

## COMMONWEALTH OF THE BAHAMAS

### New Providence

**THIS AMENDED AND RESTATED HEADS OF AGREEMENT** (this "**Amended and Restated HOA**") is entered into as of 7<sup>th</sup> February, 2012 **BETWEEN THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS** represented herein by **ANITA BERNARD**, the Secretary to the National Economic Council acting by and under the authority of the National Economic Council (hereinafter referred to as the "**Government**"), of the first part, and **MAYAGUANA ISLAND DEVELOPERS LIMITED**, a company incorporated under the laws of The Commonwealth of The Bahamas and having its registered office in the City of Nassau on the Island of New Providence one of the Islands in the said Commonwealth (hereinafter referred to as "**MID**" which expression shall include its predecessors in interest, successors and assigns), of the second part, (the Government and MID collectively referred to herein as the "**Parties**," and each one separately referred to as a "**Party**").

### WHEREAS:

- A. The Government is desirous of encouraging and facilitating orderly growth and development on the Island of Mayaguana one of the Islands in the said Commonwealth which would attract both Bahamians and non-Bahamians as investors, participants and residents.
- B. In furtherance thereof, on the 7th March, 2006 the Government and MID entered into a Heads of Agreement (the "Original HOA"), pursuant to which the Hotel Corporation of the Bahamas ("HCB"), I Group Bahamas Limited ("I Group") and MID entered into a Joint Venture Agreement (the "JVA") and MID and Mayaguana Management Company Limited ("MMC") entered into a Management Agreement (the "MA") for the development (inter alia) of certain public improvements and infrastructure necessary for the development of touristic, residential and other projects on Mayaguana.
- C. Pursuant to the terms of the Original HOA, the JVA and the MA, MID (directly and through MMC and other affiliates) has equipped Mayaguana with an extensive fleet of specialized earth-moving and construction vehicles and machinery, and has completed substantial works on Mayaguana, including installing the only gravel, asphalt and concrete plants on the said island, providing electric power, fresh-water and communication systems, warehouses, repair facilities, worker housing, technical training and materials testing facilities and administrative offices and a hospitality center to support sales and marketing efforts, completing more than ten miles of paved and unpaved road construction and repair work, making improvements to the public dock at Pirate's Well, providing other community improvements as are more particularly set forth in paragraph 11 herein, partially re-grading and repaving the Airport runway, erecting the foundations and structural steel for a new Airport terminal building and constructing/installing other critical resources that are required for the Development and that were previously not available or existent on Mayaguana.
- D. In connection with the foregoing, MID has (directly and through MMC and other affiliates) trained and employed numerous Mayaguanians and other Bahamians, utilized



numerous Bahamian contractors and suppliers and provided hurricane relief and a number of public improvements for the benefit of the local community.

- E. I Group has funded 100% of the costs for the foregoing public improvements and benefits and for the Development, including all engineering, architectural, sales and marketing, administrative and other associated costs, which costs amount to more than US\$43,000,000 to date. As a result of significant changes in global economic conditions, Government policies and other factors, the Government and I Group have agreed to change the scope of the Development, substantially reduce (by up to 70%) the amount of Crown land needed for the same and amend and restate the Original HOA in its entirety so that only the terms and conditions as set forth in this Amended and Restated HOA shall henceforth have force and effect provided nevertheless and for the avoidance of doubt that all concessions benefits rights and exemptions in respect of the Development intended to remain the property of MID shall remain in full effect from the date the same were granted.
- F. Consequently, the Parties intend that HCB, I Group and MID shall terminate the JVA and the Government shall cause HCB to transfer 100% of its issued and outstanding shares in MID to I Group for the cash consideration hereinafter described.
- G. The Government is satisfied that the Development has already impacted and will continue to impact positively and significantly upon the economy of the said Commonwealth and the said island of Mayaguana in particular and has approved in principle the Development by I Group through MID as contemplated in this agreement and the associated Land Use Plan attached hereto upon the terms and conditions hereinafter appearing.

**NOW THEREFORE**, in consideration of the mutual covenants of the Parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:-

## **1. Definitions and Interpretation**

1.1 The following terms shall have the following meanings for purposes of this Amended and Restated HOA:-

**"Airport"** means the Mayaguana Airport.

**"Amended and Restated HOA"** means this agreement as the same may be amended from time to time.

**"Approvals and Permits"** means any approval, permit, licence, consent, permission, agreement or other authorization required by law to be obtained from the Government by any person or entity in connection with the Development as contemplated by this Amended and Restated HOA, including any of the same ancillary thereto, including hotel, liquor and restaurant licences, hotel-condominium and residential building approvals, immigration clearances and work permits, customs clearances conforming with the exemptions and concessions herein provided for associated imported equipment, materials and supplies, and the like.

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"**Boutique Hotel**" has the meaning ascribed thereto in paragraph 5.1.

"**Boutique Lodge Resort**" has the meaning ascribed thereto in paragraph 6.1.

"**Commencement Date**" has the meaning ascribed thereto in paragraph 2.1.

"**Commencement Date Approvals and Permits**" mean the Approvals and Permits set forth in Schedule B.

"**Conservation Land**" has the meaning ascribed thereto in paragraph 9.1.

"**Development**" shall mean those certain public and infrastructural improvements necessary for, and the touristic, residential and other projects on Mayaguana undertaken to date pursuant to the HOA and to be continued and undertaken pursuant to this Amended and Restated HOA.

"**Development Partner**" means MID and any other person or entity involved in the ownership of land or the construction, management or operation of improvements thereon in the Development Area.

"**Development Area**" has the meaning ascribed thereto in paragraph 2.1(b) and includes any Incremental Development Acreage and any other acreage as the same is purchased by MID.

"**EIA**" has the meaning ascribed thereto in paragraph 13.2.

"**Escrow Agreement**" has the meaning ascribed thereto in paragraph 2.1.

"**Government**" means the Government of the Commonwealth of The Bahamas acting through via or under any the aegis of any Ministry, department, public corporation or other instrumentality, including the Cabinet, the National Economic Council (by whatever name called) and the Investments Board of The Bahamas.

"**HCB Shares**" has the meaning ascribed thereto in paragraph 2.1.

"**HEA**" has the meaning ascribed thereto in paragraph 15.1(a).

"**I Group**" has the meaning ascribed thereto in Recital B above.

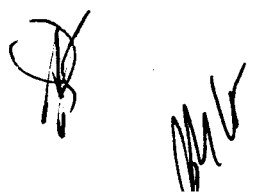
"**including**" and "includes" shall be deemed to mean "including/includes without limitation."

"**Incremental Development Acreage**" has the meaning ascribed thereto in paragraph 2.3 and 2.4.

"**JVA**" has the meaning ascribed thereto in Recital B above.

"**Land Use Plan**" means the general plan for land use on Mayaguana shown in Schedule A-1.

"**MA**" has the meaning ascribed thereto in Recital B above.

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"**Master Plan**" has the meaning ascribed thereto in paragraph 3.1.

"**Mayaguana Airport Project**" has the meaning ascribed thereto in paragraph 4.1.

"**Mayaguana Legislation**" has the meaning ascribed thereto in paragraph 2.1(f).

"**Mayaguana Signature Homes**" has the meaning ascribed thereto in paragraph 7.1.

"**Nature Preserves**" has the meaning ascribed thereto in paragraph 9.2.

"**Option Agreement**" has the meaning ascribed thereto in paragraph 2.3.

"**Option Parcel**" has the meaning ascribed thereto in Schedule A-2.

"**Original HOA**" has the meaning ascribed thereto in Recital B above.

"**US\$**" means dollars in the currency of the United States of America.


1.2 Wherever in this Amended and Restated HOA:-

- (a) An action by MID is "approved" by the Government, or the Government "agrees" that MID may take the action, the taking of the said action remains subject to MID obtaining the customary Approvals and Permits.
- (b) An action is to be taken by "MID" it may be taken by MID either directly, or through or in concert with a Development Partner, a contractor, agent, joint venture partner, affiliate or approved assignee of MID on behalf of any of the same.

## 2. **Consideration And Commencement Date**

2.1 The Government hereby agrees to cause HCB to sell to I Group 100% of the issued and outstanding shares held by HCB in MID (the "HCB Shares") for the sum of US\$500,000 (such sum be paid into an escrow account to be established at an independent institution agreed by the Parties pursuant to an escrow agreement in substantially the form attached as Schedule E (the "Escrow Agreement")) and to be paid within 14 days of the date of the occurrence (the "Commencement Date") of the last of the following:-

- (a) Receipt by I Group of the HCB Shares free and clear from any encumbrances together with all requisite approvals from the Government and the Investments Board of the Bahamas (by whatever name called) and the Central Bank of The Bahamas, the formal resignations of all members of the Board of Directors of MID and MMC appointed by HCB or the Government and all other documentation, corporate resolutions, filings and the like necessary to give effect to the full and final transfer to I Group of all HCB or Government interests in MID and MMC, the termination of the JVA and the MA and amendment of their articles, bylaws and the like to conform;
- (b) Receipt by MID of Government stamp duty exempt conveyance/s from the Government in favour of MID free and clear from any encumbrances of the absolute fee simple to the 2,912 acres of land as provided in Schedule A-1 (the



"Development Area"), together with all requisite approvals from the Government and the Investments Board of the Bahamas (by whatever name called) and the Central Bank of The Bahamas.;

- (c) Receipt by MID of an Option Agreement between the Government and MID as more particularly set forth in paragraph 2.3.
  - (d) Receipt by the Government of MID's unconditional waiver of any claim for land pursuant to the Original HOA otherwise due in consideration of prior and future works by MID on Mayaguana;
  - (e) Receipt by I Group of the Commencement Date Approvals and Permits in form and substance reasonably satisfactory to I Group; and
  - (f) The passage and enactment and bringing into force and effect of legislation in form and substance reasonably satisfactory to I Group which legislation shall set forth the concessions and exemptions to which MID shall be entitled and certain other matters as more particularly set forth in Schedule C (the "Mayaguana Legislation").
  - (g) The execution by the Parties and HCB of an agreement formally terminating the JVA with each Party and HCB releasing the others from all obligations thereunder.
  - (h) Receipt by I Group of written approval of this Amended and Restated HOA by Cabinet, the National Economic Council (by whatever name called) and the Investments Board of The Bahamas in form and substance reasonably satisfactory to I Group.
- 2.2 Government shall be entitled to receive from MID a fee equal to ten per cent (10%) of the gross sales price received by the company for sale of all residential lots in the Development Area, and five per cent (5%) of the gross sales proceeds received by the Company for the sale of all commercial lots in the Development Area payable for so long as the exemptions and concessions contemplated by paragraph 15 remain in effect, save that the fee shall not apply or be payable in respect of the first 75 residential home sites sold by MID or to sales of land by MID to an entity or joint venture in which MID holds more than a 10% interest.
- 2.3 In addition, Government shall grant MID options to purchase from the Government up to an additional 2,913 acres (collectively, the "Incremental Development Acreage") by way of formal options for Option Parcels as are more particularly set forth on Schedule A-2 attached hereto, in substantially the form of the Option Agreement attached hereto as Schedule A-2, such Option Agreement to be recorded at the Registry of Records in The Bahamas (the "Option Agreement"). As a condition precedent to the exercise of each such option to purchase, MID shall
- (i) satisfy the incremental development condition specified in paragraphs 4, 5, 6, 7, 8, 9 or 11, and

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(ii) on the exercise of each such option to purchase, shall pay a prorated amount of an aggregate of US\$500,000 based on the acreage the subject of each option, viz. the purchase price for the Option 1 parcel of 350 acres is US\$60,075 (US\$500,000 ÷ 2913 x 350).

2.4 To the extent purchased by MID, the Incremental Development Acreage shall be deemed to be part of the Development Area for all purposes of this Agreement.

### **3. Master Plan**

3.1 Within 9 months of the Commencement Date, MID shall submit to the Government a master plan for the Development that shall delineate the projected work and timing of the components of the same (the "Master Plan"). The Government shall support MID's planning efforts and schedule through the active participation of all appropriate Ministries and Government officials including the BEST Commission, Town Planning, the Mayaguana Island Administrator and the Mayaguana Town Council. The Master Plan shall include estimates at that point in time for the total investment needed to complete the Development, the economic impact of the Development on Mayaguana and start and finish dates for each phase of the Development. The Parties acknowledge that the Master Plan will as of necessity be a dynamic plan and will be subject to change.

3.2.1 In addition to its existing investment of over US\$43,000,000, MID shall invest or cause to be invested in the Development the remaining investment needed to satisfy the relevant incremental development condition specified in paragraph 4, 5, 6, 7, 8, 9 or 11 to any Option Parcel that MID exercises.

3.2.2 MID shall continue to work to secure third party financing for the remaining investment needed to complete the Development, including all of the other matters contemplated in this Amended and Restated HOA.

### **4. Mayaguana Airport Project**

4.1 As a condition to its exercise of Option Parcel 1, or Option Parcel 2, as provided below, MID shall complete improvements to the Airport (collectively the "Mayaguana Airport Project") consisting of:-

- (a) Completion of the resurfacing of approximately 6,700 linear feet of the original runway to a width of 100 feet and a thickness of 1.5 inches with hot mix asphalt;
- (b) Completion of the construction of a new approximately 800 feet by 75 feet taxiway;
- (c) Completion of clearing and grading of a safety zone on each side of the runway;
- (d) Installation of a wind sock and apron and taxiway reflectors; and
- (e) Re-design and construction of an airport terminal building in accordance with MID's development model and not to exceed 4,500 square feet.

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The improvements specified in paragraphs 4.1(a), (b), (c) and (d) shall be carried out by a Bahamian contractor hired by MID on behalf of the Government, whose rights shall be against such contractor, and shall be deemed satisfied when the Mayaguana Airport Design Project Engineer certifies that 4.1(a) through (d) inclusive have been completed in accordance with the design specifications and the Department of Civil Aviation has approved the runway for use by Dash 8 aircraft or its equivalent, following which Option Parcel 1 may be exercised.

- 4.2 The improvement specified in paragraph 4.1(e) shall be deemed satisfied when the airport terminal building is substantially completed and open for business, following which Option Parcel 2 may be exercised.
- 4.3 As a further condition to its exercise of Option Parcel 1, MID shall submit detailed plans and applications for Permits and Approvals for the work specified in paragraphs 4.1(a), (b), (c) and (d) within 6 months of the Commencement Date, and shall complete construction of the same within 18 months of the receipt of all necessary Approvals and Permits.
- 4.4 The Government shall retain ownership and control of all land at the Airport including the terminal, runways and aprons, shall (subject to paragraph 4.5) be responsible for its operations, maintenance and safety, shall make all necessary adjustments in the Airport operations to provide necessary access for MID to undertake the Airport works including changing flight operations.
- 4.5 The Government shall grant MID a Right of First Refusal giving MID the sole and exclusive right to:-
  - (a) Operate, manage and maintain the Airport, including any operational facilities that may be constructed there;
  - (b) Construct, operate, manage and maintain ancillary facilities inclusive of facilities for private planes and/or fixed base operations for aircraft landing at or situate at the Airport; and
  - (c) The Government agrees and recognizes the importance of maintaining any non-secure areas at the airport at an aesthetic standard to support the marketing of Mayaguana as a quality and unique tourist destination. In furtherance thereof, it agrees to rent any non-secure areas at the Airport at a reasonable rent to MID to enable it to promote the Airport as a commercial center and for its own use, subject to the national policy regarding Bahamian participation in retail ventures.
- 4.6 Recognizing the importance of attracting potential investors and other visitors to Mayaguana and the significance to such visitors of the convenience of traveling to Mayaguana by direct international flight, the Government shall, concurrently with the execution of this Amended and Restated HOA, put in place arrangements for inward and outward flights to clear customs and immigration in Mayaguana, which arrangements shall also permit direct entry of international shipments of equipment, materials, supplies and the like for the Development arriving either by air or sea.



- 4.7 Contemporaneously with the opening of the Boutique Hotel, the Government shall designate and staff the Airport as an International Port of Entry.
- 4.8. The Government shall ensure that commencing contemporaneously with the opening of the Boutique Hotel, Bahamasair and/or another recognized and licenced commercial airline will have scheduled flights that will enable visitors to Mayaguana to transit through Nassau with convenient same-day connections to and from the Northeastern United States on at least three days per week, such days and aircraft capacities to support Mayaguana tourism traffic and to be mutually agreed by MID and the Government. No later than contemporaneously with the commencement of construction of the Boutique Hotel the Government shall have agreed in the usual manner with Bahamasair or another licensed commercial airline, in form and substance reasonably satisfactory to MID, for the provision of such air service commencing no later than its opening date.

## **5. Boutique Hotel**

- 5.1 As a condition to its exercise of Option Parcel 3, MID shall construct within the Development Area a boutique hotel with at least 25 bedrooms which shall include a bar, restaurant, recreation facilities and the requisite utilities (collectively the "Boutique Hotel").
- 5.2 As a further condition to its exercise of Option Parcel 3, MID shall submit detailed plans and applications for Permits and Approvals for the Boutique Hotel and begin construction within 6 months of the Commencement Date provided MID is in receipt of all necessary Approvals and Permits. MID shall be entitled to exercise Option Parcel 3 when the Boutique Hotel is substantially completed and open for business.

## **6. Boutique Lodge Resort And Other Hotels**

- 6.1 MID shall continue to work to secure the agreement of an internationally recognized hotel operator to undertake the management of a 30 to 80 key boutique lodge resort in the Development Area (the "Boutique Lodge Resort") within three years after the Commencement Date. The Boutique Lodge Resort may include "over water" bungalows, in connection with which the Government shall grant leases of the bed of the sea for such over water bungalows at a nominal rent for a period of 21 years with options to renew for successive additional periods of 21 years.
- 6.2 MID intends to include other boutique hotel/resort operations within the Development Area consistent with its overall Development vision and as economic and other growth and infrastructure on Mayaguana permits.
- 6.3 MID shall be entitled to exercise Option Parcel 4 when the Boutique Lodge Resort is substantially completed and open for business, following which Option Parcel 4 may be exercised.

## **7. Mayaguana Signature Homes And Home Sites**

- 7.1 MID shall identify in the Master Plan a minimum of 500 home site lots within the Development Area that are expected to be arranged in phased clusters, with narrow sandy





roads and preserved natural vegetation ("Mayaguana Signature Homes") to be pre-sold and developed in accordance with market demand.

- 7.2 Some or all of the associated roadways, electricity, water, wastewater treatment and telephone/cable infrastructure serving the home sites will be installed on a schedule matched to the completion of the construction of the said Mayaguana Signature Homes.

The Government acknowledges that the design concept and implementation schedule for the Mayaguana Signature Homes and home site infrastructure will require certain exemptions from existing legislation as specified in the Mayaguana Legislation.

- 7.3 MID shall be entitled to exercise Option Parcel 5 when 50 Mayaguana Signature Home Site lots will be eligible for Subdivision Approval (by whatever name called) by the Ministry of Works following which Option Parcel 5 may be exercised.

## **8. Marinas And Related Projects**

- 8.1 It shall be a condition to MID's exercise of Option 6 that no later than contemporaneously with the construction of the Boutique Lodge Resort, MID shall develop a 25 slip marina to be located close to the Government dock at Abraham's Bay, Mayaguana or another appropriate location as identified in the Master Plan.

- 8.2 The construction of the said Marina is contingent upon MID obtaining:-

- (a) Confirmation satisfactory to MID that there is a physically and economically viable site within 6 months of the Commencement Date;
- (b) Permission (if such Marina construction is sufficiently proximate to the public dock at Abraham's Bay and upgrades as set forth below are deemed desirable by MID) from the Government to upgrade the existing public dock at Abraham's Bay for the purpose of aesthetically enhancing the dock area and facilitating loading/unloading of goods;
- (c) Permission from the Government to dredge a channel and slip area and construct the marina slips;
- (d) A lease from the Government of the bed of the sea for boat slips and docks at a nominal rent for a period of 21 years with options to renew for successive additional periods of 21 years; and
- (e) All Approvals and Permits necessary to construct and operate adjacent to the said Marina, and within the Development Area, marina amenities including a dock master's building, delivery dock, marine fuel depot, storage buildings, boat repair facility, laundry facility, retail shops/restaurant, and adjacent resort and residential properties to support the Marina, subject to the national policy requiring Bahamian participation in such ventures except insofar as a Development Partner seeks the right, either directly or by subcontract, to operate a signature restaurant.
- (f) MID shall be entitled to exercise Option Parcel 6 when the 25 slip Marina is substantially completed and open for business.



8.3. The Government agrees that MID shall be entitled:-

- (a) To execute works to effect the re-establishment of one or more tidal connections:-
  - (i) Between the ocean and Flamingo Pond; and
  - (ii) Between the ocean and Pirate's Well Creek;
  - (iii) Between the ocean and Abraham's Bay Salinas; and
- (b) To dredge and construct marinas to be located at Abraham's Bay, Low Point, South East Point and/or other locations within the Development Area, as specified in the Master Plan.

## 9. Conservation Lands And Nature Preserves

9.1. MID shall identify on the Master Plan land within the Development Area land to be designated as "Conservation Land." Use of the Conservation Land will be limited to research, educational, and recreational purposes and the Conservation Land shall not be developed other than to include walking and riding (e.g., bicycles, horses, mopeds) trails, nature/interpretive centers and observation and experience sites save that MID may make incidental use of the Conservation Land for utility corridors, recharge to wetlands/groundwater and similar needs of the Development. Conservation Land trails will be connected to the Nature Preserves via trail networks. It shall be a condition to MID's exercise of Option Parcel 7 that no later than contemporaneously with the construction of the Boutique Hotel, MID shall commence the development of the said Conservation Land trails.

9.2. Having regard to the importance of preserving the natural flora and fauna of Mayaguana and the value of the pristine Mayaguana Island environment, MID has proposed and the Government has agreed that nature preserves shall be established on Crown land and preserved in perpetuity at the locations (collectively, the "Nature Preserves") identified on Schedule A-1. Use of the Nature Preserves will be limited to research, educational and recreational purposes in perpetuity and the Nature Preserves shall not be developed other than to include walking and riding (e.g., bicycles, horses, mopeds) trails, nature/interpretive centers, observation and experience sites and sustainable infrastructure (e.g., composting toilets, solar power). The Government agrees that to the extent MID undertakes trail and other maintenance and management of the said Nature Preserves MID shall be entitled to charge fees to users of the said Nature Preserves to cover any costs incurred.

## 10. Housing

MID and the Government agree to work cooperatively to locate housing in existing Settlements or on Crown land on Mayaguana for persons working within the Development Area.

## 11. Community Projects and Public Water Supply Infrastructure

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11.1 MID shall be entitled to exercise Option Parcel 8 if, commencing by the date on which the Boutique Hotel opens for business, MID is demonstrably able to produce and offer potable water for sale to the Water and Sewerage Corporation (or any successor entity) at a commercially reasonable rate covering its recovery of and return on capital and operating costs in sufficient quantities to serve the current population (approximately 300 persons) of Mayaguana and any increase in that population by construction and operating personnel for the Boutique Hotel, or, at its option, to finance on commercially reasonable terms the purchase by the Water and Sewerage Corporation (or any successor entity) of a corresponding amount of desalinating capacity, equipment and facilities.

11.2 Since 2004, MID has completed the following Community Projects as contemplated by the Original HOA or in addition thereto:-

- (a) Contributing US\$200,000 for hurricane relief in 2004 and providing relief supplies and equipment to the island during the hurricanes of 2004 and 2009.
- (b) Serving as a member of Mayaguana's Community Advisory Board.
- (c) Repairing the most severe potholes on public roads and providing support to maintain public roads.
- (d) Contributing to the community health clinic and supporting the clinic with periodic visits from doctors from major US hospitals.
- (e) Providing ultrasound equipment to the community health clinic.
- (f) Undertaking meaningful community projects as approved by the Mayaguana Community Advisory Board, such as lot clearing and maintenance, mowing and maintenance of public areas, maintenance for elderly housing and land.
- (g) Providing surplus materials and labour to Mayaguana schools and churches such as paint, plumbing supplies, light fixtures, etc.
- (h) Assisting local residents with well and septic system maintenance at the request of local Government.
- (i) Undertaking special projects as follows; (a) Betsy Bay- opening an access road for a public boat launch ramp and (b) Pirates Well- lot clearing for school activities.
- (k) Making the MID Technical Center available for public purposes including education and training.
- (l) Providing equipment, trenching and land clearing and other assistance to Batelco to run a fiber optic cable between Betsy Bay and Abrahams Bay.

### 11.3 **Community Improvements**

It shall be a condition to MID's exercise of Option Parcel 9 that within six months of the Commencement Date MID shall implement or contribute (at its sole option) to the

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Mayaguana Local Government Council the cost of the following additional community improvements provided, however, that the specific improvements listed, other than those to the health clinic, may be modified by the majority vote of the Mayaguana Local Government Council:-

- (a) Outdoor basketball court, not to exceed US\$5,000;
- (b) Additional improvements to the health clinic, not to exceed US\$50,000;
- (c) Lunch and recreation facilities at schools, not to exceed US\$20,000; and
- (d) Science or technology lab at high school, not to exceed US\$25,000.

## **12. Utilities**

12.1 The Mayaguana Legislation shall include authorization for MID:-

- (a) to construct centralized and/or distributed power supply, gas supply, water, waste disposal and sewerage disposal systems and the like and the necessary distribution and collection systems in connection therewith within the Development Area and
- (b) to provide electricity, gas, water supply, waste disposal and sewerage disposal adequate to meet the needs of the Development to the extent the relevant public utility will not commit to finance, construct and provide the same at rates not in excess of those prevailing in comparable areas in The Bahamas on a schedule sufficient to meet the needs of the Development, or the plans for the Development call for "alternative" and/or distributed systems for some or all of these purposes.

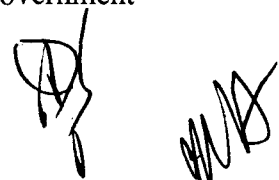
12.2 To the extent MID provides any of these services within the Development Area, it shall be entitled to charge commercially reasonable rates covering its recovery of and return on capital and its operating costs, and shall provide the Government with relevant financial data no less frequently than annually demonstrating that such rates are commercially reasonable.

## **13. Environmental Impact Assessment**

13.1 The Government agrees that, given changes in the scale, character and schedule of the Development, the environmental impact of the Development will be assessed in phases.

13.2 MID shall submit an Environmental Impact Assessment (an "EIA") to the Government within two months after the date of this Amended and Restated HOA with respect to the first phase of the Development, consisting of works undertaken to date, completion of the Mayaguana Airport Project, and the Boutique Hotel, approval of which is one of the Commencement Date Approvals and Permits listed on Schedule B. The Government shall complete its review of the EIA and provide its response to MID within three months after receipt and the Parties shall thereafter work expeditiously to resolve any outstanding questions.

13.3 Thereafter, should any subsequent proposed phase of the Development require the submission of an EIA, MID shall submit the same to the Government, the Government

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shall similarly complete its review of that EIA and provide its response to MID within two months after receipt and the Parties shall thereafter work expeditiously to resolve any outstanding questions.

#### **14. Work Permits**

MID acknowledges that contracting with Bahamians in connection with the construction and operation of the Development is of importance to the Government and MID shall use its reasonable endeavors to fill jobs with qualified Bahamians. The Government recognizes however that some of the jobs may require special skills and expertise not readily available in The Bahamas and/or that there may be insufficient numbers of qualified Bahamians available to work in Mayaguana at prevailing rates of pay in The Bahamas, and in such cases, recognizes that MID will seek the Government's grant of work permits to qualified non-Bahamian persons on a short term or a longer term basis depending on the job classification and the ability of MID to find and/or train suitable candidates for such jobs. The Government agrees to facilitate on an expedited basis the grant of such work permits.

#### **15. Exemptions And Concessions**

15.1 The Government agrees that MID and the Development shall be entitled to:-

- (a) All exemptions and concessions available under the Hotels Encouragement Act (the "HEA") and any successor or similar legislation including all customs and stamp duty and real property tax exemptions available for new hotels in the Out Islands (as such term is defined in the HEA); and
- (b) All exemptions and concessions available under the Family Islands Development Encouragement Act and any successor or similar legislation.

15.2 The Government acknowledges that the remote location of Mayaguana and the scarcity of labour and lack of infrastructure present unique and extraordinary challenges for major development on the said island and the Government recognizes that the additional exemption and concession incentives and other matters to be contained in the Mayaguana Legislation and more particularly set forth on Schedule C are critical to the success of the Development and accordingly agrees to forthwith pass and enact the Mayaguana Legislation, to make any amendments to the Real Property Tax Act, the HEA or any other legislation to give full effect to matters the subject of the Mayaguana Legislation and this Agreement, and to take any other action necessary to bring the Mayaguana Legislation into full force and effect.

#### **16. Other Government Support**

16.1 The Government will grant Permits and Approvals to MID and any other Development Partner on an accelerated basis and will take all necessary steps to expedite the approval of any applications made therefor including Permits and Approvals for those items set forth in Schedule D, subject to the applicant satisfying the objective conditions for the same in accordance with law after giving full effect to any relevant provisions of the Mayaguana Legislation.

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- 16.2 The Government will assist MID in the promotion and marketing of Mayaguana as a travel destination, including by routinely using Mayaguana's name and images in print, broadcast and other general Family Island advertising and promotional media, issuing press releases under the name of the Ministry of Tourism (or other relevant agency) reasonably proposed by MID from time to time, making appropriate Government officials available for public events, providing MID with tourism and marketing data, making postal mailings (at MID's expense) and emailing of materials supplied by MID to the Government's tourism postal address and email address lists and accommodating reasonable requests of MID or any other Development Partner as to arrival logistics intended to enhance the experience of Mayaguana visitors transiting through the Airport and through Lynden Pindling International Airport.
- 16.3 The Government will grant MID reasonably requested easements for new roads and parkways supporting the Development and along public roads and across Crown land for the purpose of utility supply to and among parcels of land constituting the Development Area, including across Nature Preserves.
- 16.4 The Government will assist MID in defending against adverse claims asserted by third parties against the land constituting the Development Area.
- 16.5 The Government shall maintain a designated Development liaison in the Office of the Prime Minister or another appropriate Ministry, who shall have the direction and authority to expedite the issuance of Permits and Approvals and other matters affecting the Development and, the design of the Development being a dynamic matter, to discuss and conclude modifications to the specific undertakings of MID hereunder save for any material changes that go to the substance of this Amended and Restated HOA.

**17. Force Majeure and Default Delays**

- 17.1 If for any reason outside the control of either Party to this Agreement, including but not limited to, such events as fire, lightning, windstorms, flood, earthquake, explosion, war, war-like activities, insurrection, riots, civil commotion, Act of God, strikes, lockouts, freight embargoes, or any unforeseen or extraordinary circumstances which may be reasonably considered to be beyond the control of MID (collectively "Force Majeure Events"), any provision of this Amended and Restated HOA cannot economically be performed or fulfilled by MID, then for the duration of such condition and for a reasonable recovery period thereafter MID shall be excused from so performing, and in addition the concessions, exemptions and other rights granted pursuant to this Amended and Restated HOA and the Mayaguana Legislation shall be extended for a reasonable period of time to ensure the full benefit thereof for the intended duration, and any payments otherwise due pursuant to paragraph 2.2 shall be deferred by a corresponding period. PROVIDED that any period of force majeure shall only apply to MID's performance of its obligations under this Agreement affected by such event and shall only continue for so long as MID is using reasonable efforts to minimize and mitigate the effect and duration thereof AND FOR THE AVOIDANCE OF DOUBT the expression "cannot be economically performed or fulfilled" shall not include the unavailability or insufficiency of funds on the part of MID or any affiliate, subsidiary or parent thereof or

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the insolvency prospective or otherwise of any of them or change in control of any relevant corporate entity.

17.2 To the extent:-

- (a) The Government fails to take all necessary steps to expedite the issuance of all Approvals and Permits applied for by MID; or
- (b) Any law or Government policy changes in a manner that has a material adverse effect on MID, MID shall be entitled to the same performance, concession and exemption, rights and payment obligation extensions as in respect of a Force Majeure Event, and, in addition, at its option, shall be entitled to appropriate compensatory relief as determined through arbitration pursuant to paragraph 27.1.

17.3 MID shall have no obligation with respect to any matter under this Amended and Restated HOA with respect to which any required Approvals and Permits are not issued in form and substance reasonably satisfactory to MID.

## **18. Costs And Expenses**

All transfers of land and shares occasioned by this Amended and Restated HOA and the termination of the JVA and MA shall be exempt from the payment of Government stamp duty. Each Party shall be responsible for its own legal fees and expenses.

## **19. Mutual Warranty**

Each of the Parties hereto warrants its power and authority to enter into this Amended and Restated HOA.

## **20. Severance**

If any provision of this Amended and Restated HOA is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the Parties hereto shall amend that provision in such reasonable manner as achieves the intention of the Parties hereto without illegality or at the discretion of the Parties the provision may be severed from this Amended and Restated HOA and the remaining provisions of this Amended and Restated HOA shall remain in full force and effect, provided that if the unenforceability of any such provision would have a material adverse effect on MID, MID shall at its option be entitled to appropriate compensatory relief as determined through arbitration pursuant to paragraph 27.1.

## **21. Headings and Schedules**

Headings contained in this Amended and Restated HOA are for reference purposes only and shall not be deemed to be any indication of the meaning of the clauses to which they relate. The Schedules attached hereto shall be deemed to be a part of this Amended and Restated HOA and are fully enforceable within their terms.

## **22. Amendment**

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This Amended and Restated HOA may only be amended from time to time by means of supplemental agreement(s) in writing signed by the Parties hereto save for the matters that fall within paragraph 16.5.

**23. Counterparts**

This Amended and Restated HOA may be executed in any number of counterparts each of which counterpart when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute one and the same Agreement.

**24. Notices**

Any notice which is required to be served hereunder or otherwise shall be given in writing and shall be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows:-

if to MID:

- a) to the law offices of Graham, Thompson & Co.:-

Sassoon House  
Shirley St. and Victoria Ave.  
P.O. Box N-272  
Nassau, New Providence, The Bahamas  
Attention: Judith Whitehead  
Facsimile No: (242) 328-1069  
Email: jaw@gtclaw.com

- b) and to the offices of I Group Bahamas Limited:-

60 Massachusetts Avenue  
Boston, MA 02115  
The United States of America  
Attention: Marc Herdegen  
Facsimile No.: (617) 778-7899  
Email: marc.herdegen@gmail.com

if to the Government:-

- a) The Secretary of the National Economic Council  
c/o The Permanent Secretary of the Ministry of Finance

Attn:  
Cecil Wallace Whitfield Building  
West Bay Street  
P.O. Box N 242  
Nassau, The Bahamas  
Facsimile No:  
Email:





Or to such other address, individual or electronic communication number as may be designated by notice given by either Party to the other. Notice given by personal delivery shall be conclusively deemed to have been given on the date of actual delivery thereof and, if given by registered mail, on the third business day following the deposit thereof in the mail and if given by electronic communication, on the day of transmittal thereof if given during normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. If the Party giving any notice knows or reasonably ought to know of any difficulties with the postal system which might affect the delivery of mail, any such notice shall not be mailed but shall be given by personal delivery or by electronic communication.

## **25. Entire Agreement**

- 25.1 This Amended and Restated HOA sets forth the entire agreement between the Government and MID relating to the Development and all subject matter herein and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Parties. Notwithstanding the foregoing, approvals previously issued by the Government shall remain in effect, with any undertaking of MID contained therein conformed with its obligations as established in this Restated and Amended HOA.
- 25.2 The Government hereby additionally confirms that the Undertaking Forming A Part Of and Annexed to the Original HOA is hereby released and terminated.

## **26. Assignment**

Neither party shall assign its rights or obligations under this Amended and Restated HOA without the written consent of the other party such consent not to be unreasonably withheld, provided that this shall not restrict a collateral assignment by MID for financing purposes, in connection with which the Government agrees upon request to execute documentation such as acknowledgment and estoppel agreements reasonably requested in connection therewith.

## **27. Disputes**

- 27.1 Any dispute with respect to any matter or matters arising out of, with respect to or in any way relating to this Amended and Restated HOA shall be finally settled under the rules of arbitration of the international chamber of commerce by three (3) arbitrators appointed in accordance with the said rules and judgment on the award may be entered in any court having jurisdiction.
- 27.2 Recourse for any claim arising out of this Amended and Restated HOA or relating to its subject matter is strictly limited to the Parties hereto only, and neither Party shall have recourse, (which recourse is hereby expressly waived) against any other entity or person, including any shareholder or beneficial owner of the other Party and any director, manager, officer, employee, agent or representative of the other Party or of any of its shareholders or its beneficial owners, whether in contract, tort or on any other theory of liability whatsoever.

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**28. Future Matters**

In recognition of the extraordinary challenges for major development on Mayaguana and the competitive disadvantage at which that places the Development, the Government agrees that to the extent it provides more favourable exemptions or concessions in respect of any other development than those provided by paragraph 15, including through the Mayaguana Legislation, it will cause the same more favourable exemptions and concessions to be provided in respect of the Development.

**29. Governing Law**

This Amended and Restated HOA shall be governed by the Laws of The Commonwealth of The Bahamas. For the avoidance of doubt this paragraph shall not nullify or modify in any way the arbitration provisions set forth in paragraph 27.1.

**IN WITNESS WHEREOF** the Parties hereto have duly executed this Amended and Restated HOA as of the day and year first above written.

**THE GOVERNMENT OF THE  
COMMONWEALTH OF THE BAHAMAS**

By: 

Anita Bernard

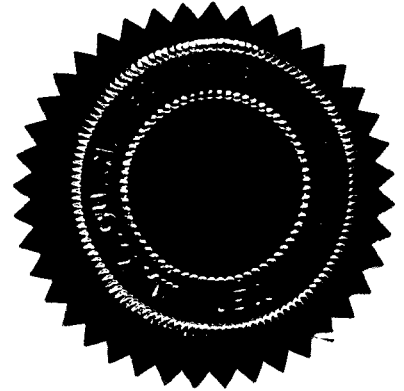
The Secretary to The Cabinet/Secretary  
to the National Economic Council

Witness: 

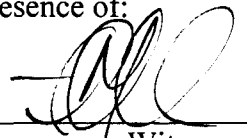


**IN WITNESS WHEREOF** the Common Seal of Mayaguana Island Developers Limited was hereto affixed the day and year first hereinbefore written.

  
\_\_\_\_\_  
Director/Authorised Officer



The Common Seal of Mayaguana Island Developers Limited was affixed hereto by **Marc Herdegen** a Director and Authorised Officer of the said Company and the said **Marc Herdegen** affixed his signature hereto in the presence of:

  
\_\_\_\_\_  
Witness

Name: Anastasia M. Campbell



## **SCHEDULE A-1 - LAND USE PLAN**

The attached plan sets forth the approximate location of the Development Area. MID shall within four months of the execution of this Amended and Restated HOA cause to be made and submitted to the Government proper surveys of the exact boundaries of the Development Area, to total 2,912 acres, taking into account variances in the local topography to optimize utility, and the Government shall cause such surveys to be reviewed and recorded by the Department of Lands and Surveys within one month thereafter.

MID shall thereafter cause all of the acreage sold to MID pursuant to the Original HOA to be conveyed back to the Government, and the Government shall in exchange convey the acreage constituting the Development Area to MID as contemplated by paragraph 2.1(b).

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## **SCHEDULE A-2 – OPTION PARCELS and OPTION AGREEMENT**

The attached plan sets forth the approximate locations of the parcels of acreage that are the subject of the Option Agreement (“ the Option Parcels”). MID shall within four months of the execution of this Amended and Restated HOA cause to be made and submitted to the Government proper surveys of the exact boundaries of the Option Parcels, to total 2,913 acres, taking into account variances in the local topography to optimize utility, and the Government shall cause such surveys to be reviewed and recorded by the Department of Lands and Surveys within one month thereafter.

Attached is the Option Agreement referred to in paragraph 2.3.

Option Parcel 1 – Mayaguana Airport Runway - 350 acres.

Option Parcel 2 – Mayaguana Airport Terminal - 300 acres.

Option Parcel 3 – Boutique Hotel - 250 acres.

Option Parcel 4 – Boutique Lodge Resort - 500 acres.

Option Parcel 5 – Home Site Utility Infrastructure - 500 acres.

Option Parcel 6 – Marina - 263 acres.

Option Parcel 7 – Conservation Land Infrastructure - 100 acres.

Option Parcel 8 – Public Water Supply Infrastructure - 400 acres.

Option Parcel 9 – Community Improvements - 250 acres.



## **SCHEDULE B - COMMENCEMENT DATE APPROVALS AND PERMITS**

All Approvals and Permits required for MID to consummate the transactions contemplated by paragraph 2.1 and to resume development activities on Mayaguana, including:-

1. National Economic Council and Investment Board of The Bahamas (by whatever name called) approvals of the transfer of shares of MID by HCB to I Group and the conveyances of the Development Area to MID.
2. Approval of the Land Use Plan by the Government.
3. BEST Commission approval of the EIA for the first phase of the Development contemplated by paragraph 13.2.
4. Approval by the Department of Civil Aviation and those Ministries or agencies in charge of customs, immigration and security of an Airport redesign in accordance with paragraph 4.1 and authorization for MID to proceed with construction.
5. Approved Investment Status issued by the Central Bank of the Bahamas with respect to the investment by I Group and its beneficial owner.
6. An executed HEA Agreement for the first phase of the Development contemplated by paragraph 13.2 confirming that the Mayaguana Airport Project and other infrastructure work preceding the construction of the Boutique Hotel is required in support thereof, and that MID shall be entitled to the customs and stamp duty exemptions available under the HEA regardless of whether such work has been or is commenced or completed prior to the construction of the Boutique Hotel and any other Approvals and Permits required to ensure that the full scope of exemptions and concessions under the HEA are available to MID.
7. Any Approvals and Permits required to ensure that the full scope of exemptions and concessions under the FIDEA are available to MID.
8. Implementation of customs and immigrations arrangements as per paragraph 4.6.



## **SCHEDULE C - MAYAGUANA LEGISLATION**

The Mayaguana Legislation shall provide the following exemptions and concessions and shall include the following matters

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## **SCHEDULE D - OTHER GOVERNMENT PERMISSIONS**

Government approval is hereby granted to MID and any Development Partners as follows:-

- (a) To construct, maintain and operate a deep water channel and turning basin in the waters of the sea immediately adjoining the areas adjacent to Abraham's Bay, Pirates Well Creek, Flamingo Pond, Wreck Bay, White Hill Bay, Long Bay, Southeast Point, Russells Bay and elsewhere in the Development Area;
- (b) To construct maintain and operate wharves and marinas in the areas of Abraham's Bay, Russells Bay and/or any other properties within the Development Area including the construction of wharves so as to be able to accommodate cargo vessels as approved by the relevant Government agencies;
- (c) To construct and maintain roads, bridges and recreational parks;
- (d) To establish and construct factories, warehouses, industrial and other undertakings as approved by the relevant Government agencies;
- (e) To establish, construct and operate tourist resorts and related facilities, marinas and industrial buildings, construct and maintain residential sites and buildings, condominiums, timeshare projects and residential clubs and any other buildings or facilities contemplated by this Amended and Restated HOA;
- (f) To sell land in the Development Area to non-Bahamian purchasers and to permit such sales to include mortgage financing for the said purchase and/or improvements thereon;
- (g) For all necessary foreign exchange control approvals required by law in connection with the Development and investment therein;
- (h) For the home sites and other lots laid out in the Development Area under the provisions of the Mayaguana Legislation and, where applicable, the Private Roads and Subdivisions (Out Islands) Act or any successor or similar legislation, or otherwise;
- (i) To construct the Airport Terminal and other airport areas and complete the runway as set forth herein;
- (j) For dredging and landfill operations required by law in connection with the Development both within the Development Area and for purposes of marinas as set forth in the Master Plan and herein;
- (k) For the construction and installation of any moorings, docks or jetties;
- (l) For the grant of all necessary/requisite work permits for essential non-Bahamian personnel on the basis hereinbefore mentioned;

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- (m) For the grant of licence/s to operate hotels under the Hotels Act, Business Licence Act (and any other successor or similar legislation) and grant of marina/dock licences (including fueling station licences), and all such other approvals, permits, agreements, licences and concessions as may be required by law for the purposes of the Development;
- (n) To construct docks and jetties in the areas of Abraham's Bay, Pirates' Well, Flamingo Pond, Wreck Bay, White Hill Bay, Long Bay, Horse Pond, Russells Bay and other shorelines within the Development Area; and
- (o) To extract, dredge and mine sand, rock and limestone on Mayaguana.

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## **SCHEDULE E – FORM OF ESCROW AGREEMENT**

Attached is an Escrow Agreement referred to in paragraph 2.1 providing:-

1. As to funds delivered into escrow pursuant to paragraph 2.1, for delivery of US\$500,000 out of escrow:
  - (a) To the Government within 14 days of the date of the occurrence of the Commencement Date, provided that occurs within 180 days after the date of execution of this Amended and Restated HOA.
  - (b) Otherwise, to I Group.