCE AT THE SOUTHWEST CORNER OF SAID LOT 11, BLOCK 6 FOR A POINT OF BEGINNING AND THENCE RUN NORTH 38°15'59" EAST ALONG THE NORTH RIGHT-OF-WAY OF 133RD AVENUE, A DISTANCE OF 71.65 FEET TO A POINT OF INTERSECTION WITH DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY TAKING (PROJECT #15100-2511); THENCE NORTH 89°37'28" EAST, ALONG SAID RIGHT-OF-WAY TAKING A DISTANCE OF 20.06 FEET; THENCE SOUTH 39°06'57" EAST, ALONG SAID RIGHT-OF-WAY TAKING, A DISTANCE OF 76.71 FEET; THENCE LEAVING SAID RIGHT-OF-WAY TAKING, SOUTH 38°59'04" WEST, A DISTANCE OF 87.44 FEET TO A POINT ON THE EAST RIGHT-OF-WAY OF GULF LANE (A 15 FOOT RIGHT-OF-WAY); THENCE NORTH 39°07'35" WEST, ALONG SAID EAST RIGHT-OF-WAY OF GULF LANE, A DISTANCE OF 91.64 FEET TO THE POINT OF BEGINNING.

Site Area: 53,796.29 sq. ft. (1.24 acres MOL)

