

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

And

MANDAHL BAY HOLDINGS, INC.

PREMISES: Plot No. 33 of Estate Mandahl, Great Northside Quarter, St. Thomas, U.S. Virgin Islands consisting of 23.53 U.S. acres.

THIS AGREEMENT made this _____ day of _____, 2014, by and between the GOVERNMENT OF THE U.S. VIRGIN ISLANDS, acting through the Department of Planning and Natural Resources (DPNR) and the Department of Property and Procurement (DP&P), hereinafter "Government," and Mandahl Bay Holdings Inc., a corporation organized and existing under the laws of the U.S. Virgin Islands, hereinafter "MBHI."

WITNESSETH:

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 leased to MBHI and its predecessors in interest for a period of 99 years Parcel No. 33 Estate Mandahl, Great Northside Quarter, St. Thomas, V.I. for the development of a marina and other uses and purposes (the "Original Agreement"); and

WHEREAS, this Agreement is intended to be a part of and subject to an agreement of even date between the Government and MBHI for the development of The Port of Mandahl (the "Development Agreement"); and

WHEREAS, the Government and MBHI agree that in order for the Development Agreement to proceed to completion, the lease provisions of the Original Agreement must be amended and replaced by the terms of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and in the Development Agreement it hereby is agreed:

ARTICLE I

PREMISES, USE AND DEFINED TERMS

- 1.01 **Premises:** The Government hereby leases to MBHI and MBHI hires and takes from the Government all of that certain parcel known as Plot No. 33 of Estate Mandahl, Great Northside Quarter, St. Thomas, U.S. Virgin Islands consisting of 23.53 U.S. acres, more or less, including 9.23 acres of submerged lands located within the Marina basin (as hereinafter defined) and the submerged lands located seaward of the adjacent shoreline (collectively, the "Premises"). The aforesaid real estate is shown on OLG Drawing No. D9-8928-T014 dated August 18, 2014, a copy of which is attached hereto as Exhibit A and made a part hereof.

- 1.02 **Use:** MBHI shall use the Premises to develop, construct and operate a hotel, marina, residential units and related ancillary and support activities and facilities in accordance with the terms of the Development Agreement.
- 1.03 **Development:** The parties to this Agreement specifically acknowledge that all construction related to the development identified in the preceding Section 1.02 and as outlined in the Development Agreement, to the extent located within the Coastal Zone as defined in the Virgin Islands Coastal Zone Management Act, Title 12 Virgin Islands Code §§901-914 (the CZM Act), shall be subject to the approvals required under the CZM Act.
- 1.04 **Defined Terms:** Any capitalized words or terms not otherwise defined in this Agreement are defined and shall be used as defined in the Development Agreement.

ARTICLE II

TERM

- 2.01 **Term:** The term of this Agreement shall be for a period of ninety-nine years (99) years (the "Term") commencing on the first day of the month following ratification of this Agreement and the Development Agreement by the Legislature of the U.S. Virgin Islands (the "Commencement Date").
- 2.02 **Development Schedule:** The improvements to be located on the Premises shall proceed in accordance with the schedule for development set out in the Development Agreement.

ARTICLE III

RENT

- 3.01 **Rent/Submerged Lands Fees:** The rent provided for in this Article shall also satisfy any fees due for the occupancy of submerged lands as a part of the Premises.

3.02 **Initial Rent:** In consideration of the Improvements (as defined in Section 4.01) to be completed at the expense of MBHI, the initial rent to be paid by MBHI under this Agreement shall be One Thousand Five Hundred Dollars (\$1,500) per month consisting of two components: (i) rent for the fast lands portion of the Premises set at the rate of \$1,000 per month based upon the appraisal obtained by DP&P and (ii) a submerged lands fee equal to fifty percent of the appraised rental value of the fast lands (\$500 per month). The rent shall be paid quarterly in advance in care of the DP&P at its offices on St. Thomas, U.S. Virgin Islands.

3.03 **Adjustment of Rent:**

- a. Rent for the fast lands portion of the Premises shall be increased every ten (10) years by an amount equal to five percent (5%) of the rent paid in the preceding ten (10) year period; provided, however, that six (6) months preceding the thirtieth (30) and the sixtieth (60th) anniversary of the Commencement Date the fair market value of the fast lands shall be determined by a panel of appraisers, one selected by the Government, one selected by MBHI, and the third appraiser jointly selected by the two other appraisers who shall serve as chair of the panel. The appraisal shall be prepared using applicable rules and standards for cost approach appraisals set forth in the Appraisal Foundation, Uniform Standards of Professional Appraisal Practice, 2014-2015 edition, as it may be amended or modified from time to time. The appraised value so determined shall be apportioned by the panel between the fast lands and the Improvements located on the fast lands. That determination shall be provided to the Government and MBHI who then shall use said information as the basis for renegotiating the rent to be paid by MBHI for the remaining term of the Lease (with appropriate adjustments every 10 years for the remainder of the Term).
- b. Upon issuance of the CZM Permit for the Marina (the "Marina Permit"), rent for the submerged lands portion of the Premises shall be increased to: (i) the sum of Forty Thousand Dollars (\$40,000.00) per annum payable for the first five (5) years of the Marina Permit; (ii) the sum of Forty-Five Thousand Dollars (\$45,000.00) per annum for years six (6) through ten (10) of the Marina Permit; (iii) the sum of Fifty Thousand Dollars (\$50,000.00) per annum for years eleven (11) through twenty (20) of the Marina Permit. Thereafter, for the remainder of the Lease Term, the rent for the submerged lands shall be redetermined on every subsequent twenty (20) year anniversary of the effective date of the Marina Permit using the methodology for determining submerged lands fees established under the CZM Act and applicable CZM Rules and Regulations, as the same may be

amended from time to time. The parties shall commence the renegotiation no later than six (6) months prior to the end of any twenty-year term.

- c. The rent determined in accordance with this Section shall be payable quarterly in advance.

- 3.04 **Late Payment Charges:** MBHI acknowledges that late payment by MBHI to the Government of rent and other charges provided for under this Agreement will cause the Government to incur costs not contemplated by this Agreement, the exact amount of such costs include without limitation, processing and accounting charges. Therefore, if any installment of rent or any other charge due from MBHI is not received by the Government within thirty (30) days of the date due, MBHI shall pay, as a late charge, to the Government **an additional ten percent (10%) of the quarterly rent as a late charge.**

The parties agree that this late charge represents a fair and reasonable estimate of the costs that the Government will incur by reason of the late payment by MBHI.

- 3.05 **Unpaid Rent, Fees and Charges:** Any installment of rent, additional rent, attorney fees, other charges or money not received by the 10th day after the day when payment is due shall bear interest **at a rate per annum equal to 150% of the interest rate then paid on ten-year promissory notes of the U.S. Treasury from the date when the payment was due according to the terms of this Agreement until paid by MBHI.**

ARTICLE IV

IMPROVEMENTS

- 4.01 **Improvements:** As a part of the consideration of this Agreement, MBHI shall develop and construct the Project at its own cost and expense, including the Phase I Hotel, the Marina, the Mandahl Beach and some of the Residences, retail and commercial improvements and ancillary and supporting infrastructure and amenities to be located on the Premises as specified in the Development Agreement.

MBHI agrees to keep and maintain the Premises and Improvements in good condition and repair, and to convey the Premises and Improvements located thereon to the Government upon the expiration or other termination of this Agreement.

- 4.02 **Title to Improvements:** For the duration of this Agreement, the Improvements shall be owned by and be the property of MBHI. At the conclusion of this Agreement, title to any of the Improvements located on the Premises shall vest in the Government.

Furniture or other items of personalty, if not removed from the Premises prior to the termination of this Agreement shall become the property of the Government.

- 4.03 **Failure of MBHI to Maintain:** In the event MBHI, after it shall have been given a six-month notice (except in a case of emergency in which event reasonable notice under the circumstances shall be sufficient), refuses and neglects to structurally maintain the Improvements for which it is responsible, or if structural repair is necessitated by reason of MBHI's negligent acts or omissions, then the Government, at its option, may make such repairs or terminate this Agreement in accordance with Section 8.01C of this Agreement. Should the Government elect to make such repairs it shall not be responsible for any loss, inconvenience or damage resulting to MBHI because of the Government's repair. The cost of such repairs by the Government, together with interest at the rate provided in Section 3.04 shall be paid by MBHI as additional rent.

- 4.04 **Construction:** The Government acknowledges that MBHI will construct, or have constructed, piers, bulkheads, wharves, breakwaters, jetties, pipelines, channels, dikes, causeways and other works bordering the shoreline portions of the Improvements; also that MBHI may wish to undertake additional, landfill, or land excavation, reclamation, and other land-building or land-removal operations in connection with the Improvements, including the restoration of Mandahl Beach, which operations may alter the topography of certain areas of the Project sites. It is agreed and understood that MBHI shall have the right to dredge the existing access channel and Marina basin, to restore an adequate depth. Such construction, land-building and land-removal operations, shall, when and if undertaken, be subject to the applicable provisions of the Virgin Islands Building Code and the CZM Act.

ARTICLE V

MORTGAGES, LIENS AND ENCUMBRANCES; ASSIGNMENT AND SUBLETTING

5.01 **Leasehold Mortgages; Assignment and Sublet:**

- a. (i) MBHI shall have the right, from time to time and at any time, in whole or in part, subject to the prior consent of the Government, which consent shall not be unreasonably withheld or delayed, to

hypothecate, mortgage, pledge or alienate MBHI's leasehold interest in the Premises and/or the rights granted to MBHI under this Agreement (collectively, the "Leasehold Mortgage"). In the event of a Leasehold Mortgage of MBHI's leasehold, MBHI shall five (5) days prior to the closing of any loan or other transaction in connection with which such interest is given, provide notice to the Government of such Leasehold Mortgage, identifying the name and address of the party obtaining an interest in MBHI's leasehold (the "Leasehold Mortgage"). In no event whatsoever shall MBHI have the right to encumber the Government's fee simple interest in the Premises.

(ii) Subject to the prior consent of the Government, which consent shall not be unreasonably withheld or delayed, MBHI shall have the right to sell, assign, transfer or otherwise dispose of this Agreement as a whole or in part in connection with the development of any part or phase of the Project to be developed on the Premises. Any sale, assignment, transfer or disposition in whole or in part of this Agreement, shall only be to an entity with the financial ability and experience to develop, own and/or operate that part of the Project on the Premises for which this Agreement is assigned.

(iii) As more specifically provided in and subject to Section 5.01f. *infra*, MBHI shall have the right to sublet the Premises and the Improvements thereon, in whole or in part.

- b. In the event of an assignment (but not a sublease) of this Agreement pursuant to Section 5.01a, all liabilities and obligations of the assignor (including a Leasehold Mortgagee which acquires the leasehold estate pursuant to a foreclosure and sale or deed in lieu of foreclosure) accruing after such assignment shall not terminate and shall not be released and discharged unless and until the assignee shall have assumed each and every one of the terms, covenants and provisions contained in this Agreement by an instrument of assumption, in form and substance acceptable to the Government and recorded with the Recorder of Deeds.

- c. For the benefit of the holder of any Leasehold Mortgage who shall have become entitled to notice as hereinafter provided in this Section 5.01, the Government agrees not to accept a voluntary surrender of this Agreement at any time while such Leasehold Mortgage shall remain an encumbrance on the leasehold estate; and the Government and MBHI further agree for the benefit of any such Leasehold Mortgagee that, so long as any such Leasehold Mortgage shall remain an encumbrance on the leasehold estate, without the prior written consent of such Leasehold Mortgagee, the Government and MBHI will not subordinate this Agreement to any mortgage which may hereafter be placed on the fee of the premises or amend or alter any terms or provisions of this Agreement or consent to any prepayment of any Annual Rent.
- d. If any Leasehold Mortgagee shall have given to the Government, before any default shall have occurred under this Agreement, a notice specifying the name and address of such Leasehold Mortgagee, the Government shall send by personal delivery or by certified or registered mail or overnight courier service to such Leasehold Mortgagee a copy of each notice of default at the same time as and whenever any such notice of default shall thereafter be given by the Government to MBHI, addressed to such Leasehold Mortgagee at the address last furnished to the Government. No notice of default by the Government shall be deemed to have been given unless and until a copy thereof shall have been so given to such Leasehold Mortgagee. MBHI irrevocably directs that the Government accept, and the Government agrees to accept, performance and compliance (“Performance”) by any such Leasehold Mortgagee of and with any term, covenant or condition on MBHI’s part to be kept, observed or performed under this Agreement with the same force and effect as though kept, observed or performed by MBHI.
- e. In case of the termination of this Agreement by reason of the happening of an Event of Default, the Government shall give notice thereof to any Leasehold Mortgagee who shall have notified the Government of its name and address pursuant to Section 5.01d, which notice shall be sent by personal delivery or by registered or certified mail or overnight courier service to such Leasehold Mortgagee at the address last furnished to the Government pursuant to Section 5.01d. If, within ninety (90) days after the mailing of such notice, such Leasehold Mortgagee shall notify the

Government that such Leasehold Mortgagee desires to enter into a lease of the Premises with the Government, the Government shall join with the Leasehold Mortgagee, or its nominee, in executing and delivering a new lease of the Premises to such Leasehold Mortgagee, or its nominee, for the remainder of the Term, at the Annual Rent and upon the terms, covenants and conditions contained in this Agreement.

- f. With prior notice to the Government, MBHI shall have the right to sublet all or portions of the Premises or the Improvements, or both, provided that each such sublease shall be subject and subordinate to this Agreement and to the rights of the Government hereunder, and MBHI shall not be released from but shall remain subject to all liabilities and obligations to the Government according to the terms this Agreement.
- g. The Government agrees to execute such further certificates, consents, subordination, non-disturbance and attornment agreements, estoppel certificates and other documents as may reasonably be required by a Leasehold Mortgagee or subtenant, provided that the Government is not required to pay money or incur expenses thereby, the documents are consistent with the terms of this Agreement, and the Government's property rights are not adversely affected thereby.
- h. In every case where the Leasehold Mortgagee elects to acquire possession of the Premises or to foreclose the Leasehold Mortgage, prior to the acquiring of possession or the foreclosing of the Leasehold Mortgage, the Leasehold Mortgagee shall give the Government (i) a right of first refusal to acquire the Improvements and assume Lessee's obligations under the Leasehold Mortgage or (ii) the right to provide a purchaser reasonably satisfactory to the Leasehold Mortgagee for the purchase of Lessee's interest in this Lease, the Improvements and Lessee's obligations under the Leasehold Mortgage. The Government shall exercise the rights herein set out within one hundred twenty (120) days from the date that the Government is notified in writing by the Leasehold Mortgagee that these rights may be exercised.

5.02 **Liens:**

- a. The Government hereby agrees to subordinate any and all rights it may have to any lien, whether statutory or otherwise, on MBHI's personal property, including without limitation, inventory, trade fixtures, and removable equipment and fixtures located within or on the Premises, whether or not any part of the Improvements becomes so related to the land that an interest therein would otherwise arise under applicable law. The Government agrees to (i) take no action to impede or interfere with Leasehold Mortgagee's remedies under a security interest in said personal property of MBHI and (ii) execute, upon request, a confirmation of such subordination in a form reasonably satisfactory to MBHI and its lenders.
- b. The Government expressly acknowledges and agrees that any contractual, statutory or common law lien rights in favor of landlords or any mortgage or deed of trust granted by the Government subsequent to the date of this Agreement are and shall be expressly made subordinate and inferior to MBHI's right, title and interest in this Agreement, any sublease permitted hereunder and/or the easements granted by this Agreement and to any liens and security interests granted by MBHI in favor of any Leasehold Mortgagee. The Government agrees to execute or cause its mortgagee to execute any further documentation that may be requested by MBHI or a Leasehold Mortgagee of any of the foregoing to evidence such subordination.
- c. In the event the Government receives a default notice or notice of lien from any of its lenders or other party holding a mortgage, deed of trust or security interest in the Premises, the Government agrees to promptly (i) provide a copy of such notice to MBHI, a Leasehold Mortgagee and subtenant, if any, and (ii) take such actions necessary to cure such default and release any monetary encumbrances (i.e. mechanics' liens, judgment liens, tax liens, etc.).

ARTICLE VI

INSURANCE AND INDEMNITY

- 6.01 **Liability Insurance:** MBHI shall, during the term thereof, keep in full force and effect a policy of public liability and property damage insurance in which the limits of public liability shall be no less than **One Million Dollars (\$1,000,000.00)** property damage, **One Million Dollars (\$1,000,000.00)** for one person and **Twenty-five Million Dollars (\$25,000,000.00)** for any number of persons injured or killed in any one accident. All of said insurance shall be in a form satisfactory to the Government and shall provide that it shall not be subject to cancellation, termination, or change, except after thirty (30) days prior written notice to the Government. MBHI shall furnish the Government, or the Government's designee, with a certificate of insurance evidencing the coverage required hereunder on the day MBHI commences work in or about the property herein leased.
- 6.02 **Indemnity:** MBHI agrees to indemnify and save the Government harmless from and against any and all claims and demands (except such as result from the negligence of the Government, its agents, contractors, servants or employees or the failure of the Government to comply with the terms of this Agreement) for or in connection with, any accident, injury or damage whatsoever caused to any person or property arising, directly or indirectly, out of the business conducted on the Premises or occurring in, on or about said property or any adjacent area under the exclusive control of MBHI or arising directly or indirectly, from any act or omission of MBHI or subtenant or their respective servants, agents, employees, or contractors, and from and against any and all costs, expenses and liabilities incurred in connection with any such claim or proceeding brought thereon.

ARTICLE VII

CONDEMNATION

- 7.01 **Notice of Condemnation:** The party receiving any notice of the kind specified below which involves the Premises shall promptly give the other party notice of the receipt, contents, and date of the notice received, which shall include:
- a. Notice of Intent Taking.
 - b. Service of any legal process relating to condemnation of the Premises or Improvements.

- c. Notice in connection with any proceedings or negotiations with respect to such a condemnation.
- 7.02 **Rights of Government and MBHI:** Government and MBHI shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of its claims. Government and MBHI each agree to execute and deliver to the other any instrument that may be required by the provisions of this Agreement relating to the condemnation.
- 7.03 **Taking of Leasehold:** Upon a total taking, MBHI's obligation to pay rent and other charges hereunder shall terminate on the date of taking, or possession given, whichever is earlier, but MBHI's leasehold interest in the premises shall continue until the taking is completed by deed, contract or final order of condemnation. All sums awarded for the taking of the MBHI leasehold interest in the Premises and for all improvements made thereto by MBHI shall belong to MBHI.
- 7.04 **Partial or Temporary Taking:** Upon a partial or temporary taking, all sums including damages and interest awarded for (i) the partial leasehold taken or (ii) the leasehold taken temporarily, and any improvements thereon shall belong to MBHI. Within one (1) year of a partial or temporary taking, MBHI shall have the option of terminating this Agreement upon six (6) months notice to the Government.

ARTICLE VIII

CANCELLATION; FORCE MAJEURE; TERMINATION; QUIET ENJOYMENT; RECORDING

- 8.01 **Cancellation:** This Agreement shall be subject to cancellation by the Government in event MBHI shall:
- A. Be in arrears in the payment of the whole or any part of the Annual Rent agreed upon hereunder for a period of six (6) months after the Government has notified MBHI and any Leasehold Mortgagee in writing that payment was not received when due and neither MBHI nor the Leasehold Mortgagee has commenced litigation to contest the claim of the Government, or, if contested, within six (6) months after a final, non-appealable judgment has been entered by the Court in favor of the Government.
- B. Abandon the Premises for a period in excess of one year after completion of construction.

- C. Default in performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by MBHI, and such default continues for a period of six (6) months after receipt of written notice from Government to cure such default, unless during such six (6) month period, MBHI shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default. If default by MBHI in the performance of its obligations hereunder is precipitated by activities for which Government is solely responsible, the period herein established to commence a cure for the said default will be extended for a reasonable period to account for the effect of Government's activities.

Failure of Government to declare this Agreement terminated upon the default of MBHI for any of the reasons set out shall not operate to bar or destroy the right of Government to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement.

- 8.02 **Force Majeure:** Any failure or delay in performance by MBHI and/or its subsidiaries and/or their 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 subdivision, territory, municipality, agency or instrumentality thereof, or the order of any court of competent jurisdiction.
- 8.03 **Termination:** This Agreement shall terminate at the end of the Term.
- 8.04 **Quiet Enjoyment:** The Government agrees that MBHI, upon paying the Annual Rent and performing the terms, covenants, and conditions of this Agreement, may quietly have, hold and enjoy the Premises from and after the delivery of the Premises to MBHI during the continuance of this Agreement.
- 8.05 **Recording:** This Agreement may be recorded at the Office of the Recorder of Deeds for the District of St. Thomas and St. John.

ARTICLE IX

GENERAL TERMS AND CONDITIONS

- 9.01 **Notices:** All notices provided to be given under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at:

GOVERNMENT: Commissioner of Property and Procurement
Department of Property and Procurement
Building No. 1 Subbase
St. Thomas, Virgin Islands 00802

MBHI: Mandahl Bay Holdings, Inc.
c/o Piller Income Asset Management
1603 LBJ Freeway, Suite 300
Dallas, TX 75234
ATTN: Karl Blaha, President

With a copy to: Dudley, Topper and Feuerzeig, LLP
1000 Frederiksberg Gade
Charlotte Amalie, St. Thomas, VI 00802
Attn: Managing Partner

The address of either party may be changed from time to time by giving written notice to that effect to the other party.

- 9.02 **Non-discrimination:** MBHI in exercising any of the rights or privileges granted by this Agreement, shall not, on the grounds of race, color, creed, sex, or national origin discriminate or permit discrimination against any person.
- 9.03 **Officials not to Benefit:** No member of the U.S. Congress or the Territorial Legislature, no official or officer of the United States or the Virgin Islands Government, or any of their instrumentalities shall be admitted to any share of this Agreement or any benefit of value that may arise therefrom.
- 9.04 **Agreement made in the Virgin Islands:** The laws of the U.S. Virgin Islands and federal law applicable to the U.S. Virgin Islands shall govern the validity, performance, and enforcement of this Agreement.
- 9.05 **Counterparts:** This document may be executed in multiple counterparts each of which shall be deemed an original.

- 9.06 **Cumulative Rights and Remedies:** The rights and remedies of each party enumerated herein shall be cumulative, and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by the Government of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.
- 9.07 **Interpretation:** Words of gender used in this Agreement shall be held to include the plural and vice versa unless the context otherwise requires.
- 9.08 **Agreement Made in Writing:** This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.
- 9.09 **Paragraph Headings:** The captions of the various articles, sections and paragraphs of this Agreement are for convenience and ease of the scope, content, or intent of this Agreement and are not intended to alter or modify the substance or content of any part or parts of this Agreement.
- 9.10 **Invalidity or Illegality of Provisions:** The invalidity or illegality of any provisions shall not effect the remainder of this Agreement.
- 9.11 **Successors and Assigns:** All of the terms, provisions, covenants, and conditions of this Agreement shall inure to the benefit of and be binding upon Government and MBHI and their successor, assigns, legal representative, heirs, executors and administrators.
- 9.12 **Approval Required; Superseding Agreement:** This Agreement shall not become effective unless and until approved by the Legislature of the U.S. Virgin Islands as part of the Development Agreement. Upon approval by the Legislature, the lease provisions of the Original Agreement and the specific provisions thereof relating to the development of the Premises shall be superseded by this Agreement and by the Development Agreement. The foregoing notwithstanding, nothing in this Agreement or in the Development Agreement shall alter, limit or otherwise affect the rights to develop Great Hans Lollok Island accorded under and pursuant to the Original Agreement.

ARTICLE X

CONFLICT OF INTEREST; WAIVER

- 10.01 **Compliance with Laws:** To the extent not otherwise addressed in this Agreement, MBHI shall comply with all laws and regulations of the U.S.

Government and the Government of the Virgin Islands including but not limited to zoning, Coastal Zone Management (CZM), building codes, environmental and American Disabilities Act (ADA).

MBHI shall obtain all licenses and permits required to develop and occupy the Premises and engage in business in the U.S. Virgin Islands.

- 10:02 **Waiver:** The waiver by either party of any breach of any term condition or covenant of this Agreement by the other party shall not be deemed to be a waiver of any subsequent breach of the same or any other terms, condition or covenant of this Agreement. No delay or omission to exercise any right or power hereunder shall impair any right or power; every right and remedy conferred under this Agreement may be exercised from time to time and as often as may be deemed expedient by the holder of such right or remedy.

ARTICLE XI

DISPUTE RESOLUTION

- 11.01 Mutual Discussions. Except as otherwise provided in this Article XI 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 11.01 within 60 days after such notice of Dispute is delivered, then the provisions of Section 11.02 hereof shall apply.
- 11.02 Mediation. If a settlement of any such Dispute or difference is not reached pursuant to Section 11.01, 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.
- 11.03 Arbitration. If a Dispute cannot be settled pursuant to Sections 11.01 or 11.02 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.

- 11.04 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.
- 11.05 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.
- 11.06 Commercial Acts: Limited Waiver of Sovereign Immunity. The Government unconditionally and irrevocably agrees that the execution, delivery and performance of this Lease constitutes governmental, commercial acts with a private party, which is permissible under Section 2 (b) of the Revised Organic Act of the Virgin Islands. In furtherance of the foregoing Section, and as further assurance to Lessee, the Government, in its capacity as Lessor, hereby irrevocably and unconditionally agrees that in any action brought against the Government by Lessee, an approved assignee, sublessee, or leasehold mortgagee, or other lawful real party in interest in any court with appropriate jurisdiction over the parties, local or federal, the Government will not enter a defense of sovereign immunity in avoidance of any claim alleging breach of contract or the enforcement of any judgment lawfully obtained against it.

[SPACE LEFT BLANK INTENTIONALLY – SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties herein have hereunto set their hands and seals on the day and year first above written.

WITNESSES:

José Raúl Canales
Yath Escobar

MBHI:

MANDAHL BAY HOLDINGS, INC.

BY: Karl Blaha
Karl Blaha, President

ATTEST: [Signature]
Asst Secretary

WITNESSES:

Derek Bart
Lisa Hill

GOVERNMENT:

GOVERNMENT OF THE VIRGIN ISLANDS

DEPARTMENT OF PLANNING AND
NATURAL RESOURCES

BY: _____
Jean-Pierre Oriol,
Acting Commissioner

DEPARTMENT OF PROPERTY AND
PROCUREMENT

BY: [Signature]
Lynn Millin Maduro, Commissioner

APPROVED:

BY: [Signature]
John P. deJongh, Jr., Governor

APPROVED FOR LEGAL SUFFICIENCY

BY: [Signature]
Vincent F. Frazer, Esq., Attorney General

IN WITNESS WHEREOF, the parties herein have hereunto set their hands and seals on the day and year first above written.

WITNESSES:

MBHI:

MANDAHL BAY HOLDINGS, INC.

BY: _____
Karl Blaha, President

ATTEST: _____
Secretary

WITNESSES:

Sherril Albert

GOVERNMENT:

GOVERNMENT OF THE VIRGIN ISLANDS

DEPARTMENT OF PLANNING AND
NATURAL RESOURCES

BY: *J. Oriol*

Jean-Pierre Oriol,
Acting Commissioner

DEPARTMENT OF PROPERTY AND
PROCUREMENT

BY: _____
Lynn Millin Maduro, Commissioner

APPROVED:

BY: _____
John P. deJongh, Jr., Governor

APPROVED FOR LEGAL SUFFICIENCY

BY: _____
Vincent F. Frazer, Esq., Attorney General

10-21-14

NOTARIZED ACKNOWLEDGEMENTS

Territory of the Virgin Islands)
District of St. Thomas-St. John) ss:

Before me personally appeared Karl Blaha, President, Mandahl Bay Holdings, Inc., to me well known, who acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand on this 7th day of November A.D. 2014.

Federick Nupel
Notary Public

NP # : 12-17
COM Exp: 10/6/16

Territory of the Virgin Islands)
District of St. Thomas-St. John) ss:

Before me personally appeared Jean-Pierre Oriol, Acting Commissioner of Department of Planning and Natural Resources, to me well known, who acknowledged that she executed the foregoing instrument for the purposes therein contained.

WITNESS my hand on this 7th day of November A.D. 2014.

Federick Nupel
Notary Public

NP # : 12-17
COM Exp: 10/6/16

Territory of the Virgin Islands)
District of St. Thomas-St. John) ss:

Before me personally appeared Lynn Millin Maduro, Commissioner of Department of Property and Procurement, to me well known, who acknowledged that she executed the foregoing instrument for the purposes therein contained.

WITNESS my hand on this 7th day of November A.D. 2014.

Federick Nupel
Notary Public

NP # : 12-17
COM Exp: 10/6/16

10-21-14

MANDAHL BAY HOLDINGS, INC.

Plot No. 33 of Estate Mandahl, Great Northside Quarter, St. Thomas, U.S. Virgin Islands
Page 20

APPROVED:

Legislature of the U.S. Virgin Islands

BY: _____
President

Date: _____

