



THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE GOVERNOR  
GOVERNMENT HOUSE  
Charlotte Amalie, V.I. 00802  
340-774-0001

November 14, 2014

SENATOR SHAWN MICHAEL MALONE  
14 NOV 14 PM 6:13  
SENATOR SHAWN MICHAEL MALONE

VIA MESSENGER

The Honorable Shawn Michael Malone  
President  
Thirtieth Legislature of the Virgin Islands  
Capitol Building  
St. Thomas, VI 00802

Re: Lease Agreement Between the Government of the U.S. Virgin Islands and Mandahl Bay Holdings, Inc.

Dear Senator Malone:

Transmitted herewith for your approval, in accordance with the provisions of Title 31, Section 205, subsection (c), of the Virgin Islands Code, is a Lease Agreement between Government of the U.S. Virgin Islands and Mandahl Bay Holdings, Inc. ("MBHI") (hereinafter "Lease Agreement"), which is attached as an appendix to the Agreement between Government of the U.S. Virgin Islands and Mandahl Bay Holdings, Inc. for the Development of The Port of Mandahl.

The Lease Agreement is for the use of Parcel No 33 Estate Mandahl Bay, Great Northside Quarter, St. Thomas, Virgin Island consisting of 23.53 U.S. acres more or less including 9.23 acres of submerged lands located within the Marina basin and seaward of the adjacent shoreline. The property shall be used to develop, construct and operate a hotel, marina, residential units and related ancillary and support activities and facilities and for no other purpose.

Background & History

The Virgin Islands Government and Hans Lollik Corporation, were parties to an agreement dated April 1, 1964 ("original agreement"). On March 31<sup>st</sup>, 2005 (MBHI) became the successor in interest to the original agreement by assignment, pursuant to which MBHI acquired the leasehold interest, for the nearly 60 remaining years on the original agreement, over Parcel No. 33 Estate Mandahl, Great Northside Quarter, St. Thomas, Virgin Islands for the development of a marina and for other uses as stipulated in the original agreement.

While the infrastructure elements provided for under the original agreement,

included, the construction of a road system within 33 Estate Mandahl, land removal, configuration of the parcel to connect the salt pond to the ocean through the construction of a water channel and installation of rock groin breakwater, and dredging of the salt pond to create a marina basin were completed by MBHI, the larger development contemplated under the original agreement remains incomplete as MBHI's vision entails more than a marina. MBHI approached the Government in 2012 to amend the 1964 original agreement to incorporate all of their development plans and seek additional time on the lease. As a result of those discussions, my Administration endeavored to negotiate a new lease rather than an extension of the original agreement in order to ensure adherence to all of the Government's existing requirements for leases to include specific provisions on construction and development timelines, insurance, mortgaging, rent and a detailed list of the improvements planned for the subject property which under the original agreement did not suffice our current standards for such leases. The decision was made to enter into a new agreement with new terms and conditions and to comply with current policies on lease to include adherence to the Coastal Zone Management rules and regulations for submerged lands, which did not appear to be a requirement under the original agreement.

### New Lease

At an anticipated investment of \$425 million, the instant Lease Agreement proposes to accomplish the following:

1. Completion of the marina at 33 Estate Mandahl;
2. Development of a mid-range hotel and convention center;
3. Two (2) fractional interest (timeshare) developments;
4. Renovation and Expansion of the Mahogany Run Golf Course;
5. Construction of Residences and group dwelling units;
6. Development of related commercial, ancillary and support activities; and
7. The creation of approximately 300 construction jobs and 700 permanent jobs.

Key features of the Lease Agreement as compared to the original agreement include: making provisions for adherence to the Coastal Zone Management laws, rules and regulations, land lease rates based upon the current fair market value, and the requirement that development activities for Phase I (Hotel, Marina, and Mandahl Beach Design and Permitting) commence within 15 months and the construction of the Phase I Hotel and Marina completed within 42 months, and commencement of construction for the Marina within 12 months following the start of the Phase I Hotel construction. As there is no financial contingency clause in the Lease Agreement, they have to commence the construction within these time parameters.

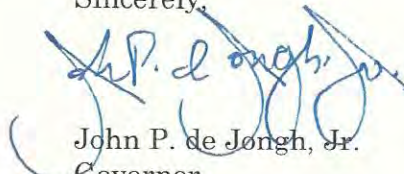
Approval of the enclosed Lease has many significant and positive attributes. First, and most importantly, the opportunity presented in the proposed development will broaden the capabilities of the Territory to seize upon and market to the ever-growing corporate meetings and incentives market, particularly given the fact that a U.S. passport is not required for travel. Secondly, the proposed investment will drive not only expansion of room capacity and available amenities but will also broaden and diversify the Territory's tourism product, which will undoubtedly trickle down to many of our small businesses

including tourist attractions and excursions, retail, pleasure boating and sailing, nightlife, eco-tourism, restaurants, rental cars and taxi services. Third, the approval of this project will provide much-needed construction jobs during the development phases as well as significant permanent jobs upon completion, thereby increasing the overall economic activity throughout the Territory. This will be our first new hotel and resort construction in over twenty years, and the association with Hyatt Corporation, and especially their Regency brand, puts us in an up-scale range and ensures our competitive positioning. At a time that our regional competitors are expanding and broadening their hotel products and attracting hotel brands to increase visitor traffic, this investment is coming at a most opportune time for the Territory.

As always, members of my Administration including the Attorney General and the Commissioners of the Departments of Property & Procurement and Planning and Natural Resources will make themselves available as necessary to discuss this measure.

The Thirtieth Legislature's prompt and favorable consideration of this Lease Agreement will be greatly appreciated.

Sincerely,



John P. de Jongh, Jr.  
Governor

*Enclosures*

AGREEMENT  
BETWEEN  
**GOVERNMENT OF THE U.S. VIRGIN ISLANDS**

And

**MANDAHL BAY HOLDINGS, INC.**

FOR THE DEVELOPMENT

OF

**THE PORT OF MANDAHL**  
A PLANNED AREA DEVELOPMENT

**AGREEMENT** between the Government of the U.S. Virgin Islands (the “Government”) and Mandahl Bay Holdings, Inc. (“MBHI”), a U.S. Virgins Islands corporation. The Government and MBHI each being a “Party” hereto and hereinafter are collectively referred to as the “Parties.”

**WITNESSETH:**

WHEREAS, no major hotel development has occurred in the U.S. Virgin Islands in more than twenty (20) years, resulting in there being fewer hotel rooms in the Territory today than existed twenty-five (25) years ago; and

WHEREAS, the Government and MBHI (as assignee and successor in interest to Hans Lollik Corporation) are parties to an agreement dated April 1, 1964, as amended, pursuant to which the Government among other things leased to MBHI for a period of 99 years Parcel No. 33 Estate Mandahl, Great Northside Quarter, St. Thomas, V.I. (“33 Estate Mandahl”) for the development of a marina and for other uses and purposes (the “Original Agreement”); and

WHEREAS, although many of the infrastructure elements called for under the Original Agreement were completed, including construction of a road system within 33 Estate Mandahl, removal of the land in order to connect the salt pond to the ocean through the construction of a water channel and the installation of a rock groin breakwater, and dredging of the salt pond to create a marina basin, the development contemplated by the Original Agreement was never completed; and

WHEREAS, this Agreement is intended to promote: (i) the development of a major new upscale hotel, (ii) the completion of the marina at 33 Estate Mandahl, (iii) the development of a mid-range hotel and convention center, (iv) two fractional interest (timeshare) developments; (v) the renovation and expansion of Mahogany Run Golf Course; (vi) the construction of residences and group dwelling units, and (vii) the development of related commercial, ancillary and support

activities to be located on 33 Estate Mandahl, and on surrounding and adjacent real estate owned by MBHI (collectively, the "Project"); and

WHEREAS, the Government is interested in attracting a new world-class hotel, a new mid-range hotel, the construction of the convention center, the renovation and expansion of the golf course and related tourism development; and

WHEREAS, the development contemplated by this Agreement will require an investment by MBHI estimated to be in excess of Four Hundred Twenty-Five Million Dollars (\$425,000,000.00), would cause the creation of approximately 300 construction jobs and 700 permanent jobs, would result in a meaningful increase in the number of hotel rooms in the Territory and would be in the public interest by spurring economic activity and increasing employment opportunities in the U.S. Virgin Islands; and

WHEREAS, to the extent that the further infrastructure work contemplated by the Project constitute facilities eligible for issuance of private activity bonds under Internal Revenue Code Section 149(C), the Government is willing to entertain annual application from MBHI for allocation of the Government's private activity bonds capacity for facilities that qualify under IRS rules, subject to availability of the Government's annual allocation; and

WHEREAS, as an inducement to MBHI to undertake this Project the Government is prepared to enter into a new lease of 33 Estate Mandahl for a period of ninety-nine years (99).

NOW, THEREFORE, in consideration of the foregoing recitals, the covenants, conditions and agreements between the Parties hereafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the Parties agree as follows:

ARTICLE I

**Development Project**

1.01 Development: MBHI shall develop and construct the Project in two phases at its own cost and expense the following improvements more specifically itemized on Exhibit A (subject to modification as circumstances dictate):

**Phase 1 Development**

- A. An upscale hotel containing three hundred (300) rooms with meeting and banquet facilities at an initial estimated cost of One Hundred Thirty-Five Million Dollars (\$135,000,000) (the "Phase 1 Hotel");
- B. A marina containing not fewer than twenty-five (25) boat slips and moorings nor more than one hundred ten (110) boat slips and moorings, constructed at an initial estimated cost of Fifteen Million Dollars (\$15,000,000) (the "Marina");
- C. A restored beach at Mandahl Bay, developed at an initial estimated cost of Four Million Dollars (\$4,000,000) ("Mandahl Beach");
- D. Fractional interest (timeshare) developments containing approximately twenty-one (21) units at an initial estimated cost of Seven Million Eight Hundred Thousand Dollars (\$7,800,000) (the "Phase I Timeshares").
- E. Residential development consisting of single-family homes, apartments and condominiums with approximately 130 dwelling units and 43 estate lots (the "Residences");
- F. Retail and commercial improvements; and
- G. Ancillary and supporting infrastructure and amenities.

**Phase 2 Development**

- A. The acquisition and improvements to Mahogany Run Golf Course at an initial estimated cost of Twenty Million Dollars (\$20,000,000).
- B. A convention center with meeting and banquet facilities with a capacity for one thousand five hundred (1,500) people, developed at an initial estimated cost of Nine Million Dollars (\$9,000,000) (the "Convention Center");

- C. A three star conference hotel containing not fewer than two hundred (200) rooms with meeting and banquet facilities at an initial estimated cost of Sixty-Seven Million Dollars (\$67,000,000) (the “Phase 2 Hotel”);
  - D. A fractional interest (timeshare) development containing approximately One Hundred Fifty (150) units at an initial estimated cost of Fifty-Nine Million Dollars (\$59,000,000) (the “Phase II Timeshares”).
  - E. Residential development consisting of single family homes, apartments and condominiums with approximately 82 dwelling units (the “Phase II Residences”).
- 1.02 Planned Area Development. The development described in Section 1.01, to the extent it is to be developed on land not already zoned for the specific use, shall be completed as a Planned Area Development pursuant to Section 232 of Title 29 Virgin Islands Code. Further, in respect to questions of land use and zoning law, the Government has determined to be in the public interest the uses more specifically detailed in Appendix A and said uses hereby are approved.
- 1.03 Lease. The Government agrees to lease 33 Estate Mandahl to MBHI for a period of ninety-nine (99) years pursuant to the terms of the lease agreement attached hereto as Appendix B.
- 1.04 Government Regulation. Notwithstanding the land use approvals stated in Section 1.02, consistent with the proper discharge of the Government’s police power and in the interest of public health and safety, all construction within the Virgin Islands Coastal Zone shall require receipt of a Coastal Zone Management Permit pursuant to the Virgin Islands Coastal Zone Management Act, Title 12 Virgin Islands Code §§901-914 (the “CZM Act”), and all construction shall require the issuance of appropriate building, environmental and other permits applicable to construction in the U.S. Virgin Islands of the type and size contained in the Project.
- 1.05 Original Agreement and Great Hans Lollik Island. Nothing in this Agreement nor in the lease attached hereto in Appendix B shall be deemed to alter, limit or**



**otherwise affect the rights for the development of Great Hans Lollok Island contained in the Original Agreement.**

## ARTICLE II

### **Development Timetable**

- 2.01 Phase 1 Hotel, Marina and Mandahl Beach Design and Permitting. Within fifteen (15) months of the Effective Date of this Agreement, MBHI shall complete preliminary design of the development associated with the Phase 1 Hotel, the Marina and Mandahl Beach and shall apply to the St. Thomas Committee of the Virgin Islands Coastal Zone Management Commission (the "CZM") for the applicable CZM land and water permits and shall apply to the U.S. Army Corp of Engineers for the permits required for the restoration of the Mandahl Beach and the Marina (collectively, the "CZM Permits"). Within twelve (12) months of the receipt of the CZM Permits, MBHI shall complete the construction design and engineering drawings and apply for building and other permits required for the construction of the Phase 1 Hotel, the Marina; and ancillary facilities (together with the CZM Permits hereinafter collectively referred to as the "Phase 1 Development Permit").
- 2.02 Phase 1 Hotel Construction. Within fifteen (15) months of the receipt of the Phase 1 Development Permit, MBHI shall have commenced construction of the Phase 1 Hotel. Subject to force majeure, the Phase 1 Hotel will be completed within forty-two (42) months from the date construction is commenced.
- 2.03 Marina Construction. Within twelve (12) months of the commencement of construction of the Phase 1 Hotel, MBHI shall have commenced construction of the Marina.
- 2.04 Remaining Phase 1 Development. Within ten (10) years of the Effective Date of this Agreement the remainder of the Phase 1 Development shall proceed in such phases as MBHI determines to be economically advantageous and within its sole discretion; provided, however, that MBHI shall periodically confer with the Government in order to

keep the Government informed with respect to phases and timing of remaining Phase 1 Development.

- 2.05 Phase 2 Development. The Phase 2 Development shall proceed at such time and in such phases as MBHI determines to be economically advantageous and within its sole discretion; provided, however, that prior to commencement of any of the development projects covered in Phase 2, MBHI shall meet with the Government to advise it of the cost, details, design, and timing planned for the Phase 2 Development project to be undertaken. Additionally, the Government shall have the right from time to time to request a meeting with MBHI to discuss the status and timing of projects included in the Phase 2 Development.
- 2.06 Assistance with Permits. The Government will, consistent with the public interest, issue such permits, certificates and licenses and take such other action as may be required of it under any health, safety or related laws; provided the Project has been designed by MBHI in accordance with all applicable laws and regulations, including laws and regulations for the protection of the environment.

### ARTICLE III

#### **Economic Development Incentives and Obligations**

- 3.01 Economic Development Benefits. MBHI or its qualified assignees and lessees shall receive the tax exemptions and benefits specified under the Virgin Islands Industrial Development Program, Title 29 Virgin Islands Code §§701-746 (the "VI Development Program"), for the construction and operation of the Phase 1 Hotel, the Phase 2 Hotel, all timeshare developments, the Marina, the Convention Center and the Golf Course.
- 3.02 Period of Benefits. MBHI shall enjoy the foregoing tax exemptions and benefits for a period of twenty (20) years for each of the developments identified in Subsection 3.01, with the specific start dates of each benefit for each development to be specified by MBHI in writing to the Virgin Islands Economic Development Commission (the "EDC").

- 3.03 Extension of Benefits. MBHI shall be entitled to apply to the EDC for an extension of benefits in accordance with applicable provisions of the V.I. Development Program.
- 3.04 Conditions for the Receipt of Benefits. As a condition for the receipt of the above tax exemptions and benefits, MBHI shall comply in a reasonable and substantive manner with (i) all applicable provisions of the V.I. Development Program, including the rules and regulations promulgated thereunder, relating to the employment and training of residents, non-discrimination, and the local procurement of goods and services, and (ii) all applicable laws, rules and regulations for the protection of the environment.

#### ARTICLE IV

##### **Obligations**

- 4.01 Other Legislation. The terms and conditions of the Agreement being contractual and proprietary in nature, it is understood and expressly agreed that the Government will not adopt legislation, rules or regulations impairing or limiting the obligations of this Agreement or the rights and benefits accorded to MBHI hereunder.
- 4.02 Further Assurances. (a) The Parties agree to do all things and take all actions necessary or appropriate to carry out the terms of this Agreement and for the implementation of the intent of the Parties as expressed in this Agreement, (b) The Parties further agree not to take any action that would adversely affect in any way the binding effect, legality and enforceability of their respective obligations and commitments under this Agreement.

#### ARTICLE V

##### **Force Majeure**

- 5.01 Force Majeure. Any failure or delay in performance by MBHI, its subsidiaries or assignees or contractors or subcontractors of their obligations hereunder shall not be a breach of this Agreement if such failure or delay arises out of or results from causes beyond its control. These causes shall include, but not be restricted to, fire, storm, flood, earthquake, explosion, accident, acts of a public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restrictions, shortages of materials or supplies, failures by

contractors or subcontractors, transportation embargoes, or failure or delays in transportation, acts of God, acts, rules, regulations, orders or directives of any government or any state, subdivision, territory, municipality, agency or instrumentality thereof, or the order of any court of competent jurisdiction.

## ARTICLE VI

### **Dispute Resolution**

- 6.01 Mutual Discussions. Except as otherwise provided in this Article VI if a dispute or difference of any kind whatsoever shall arise among the Parties in connection with, relating to or arising out of this Agreement (each, a "Dispute"), one of such Parties shall notify the other of such Dispute. The Parties will attempt to settle such Dispute in the first instance by mutual discussions between their respective designated representatives and the joint decision of such individuals shall be binding upon the parties hereto. If a settlement of any such Dispute or difference is not reached pursuant to this Section 6.01 within 60 days after such notice of Dispute is delivered, then the provisions of Section 6.02 hereof shall apply.
- 6.02 Mediation. If a settlement of any such Dispute or difference is not reached pursuant to Section 6.01, the Parties agree to submit the matter to mediation. The process for mediation shall be governed by the procedures set forth in Rule 3.2 of the Local Rules of the District Court of the Virgin Islands.
- 6.03 Arbitration. If a Dispute cannot be settled pursuant to Sections 6.01 or 6.02 above, such Dispute shall be determined by arbitration administered by the American Arbitration Association ("AAA"). The number of arbitrators shall be three (3). Within thirty (30) days of delivery of the request for arbitration, each Party shall appoint one (1) arbitrator. If within fifteen (15) days of their appointment, the two Party appointed arbitrators do not reach an agreement on the appointment of a third arbitrator who shall serve as the chairman of the tribunal, the AAA shall appoint the third arbitrator. The language of the arbitration shall be English. Judgment upon any award(s) rendered by the arbitrators may be entered in any court having jurisdiction thereof. Nothing in this Agreement shall

prevent either Party from seeking provisional measures from any Virgin Islands court of competent jurisdiction, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

- 6.04 No Claim. No claim may be made by one Party against the other Party for any special, indirect, consequential, incidental or punitive damages in respect of any claim for breach of contract or any other theory of liability arising out of or relating to this Agreement or the development, construction or operation of the Project or any act, omission or event occurring in connection therewith and the Parties hereby waive, release and agree not to sue upon any claim for such damages.
- 6.05 Continued Performance. The Parties shall continue to perform their respective obligations under this Agreement during the existence of any Dispute under this Agreement or the pendency of any mediation or arbitration.
- 6.06 Commercial Acts. The Parties each agree that the execution, delivery and performance of this Agreement constitute private and commercial acts rather than public or governmental acts.

## ARTICLE VII

### **General Provisions**

- 7.01 Governing Law. The governing law of this Agreement shall be the law of the Territory of the U.S. Virgin Islands.
- 7.02 Rules of Interpretation. In this Agreement, unless the context otherwise requires, headings are for convenience only and do not affect the interpretation of this Agreement; a reference to an Appendix, Article or Section is a reference to that Appendix to, or Article or Section of, this Agreement; a reference to a document includes any amendment or supplement to, or replacement or novation of, that document; a reference to the singular includes the plural and vice versa; the words “include,” “includes,” and “including” mean include, includes, and including “without limitation” and “without

limitation by specification,” and any list or series following any such term is: (a) not exhaustive and (b) not meant to be limited to elements or items of the same or similar kind; and the words “hereof, “herein” and “hereunder”, or “thereof, “therein” and “thereunder” and words of similar import when used shall refer to this Agreement or any other agreement as a whole and not to any particular provision.

7.03 Construction. This Agreement shall not be construed more strictly against one Party than against any other Party merely by virtue of the fact that the Agreement may have been prepared by counsel.

7.04 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired hereby. In the event any such provision is held to be invalid, illegal or unenforceable, the Parties hereto shall make their best efforts to agree on a provision in substitution for such invalid, illegal or unenforceable provision that is as near to economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

7.05 Notices. All communications and notices expressly provided for herein shall be sent, by registered first class mail, postage prepaid, by a nationally recognized overnight courier for delivery on the following business day or by telecopy (with such telecopy to be confirmed promptly in writing sent by mail or overnight courier as aforesaid), as follow:

GOVERNMENT OF THE UNITED  
STATES VIRGIN ISLANDS:

Governor  
Government House  
21-22 Kongens Gade  
St. Thomas, U.S. Virgin Islands 00802  
Telephone: 340-774-1000  
Telefax: 340-777-6234

With a copy to:

Commissioner  
Virgin Islands Department of Property &  
Procurement  
Bldg. 1, Subbase – 3rd Floor

10/21/14

St. Thomas, U.S. Virgin Islands 00802  
Telephone: 340-774-3320  
Telefax: 340-714-9511

Attorney General of the U.S. Virgin Islands

St. Thomas, U.S. Virgin Islands 00802  
Telephone: 340-774-3320  
Telefax: 340-714-9511

Attorney General of the U.S. Virgin Islands  
Virgin Islands Department of Justice  
3438 Kronprindsens Gade  
GERS Building 2nd Floor  
St. Thomas, U.S. Virgin Islands 00802  
Telephone: 340-774-5666  
Telefax: 340-774-9710

MBHI:

Mandahl Bay Holdings, Inc.  
c/o Managing Partner  
Dudley, Topper and Feuerzeig, LLP  
1000 Frederiksberg Gade  
St. Thomas, U.S. Virgin Islands 00802  
Telephone: 340-774-4422  
Telefax: 340-715-4400

With a copy to:

Mandahl Bay Holdings, Inc.  
c/o Pillar Income Asset Management  
1603 LBJ Freeway, Suite 300  
Dallas, TX 75234  
Attn: Karl Blaha  
Telephone: 469-522-4237  
Telefax: 469-522-4320

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section 7.05.

- 7.06 Assignment. This Agreement is not assignable by the Government in whole or in part except where MBHI consents, in its sole discretion, to such assignment in writing. MBHI shall have the right at any time to assign all its rights and obligations, or any part thereof (including related permits, or relevant parts thereof, issued under the CZM Act or other applicable statutes or regulations obtained for the development of the Project or any part thereof), in and to this Agreement, to a subsidiary, partner or other affiliate of MBHI that agrees to assume the assigned obligations of MBHI in and to this Agreement or applicable portion thereof; provided, however that proof of the ability of such subsidiary, partner or other affiliate to fulfill any assigned obligations shall be provided to the

Government as part of the advance notice by MBHI. The Government may object to such assignment if it reasonably appears that the subsidiary, partner or other affiliate of MBHI lacks such ability. MBHI shall provide the Government at least thirty (30) days advance written notice of its intention to assign this Agreement. The Government shall receive a copy of the written agreement of the subsidiary, partner or other affiliate to agree to assume all assigned obligations and shall acknowledge to the Government its ability to fulfill such obligations.

- 7.07 No Third Party Beneficiary. This Agreement is for the sole and exclusive benefit of the Government and MBHI and, if applicable, any permitted successors, transferees or assigns thereof. No other persons or entities are intended third party beneficiaries of this Agreement, including, without limitation, any third parties that may, from time to time, have ownership, security or other interest in any real or personal property associated with the Project, nor shall such third parties have any rights to enforce any of the provisions of this Agreement.
- 7.08 Contractual Relationship. None of the commitments or other obligations, agreements or provisions contained in this Agreement shall or shall be deemed to give the Government the right or power to exercise control over the affairs or management of MBHI or any of its subsidiaries or partners, the Project or any part thereof. The relationship between the Government and MBHI is, and at all times shall remain, contractual. No commitment or other obligation, agreement or provision of this Agreement, nor any agreement executed pursuant hereto, is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest between or among the Government and MBHI or to create any equity interest in the Project for the Government (other than the Government's fee interest as owner/lessor of 33 Estate Mandahl). Notwithstanding any other provision of this Agreement or agreement executed pursuant hereto, the Government is not and shall not be construed as a partner, joint venture, alter ego, manager, controlling person or other business associate or participant of any kind of MBHI, its stockholders, subsidiaries, or partners or the Project.



- 7.09 Further Assurances. The Government and MBHI agree to do all things and take all actions required, necessary or appropriate to carry out the terms of this Agreement and the implementation of the Parties' intent as reflected by the terms of this Agreement. Such things and actions include, but are not limited to, the obtaining, negotiation, execution and delivery of all necessary or desirable agreements, filings, consents, authorizations, approvals, licenses or deeds. Without limiting the generality of the foregoing, the Parties agree: (a) to take all actions, without exception, which are necessary and appropriate at any time to assure the binding effect, legality and enforceability of their respective obligations and commitments hereunder and (b) not to take any action which would affect adversely in any way whatsoever the binding effect, legality and enforceability of their respective obligations and commitments hereunder.
- 7.10 Survival of Representations and Warranties. The representations, warranties and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.
- 7.11 Binding Effect. This Agreement and all terms, provision and obligations set forth herein shall be binding upon and shall inure to the benefit of the Government and MBHI and their respective successors and assigns.
- 7.12 Waivers. Waiver of any of the obligations of a Party set forth in this Agreement may only be effected, in writing, by the other Party hereto. No delay or omission to exercise any right or power by any Party shall be construed to be a waiver. In the event any provision is waived by a Party, such waiver shall not be deemed to waive any other provision.
- 7.13 Entire Agreement. This Agreement is the entire agreement and supersedes all prior and collateral communications and agreements of the Parties relating to the subject matter.

- 7.14 Amendments. This Agreement may be amended only by a written modification duly executed by the Parties' authorized representatives.
- 7.15 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

## ARTICLE VIII

### **Effective Date**

- 8.01 Legislative Approval. This Agreement shall not take effect unless and until approved by the Legislature of the U.S. Virgin Islands (the "Effective Date").

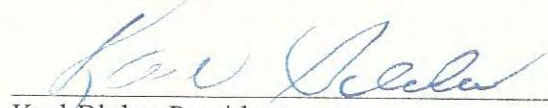
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IN WITNESS WHEREOF, the Parties hereto subscribe their names by their respective duly authorized representatives.

MANDAHL BAY HOLDINGS, INC.

DATE: 11/6/2014

By:

  
Karl Blaha, President

GOVERNMENT OF THE U.S. VIRGIN ISLANDS

DATE: 11/26/2014

By:

  
John P. de Jongh, Jr., Governor

Approved as to Legal Sufficiency:

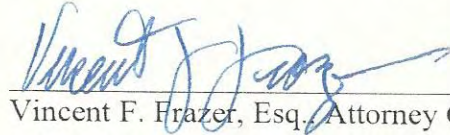
  
Vincent F. Frazer, Esq., Attorney General

EXHIBIT A  
Port of Mandahl Development Breakdown

POM Main Entrance & Road	\$ 2,000,000
Conference Center & Parking	\$ 9,000,000
3 Star Conference Hotel	\$ 67,500,000
Vacation Club Units	\$ 59,850,000
Virgin Islands Visitor Guest Center	\$ 2,250,000
Golf Villas	\$ 13,440,000
Golf Cluster Housing	\$ 18,000,000
Fractional Units/Vacation Club Units	\$ 7,890,000
Down Island Estate Lots	\$ 1,500,000
Down Island Cluster Housing	\$ 24,000,000
Tennis Pavilion	\$ 750,000
Mandahl Beach Restoration	\$ 4,000,000
HYATT INTERNATIONAL (Phase 1 Hotel)	\$135,000,000
POM Commercial Center	\$ 18,000,000
Port of Mandahl	\$ 15,800,000
POM Utility Center	\$ 2,000,000
Marina Townhouses	\$ 17,360,000
Marina View Cluster Housing	\$ 17,550,000
POM Estate Lots	\$ 10,000,000
Mahogany Run Golf Course	\$ 20,000,000
Tutu Bay Site	\$ 2,500,000
Total	\$448,390,000

M:\5259\11\GVI MAND AHL BAY HOLDINGS DEVELOPMENT AGREEMENT - EXECUTION COPY.DOC

10/21/14