



## DEVELOPMENT AGREEMENT

THIS AGREEMENT is made this 24<sup>th</sup> day of September 2015 (pursuant to the "Effective Date")

### BETWEEN

**The Government of the Cayman Islands** acting herein and represented by the Cabinet Secretary, Mr. Samuel Rose, of the Government Administration Building, Elgin Avenue, Grand Cayman, Cayman Islands (the "**Government**").

### AND

**Beach Bay Land Ltd.**, an Ordinary Resident company formed under the laws of the Cayman Islands, with its registered office at PO Box 1350, Clifton House, 75 Fort Street, Grand Cayman, KY1-1108, Cayman Islands (the "**Company**").

### WHEREAS:

#### A Background and Development

Beach Bay Land Ltd., a local Cayman Islands corporation, was formed in 2007 to implement their vision for a hotel/condominium development at St. James Point in the Bodden Town district. The Company envisions this project, a resort and residential development that will be seen as an icon across the region and serve as a flagship for its brand, to be one that 'raises the bar' not only on Grand Cayman but also in the Caribbean.

Since 2007 the Company or its related entities have spent nearly US\$50 million in securing, entitling and improving the development site assembled through over 30 acquisitions. It also has worked on developing forward-thinking design concepts and branding solutions that will support a new tourist destination independent of Seven Mile Beach.

The Company will execute the development over an estimated 10-year period and estimates that the total cost of Phase 1 of the development will be of the order of CI\$ 200 million and will continue with further investments in phases thereafter.

This Agreement relates to Phase 1 of the development and which is to consist of an internationally branded, multi-storey hotel/condominium Development incorporating luxury hotel accommodations, residences, restaurants, boutique retail outlets, watersports support facilities, spa, commercial and other amenities (the "**Development**").

## **B General**

The Government is committed to the development of its high-end tourism product and to promote and encourage the growth and development of tourism in the Cayman Islands.

The Government recognises that sustainable development shared amongst all districts of the Islands represents the economic future of the country. Government notes that the Development will be the largest of its kind east of the Seven Mile Beach corridor. It is also recognised that the Development will create a variety of new employment and entrepreneurial opportunities for Caymanians, particularly those who live in and around the Bodden Town area, in keeping with the Government's Go East initiative.

Additionally, the parties will use their best efforts to help the Company train and employ as many Caymanians as possible as part of the Development's workforce both during construction and operation of the Development with a target of 60% participation, and the Company will endeavour to use local contractors and other local service providers wherever possible.

The parties have each agreed to provide certain undertakings for the implementation and completion of the Development subject to the terms and conditions of this Agreement.

**NOW THIS AGREEMENT WITNESSES** as follows:

### **PART I - PARTIES' UNDERTAKINGS**

#### **1 The Company's warranty and undertakings**

- 1.1 The Company, Beach Bay Land Ltd., warrants that it (alternately, "BBLL" or the "Holding Company") is a duly registered Cayman Islands Ordinary Resident company licensed to operate in the Cayman Islands.
- 1.2 The Company undertakes to do the following, whether through BBLL itself or through an affiliate of BBLL (as defined in clause 17.1), as the case may be:
  - a. To establish one or more companies if necessary and as determined by BBLL, each duly incorporated in accordance with the laws of the Cayman Islands, to take a lease of the whole or portion of the land upon which the Development is to be located and to operate the whole or some aspect of the Development;

- b. Whether directly or indirectly, to conceptualise, plan, design, construct and operate the Development directly or through related or affiliated entities;
- c. To engage two reputable Construction Managers and submit their budget reports (the “**Budget**”) to government regarding the cost of this Development as envisioned as of the Commencement Date as defined at clause 17.3 herein;
- d. To engage an independent, third party accountant or administrator to assess the Concession Credit rebates as defined herein and to verify the amounts for submission to the Government as and when required and for a system of submission to be agreed upon by both parties; and
- e. To comply with its obligations under the timetable in Schedule 1 (the “**Timetable**”).

1.3 The Company's performance of its obligations under sub-clauses b. to e. inclusive of clause 1.2 is in all respects subject to each of the following happening on or before the date that is 12 calendar months after the Commencement Date as defined at clause 17.3 herein:

- a. the Company being granted all planning and building approvals, licences, permits, certificates and other authorisations of whatever kind necessary or desirable to construct the Development and to operate all aspects of the Development, such authorisations not to be unreasonably withheld;
- b. the companies referred to in sub-clause a. of clause 1.2 (being the companies to be established in accordance with the laws of the Cayman Islands) being granted all licences and other authorisations as may be required to carry on business in the Cayman Islands; and
- c. the Government having done all such acts, matters and things as may be necessary or expedient to fully perform each of its undertakings under clauses 2.2, 2.3. and 2.4

If all of these conditions precedent are not satisfied by that date and such default is not the fault of the Company, the Company may in its sole discretion extend the term of the effective date day for day or terminate this Agreement by written notice to the Government, whereupon each party will be relieved of any further obligation or any liability under this Agreement.

SA  
JOK

## 2 The Government's undertakings

The Government undertakes to do the following for the advancement of the Development but only to the extent those undertakings are within its lawful authority and remit, including the lawful authority and remit of the relevant departments, boards, statutory bodies, etc. and permissible under the laws of the Cayman Islands:

### Infrastructure

- 2.1 To use best efforts to assist the Company in renaming "Beach Bay Road" to "St. James Point Road";
- 2.2 To request the assistance of the relevant statutory and governmental bodies and, wherever appropriate, to issue directions:
  - a. to assist the Company with obtaining all planning and building approvals, licences, permits, certificates and other authorisations of whatever kind necessary or desirable to construct the Development; and
  - b. in relation to the Development and where permissible, to ensure processing in a timely fashion and, as far as possible, in sufficient time to allow the Company or its nominee to commence operation immediately following completion of that phase in accordance with the Timetable, of all approvals, licences, permits, certificates and other authorisations of whatever kind necessary or desirable to operate the Development.

### Concession Credit Scheme - Duties and fees

- 2.3 To provide the Company (or its affiliates, successors or assigns) with a rebate of 12.5% of a maximum of CI\$200 million of the capital cost of the Development as a waiver or reduction or rebate in government fees and duties (the "Concession Credit"). The Concession Credit is to be applied at the Company's discretion against the various areas of development fees and stamp and other duties and levies incurred in relation to the Development including but not limited to stamp duty on capital investments and existing land acquisitions and transfers. It is understood between the parties that the cost of the Development is the capital cost to complete the Development in its entirety. Such costs may include but are not limited to land acquisition costs, planning fees, construction, landscaping and other development completion costs and including all furnishings, fixtures and equipment (FF&E) costs as well as any non-consumable operating supplies and equipment (OS&E) required for the fully operational Development.

- 2.4 It is understood by the parties to this Agreement that the Concession Credit may be applied to additional areas of government fees, duties and/or taxes should such concessions be granted to any other developer of a similar type of development in the Cayman Islands during the lifetime of this Development.

### **Indemnity**

- 2.5 To indemnify the Company from any and all environmental abatement and mitigation fees that may be levied in connection with any government-approved construction in relation to parts of the Development and completion work undertaken during the course of the Development.

### **General**

- 2.6 To provide a dedicated inspector or inspectors to inspect and review the construction on behalf of the Government as required, salary of these inspectors to be underwritten by the Company.
- 2.7 To appoint an individual acceptable to the Company with the grade of Chief Officer in a Ministry or a Member of the Legislative Assembly ('Councillor') as liaison to assist coordinating and expediting internal operations among applicable Government Ministries and the Company. It is understood that this individual will have access to Caucus and Cabinet as required.
- 2.8 To use its best efforts to agree to a similar Concession Credit scheme in relation to successive developments undertaken by the Company as further phases.

## **PART II - TERMINATION, FORCE MAJEURE, CONFIDENTIALITY, INTELLECTUAL PROPERTY RIGHTS**

### **3 Termination**

- 3.1 Nothing in this clause 3 derogates from the Company's rights under clause 1.3.
- 3.2 Any termination of this Agreement does not affect the continuation in force of the parties' obligations under those provisions of this Agreement which are expressly deemed to continue in force notwithstanding the expiration or termination of this Agreement.
- 3.3 Subject to clause 3.2, if for the purpose of this Agreement an exemption or concession granted to give effect to this Agreement is subsequently revoked or varied without the consent of the Company, that revocation or variation will be deemed to be a breach of the Government's obligations under this Agreement.

### 3.4

- a. If the Government is unable to meet any of its obligations by reason of any matter or thing beyond its control such as, without limitation, (i) a law of the United Kingdom that is extended to the Cayman Islands by Order in Council (or otherwise) or (ii) a directive, measure, action or order from the United Kingdom, or an obligation arising from an international treaty, convention or other instrument that is extended to the Cayman Islands, the Government shall not be deemed to be in breach of the Agreement and the Company may terminate this Agreement by notice in writing.
- b. If any of the conditions precedent in clause 1.3 are not met and the Company elects not to terminate the Agreement as provided therein, the Government shall use its best endeavours to satisfy the obligation that corresponds with that condition precedent within a reasonable period of time. Where, after such reasonable period of time has elapsed, the Government is unable to meet its obligation for any reason referred to in sub-clause (a), the Government shall be deemed to be in breach of the Agreement and the Company may terminate this Agreement by notice in writing.

## 4 Force Majeure

4.1 Subject to clause 4.2, for the purpose of this Agreement, "**Force Majeure**" means an event or circumstance (including, where applicable, the effects of such event or circumstance):

- a. that prevents one party from performing its obligations under this Agreement;
- b. was not anticipated as of the Effective Date;
- c. is not within the reasonable control of, or the result of the negligence of that party; and
- d. which, by the exercise of due diligence, that party is unable to overcome or avoid or cause to be avoided.

Events of Force Majeure include, but are not limited to, war, earthquake, hurricane, flood or such other adverse weather condition, strikes, lockouts, political or other industrial action (except where such strikes, lockouts or other actions are within the power of the party invoking Force Majeure to prevent).

A Force Majeure event shall create a day-for-day extension of this Agreement.

4.2 A party affected by an event of Force Majeure must:

- a. take all reasonable measures to remove that party's inability to fulfil its obligations under this Agreement with a minimum of delay;
- b. as soon as reasonably possible, and in any event, not later than 14 days following the occurrence of that event, notify the other party in writing of that event providing evidence of the nature and cause of the event and the extent to which it suspends the affected party's obligations under this Agreement;
- c. notify the other party in writing of the restoration of normal conditions as soon as possible; and
- d. resume performance of its obligations as soon as possible once the Force Majeure event no longer exists.

4.3 If the Force Majeure event continues for a period of 60 days or more, the parties shall meet to discuss the basis and terms upon which the arrangements set out in this Agreement may be continued, and may agree to suspend further performance of the Agreement until the Force Majeure event comes to an end.

4.4 Without prejudice to clause 4.3, where the Force Majeure event or its effects continues for more than 60 days and had occurred prior to the completion of construction of the Development, the affected party may by written notice terminate this Agreement whereupon each party will be relieved of any further obligation under this Agreement.

## 5 Confidentiality

5.1 For the purpose of this Agreement, "**Confidential Information**" means all information or data (including all oral and visual information or data and all information or data recorded in writing or in any other medium or by any other method) owned by either party, including, without limitation, any information relating to that party's operations, processes, plans, know how (being technical, marketing or commercial information), design rights, trade secrets, technical information, financial plans and records, business operations and procedures, business affairs and Intellectual Property as defined in clause 6. However, the existence and nature of this Agreement and its terms and conditions are not Confidential Information.

gpk  
SK

5.2 In relation to the Confidential Information of the other party, each party undertakes to maintain the same in confidence and to use it only for the purposes of this Agreement and for no other purpose including, without limitation, commercial use or other use for the benefit of itself or any third party other than as permitted by this Agreement.

5.3 In relation to the Confidential Information of the other party, each party undertakes not to copy, reproduce, reduce to writing any part thereof except as may be reasonably necessary for the purpose of giving effect to the Agreement and any copies, reproductions or reductions to writing so made are at all times the property of the disclosing party.

5.4 All Confidential Information received must be returned to the disclosing party together with any copies at any time on request and in any event on the expiration or termination of this Agreement.

5.5 Neither party may disclose the Confidential Information of the other party to its employees or to third parties except in confidence to those of its employees, directors or third party advisors who require that information for the performance of its undertakings pursuant to this Agreement and on the following conditions:

- a. those employees, directors and third party advisors are obliged by their contracts of employment or service not to disclose the same; and
- b. the receiving party must enforce those obligations at its expense and at the request of the disclosing party in so far as breach of those obligations relates to the disclosing party's Confidential Information.

The receiving party is responsible for the performance of sub-clauses 5.2, 5.3 and this sub-clause 5.5 on the part of its employees, directors and third party advisors to whom the Confidential Information is disclosed pursuant to this sub-clause.

5.6 Each party must use all reasonable efforts to ensure that all appropriate precautionary measures are put in place to protect the Confidential Information of the other party from unauthorised disclosure, copying or use.

5.7 The obligations of confidentiality under this clause 5 do not apply to any Confidential Information disclosed with respect to which the receiving party can prove:



- a. that such Confidential Information is in the public domain without any breach by any of the parties of the provisions of this clause 5;
- b. it was in possession of such Confidential Information prior to any disclosure by the other party and that this occurred without any breach by any of the parties of the provisions of this clause 5;
- c. that such Confidential Information is or was required to be disclosed by any applicable law, any governmental agency or instrumentality or any regulatory or other supervisory body requesting or requiring such disclosure or any stock exchange requirement, regulation or listing requirement

5.8 The obligations contained in this clause 5 continue in force notwithstanding the expiry or termination of this Agreement.

## 6 Intellectual Property

- 6.1 For the purpose of this Agreement, "**Intellectual Property**" means all intellectual creations including, but not limited to, inventions, know-how, layouts, drawings, designs, specifications, computer programmes, reports, data, maps, photographs and any other matter in any format or media protected by intellectual property rights, whether registered or not, including patents, designs, copyrights and all similar proprietary rights and applications for protection thereof.
- 6.2 Intellectual Property rights generated by a party under this Agreement is the property of that party which will be free to protect, transfer and use that Intellectual Property and the associated rights as it sees fit.
- 6.3 Intellectual Property that is generated by more than one party is jointly owned by those parties ("**Jointly Owned Intellectual Property**"), and each party is free to use the Jointly Owned Intellectual Property as it sees fit without owing the other party any compensation or requiring the consent of the other party.
- 6.4 Should the Company require any Intellectual Property from the Government, then prior to obtaining access and use of that Intellectual Property, it must apply for permission or a licence to access and use that the same on such terms and conditions as the relevant government department with custody and control over that Intellectual Property specifies.

- 6.5 Nothing in this Agreement constitutes a transfer of the Intellectual Property rights of one party to another, whether existing or arising in the future and whether or not generated under this Agreement.
- 6.6 The Government acknowledges that any Intellectual Property rights that subsist in any material provided by the Company under or pursuant to this Agreement remains the sole property of the Company. If new know-how or Intellectual Property evolves or is generated or arises, in whole or in part, from this Agreement and is paid for (without reimbursement) by the Company, then the same belongs to the Company unless otherwise agreed in writing by the Company.
- 6.7 The obligations contained in this clause 6 continue in force notwithstanding the expiry or termination of this Agreement.

## **7 Dispute resolution**

- 7.1 If any dispute, claim, question or disagreement arises from or relating to this Agreement, the parties agree to use their best endeavours to settle the dispute, claim, question or disagreement. To this effect, they must consult and negotiate with each other in good faith and, recognising their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

## **PART III - MISCELLANEOUS PROVISIONS**

### **8 Announcements and publicity**

- 8.1 Except insofar as inconsistent with Cayman Islands law, each party agrees to:
- a. liaise closely with the other concerning any proposal to make and promulgate any publicity, advertisement or other disclosure with regard to this Agreement; and
  - b. use all reasonable endeavours to agree the general nature of the content of any publicity, advertisement or other disclosure with regard to this Agreement before promulgating it.
- 8.2 The obligations contained in this clause 8 continue in force notwithstanding the expiry or termination of this Agreement.

**9 Assignment etc.**

Upon giving prior written notice to the Government, the Company may at any time assign any or all its rights, title and interest in this Agreement on the condition that the assignee assumes the Company's obligations under this Agreement whereupon the Company will be discharged from further performance of those obligations. The Company may only do so with the consent of the Government, which consent shall not be unreasonably withheld.

**10 Expenses**

Each party agrees to pay its own expenses (including but not limited to legal, accounting and other professional services) in connection with all negotiations, studies and other actions taken in relation to this Agreement and all costs of preparing and implementing the terms of this Agreement.

**11 Nature of relationship**

The parties acknowledge there is no relationship between the parties of joint venture, partnership, principal/agent or employer/employee and nothing in this Agreement is to be construed as implying the existence of any such relationships. Accordingly, neither party has any right or authority to act on behalf of the other party, nor bind the other party by contract or otherwise.

**12 Warranty of authority**

Each party hereby warrants in favour of the other that:

- a. it has full power and authority to enter into this Agreement;
- b. it has all necessary approvals to enter into this Agreement;
- c. the execution of this Agreement has been fully authorised; and
- d. those provisions that are intended to be binding upon it constitute legally binding obligations on its part.

**13 Powers of the Legislature**

Nothing contained in this Agreement in any way fetters, or is to be taken as seeking in any way to fetter, the exercise of legislative power of the Legislature of the Cayman Islands (as defined in section 59 of the Constitution of the Cayman Islands).

## 14 Severance

- 14.1 If any provision of this Agreement is held to be illegal, invalid or unenforceable, that provision is to be treated as being severed from this Agreement, but the rest of this Agreement will not be affected.
- 14.2 Without derogating from the preceding clause 14.1, the parties agree to negotiate in good faith the terms of an alternative provision in place of the deleted provision.

## 15 Waiver

The failure or delay of either party to enforce any of its rights or to require the performance of any obligation, responsibility or liability, or to exercise any right, power or remedy under this Agreement will not itself be taken as a waiver of that party's rights, obligations, responsibilities, liabilities, rights or powers under this Agreement, nor will partial exercise of any such right, power or remedy preclude any further exercise of the same, or of any other right, power or remedy.

## 16 Preservation of relationship and notices

- 16.1 Each party agrees to designate not less than two individuals to be responsible for maintaining the relationship between the parties, and these individuals may be changed from time to time as necessary.
- 16.2 On behalf of the Company, these individuals will be Mr. John David Layton and Mr. David Dinner.
- 16.3 On behalf of the Government, these individuals will be the Honourable Premier and Minister of Home Affairs, Health and Culture Mr. Alden McLaughlin and the Honourable Minister of Planning, Lands, Agriculture, Housing and Infrastructure Mr. D. Kurt Tibbetts or their designates.
- 16.4 Any notice or communication required or authorised by this Agreement to be given to a party must be in writing in English, signed by or on behalf of the party giving the same and sent by personal delivery to the recipient's address that appears below. The notice or communication is taken to be given on the business day following the day of delivery.

## The Government

Name: The Government of the Cayman Islands  
Address: Government Administration Building  
133 Elgin Avenue  
Grand Cayman KY1-9000

Attention: Honourable Minister of Planning, Lands, Agriculture, Housing and  
Infrastructure Mr. Kurt Tibbetts.

## The Company

Name: Beach Bay Land Ltd.  
Address: Caribbean Plaza, Unit C16  
878 West Bay Road  
P.O. Box 10269  
Grand Cayman KY1-1003

Attention: John David Layton

AND

Name: Beach Bay Land Ltd. – John David Layton  
Address: c/o Dinner Martin Attorneys  
3<sup>rd</sup> Floor, One Capital Place  
P.O. Box 10190  
Grand Cayman KY1-1002

Attention: David Dinner

## 17 Definitions and interpretation

- 17.1 In this Agreement, "**affiliate**", in relation to BBLL, means any other company that:
- a. is controlled, whether directly or indirectly, by BBLL; or
  - b. controls, whether directly or indirectly, BBLL; or
  - c. is under common control, whether directly or indirectly, with BBLL.

god  
SR

- 17.2 In this Agreement, "**Budget**" refers to the estimated cost of the Development and is subject to change or revision without notice.
- 17.3 In this Agreement, as the context permits or allows, ("**Commencement Date**") refers to the date upon which the Company or its affiliate submits the first plans to the Planning Department for approval.
- 17.4 In this Agreement, as the context permits or allows, "**Company**" includes each and every company duly incorporated in accordance with the laws of the Cayman Islands that is an affiliate of BBL.
- 17.5 In this Agreement, unless the context otherwise requires:
- a. A reference to any statute or statutory provision includes a reference to:
    - (i) that statute or statutory provision as from time to time amended, extended, re-enacted, revised or consolidated whether before or after the date of this Agreement;
    - (ii) all statutory instruments, regulations or orders made pursuant to it;
  - b. A reference to any clause, sub-clause or schedule is to a clause, sub-clause or schedule, as the case may be, of or to this Agreement.
  - c. Headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
  - d. The schedule(s) to this Agreement is (are) deemed to be incorporated into and form(s) part of this Agreement.

## 18 Entire agreement

This Agreement constitutes the entire agreement between the parties with respect to all matters to which it refers and replaces and supersedes all previous agreements, licences, arrangements, writings, statements, representations of fact or opinion, heads of agreement and understandings between the parties with respect to the subject matter of this Agreement.

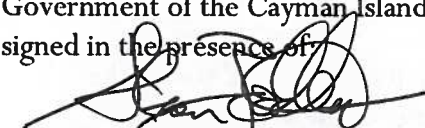
**19 Variation**


This Agreement may not be varied, modified or amended other than by written agreement of the parties.

**20 Governing law and jurisdiction**

This Agreement is governed by the laws of the Cayman Islands and the parties agree to submit to the exclusive jurisdiction of the courts of the Cayman Islands and the courts of appeal from them to determine any dispute arising out of or in connection with this Agreement.

**Executed as an agreement the day and year first before mentioned.**

Executed for and on behalf of the  
Government of the Cayman Islands  
signed in the presence of:  
  
\_\_\_\_\_  
Signature of witness

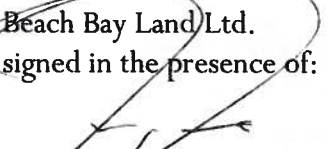
  
\_\_\_\_\_  
Name: Samuel Rose, JP  
Title: Cabinet Secretary

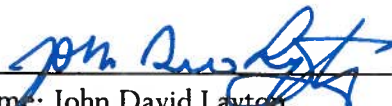


**STRAN BODDEN**  
**Justice of the Peace**

**ID# SB280512**

Executed for and on behalf of  
Beach Bay Land Ltd.  
signed in the presence of:

  
\_\_\_\_\_  
Signature of witness *DAVID DINNEN*  
*AT GEORGE TOWN, GRAND*  
*CAYMAN, CAYMAN ISLANDS*

  
\_\_\_\_\_  
Name: John David Layton  
Title: Authorised signatory

*SL*  
*get*

**Schedule 1**  
(Timetable for the Development)

1. Within 12 calendar months of the Commencement Date, the Company, by itself or through one or more of its affiliates, as the case may be, shall do the following:
  - a. produce, or cause to be produced, plans and specifications for the construction of the Development;
  - b. produce, or cause to be produced, two budget reports from two reputable Construction Managers;
  - c. submit the necessary applications for permission to carry out the Development , such applications to be submitted in stages for staged permitting;
  - d. submit the necessary application for permits to construct the Development, such applications to be made in stages for staged permitting;
  - e. establish the companies referred to in sub-clauses a and b of clause 1.2 (being the companies to be established in accordance with the laws of the Cayman Islands) and apply for all licences and other authorisations as may be required to carry on business in the Cayman Islands.
2. The Government will offer all reasonable assistance to facilitate:
  - a. the granting of approval of the Company's planning application; and
  - b. the issue of necessary building permits to allow the Company to commence construction of the Development. The Government will seek to ensure that those approvals are granted and those building permits are issued within 6 calendar- months of the Company submitting the necessary applications.
3. Within 9 calendar months of being granted the necessary planning approvals and obtaining the necessary building permits, the Company shall commence construction of the Development.
4. Within 36 calendar months of the commencement of construction (subject to acts of God or other events beyond its control and assuming it has received all necessary or desirable planning and building approvals, licenses, permits, certificates and other authorisations of whatever kind), the Company shall complete, or cause to be completed, construction of the Development and commence its operation.