

# **DEVELOPMENT AGREEMENT**

**BETWEEN**

**THE CROWN**

**AND**

**THE GOVERNMENT OF THE TURKS AND CAICOS ISLANDS**

**AND**

**TURKS, LTD.**

**relating to:**

**Hotel, Villa, Marina, Amphitheatre and Helipad development  
on Dellis Cays, Providenciales**

**Dated the 31<sup>st</sup> day of July, 2005**

**ATTORNEY GENERAL'S CHAMBERS  
SOUTH BASE  
GRAND TURK  
TURKS & CAICOS ISLANDS  
BRITISH WEST INDIES**

A handwritten signature, possibly 'K', followed by a period.

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## DEVELOPMENT AGREEMENT

THIS AGREEMENT is made 31<sup>st</sup> day of July 2005.

### B E T W E E N:

**RICHARD TAUWHARE**, Governor of the Turks and Caicos Islands acting in the name of and on behalf of **HER MOST EXCELLENT MAJESTY QUEEN ELIZABETH THE SECOND** by the Grace of God Queen of the United Kingdom of Great Britain and Northern Ireland and of the Turks and Caicos Islands and of all of Her Other Realms and Territories ("**the Crown**")

### OF THE FIRST PART

**A N D:** The said **RICHARD TAUWHARE** in the name of and on behalf of the Government of the Turks and Caicos Islands ("**the Government**")

### OF THE SECOND PART

**A N D:** **TURKS, LTD.**, a company incorporated in the Turks and Caicos Islands, and having its registered office at Caribbean Management Services Limited, P.O. Box 127, Richmond House, Providenciales, Turks and Caicos Islands, B.W.I. ("**the Developer**")

### OF THE THIRD PART

### RECITALS

#### WHEREAS -

1. The Developer has applied to the Government and the Crown for their assistance to carry out and complete the Development and the Government and the Crown believe it is in the best interests of the Islands to assist the Developer to carry out and complete the Development
2. The Government and the Crown are satisfied that the undertaking by the Developer of the Development is for the purpose of section 4 of the Encouragement of Development Ordinance Cap. 165:
  - (a) a new enterprise;



- (b) that it will have a beneficial effect on employment and the economy of Islands;  
and
- (c) that it will be proper, in accordance with the provisions of this Agreement and pursuant to section 4 of the Ordinance to declare the Development to be a development enterprise and the Developer to be a "Developer" as defined in the Ordinance for the purpose of conducting that enterprise

**NOW THEREFORE** in consideration of the mutual benefits and covenants contained herein, the receipt and sufficiency of which is acknowledged by them, the Crown, the Government and the Developer agree as follows:

## **1.0 INTERPRETATION**

1.1. In this Agreement and unless the context otherwise requires:

- 1.1.1 "**Approved Plans**" means the plans, drawings, specifications, construction methods, techniques and materials to be used for the construction of the Development together with such other facilities as are required for the operation of the Development as approved from time to time by the Physical Planning Board
- 1.1.2 "**Belongers**" means persons who belong to the Islands within the meaning of the Immigration Ordinance
- 1.1.3 "**Completion**" means in relation to a Phase of the Development, substantial completion of that Phase in conformity with the Approved Plans and building regulations and to the satisfaction of all statutory authorities.
- 1.1.4 "**Detailed Development Permission**" has the meaning assigned to it under the Planning Laws
- 1.1.5 "**Development**" has the meaning set out in Schedule 2
- 1.1.6 "**Developer**" means Turks, Ltd. a company incorporated in the Turks and Caicos Islands and having its registered office at Caribbean Management Services Ltd., P. O. Box 127, Richmond House, Providenciales, Turks and Caicos Islands
- 1.1.7 "**Dollars**" means dollars in the lawful currency of the United States of America
- 1.1.8 "**Force Majeure**" means any event or circumstances whether arising from natural cause, human agency or otherwise beyond the control of any Party including (but without prejudice to the generality of the foregoing) acts of God, riots, lawful strikes, civil commotion, war, warlike operations, unavailability of shipping and natural disasters

- 1.1.9 **"the Immigration Ordinance"** means the Immigration Ordinance Cap. 51, as amended and any regulations made there under.
- 1.1.10. **"Infrastructure Works"** has the meaning set out in Schedule 2
- 1.1.11 **"the Islands"** means the Turks and Caicos Islands.
- 1.1.12 **"the Property"** means the property comprised in lots 61212/3-34 inclusive, lots 61213/2-17 inclusive, lots 61213/19-38 inclusive, and lots 61214/1-13 inclusive, East Cays (Dellis Cays), Providenciales, shown approximately on the Plan at Schedule 1.
- 1.1.13 **"the Ordinance"** means the Encouragement of Development Ordinance Cap. 165 as amended and any regulations made thereunder
- 1.1.14 **"Outline Development Permission"** has the meaning assigned to it under the Planning Laws
- 1.1.15 **"the Parties"** means the Government the Developer and the Crown or any two of them together and "Party" shall mean any one of the Parties
- 1.1.16 **"Phase One"** has the meaning set out in Schedule 2
- 1.1.17 **"Phase Two"** has the meaning set out in Schedule 2
- 1.1.18 **"Phase Three"** has the meaning set out in Schedule 2
- 1.1.19 **"Phase Four"** has the meaning set out in Schedule 2
- 1.1.20 **"Phase Five"** has the meaning set out in Schedule 2
- 1.1.21 **"Phase Six"** has the meaning set out in Schedule 2
- 1.1.22 **"Physical Planning Board"** means the Physical Planning Board established under the Physical Planning Ordinance Cap. 73 and any statutory body replacing same
- 1.1.23 **"Planning Laws"** means laws enacted under the Physical Planning Ordinance Cap. 73, regulations made thereunder and any statute amending replacing or enacting same.
- 1.1.24 **"the Plan"** means the masterplan for the Development as amended by the Developer from time to time, the current draft of which is annexed at Schedule 1

1.2 The laws of the Islands shall be the governing law of this Agreement



- 1.3 This Agreement and the Schedules constitute the entire agreement of the Parties as to the subject matter hereof as at the date of this Agreement.
- 1.4 The Parties agree that the Schedules form part of this Agreement.
- 1.5 In the event that one or more of the provisions contained herein shall be held for any reason to be illegal, invalid or unenforceable, the parties shall negotiate in good faith and endeavour to agree the terms of a mutually satisfactory provision to be substituted for the provision found to be illegal invalid or unenforceable as the case may be.
- 1.6 Any waiver by any party of a breach of any provisions of this Agreement by another Party shall not operate as or be construed as a waiver of any other breach of such provisions or of any breach of any other provision of this Agreement. The failure of a Party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered to be a waiver of any rights under this Agreement or to deprive that Party of the right thereafter to insist upon strict adherence to that term or upon any other term hereof. Any waiver of any right hereunder shall be of no effect unless it is in writing authenticated by the waiving Party.
- 1.7 This Agreement shall only be modified by an instrument in writing executed by all the Parties.
- 1.8 The clause and paragraph headings in this Agreement are inserted for the convenience of reference only; they form no part of this Agreement, and shall not be taken into account in construing the intent or understanding evidenced thereby.
- 1.9 Reference to an ordinance or any provision of an ordinance or any regulation or order made or issued under such provision includes any amendment consolidation or replacement thereof from time to time.
- 1.10 It is agreed that the obligations of the Government extend only so far as it may lawfully agree.
- 1.11 Any reference to a clause is to a clause of this Agreement and any reference to a paragraph is to a paragraph of the clause or schedule in which such reference appears.
- 1.12 Words denoting the singular number shall include the plural and vice versa.
- 1.13 Words denoting the masculine gender shall include persons feminine and corporate.
- 1.14 Reference to this Agreement or to any other agreement shall include all agreements supplemental to or varying, modifying, altering or in any way affecting any of their terms.



- 1.15 Any terms not expressly defined shall bear the meaning ascribed to them by the Interpretation Ordinance.
- 1.16 For the purposes of this Agreement time shall be of the essence.
- 1.17 If the Developer is comprised of more than one person or company, covenants on the part of the Developer shall be entered into jointly and severally.

## **2.0 CONDITIONALITY OF AGREEMENT AND DEVELOPMENT ORDER BENEFITS**

- 2.1 Save with the prior written permission of the Minister for Finance, the Developer shall not be entitled to receive any benefits under the Development Order referred to in clause 4.2 until it has received Detailed Development Permission for Phase One.

## **3 OBLIGATIONS OF THE DEVELOPER**

### **3.1 Planning and Construction**

The Developer shall:

- 3.1.1 Satisfy all of the pre-construction requirements stipulated by the Departments of Planning and Environment and Coastal Resources prior to the commencement of construction.
- 3.1.2 Within 180 days of the execution of this Agreement at its own expense submit to the Physical Planning Board an application for Outline Planning Permission for the Development and then within 60 days of the grant of Outline Development Permission at its own expense submit to the Physical Planning Board an application for Detailed Development Permission for Phase One of the Development and a building permit in respect of Phase One of the Development; and thereafter to apply at its own expense to the Physical Planning Board for Detailed Development Permission and a building permit in respect of each subsequent Phase in a timely manner so as to be in a position to commence construction of each subsequent Phase in accordance with the provisions of this Agreement.
- 3.1.3 Commence construction of Phase One by or before 30th June 2006 ("the Construction Date") at an estimated cost of Three Million Dollars (\$US3,000,000.00).
- 3.1.4 Within two (2) years of the Construction Date at its own expense submit to the Physical Planning Board an application for Detailed Development Permission and commence construction of Phase Two of the Development within twelve (12) months from the date of the grant of Detailed Development Permission therefore and thereafter diligently proceed with such construction in accordance in all respects with the Approved Plans and

the Planning Laws so as to have Phase Two in a state of Completion by no later than five (5) years from the Construction Date. The cost of Phase Two of the Development is estimated at Fifteen Million Dollars (\$US15,000,000.00).

- 3.1.5 Within four (4) years of the Construction Date at its own expense submit to the Physical Planning Board an application for Detailed Development Permission and commence construction of Phase Three of the Development within twelve (12) months from the date of the grant of Detailed Development Permission therefore and thereafter diligently proceed with such construction in accordance in all respects with the Approved Plans and the Planning Laws so as to have Phase Three in a state of Completion by no later than seven (7) years from the Construction Date. The cost of Phase Three of the Development is estimated at Fifteen Million Dollars (\$US15,000,000.00).
- 3.1.6 Within six (6) years of the Construction Date at its own expense submit to the Physical Planning Board an application for Detailed Development Permission and commence construction of Phase Four of the Development within twelve (12) months from the date of the grant of Detailed Development Permission therefore and thereafter diligently proceed with such construction in accordance in all respects with the Approved Plans and the Planning Laws so as to have Phase Four in a state of Completion by no later than nine (9) years from the Construction Date. The cost of Phase Three of the Development is estimated at Fifteen Million Dollars (\$US15,000,000.00).
- 3.1.7 Within eight (8) years of the Construction Date at its own expense submit to the Physical Planning Board an application for Detailed Development Permission and commence construction of Phase Five of the Development within twelve (12) months from the date of the grant of Detailed Development Permission therefore and thereafter diligently proceed with such construction in accordance in all respects with the Approved Plans and the Planning Laws so as to have Phase Five in a state of Completion by no later than eleven (11) years from the Construction Date. The cost of Phase Three of the Development is estimated at Fifteen Million Dollars (\$US15,000,000.00)..
- 3.1.8 Within nine (9) years of the Construction Date at its own expense submit to the Physical Planning Board an application for Detailed Development Permission and commence construction of Phase Six of the Development within twelve (12) months from the date of the grant of Detailed Development Permission therefore and thereafter diligently proceed with such construction in accordance in all respects with the Approved Plans and the Planning Laws so as to have Phase Six in a state of Completion by no later than twelve (12) years from the Construction Date. The cost of Phase Three of the Development is estimated at Fifteen Million Dollars (\$US15,000,000.00)..
- 3.1.9 The Developer shall at all times comply in all respects with the provisions of all statutes and regulations applicable to the construction and operation of the Development including, without prejudice to the generality thereof, obtaining all necessary licenses, permissions, certificates and approvals and the payment of all applicable fees and charges and all of the laws of the Turks and Caicos Islands.



- 3.1.10 The Developer shall pay all costs associated with the unloading and clearing of construction materials, plant and machinery and all capital items referred to in Clause 4.5 including the cost of providing Customs Officers, Immigration Officers and any other Government Officials as may be required under relevant legislation.
- 3.1.11 Nothing herein shall be construed so as to preclude the Developer from commencing any Phase earlier than the dates specified in that regard in this Clause 3, and the Developer shall be entitled at its sole and absolute discretion to vary the sequencing of the Phases, including the sequencing of the application for planning approvals for and construction of the Phases, as well as changing the composition (including the real estate sale products) of each Phase, and inter-changing components of the Development between the Phases. Without limitation of its discretion pursuant to this clause, the Developer shall keep the Government and the Crown reasonably apprised of its plans in this regard from time to time.

### **3.2 Belongers**

- 3.2.1 The Developer agrees in relation to the construction and operation of the Development to give preference in employment to Belongers insofar as there are from time to time Belongers ready and willing to fill any position within the Islands for which the Developer wishes to recruit. The Developer further agrees not to treat Belongers prejudicially (taking all circumstances into account) as to wages, remuneration and other conditions of service.
- 3.2.2 The Developer shall employ Belongers in its employment in positions of increasing responsibility and shall provide on-site or overseas training for technical, professional supervisory and management positions.
- 3.2.2 The Developer agrees within one year from the Construction Date to prepare a training plan acceptable to the Government, to revise and update that plan annually in co-operation with Government and to provide regular reports to Government on the progress of that training and such reasonable information as Government requests to enable Government to ensure that the Developer is complying with its obligations hereunder.
- 3.2.3 Subject to 3.2.1 that there are from time to time Belongers ready and willing to fill any position within the Islands for which the Developer wishes to fill in accordance with the Immigration Ordinance, the Developer acknowledges and accepts that the Government intends to reduce by fifty per cent (50%) the number of work permits granted to non-Belongers employed in professional and supervisory capacities in the Development within three years from the date of commencement of the Development and the Developer shall make no objections to or representations in respect of any such reduction.



### **3.3 Scholarships**

- 3.3.1 The Developer shall contribute the sum of US\$78,000.00 per annum to the National Scholarship Fund. The contribution shall commence with the first payment of US\$78,000.00 on the date hereof and shall continue on subsequent anniversaries for a period of fifteen (15) years or until the Development is completed whichever is the shorter of the two.
- 3.3.2 The Developer shall be entitled to assign its obligations under this clause to any purchaser of hotels in the Development or to condominium strata corporations (with respect to sold units only) in the Development provided always that failure by any such assignee to pay a scholarship contribution as contemplated by this clause shall be an event of default on the part of the Developer hereunder and the Crown and the Government shall be entitled to demand payment from the Developer as if its obligations under this clause had not been so assigned.

### **3.4 Stamp Duty and Other Charges**

- 3.4.1 The Developer agrees to pay all relevant Stamp Duty or other taxes and charges in relation to the Development.

### **3.5 National Insurance Contributions**

- 3.5.1 The Developer shall pay those contributions due under the National Insurance Ordinance Cap. 137 or any statutory amendment, replacement or modification thereof in respect of those persons who are employed by the Developer in an Insurable Employment as defined in that Ordinance.

### **3.6 Assignment**

- 3.6.1 Subject to clause 3.3.2, the Developer shall not without obtaining the prior written consent of the Crown and the Government assign this Agreement and the Crown and the Government shall have an absolute discretion as to whether or not to grant their respective consents and shall not be obliged to grant consent unless they are satisfied that the proposed assignee is and is likely to continue to be of sufficient financial worth and has sufficient experience to be fully capable of performing the obligations of the Developer hereunder and the Developer shall not assign this Agreement without first procuring that the permitted assignee enters into direct covenants with the Government and the Crown to perform, fulfil and observe the obligations of the Developer under this Agreement or such of them as shall at the date of such assignment remain to be performed or fulfilled or are of perpetual duration.



### **3.7 Interest on late payments**

- 3.7.1 If the Developer fails to pay any sum due under the provisions of this Agreement on the due date the Developer shall pay interest on such sum at the rate of 4% above FirstCaribbean International Bank (Bahamas) Limited's base rate from time to time for the period from the due date to the date of payment.

### **4.0 OBLIGATIONS OF GOVERNMENT AND CROWN**

#### **Work Permits**

- 4.1 Subject to clause 3.2.1 and to compliance with the Immigration Ordinance and to compliance by the Developer with the terms hereof the Government shall to the extent it is able in law facilitate the entry into the Islands and employment of such expatriate personnel as may be required for the construction and operation of the Development subject to a maximum limit of 50% of the Developer's total employees.

#### **Development Order**

- 4.2 The Government shall within thirty (30) days of the grant of Detailed Development Permission for Phase one of the Development declare the Development to be a "development enterprise" and shall declare the Developer to be a "Developer" within the meaning of the Ordinance and shall grant the Developer a Development Order in the form contained in Schedule 3.

#### **Over-Water Bungalows**

- 4.3 Subject to the stipulations of the Planning Department and the Department of Environment and Coastal Resources and on payment of the licence fee of US\$200,000.00, the Government and the Crown shall approve of the concept of "over-water bungalows" as part of the Development along the northern and southern shorelines of Dellis Cay and upon the grant to the Developer of Detailed Planning Permission for such bungalows, the Crown shall grant a two hundred years (200) licence for the use of that area of the sea bed (the "Licensed Area") at the shoreline, the exact dimensions of which shall be defined in the licence and any assignment in part of the licence and outlined on a plan scheduled thereto, to the Developer for that purpose; which licence shall be assignable to third parties who purchase lots within the Development which are adjacent to such over-water bungalows with respect in the case of each such assignment to that portion of the Licensed Area adjacent to that purchaser's lot and on which an over-water bungalow and servicing boardwalks have been, or are to be, built.

#### **Amendment to the Timesharing Ordinance**

- 4.4 The Government shall use its best endeavours to amend the Timesharing Ordinance so as to exclude for the purposes of that Ordinance "fractional ownership schemes" where the fractional interests being sold or marketed are no smaller than one sixth.



### **Port Of Entry for Materials**

4.5 (a) The Government agrees that the Developer may unload its construction materials, plant and machinery and all capital items required for the initial construction of the Development directly on Dellis Cay without the said goods crossing the dock or otherwise being unloaded at Providenciales or at any other designated port of entry provided always that the Developer shall comply with the documentary requirements of the Customs Department with regard to Customs clearance at Customs' main office at Providenciales or at another designated port of entry and with the requirements of the Customs Department with regard to Customs clearance on site and shall meet all of the expenses of the Customs Department and Immigration Department to effect entry of the goods.

(b) Subject to the stipulations of the Planning Department and the Department of Environmental and Coastal Resources and on payment of the licence fee, the Government shall issue or cause the issuance to the Developer of a dock licence with respect to a dock to be designated by the Developer at Dellis Cay within twenty eight (28) days of the completion of the said dock, pursuant to section 17 of the Docks Ordinance 1984 free of the condition referred to in S. 18 of that Ordinance..

### **Permanent Residence Certificates**

4.6 Subject to the provisions of the Immigration Ordinance Cap. 51 and compliance therewith and the production of satisfactory proof of major investment in the Development, the Government agrees to grant Permanent Residence Certificates with the right to work to Dr. Cem Kinay, Magister Oguz Serim and Mr. Turgay Ciner and an additional number of Permanent Residence Certificates (without the right to work) to such other persons who qualify under the Immigration Ordinance by virtue of their purchase of villas or condominiums within the Development (which persons are to be nominated by the Developer prior to the completion of Development).

### **Exchange Control**

4.7 The Government undertakes, subject to any obligation imposed on it by treaty, international obligation, or any order of any competent Court, that all liquid assets of the Developer held within the Islands shall at all times be permitted to be moved freely within or out of the Islands without the requirement for any prior consent on the part of the Government or any of its officers.

### **Further Assistance**

4.8 (a) To the extent that it is able in law the Government agrees, subject to the law in force for the time being, and subject to the Developer complying in full with the provisions of all applicable Ordinances and subsidiary legislation to grant or cause to be granted all such further licences, approvals, permits, or authorisations as may be necessary or required for the Development be constructed and operated as herein contemplated.



(b) Without limit to the generality of the foregoing the Government agrees subject to the directions of the Physical Planning Board and the Department of Environment and Coastal Resources that permitted facilities of the Development shall include hotels, condominiums and single family residential accommodation, restaurants, bars, retail outlets, marinas, docks, administrative and management facilities, helipad, amphitheatre and a full range of sports facilities (including scuba diving, sailing and sport fishing).

(c) The Government will not object to or oppose, or cause the refusal or any delay in the granting of, any licence, approval, permit or authorisation necessary or required, whether by virtue of any existing or future legislation or administrative ruling, for the development to be operated as herein contemplated, subject to the Developer complying in full with the provisions of all applicable Ordinances and subsidiary legislation.

(d) Subject to its legal obligations and to the legal principles governing the exercise by Government of its statutory powers and discretions, the Government will not take or cause any action or do anything which has the effect of preventing the operation of the Development as herein contemplated.

(e) The Government agrees to consider in good faith on their merits any requests or representations of the Developer made from time to time for further or other relief, assistance, or co-operation with it.

#### **Water Supply**

4.9 Subject to the Developer complying with all relevant legislation and in particular the Water and Sewage Ordinance Cap [ ], and to its obligations under any existing agreement, the Government agrees to the extent permissible in law to permit and license the Developer to provide its own supply of potable water to the Development including the sinking of wells and the operation of reverse osmosis distillation plants, subject always to the requirement to obtain and comply with development permission under the Physical Planning Ordinance in that regard.

#### **Garbage and Sewerage Disposal**

4.10 Subject to its obligations under any existing agreement, the Government agrees to the extent permissible in law to authorise and if necessary license the Developer to provide its own method and system of garbage and sewerage disposal subject always to the requirements of the Physical Planning Ordinance and any other applicable law.

### **5 EXPROPRIATION**

5.1 The Government of the Crown agree not to acquire compulsorily, nationalize or expropriate the Development or any part thereof or assets incidental thereto. Without limiting the generality of the foregoing and without in any way restricting the remedies available to enjoin or recover damages for any breach of the foregoing covenant, the

Government and the Crown agree that, in the event of such compulsory acquisition, nationalisation or expropriation, the Developer shall be entitled to compensation in respect of the relevant assets, the amount thereof to be determined by agreement between the parties, without regard to the fact the assets had been compulsorily acquired or in default thereof to be assessed in accordance with the arbitration provisions of this agreement.

## **6 LICENCES AND APPROVALS**

- 6.1 The Government agrees, subject to the law in force at the time being and subject to the Developer complying in full with the provisions of all applicable Ordinances and subsidiary legislation and the provisions of this Agreement, to facilitate and support the grant of such licenses, approvals, permits, or authorizations as may be necessary for the construction or operation of the Development.

## **7.0 TERMINATION**

- 7.1 This Agreement may be terminated forthwith by the Crown and/or the Government if the Developer fails to:

- (a) Apply for Detailed Development Permission in respect of any Phase of the Development within the time periods specified in this Agreement;
- (b) Commence construction of any Phase of the Development within the specified time period; or
- (c) Complete construction of any Phase the Development within the specified time period;

and the Crown and the Government have given written notice of the default concerned to the Developer and the Developer has failed to remedy that default within one hundred and twenty (120) days of the receipt of that notice.

- 7.2 If the Developer is in breach of any other obligations, covenants, agreements, stipulations or conditions and has failed to take any steps to remedy the breach of such obligations, covenants, agreements, stipulations or conditions within such reasonable period as the Government shall stipulate (being not less than 90 days), the Crown and/or the Government may forthwith terminate this Agreement.
- 7.3 This Agreement may also be terminated on 120 days written notice by the Crown and/or the Government, giving written notice to that effect:-



- (a) if an order is made or an effective resolution passed for the winding up of the Developer, whether voluntary or compulsory but not a voluntary winding up for the purpose of a reconstruction or amalgamation without insolvency;
- (b) if the Developer is unable to pay its debts within the meaning of section. 93 of the Companies Ordinance or summons a meeting of its creditors.

7.4 The Government shall also have the right to terminate this Agreement on 90 days written notice to the Developer and to recover any loss resulting from such termination as contemplated by this agreement if the Developer gives or offers or has given or offered or agrees or has agreed to offer or give to any person any gift or inducement or reward for doing or forbearing to do or for having done or forborne to do anything in relation to entering into this Agreement or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or if in relation to this Agreement the Developer or any person under its control commits or has committed or attempts to commit or has attempted to commit any offence of bribery at common law or under any written law of the Islands. For the avoidance of doubt, the payment of fees to a professionally retained person in relation to this agreement shall not amount to an event giving rise to a right of termination on the part of the Government pursuant to this clause.

7.5 It is hereby acknowledged and agreed that termination of this Agreement shall be without prejudice to any other right or action or remedy of the Crown or the Government arising under this Agreement.

7.6 In the event of termination of this Agreement, the Developer shall be liable to pay to the Government upon demand all sums which would have been payable to the Crown or the Government by the Developer but for the concessions granted to the Developer by virtue of the Development Order for any Phase which is not substantially complete and (i) provided that no such termination shall affect any concession granted under the paragraph 9(a) of the Development Order with respect to any such completed earlier Phase and (ii) there shall be no obligation on the part of the Developer to the Government or the Crown pursuant to this clause if, by the date of such termination, expenditure on the Development has exceeded the total amount of estimated expenditure contemplated by clauses 3.1.3-3.1.8 (inclusive) hereof.

## **8. ARBITRATION**

8.1 In the event of any dispute arising out of or in relation to this Agreement and such dispute relates to a technical or minor matter only such dispute shall be referred to an appropriately qualified single arbitrator to be agreed by the parties or in default of agreement to be appointed as provided hereunder and the person so appointed shall act as an expert and his decision shall be final and binding save for the right of appeal to the Supreme Court on a point of law.

- 8.2 In all other cases the Parties submit to the jurisdiction of the Supreme Court
- 8.3 If a Party wishes to refer a matter to arbitration that party ("the Giver") shall serve written notice ("the Arbitration Notice") of the matter in dispute to the other Party ("the Receiver") setting forth the terms of the matter disputed and nominating an arbitrator
- 8.4 The Receiver shall within 14 days provide a response in writing ("the Response Notice") to the Giver either agreeing to the reference to arbitration or contesting the reference on the basis that the matter is not suitable for reference to arbitration and if the Receiver agrees that the matter can be referred to arbitration the Receiver may nominate a different arbitrator from the one nominated by the Giver
- 8.5 If the Parties cannot agree within 14 days from the date of the Response Notice which arbitrator should act then the arbitrator shall be appointed by the President for the time being of the Providenciales Chamber of Commerce
- 8.6 If the Parties fail to agree that the matter should be referred to arbitration either of them may refer the issue of suitability for arbitration to the Supreme Court for decision as a preliminary matter
- 8.7 All arbitrations shall take place in the Islands at a place and time decided upon by the arbitrator and the cost of the arbitration shall be ordered by the arbitrator
- 8.8 Save as expressly varied hereby the terms of the Arbitration Ordinance Cap. 47 shall apply

## **9.0 FORCE MAJEURE**

- 9.1 If any of the Parties is effected by Force Majeure, that Party shall forthwith notify the other parties of the nature of and extent thereof.
- 9.2 No Party shall be deemed to be in breach of this Agreement or otherwise be liable to the other Parties by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other Parties and the time for performance of that obligation shall be extended for such reasonable time as may be fair and reasonable.

## **10.0 NOTICES**

- 10.1 Any notice or other communication required or permitted to be given hereunder shall be sent either by registered (air) mail, return receipt requested if available, or by cable, telefax, telegram or facsimile, or delivered by hand against receipt, addressed as follows:





If to the Crown or the Government

The Attorney General  
Attorney General's Chambers  
South Base  
Grand Turk  
Turks and Caicos Islands  
Fax (649) 946 – 2588

If to the Developer:


Turks, Ltd  
Misick & Stanbrook  
P.O. Box 127  
Richmond House  
Providenciales  
Turks and Caicos Islands  
Fax (649) 946-4734

or at such other place as the relevant Party may, giving reasonable notice, direct in writing. Any notice sent by registered mail shall be deemed to have been received seven (7) days after posting unless previously received, and any notice by cable, telegram, telex or facsimile shall be deemed to have been received the next business day after delivery to a proper transmitting agent, unless previously received hereunder.

A handwritten mark, possibly a signature or initials, consisting of a large 'K' shape with a horizontal line extending to the right and a small dot at the end.

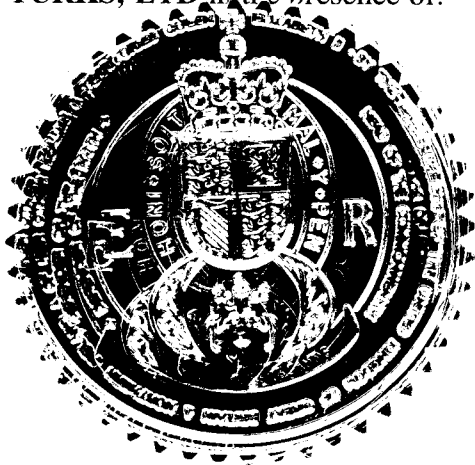
**IN WITNESS WHEREOF**, the Parties have caused the execution of these presents by their duly authorised representatives the day and year first above written.

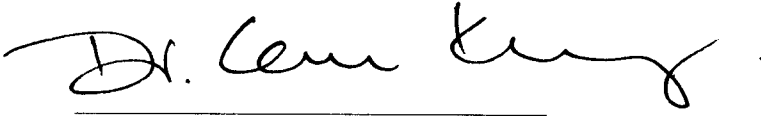
Executed for and on behalf of  
**THE CROWN** and for and on behalf of  
**THE GOVERNMENT OF THE TURKS &  
CAICOS ISLANDS** by **RICHARD TAUWHARE**,  
Governor in the presence of:

  
\_\_\_\_\_  
WITNESS

  
\_\_\_\_\_  
**RICHARD TAUWHARE**, Governor of the  
Turks and Caicos Islands

Executed for and on behalf of  
**TURKS, LTD** in the presence of:



  
\_\_\_\_\_  
**DIRECTOR**

  
\_\_\_\_\_  
**DIRECTOR/SECRETARY**

**SCHEDULE 1**  
**(The Plan)**





*Handwritten signature or mark*

## **SCHEDULE 2**

### **DESCRIPTION OF THE DEVELOPMENT, THE INFRASTRUCTURE WORKS AND THE PHASES**

#### **THE DEVELOPMENT**

The Development is to consist of a mixed-use resort with the following components comprising up to 100,000 square meters of built area, substantially in accordance with the Plan:

##### **Phase One**

The Infrastructure

##### **Phase Two**

- (a) Resort Hotel – up to 50 rooms with up to 52 additional residences and up to 25 villas;
- (b) Up to 50 residential villas on private villa lots;
- (c) Related recreational and restaurant facilities;
- (d) Helipad;
- (e) Managerial, administrative staff and back of the house facilities and accommodation.

##### **Phase Three**

- (a) South Beach – up to 30 over-water bungalows and up to 30 beach villas;
- (b) West Beach – up to 15 Beach Villas.

##### **Phase Four**

- (a) Up to 20 villas, lounge and restaurant on Little Dellis Cay.

##### **Phase Five**

- (a) Wellness Village – with up to 20 spa villas, spa and restaurant area;
- (b) Amazon Village – with up to 20 wood construction Amazon villas, lounge and restaurant.

##### **Phase Six**

- (a) Marina Village – with up to 32 marina villas and up to 65 condominium units;

- (b) Marina;
- (c) Amphitheatre.

The entire Development shall be completed by or before the 1<sup>st</sup> day of July 2018.

K.



**Developer**

4. Turks, Ltd., a company incorporated under the laws of the Turks and Caicos Islands, and having its registered office at Misick & Stanbrook, P. O. Box 127, Providenciales, Turks and Caicos Islands, is declared to be the Developer in accordance with the Encouragement of Development Ordinance Cap. 165

**Premises of Development Enterprise**

5. The Development shall be constructed, managed and otherwise operated at those parcels comprised in Blocks 61212, 61213 and 61214, all East Cays, Providenciales.

**Commencement of Development Enterprise**

6. The construction by the Developer of the Development shall commence on or before the 30<sup>th</sup> day of June, 2006.

**Completion of Development Enterprises**

7. The date on or before which it is anticipated that the Development shall be completed is the 1<sup>st</sup> day of July, 2018.

**Other Conditions**

8. The construction and operation of the Development shall be carried out in accordance with the terms and conditions of the development agreement. The benefits and covenants expressed therein shall form part of this Order.

**Declared Benefits**

9. Subject to the provisions of the Encouragement of Development Ordinance Cap.165 and provided that at least seven (7) days prior to the importation of any article into the Turks and Caicos Islands pursuant to this Order, the Developer shall furnish the Collector of Customs with a list which shall be agreed with the Collector of Customs describing the articles that are to be imported including their categories and their quantities, the Developer shall be entitled:

- (a) for a period of 15 years from the date of Commencement, or until the Development is complete, whichever is the earlier, to exemption from:
  - (i) any taxes on profits, gains or turn-over attributable to the Development;
  - (ii) any real property tax, capital levy or other tax on capital invested in the Development;
- (b) for a maximum period of 15 years from the date of Commencement, or until the Development is completed, which ever is the earlier, to a reduction to 5 % in customs import duties on -



**Materials:**

- (i) all building materials (except excluded items) which the Collector of Customs is satisfied are imported for and to be used solely in the initial construction and fitting out of the Development ;

**Equipment:**

- (ii) all plant, machinery, equipment, tools (except excluded items) which the Collector of Customs is satisfied are imported for and are to be used solely in the initial construction of the Development and provided that such plant, machinery and equipment are exported upon completion of the Development;

**Furniture, Fixtures and fittings:**

- (iii) all furniture, fixtures and fittings (except excluded items) which are normally capitalised in accordance with the generally accepted accounting principles and which the Collector of Customs is satisfied are imported for and to be used solely in the initial construction of the Development

and

- (c) for a maximum period of 15 years from the date of Commencement, to a reduction to 5 % in customs import duties on two separate refurbishments of the items referred to in paragraph (b) above.

**PROVIDED THAT** if the Developer fails to give at least 7 days notice prior to the importation of any article the Collector of Customs shall be entitled to charge customs duties at the full rate in respect of such article **AND PROVIDED FURTHER** that duties on articles imported may become payable as provided by section 9(1) of the Encouragement of Development Ordinance in the event of their being disposed of in any manner within five years from the date of importation.

**Cessation of benefits and recovery of duty**

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- (1) If at any time after the date of making of this Order any of the accommodation units (with the exception of the staff accommodation which shall not be counted as units from which the Government derives revenues under the Hotel and Restaurant (Taxation) Ordinance, Cap. 161 but which shall be counted as units for which full duty is payable if sold) and the Hotel within the Development are not used for accommodation from which

the Government derives revenue under the Hotel and Restaurant (Taxation) Ordinance, Cap. 161, the Developer shall pay to the Government:-

- (a) the amount of taxes, capital levy or customs import duties which the Developer would have paid in respect of any such unit not so used had it not been for Article 9; and
  - (b) interest on that amount at the rate specified in paragraph (2) for the period beginning with the date on which the taxes, capital levy or customs import duties would have been payable if it had not been for article 9 and ending not later than the date on which the taxes, capital levy or customs import duties are paid.
- (2) The rate of interest referred to in paragraph (1)(b) shall be 4% above FirstCaribbean International Bank (Bahamas) Limited' s base rate as it existed from time to time during the period specified in paragraph (1)(b) .

Made this       day of       200[   ]

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**RICHARD TAUWHARE, GOVERNOR**