

**TOURIST DEVELOPMENT UP TO \$30 MILLION GRANT AGREEMENT  
WITH DAD 1300 N. ATLANTIC COCOA, LP**

**THIS TOURIST DEVELOPMENT GRANT AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_, 2022, by and between the following Parties: DAD 1300 N. ATLANTIC COCOA, LP., a Delaware limited partnership, (hereinafter called the ‘GRANTEE’), and BREVARD COUNTY, a political subdivision of the State of Florida, (hereinafter called the ‘GRANTOR’).

**RECITALS**

**WHEREAS**, the GRANTEE states Brevard County has achieved substantial growth and has become a nationally known destination for tourists and business travelers alike, including the “return to Space;” and

**WHEREAS**, GRANTEE has determined that there is a robust interest in and potential for attracting national and international conventions to Brevard County through a hotel convention center destination serving business, tourism and combined business/tourism events that will substantially benefit the growing business community in Cocoa Beach and Brevard County; and

**WHEREAS**, the Grantee states that while Brevard County has a wide range of hotels, a variety of restaurants, and other tourist and business traveler amenities, Brevard County does not have an adequate Convention Center venue to “anchor” the expansion of its existing tourist development assets; and

**WHEREAS**, GRANTEE is offering the GRANTOR an opportunity to provide Tourist Development Tax to fund advertising to promote a world-class, state-of-the-art Convention Center to be constructed and operated by the GRANTEE in order to fill a missing convention center venue element in the tourist industry of Brevard County; and

**WHEREAS**, no Westin destination resort currently exists in Brevard County; and

**WHEREAS**, GRANTEE is proposing to construct a Westin flag hotel in the Brevard County market consisting of a new Westin Cocoa Beach Resort and Spa of approximately 800,000 square foot (in total) of mixed-use destination resort uses anchored by a 4.5-star, 502-key Westin hotel; approximately 120,000 square feet of event space including a state-of-the-art convention center venue, indoor, and outdoor event space; multiple food and beverage venues; spa and fitness center; retail; and a multistory parking garage which accommodates approximately 800 vehicles, all of which are included as part of “the Project;” and

**WHEREAS**, the GRANTEE states the Westin Cocoa Beach Resort and Spa represents an ambitious development project, and one of the largest of its kind in the U.S. at an estimated cost of approximately \$400 million; and

**WHEREAS**, GRANTEE represents the Project will fill a significant void in Brevard County's existing lodging market with a high-end resort and convention center that will be much sought after by less budget-oriented leisure travelers and corporations; and

**WHEREAS**, it is anticipated that the Westin Cocoa Beach Resort and Spa will be transformative for Brevard County's Space Coast, befitting its tremendous revival as a center of technology, innovation, and leisure; and

**WHEREAS**, GRANTEE, through its affiliated entities, owns and controls the International Palms Resort (hereinafter the "IPR") located at the Property on approximately 15.7-acres situated in the heart of Cocoa Beach on a prime oceanfront location abutting the GRANTOR's Lori Wilson Park, and the Property has been used for a hotel/resort since the early 1960's; and

**WHEREAS**, due to the existing resort's advanced age and general state of disrepair, all existing structures and features onsite are contemplated to be demolished, including below grade infrastructure and foundations per GRANTEE's plans; and

**WHEREAS**, GRANTEE has spent nearly five years and approximately \$37 million of which \$7 million has been used to receive full land development entitlements from the City of Cocoa Beach and other agencies with jurisdiction to advance architectural and engineering plans for the Westin project to the point the resort is essentially "shovel-ready" and can be open within three years of construction commencement; and

**WHEREAS**, in accordance with section 125.0104(3), Florida Statutes, GRANTOR imposed a Tourist Development Tax; and

**WHEREAS**, GRANTEE has agreed to construct and operate, at its sole cost, the convention center venue as part of the Westin Cocoa Beach Resort and Spa project; and

**WHEREAS**, Grantee seeks an annual Grant payable by the GRANTOR in four quarterly installments in each year during the term of this agreement; and

**WHEREAS**, the Grant will be solely used for the promotion and advertising of the Westin Cocoa Beach Resort and Spa and the Space Coast with the main goal being the attraction of tourists; and

**WHEREAS**, as of the Effective Date, the GRANTOR is authorized to promote and advertise tourism in accordance with the provisions of section 125.0104(3), Florida Statutes, as well as the specific provisions of sections 102-117 and 102-119 of the Code of Ordinances of Brevard County, Florida; and

**WHEREAS**, under the terms of this Agreement, the GRANTEE will be using the Tourist Development Grant solely to promote and advertise the Westin Cocoa Beach Resort and Spa and the Space Coast and that such a use will promote and advertise tourism in Brevard County; and

**WHEREAS**, the Tourist Development Council ~~recommended approval of~~ reviewed and made its recommendation on this Tourism Development Grant for GRANTEE at its meeting on July 6, 2022; and

**WHEREAS**, GRANTOR approved a Tourist Development Grant for GRANTEE at a meeting of the County Commission on \_\_\_\_\_2022, subject to satisfaction of the conditions set forth herein; and

**WHEREAS**, the GRANTEE has represented to the GRANTOR that its Tourist Development Plan allows for the delivery to and expenditure by the GRANTEE of the GRANT funds for advertising and promotion of the Convention Center venue pursuant to the terms of this Grant once all conditions precedent to this Agreement are met; and

**WHEREAS**, the GRANTOR desires to limit the Annual Grant Amount to be paid to GRANTEE to the amount defined in section 2.2 of this Agreement but to no more than one million dollars (\$1,000,000) in any year; and

**WHEREAS**, GRANTEE acknowledges that the GRANTOR is subject to the Florida Public Records Act, Chapter 119, Florida Statutes (the "Public Records Act") and to certain provisions of Chapter 286, Florida Statutes, relating to records and public meetings; and

**WHEREAS**, by approving this Agreement, the GRANTOR finds and declares that this Agreement serves a public purpose which includes the promotion and advertisement of a Convention Center venue for the development and growth of tourism in the County as one of

its main purposes, as well as the promotion of economic development, job growth, and a new business to the County, to wit, a Westin Cocoa Beach Resort and Spa resort, as well as expansion of the type of hotel services offered within the COUNTY, along with the expansion of the County's tax base and indirect economic development likely to result from GRANTEE's activities in Brevard County; and

**WHEREAS**, the economic analysis presented by GRANTEE states there is an increase in tourism predicted due to the construction of the proposed Convention Center venue; and

**WHEREAS**, section 125.045 (2), Florida Statutes provides that "The governing body of a county may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose. The provisions of this chapter which confer powers and duties on the governing body of a county, including any powers not specifically prohibited by law which can be exercised by the governing body of a county, must be liberally construed in order to effectively carry out the purposes of this section"; and

**WHEREAS**, section 125.045(3), Florida Statutes provides that "For the purposes of this section, it constitutes a public purpose to expend public funds for economic development activities, including, but not limited to making grants to private enterprises the attraction of new businesses to the community;" and

**WHEREAS**, sections 125.045(5)(a)1. and .3, Florida Statutes provide that a County may "direct financial incentives of monetary assistance provided to a business from the county or through an organization authorized by the county. Such incentives include, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies..." and "Fee-based or tax-based incentives, including, but not limited to, credits, refunds, exemptions, and property tax abatement or assessment reductions."

**NOW THEREFORE**, in consideration of the mutual promises and agreements contained herein, and other valuable and good consideration, the Parties agree as follows:

**1. RECITALS.**

1.1. The above recitals are true and correct and are incorporated herein and made part of this Agreement.

1.2. The Parties agree that this Grant shall not take effect until the Effective Date.

## 2. DEFINITIONS.

2.1. "Tourist Development Tax" or "TDT" shall mean the portion of Brevard County's Tourist Development Tax that is levied upon and collected from the GRANTEE under the authority of section 125.0104(3), Florida Statutes and section 102-117, Brevard County Code of Ordinances, less any administrative and overhead amounts retained by the Brevard County Tax Collector, and the Brevard County Tourist Development Office.

2.2 "Annual GRANT" shall mean the total amount of the four Quarterly Payments of eligible Tourist Development Tax revenue made each year to the GRANTEE by the GRANTOR pursuant to this Agreement.

2.3 "Certificate of Occupancy" or "CO" shall mean a permanent certificate of occupancy for the Project and the Westin Resort Hotel from the government agency with jurisdiction to issue it, which is currently the City of Cocoa Beach.

2.4 "Convention" shall mean a conference or an event at the Convention Center venue located at the project site with guests attending a convention with 200 or more estimated participants.

2.5 "Convention Center" or "Convention Center venue" means a state-of-the-art privately-owned Convention Center of approximately 62,500 square feet in size.

2.6 "Effective Date" is ~~the earlier of either (1)~~ the date a permanent certificate of occupancy (CO) is issued for the Project.

2.7 "Owner," "Ownership" or "Owned" refers to DAD 1300 N. ATLANTIC COCOA, LP. as the entity holding fee simple title to the real property at the Project site with the authority to operate the Project as its manager. Transfer of direct and indirect beneficial ownership interests in GRANTEE to any investors, or to any entity affiliated with DRIFTWOOD CAPITAL LLC or DRIFTWOOD DEVELOPMENT PARTNERS, LP are not deemed to affect or change the ownership status of GRANTEE as long as:

1) Driftwood Capital, LLC shall at all times retain ultimate control of the general partner of DAD 1300 and the direct and indirect ultimate beneficial owners of DAD 1300 as of the date of this Grant Agreement shall retain at least ten percent (10%) of the direct and indirect beneficial ownership interest in DAD 1300 at all times going forward; and

2) GRANTEE holds fee simple title to the land at the Project site, and ownership of the Project; and

3) GRANTEE remains in control of the Project's operations as manager and operator. Upon request of the GRANTOR, the GRANTEE shall provide GRANTOR with documentation to support the continuing ownership of the Project by the GRANTEE.

2.8 "Pre-function" space means large areas for gathering of attendees, excluding hallways.

2.9 "the Project" shall mean the improvements described in section 4 of this Agreement.

2.10 "Project Site" shall mean the tract of land located at 1300 N. Atlantic Avenue, Cocoa Beach, Florida, as more particularly described on EXHIBIT "A" to this Agreement.

2.11 Subject to the timing and partial quarterly payment provisions set forth in section 5.2.1. below, "Quarterly Payment" means the amount of Tourist Development Tax (as defined in section 2.1) eligible for reimbursement to GRANTEE by the GRANTOR in each County fiscal quarter, as defined 2.11.1. below, less the IPR amount multiplied by fifty percent (50%) (the '50% formula). The Grantor must expend equivalent funds on eligible advertising and promotion expenses in order to qualify for the full quarterly payment. For example if the applicable TDT, as defined in section 2.1, for one quarter is \$300,000 and the International Palms Resort's average quarterly TDT collected was \$100,000, then the new net TDT taxes generated are \$200,000. So \$200,000 times 50% generates a grant payment for eligible expenses of \$100,000.

2.11.1. For the purposes of this section, a "fiscal quarter" is defined as each period of three calendar months during the County fiscal year, which fiscal year commences on October 1 each year. The first "fiscal quarter" under this agreement shall be deemed to begin on first day of the first fiscal quarter occurring after the Effective Date, as the term 'Effective Date' is defined in section 2.6 above. For example, if the Effective Date occurs on January 15, 2025 the first fiscal quarter would begin on April 1, 2025.

2.12 "Resort" shall mean a new Westin Cocoa Beach Resort and Spa to be located at 1300 N. Atlantic Avenue, Cocoa Beach, Florida consisting of approximately 800,000 square foot (in total) of mixed-use destination resort uses, anchored by a 4.5-star, 502-key Westin hotel; approximately 120,000 square feet of event space including a state-of-the-art convention center venue, indoor, and outdoor event space; multiple food and beverage venues; spa and

fitness center; retail; and a multistory parking garage which accommodates approximately 800 vehicles.

2.13 The “SPACE COAST OFFICE OF TOURISM,” refers to the Brevard County Tourist Development Office, an office of the Brevard County government. The Brevard County Manager or his/her designee shall administer the GRANT.

2.14 “Tax Collector” means the Brevard County Tax Collector as defined in the Brevard County Charter.

2.15 “Tourist Development Grant” or “GRANT” shall mean grant funding by GRANTOR in the form of cash payments to GRANTEE made from the Tourist Development Tax revenue generated each year by the Project as defined in section 2.2 and 2.11 above and as set forth in this Agreement. In no event will the quarterly Grant exceed the value of the tourist development tax received by the COUNTY.

2.16 The “Tourist Development Council” refers to the advisory council appointed by the Board of County Commissioners of Brevard County, Florida, pursuant to Section 125.0104(4)(e), Florida Statutes, and Section 102-120, Brevard County Code of Ordinances.

2.17 “Westin Cocoa Beach Resort and Spa” shall mean a Westin hotel, or any successor hotel flag or brand transferee that may arise during the term of this Agreement. Said successor hotel must be a Westin also, or at least a hotel with a 4.5-star hotel rating, as rated by Forbes Travel Guide, or its successor, and the successor hotel must be approved by the GRANTOR.

2.18 Subject to the timing and partial quarterly payment provisions set forth in section 5.2.1 below, “Year” shall mean a time period of three-hundred-sixty-five (365) days, commencing on October 1 of the first County fiscal after the Effective Date.

2.19 “Eligible advertising and promotion expenses” means, for any quarter during the term of this agreement, after the Effective Date, including those GRANTEE expenses listed on Exhibit B to this Agreement and all other reasonable, documented out-of-pocket costs and expenses incurred and paid by GRANTEE to third party media or similar organizations with expertise in the attraction of tourists, provided such costs and expenses must relate to promotion, advertising, marketing and attraction of tourists to the Westin Resort Convention Center venue, which marketing shall include references to Cocoa Beach and Florida’s Space Coast, as part and parcel of the promotion and advertisements of its Project.

2.20 The “IPR annual amount” means the yearly average of the total amount of tourist development tax, as defined by section 125.0104 Florida Statutes, generated and paid by the IPR to GRANTOR over the four-year period immediately preceding the date that the IPR is permanently closed for business, less any administrative and overhead amounts retained by the Brevard County Tax Collector, and the Brevard County Tourism Development Office.

2.21 The “IPR amount” means one-fourth (1/4) of the IPR annual amount.

2.22 “Annual Grant Amount” shall mean the total of payments by GRANTOR to the GRANTEE each year as measured by the total amount of TDT, as defined in section 2.1, received by the County from the Project in each year during the term of this Agreement less the IPR annual amount multiplied by fifty percent (50%), to the extent GRANTEE has met 5.5.3.

2.23 “First Quarterly Payment” shall mean the amount of TDT (as defined in section 2.1) remitted to the Tax Collector by the GRANTEE for the Project for the period after the Effective Date and before the first day of the next fiscal quarter (as ‘fiscal quarter’ is defined in section 2.11 above), added to the amount of TDT remitted to the Tax Collector by the GRANTEE for the first fiscal quarter for which a Quarterly Payment is due (“the Combined Total”), which Combined Total shall then be used in the 50% formula for determining the reimbursement of TDT from the GRANTOR to the GRANTEE for the first Quarterly Payment only.

2.24 “Promotion” “means marketing or advertising designed to increase tourist-related business activities.

### **3. FINDINGS.**

The County makes the following additional findings in approving this Tourist Development Grant:

3.1 This Grant is authorized pursuant to section 125.045(2), (3) and (5)(a)1. and .2 Florida Statutes, which provides that tax-based incentives, including grants to private enterprises and expenditure of public funds for the attraction of new and/or expanding businesses to the community, constitute a public purpose authorized pursuant to those statutes.

3.2 In accordance with section 125.0104(3), Florida Statutes, as well as sections 102-117, as well as 102-119 of the Code of Ordinances of Brevard County, Florida, the GRANTEE is authorized by law to spend the TDT GRANT funds received under section 5 of this Agreement:

3.2.1 for the promotion and advertisement of the privately-owned Convention Center venue in the State of Florida, nationally and internationally, provided:

3.2.1.1 such tax revenues are expended for marketing the Convention Center venue along with the remainder of the Project, and

3.2.1.2 the Convention Center venue shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the venue to tourists.

#### **4. PROJECT DESCRIPTION.**

For the purposes of this Agreement, the Project is described to include the following facilities and amenities:

4.1. GRANTEE agrees and commits to undertake the construction of the Project which consists of approximately 800,000 square foot (in total) of mixed-use destination resort anchored by a 4.5-star, 502-key Westin hotel; approximately 120,000 square feet of event space including a state-of-the-art Convention Center venue, indoor, and outdoor event space; multiple food and beverage venues; spa and fitness center; retail; and a multistory parking garage which accommodates approximately 800 vehicles.

#### **5. TOURIST DEVELOPMENT GRANT.**

5.1 Grant Amount. Subject to sections 5.2, 5.3.1, and 5.3.2 below, to support the advertisement of the venue of which such advertising has a one of its main purposes the attraction of tourists, the GRANTOR agrees to pay an annual Tourist Development Grant (sometimes referred to as the "GRANT" or the "Annual Grant Amount") to the GRANTEE in the Annual Grant Amount as defined in section 2.22 above, as a reimbursement grant for certain eligible advertising and promotion expenses.

5.2 Grant Payment and Caps. Beginning in the year of the Effective Date, as defined in section 2.6, the Annual Grant Amount shall be paid each year during the term of this Agreement in Quarterly Payments, as defined in section 2.11 above, provided:

5.2.1. unless the Effective Date falls on October 1, the first Quarterly Payment, as defined in section 2.23 above, by GRANTOR to GRANTEE shall be paid as follows:

5.2.1.1 the GRANTEE's request for the First Quarterly Payment shall be a proper invoice submitted to the GRANTOR by the GRANTEE in accordance with section 5.3 below.

5.2.3. The maximum Annual Grant Amount shall be the lesser of:

- 1) one million dollars (\$1,000,000) or
- 2) the Annual Grant Amount, as defined in section 2.22 above.

5.2.4. The total amount paid to the GRANTEE by the GRANTOR on or before the end of the term of this Agreement shall not exceed thirty million dollars (\$30,000,000). In no event shall a quarterly grant payment, or the total grant payment, under this Contract, exceed the amount of Tourist Development Tax received by Grantor from the Grantee.

5.2.5. Should GRANTEE not collect and remit the amount of Tourist Development Tax dollars necessary to require GRANTOR's payment of up to one million dollars (\$1,000,000) in a year (as 'year' is defined by section 2.18) GRANTEE shall not be entitled to an extension of the terms and quarters of this agreement, nor shall GRANTEE be entitled to receive any annual GRANT amount over one million dollars (\$1,000,000) in any year (as 'year' is defined by section 2.18) period during the term of this Agreement to retroactively capture any shortfall of grant funds resulting from the failure of any Annual Grant Amount paid to GRANTEE to exceed one million dollars (\$1,000,000) during the term of this Agreement.

It is the intent of the parties that the design of this subsection is to let the Annual GRANT Amount rise (subject to the million dollar cap) and fall (if the Annual Grant Amount does not reach the one million dollar cap) during the term of this Agreement based on economic conditions in the tourist industry without any right of the GRANTEE to recoup any difference between the one million dollar cap and the Annual Grant Amount actually received by GRANTEE in down years.

5.3. The first Quarterly Payment due under the terms of this Agreement shall be invoiced by the GRANTEE to the GRANTOR, in compliance with this Agreement, at least ninety (90) days but not less than one hundred twenty (120) days after the last day of the first fiscal quarter, as defined in section 2.11.1 above:

5.3.1. Thereafter, during the term of this Agreement every invoice for a Quarterly Payment shall be submitted by the GRANTEE to the GRANTOR within twenty (20) calendar days after the last day of every fiscal quarter, as the term "fiscal quarter" is defined in section 2.11.1 above.

5.4 Grant Term. The term of this GRANT agreement shall be thirty (30) years from the Effective Date, as defined in section 2.6:

5.5 Initiation of Payment. This is a reimbursement grant. GRANTOR is not obligated to make any Quarterly Payment until:

5.5.1. After the Effective Date; and

5.5.2. GRANTEE has provided proof of payment and invoices for all eligible promotion and advertising expenses incurred to GRANTOR as required under this Agreement.

5.5.3. GRANTEE has provided GRANTOR proof of payment of the TDT to the Tax Collector.

5.5.4. For each annual period, if GRANTEE has not provided proof of said payment and invoices for all outstanding eligible promotion and advertising expenses within forty-five (45) days after the end of the fourth quarter for the year in which payment is sought, GRANTEE waives any further right to receive any unreimbursed TDT funds for that annual period.

5.6 Payment Due Date. The GRANTOR shall deliver each Quarterly Payment to GRANTEE within 45 days after the GRANTOR's County Manager receives the GRANTEE's proper invoice, as well as all other required documentation specified in this Agreement. For the purposes of this Agreement, the term "proper invoice" means an invoice that conforms to all requirements specified in this Agreement and the submission of the contract for the Project for which the invoice is submitted. If a "proper invoice" is not submitted, within ten (10) days of receipt, GRANTOR shall advise GRANTEE what additional requirements under this Agreement have not been met, failing which, the GRANTOR will be deemed to have waived such requirements.

5.7 Grantee Invoices. All Grantee invoices shall be provided to the Space Coast Office of Tourism and GRANTOR. Quarterly Payments shall be made in accordance with the grant procedures of the Space Coast Office of Tourism, Brevard County Administrative Order AO-33 (copy available upon request) and the local government Florida Prompt Payment Act.

5.8 Payment to Owner. The payments made under this GRANT shall only be made to the owner of the Convention Center venue, as defined in this agreement. The Convention Center venue must have the same ownership as the Resort Hotel, as ownership is defined in

this Agreement. In the event the Convention Center venue does not have the same ownership as the Resort Hotel, as ownership is defined this Agreement, this GRANT shall be null and void.

5.9 Non-Tourist Development Revenues. The Parties agree that this GRANT shall not be paid from GRANTOR's non-tourist development related revenues. Payments made under this Agreement are not to be considered a general obligation or indebtedness of the County or to create a lien on any County property. Neither the County nor any holder of the indebtedness issued by GRANTOR shall have any right to require or compel the levy of ad valorem taxes by the COUNTY in order to make payments pursuant to this Agreement. This Agreement shall not be considered a pledge of the Grantor's ad valorem taxes or other County revenues.

## **6. GRANTEE USE OF GRANT FUNDS.**

6.1 Legal. GRANTEE warrants that all funding authorized and expended under the terms of this Agreement shall be used only for eligible costs and expenses in accordance with section 125.0104, Florida Statutes, and, to the extent applicable, Brevard County ordinances, the Brevard County Charter, local law, and this Agreement.

6.2 Advertising and Promotion. Subject to the Force Majeure provision set forth in section 26 below, as a condition of receiving this GRANT, GRANTEE agrees to spend all funding received from GRANTOR pursuant to this Agreement for eligible expenses, as defined in section 2.19 above.

6.2.2 GRANTEE agrees to provide documentation of said spending to Grantor as required under this Agreement for the purposes of any audit of GRANT funds conducted or authorized by the GRANTEE.

6.3. Public Usage. Through the term of this Agreement, the Parties will cooperate to schedule a portion of the Convention Center venue including parking on the same terms as Hotel patrons to be made available to Brevard County for 15 days ("County days") per year. Said scheduling shall occur on or before of October 1<sup>st</sup> of each year. County days shall include Convention Center venue staff setting up the basic room with tables (with tablecloths and chairs, as needed, at no cost), provided that during such County Days, all other equipment rentals, food and beverage and other operating expenses associated with an event scheduled for a County day shall be borne solely by the entity sponsoring the event. GRANTEE gives GRANTOR the right to access GRANTEE's property to film video and take photographs of the Convention Center and the activities at the Convention Center; and GRANTEE gives GRANTOR a royalty-free, world-wide, nonexclusive, irrevocable, unlimited commercial use license right to

use said video and photographs in GRANTOR's promotional materials. The GRANTOR's right to fifteen days use of the Convention Center venue will cease upon expiration of this Agreement.

## **7. CONTINGENCIES ON GRANT PAYMENT.**

**7.1 CONDITIONS PRECEDENT.** As conditions precedent to the implementation of this Agreement and GRANTOR's obligation under this Agreement to make payments of the Annual Grant Amounts or the Quarterly Payments comprising the Annual Grant Amounts provided for in this Agreement, the following conditions precedent set forth in section 7.1.1. through 7.1.3. must be met:

7.1.1 Execution of this Agreement by all parties;

7.1.2 Receipt from all regulatory bodies with jurisdiction over the construction of the Project, of permitting documents verifying that all construction activities at the Project Site and the Project have conformed to applicable law. Unless the Effective Date is in effect, such documentation shall include a certificate of occupancy (CO) allowing use of the Convention Center venue by the GRANTEE. GRANTOR shall accept said CO as evidence that the Project has been substantially completed and made ready for tenancy by GRANTEE and its invitees.

**7.2 CONDITIONS FOR PAYMENT.** The following requirements must be met by the GRANTEE before any Quarterly Payment by GRANTOR's is required:

7.2.1. the receipt of a proper invoices or invoices for a Quarterly Payment;

7.2.2. the receipt of other payment-related documentation and information pertaining to the Project, if any, that is reasonably requested by the County Manager or designee; and

7.2.3. all tax remittance documentation or information related to the Project, if any, that is reasonably requested by the Tax Collector in the performance of the TDT collection duties of that office.

7.3 GRANTEE acknowledges the above referenced contingencies and represents it is not acting in reliance on this Agreement or the occurrence of any of the listed contingencies before those contingencies have been satisfied.

7.4 GRANTEE expressly waives the confidentiality requirements of Florida Statutes Chapters 119 and 212 and other applicable Florida law, to the extent required for the GRANTOR to obtain verification from the Tax Collector, the State of Florida Department of Revenue or any other governmental official or departments accepting the remittance of the amount of Tourist

Development Tax regarding the amount remitted during each quarter as defined in this Agreement.

7.5. GRANTEE hereby authorizes the Tax Collector, the State of Florida Department of Revenue or any other governmental official or departments accepting the remittance of the amount of Tourist Development Tax to release all information regarding the GRANTEE's payment and associated financial figures remitted into the Tourist Development Tax to GRANTOR upon request of the Brevard County Manager. Should such aforementioned third parties require verification, GRANTEE shall authorize a release of such information to the applicable third party allowing for the release of the information to GRANTOR. GRANTEE acknowledges and agrees that GRANTOR may be required to release this information to third parties as required under Florida Statutes Chapter 119 and other applicable Florida law. Should GRANTEE claim that the information referenced in Sections 7.3 and 7.4 of this Agreement should not be released in a public records request, GRANTEE agrees to fully indemnify and hold harmless Grantor for any actions or costs relating to the release or non-release of these records.

7.6. Except as provided in the last sentence of this section, GRANTEE shall not sell, lease, rent, or in any way change the legal ownership or management control of the GRANTEE from the existing parties or entities having such on or before the date of this Agreement without the prior written consent of the GRANTOR. Any such future change, assignment, or transfer of ownership to any other entity without the written acceptance of the GRANTOR not substantially complying with section 7.6.1. through 7.6.3. below shall be grounds for declaring a default by GRANTEE under this Agreement. Transfer of direct and indirect beneficial ownership interest in DAD 1300 N. Atlantic Cocoa LP to any investors, or to any entity affiliated with DRIFTWOOD CAPITAL LLC or DRIFTWOOD DEVELOPMENT PARTNERS, LP. shall not be deemed to affect or change the ownership status of DAD 1300 under this definition as long as:

7.6.1 Current direct and indirect beneficial owners in DAD 1300 N. Atlantic Cocoa LP remain as general partners and retain at least ten percent (10%) of the direct and beneficial ownership interests in DAD 1300 N. ATLANTIC COCOA, LP; and

7.6.2. GRANTEE holds fee simple title to the land and title to the Project; and

7.6.3. GRANTEE remains in control of the Project's operations as manager and operator. Upon request of the GRANTOR, the GRANTEE shall provide GRANTOR with documentation to support the continuing ownership of the Project by the GRANTEE;

7.6.4. No consent from the GRANTOR will be required for any transfer or sale of membership interests that substantially complies with Exhibit C provided the GRANTEE continues to meet the requirements set forth in subsection 7.6.1. through 7.6.3. above.

7.7. Both Parties agree that applicable laws regarding the collection, remittance, or use of Tourist Development Tax dollars may change over the term of the GRANT. Should applicable laws change to prohibit, limit, or frustrate the purposes and terms of the GRANT and this Agreement, the GRANTEE shall only be entitled to the amounts as set forth in this Agreement to the extent that they may be limited by a change in law, provided:

7.7.1 To the extent permissible by law, GRANTEE reserves the right to challenge any such law as an unconstitutional impairment of Contract by whatever form of claim is appropriate, whether through an action for declaratory relief or other form of claim. To the extent that GRANTEE is required to join GRANTOR as a Party Plaintiff to litigation for impairment of contract arising out of the State of Florida's legislative changes, GRANTEE agrees defend at its cost any such litigation.

7.7.2 As to only those amounts that are not paid to the GRANTEE under the terms of the existing Agreement as a result of modified or amended legislation, the Parties agree that, as to those amounts only, this Agreement will be abated until a final judicial determination is rendered.

7.7.3. The amounts due under this Agreement as permitted by modified or amended legislation, shall continue to be paid to the GRANTEE by the GRANTOR. GRANTOR waives any right to claim the amounts due under this Agreement that were prohibited by modified or amended legislation while the law was in effect.

## **8.0 Job Creation and Economic Impact.**

8.1 The Parties acknowledge that GRANTEE has provided an economic impact study entitled: Westin Cocoa Beach Resort and Spa Conference (or its equivalent namesake) Market & Economic Impact Study dated May 2022, as updated setting forth job creation estimates as well as projected economic and fiscal impacts, together with comparable projects and GRANTEE experience in similar projects. A copy of that study is incorporated by reference into this Agreement.

## **9.0 Audit and Public Records.**

9.1 Right to Audit Records. In performance of this Agreement, GRANTEE shall keep books, records, and accounts of all activities related to this Agreement, in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by GRANTEE in conjunction with this Agreement and the performance of this

Agreement shall be open to inspection during regular business hours by an authorized representative of the County and shall be retained by GRANTEE for a period of five (5) years after termination of this Agreement, unless such records are returned to GRANTOR upon completion of the contract.

9.2 Public Records Disclosures. GRANTEE agrees that Florida has broad public disclosure laws, and that any written communications with the GRANTEE, to include emails, email addresses, a copy of this Agreement, and any supporting documentation related to this Agreement are subject to public disclosure upon request, unless otherwise exempt or confidential under Florida Statute.

9.2.1. Public records are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. In this case, the portion of the GRANTEE's records relating to the acceptance and use of the GRANTOR grant are public records that may be subject to production upon request. The GRANTEE agrees to keep and maintain these public records until completion of the contract. Upon completion of the Agreement, GRANTEE will transfer, at no cost, to the GRANTOR, any public records in its possession.

9.2.2. Upon a request for public records related to this Agreement, GRANTEE will forward any such request to the GRANTOR. The GRANTOR will respond to any public records request. Upon request, the GRANTEE will provide access or electronic copies of any pertinent public records related to this Agreement to the GRANTOR within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes.

9.2.3. The GRANTEE agrees that Brevard County will consider all documentation the GRANTEE submits to Brevard County to support payment of this Grant to be subject to public records disclosure. If GRANTEE believes a specific documentation is exempt from public disclosure, the GRANTEE must so label the documentation and provide the basis for the exemption to GRANTOR. GRANTEE understands that GRANTOR will make the final decision as to whether or not the exemption is applicable, and so notify GRANTEE.

**IF GRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO GRANTEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS**

**AT THE OFFICE OF TOURISM, C/O ADMINISTRATIVE SECRETARY, 150 COCOA ISLES BLVD, SUITE 401 COCOA BEACH, FLORIDA 32931, PHONE (321) 433-4470.**

**10. DEFAULT TRIGGERS & SPECIFIC REMEDIES.**

10.1. General Default.

10.1.1. Either Party is in default of this Agreement if the Party breaches any covenant contained in this Agreement and such breach has not been corrected or cured within thirty (30) days after written notice thereof.

10.1.2. The GRANTOR Party is in material breach of this Agreement under the following circumstances:

10.1.2.1. As to the GRANTOR, the failure to make a required Quarterly Payment in accordance with the time limits set forth in 5.6 after notice of default provided by the GRANTEE and the failure to cure the default within the thirty (30) day cure period set forth in section 10.1.1. of this Agreement.

10.1.2.2. As to GRANTEE, for the failure to meet the conditions for receiving a Quarterly Payment as such conditions are specified in section 7.2, after notice of default and the failure to cure the default within the thirty (30) day cure period set forth in section 10.1.1. of this Agreement.

10.1.3. GRANTEE is in default if any representation or warranty made by GRANTEE herein or in any report, statement, invoice, certificate, application, or other documentation furnished to the GRANTOR in connection with the performance of the Agreement proves to be untrue in a material respect as of the date of issuance or making thereof, was made with knowledge that it was untrue by GRANTEE employee submitting the documentation, and has not been corrected, cured or brought into compliance within thirty (30) days after written notice thereof to GRANTEE by the GRANTOR.

10.1.4. GRANTEE is in default if it fails to provide to the GRANTOR the written verification, reasonably satisfactory to the GRANTOR, of its performance of GRANTEE'S obligations as set forth herein.

10.1.5. GRANTEE is in default if it fails to provide GRANTOR with all information reasonably requested by GRANTOR relating to the provisions of the GRANT.

10.1.6 GRANTEE is in default of this Agreement if GRANTEE fails to remit the legally required amount of Tourist Development Tax dollars to the appropriate agencies in the time period as required by law. Such default may be cured if the GRANTEE remits the required amount within fifteen days following the required date. If GRANTEE fails to remit the required amount within the fifteen-day period following the default, GRANTOR, in their sole discretion, may terminate this Agreement.

10.1.7. Should any litigation between the Parties out of this Agreement, each Party shall bear its own attorney's fees and costs, except as noted in section 7.7.1 and section 20.

## **11. REMEDIES.**

11.1. In the event of a material breach by GRANTOR, GRANTEE'S remedy reserves its right to enforce the Agreement in any appropriate legal or equitable action available under law other than an action for monetary damages. In addition, the GRANTOR's right to fifteen days use of the Convention Center venue each year will cease upon termination of this Agreement.

11.2. GRANTOR remedies for default by GRANTEE are as follows: At whatever point a default is identified the GRANTOR shall so notify GRANTEE and GRANTOR shall have no obligation to make further payments to GRANTEE unless and until GRANTEE has demonstrated to GRANTOR that the matter is resolved to GRANTOR's satisfaction unless otherwise stated in this Agreement. GRANTEE agrees to cooperate with GRANTOR regarding any requests for information by GRANTOR to identify or resolve said default. GRANTOR's remedy shall be limited to (a) a release from further obligation to pay and (b) a claim for reimbursement under the terms specified in this Agreement, if any funds have been extended by the GRANTOR on behalf of GRANTEE. Unless otherwise provided in this agreement, the GRANTEE shall have thirty (30) days to remedy such default. If the default is not remedied within that time, the Agreement may be terminated in accordance with section 12 below.

11.3 The provisions of section 11.1 and remedies specified therein shall survive any termination of this Agreement by the GRANTOR or resulting from the GRANTOR's default.

## **12. TERMINATION.**

12.1. Subject to the Default and Remedies provisions specified in sections 10 and 11, above, if either Party fails or refuses to perform any of the provisions of this Agreement, or otherwise fails to timely satisfy the Grant provisions, either Party may notify the other Party in writing of the nonperformance and, after the any cure period has elapsed without compliance,

terminate this Agreement. Such termination is effective upon the Party's receipt of the Notice of Termination.

12.2 If the GRANTEE defaults, without cure or as expressed in this Agreement, this Agreement will be deemed automatically terminated and void. Under such circumstances, no further grant payments shall be due or payable from the GRANTOR to the GRANTEE under this agreement.

12.3 If the Grantor defaults without cure, under such circumstances:

12.3.1. The termination shall be automatic on the date the thirty (30) day cure period has elapsed without a cure, provided the GRANTEE shall give notice to GRANTOR of said uncured default and automatic termination shall not constitute a waiver of any of GRANTEE's remedies provided for in section 11 above, which remedies shall survive termination and are expressly reserved to the GRANTEE under this section should the Agreement terminate due to default of the GRANTOR.

12.4. It is the express agreement and intent of the Parties that the Grant payments to be made by the GRANTOR to the GRANTEE under the terms of this Agreement are not, and cannot be pledged as security for, or a guarantee of, the GRANTEE's payment of indebtedness to a third-party.

12.5. The Parties agree this Agreement shall not be considered a pledge of the GRANTOR'S ad valorem taxes, future ad valorem taxes, taxing powers, or other County revenues.

12.6. The Parties may execute a written agreement terminating this Agreement.

12.7. Except as provided in section 12.8, termination or expiration of this Agreement shall not affect any other rights of either Party which may have vested or accrued up to the date of such termination or expiration.

12.8 This Agreement shall automatically terminate if the County is no longer able to levy the Tourist Development Tax due to the operation of section 125.0104(7) Florida Statutes due to:

12.8.1. the inability of the County to renew or replace its current Agreement with USSSA and failing, after a good faith effort has been made to obtain an agreement for a replacement operator of the Spacecoast Stadium, which USSSA Agreement expires in 2038; and

12.8.2 by failing to enact an ordinance reimposing the TDT as authorized by said subsection (7); provided.

12.8.3.1. this Agreement shall be deemed to be automatically reinstated and in full force and effect should the County pass an ordinance levying the TDT after an automatic termination as described in section 12.8, 12.8.1. and 12.8.2 above. This reinstatement provision shall survive any such termination.

### **13. NOTICES AND ADMINISTRATORS.**

13.1 All notices required or permitted under this Agreement and any written consents or approvals required hereunder shall be in writing and are in effect upon receipt. Notices shall be transmitted either by personal hand delivery; United States Postal Service (USPS), certified mail return receipt requested; or, overnight express mail delivery. E-mail and facsimile transmission may be used if the notice is also transmitted by one of the preceding forms of delivery. The addresses set forth below for the respective parties shall be the places where notices shall be sent unless prior written notice of change of address is given.

13.2. The parties' designated representatives and their respective addresses for purposes of this Agreement shall be sent by E-mail with a confirmation copy by overnight courier or registered mail addressed as follows:

If to GRANTEE:

DAD 1300 N ATLANTIC COCOA, LP  
255 Alhambra Circle, Suite 760  
Coral Gables, FL 33134  
Attn: Carlos Rodriguez, Sr., CHAIRMAN/CEO

If to the GRANTOR:

Brevard County Manager  
2725 Judge Fran Jamieson Way  
Building C  
Viera, Florida 32940  
E-mail:

*With a copy to:*

Brevard County Attorney  
2725 Judge Fran Jamieson Way  
Building C  
Viera, Florida 32940  
E-mail:

#### **14. BINDING EFFECTS AND ASSIGNMENT.**

14.1. This Agreement, or portions thereof, may not be assigned to any other party, legal entity or person by GRANTEE or by a third party without the prior written consent of the GRANTOR. Such consent shall not be unreasonably withheld if the GRANTOR's reasonable review of the experience and financial viability of the Assignee is determined to make the assignment commercially feasible and viable.

14.2. This Agreement shall be binding upon the successors and assigns of the Parties hereto to the extent such assignment has been consented to by the GRANTOR under the circumstances in this Agreement.

#### **15. GOVERNING LAW, VENUE AND WAIVER OF REMOVAL TO FEDERAL COURT, SERVICE OF PROCESS, REMEDY FOR UNLAWFUL PAYMENTS, WAIVER OF TRIAL BY JURY**

15.1. This Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Florida. Venue in any litigation arising out of this agreement shall be Brevard County, Florida in the state court with jurisdiction. **BOTH PARTIES AGREE TO WAIVER OF ANY RIGHT TO TRIAL BY JURY AND HEREBY WAIVE ANY JURY TRIAL.** GRANTEE hereby consents and waives any objection or defenses relating to Florida state court having jurisdiction over any dispute or claim arising out of this agreement and consents to process being served upon its Florida registered agent. GRANTEE expressly waives removal of any claim or action arising under this agreement to federal court.

15.2. GRANTEE agrees that any public expenditure found to be unlawful by a court of competent jurisdiction shall be reimbursed to the GRANTOR.

#### **16. MODIFICATION.**

This Agreement may not be changed or modified except by written instrument signed by all of the Parties hereto.

## **17. SURVIVAL.**

All covenants, agreements, representations, warranties and endowments made herein relating to repayment by GRANTEE in the event of GRANTEE'S default shall survive the termination of this Agreement until any claim or claims made under this Agreement by the GRANTOR is resolved.

## **18. FURTHER ASSURANCES.**

Each Party, without further consideration, shall take such action, execute and deliver such documents as the other may reasonably request to correct or effectuate the purpose of this Agreement.

## **19. RELATIONSHIP OF THE PARTIES.**

Nothing in this Agreement, nor any act of the Parties, shall be deemed or construed by the Parties hereto or by any third party to create a relationship of principal and agent, partnership, joint venture or of any similar association whatsoever between GRANTEE and GRANTOR. This Agreement does not constitute any support or denial of support between GRANTOR and GRANTEE outside of the terms of this Agreement.

## **20. GRANTEE'S WARRANTIES/REPRESENTATIONS AND INDEMNIFICATION.**

20.1. GRANTEE represents that it is possessed with all requisite lawful authority to enter into this Agreement, and the individual executing this Agreement is possessed with the authority to so sign and bind GRANTEE.

20.2. GRANTEE further warrants that it has not entered into any agreement nor has any obligations which would prohibit GRANTEE from locating the Project in Brevard County, Florida.

20.3. To the extent permitted by law, other than GRANTEE'S claims arising out of a default by the GRANTOR, GRANTEE shall indemnify and hold GRANTOR harmless for any claims or actions of any nature resulting from or arising out of the construction or operation of the Project or its facilities or otherwise in GRANTEE'S use of this GRANT. The GRANTEE shall indemnify, defend, and hold harmless Brevard County for the negligent acts and omissions of the GRANTEE'S own employees and agents in the performance of this Agreement, to the extent permitted by law, and against any and all third-party claims, suits, proceedings, losses,

liabilities, damages, fees and expenses (including reasonable attorney's fees and expenses) related to the GRANTEE's project. The GRANTEE expressly agrees that Brevard County has no liability to the GRANTEE for GRANTEE's operation of the Project. The Parties acknowledge specific consideration has been exchanged for this provision.

20.4. GRANTEE agrees to comply with all federal, state and local laws, and is responsible for any and all permits, fees, and licenses necessary to perform the Grant. GRANTEE will ensure all Contractors are appropriately licensed to do the work required. Nothing in this Agreement shall be construed as a waiver by GRANTOR of any requirements for local permits, fees, and licenses.

20.5. GRANTEE shall not engage the services of any person or persons now employed by Brevard County, to provide services relating to this agreement without written consent from Brevard County.

20.6. GRANTEE is the current owner in fee simple of the property located at 1300 N. Atlantic Avenue, Cocoa Beach, Florida 32931, upon which the project and the Project is to be built.

20.7 The Grantee further represents that the grants being paid to the Grantee by the Grantor under this agreement are not necessary to make the Project economically feasible.

## **21. SEVERABILITY.**

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Parties shall use their best efforts to rehabilitate and replace the unenforceable provision or provisions of this Agreement with lawful terms and conditions approximating the original intent of the Parties.

## **22. INSURANCE.**

22.1. GRANTEE agrees to procure and maintain, at its own expense and without cost to GRANTOR, the following types of insurance. The policy limits required are to be considered minimum amounts:

22.1.1. General Liability Insurance policy with a \$1,000,000 combined single limit for each occurrence to include personal injury, contractual liability, and errors and omissions coverage.

22.1.2. Auto Liability Insurance policy which includes coverage for all owned, non-owned and rented vehicles with a \$1,000,000 combined single limit for each occurrence, as well as Full Coverage Vehicle Insurance to include Liability (as above), Collision, Comprehensive, PIP and Uninsured Motorists.

22.1.3. Workers' Compensation and Employers Liability insurance policy covering all employees of GRANTEE that work on this Grant, as required by law. Coverage shall be for all employees directly or indirectly engaged in work on this Grant, with limits of coverage as required by State law.

22.1.4. Provision of Certificates of insurance - GRANTEE will provide certificates of insurance to GRANTOR demonstrating that the insurance requirements have been met prior to the commencement of work under this Grant. The insurance coverage enumerated above constitutes the minimum requirements and shall in no way lessen or limit the liability of GRANTEE under the terms of the Grant.

### **23. MISCELLANEOUS PROVISIONS.**

23.1. This Agreement shall not obligate or make GRANTOR or the GRANTEE liable to any Party other than the Parties to this Agreement. Oversight of GRANTEE staff will be the responsibility of the GRANTEE Manager.

23.2. The waiver by the GRANTOR of any of GRANTEE's obligations or duties under this Agreement shall not constitute a waiver of any other obligation or duty of the GRANTEE or any other Party under this Agreement, nor shall a waiver of any such obligation or duty constitute a continuing waiver of that obligation of duty.

23.3 The County's indemnity and liability obligations hereunder shall be subject to the County's right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing herein shall constitute a waiver of the County's sovereign immunity.

## **24. SCRUTINIZED COMPANIES.**

24.1. The GRANTEE certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes, the GRANTOR may immediately terminate this Grant at its sole option if the GRANTEE or its subcontractors are found to have submitted a false certification; or if the GRANTEE, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel during the term of this Contract.

24.2. GRANTEE further certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes.

24.3. Pursuant to Section 287.135, Florida Statutes, the GRANTOR may immediately terminate this Grant at its sole option if the GRANTEE, its affiliates, or its subcontractors are found to have submitted a false certification; or if the GRANTEE, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the contract.

24.4. The GRANTEE agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this contract.

24.5. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize these contracting prohibitions, this section shall become inoperative and unenforceable.

## **25. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY).**

25.1. The GRANTEE shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the GRANTEE during the term of the Grant. Upon request, GRANTEE shall provide acceptable evidence of their

enrollment. Acceptable evidence shall include, but not be limited to, a copy of the fully executed E-Verify Memorandum of Understanding for the business.

25.2. GRANTEE shall expressly require any subcontractors performing work or providing services pursuant to this Grant to likewise utilize the United States Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Grant.

25.3. GRANTEE agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as required by section 448.095(2)(b), Florida Statutes, and to make such records available to the COUNTY consistent with the terms of GRANTEE's enrollment in the program.

25.4. Compliance with the terms of this section is made an express condition of this Contract and the COUNTY may treat a failure as grounds for immediate termination of this Contract.

25.5. A GRANTEE who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-Verify program, the GRANTEE hires or employs a person who is not eligible for employment.

25.6. Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

25.7. GRANTOR will not intentionally award a publicly-funded contract to any GRANTEE who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 United States Code (USC) section 1324a(e)(section 274A(e) of the Immigration and Nationality Act (INA). The GRANTOR shall consider a GRANTEE's intentional employment of unauthorized aliens as grounds for immediate termination of this contract.

## **26. FORCE MAJEURE.**

In no event shall the GRANTOR or GRANTEE be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, strikes, pandemics, government imposed lockdowns or similar government acts substantially impeding tourism, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God; it being understood that the Parties shall use reasonable efforts

which are consistent with accepted practices in the tourism industry to resume performance as soon as practicable under the circumstances.

**27. FOREIGN DISCLOSURES.**

Pursuant to section 286.101(3)(a), Florida Statutes, prior to the GRANTOR signing this Agreement, GRANTEE agrees it will complete Brevard County's Foreign Disclosure form and file any required foreign disclosures with the State of Florida's Department of Financial Services.

**28. ENTIRE AGREEMENT AND DUPLICATE AGREEMENTS.**

This Agreement contains the entire understanding of the Parties and supersedes all prior agreements and negotiations respecting such matters. This Agreement is executed in duplicate originals.

**[SIGNATURES APPEAR ON PAGE 25]**

**IN WITNESS WHEREOF**, the GRANTOR and GRANTEE have caused this agreement to be executed and delivered by their duly authorized representatives, fully authorized by all required action to sign on behalf of and to bind that Party to the obligations stated herein.

Signed, Sealed, and Delivered in the presence of:

\_\_\_\_\_  
Witness

**GRANTEE:**

DAD 1300 N ATLANTIC COCOA, LP, a Delaware limited partnership,

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Carlos Rodriguez, Managing Member  
Its authorized signatory

**ATTEST:**

**GRANTOR:**

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Rachel Sadoff, Clerk

By: \_\_\_\_\_  
Kristine Zonka, Chair

(As approved by the Board on \_\_\_\_\_)

APPROVED AS TO FORM CONTENT

\_\_\_\_\_  
County Attorney

## EXHIBIT "A"

### PARCEL I

BLOCK THIRTEEN (13), LESS THAT PORTION OF LOTS EIGHT (8) AND NINE (9) OF SAID BLOCK 13 LYING WITHIN THE RIGHT OF WAY FOR STATE ROAD A-1-A; BLOCK FOURTEEN (14); AND ON THE SOUTH ONE-HALF (S 1/2) OF A CLOSED STREET RUNNING FROM STATE ROAD A-1-A EAST TO THE EAST LINE OF BLOCK 14, PROJECTED, ORIGINALLY NAMED LAUREL AVENUE, WHICH SEPARATED BLOCKS ELEVEN (11) AND TWELVE (12) FROM BLOCKS THIRTEEN (13) AND FOURTEEN (14); THAT PORTION OF BANKS STREET EXTENDING FROM THE SOUTH LINE OF BLOCKS THIRTEEN (13) AND FOURTEEN (14) TO THE NORTH LINE OF THE SOUTH ONE-HALF (S 1/2) OF CLOSED LAUREL AVENUE; AND THE ALLEY SEPARATING LOTS ONE (1) THROUGH FIVE (5) INCLUSIVE FROM LOTS SIX (6) AND FIFTEEN (15) IN BLOCK 14, ALL ACCORDING TO THE PLAT OF SEA CREST BEACH SUBDIVISION, AS RECORDED IN PLAT BOOK 3, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THE STREET KNOWN AS LAUREL AVENUE AND BANKS STREET AND THE ALLEY ABOVE DESCRIBED HAVING BEEN CLOSED BY A RESOLUTION OF THE COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA.

### PARCEL II

ALL OF BLOCK FIFTEEN (15), LESS THAT PART OF LOTS EIGHT (8) AND NINE (9), LYING WITHIN THE RIGHT OF WAY OF A-1-A; AND ALL OF BLOCK SIXTEEN (16), EXCEPT LOTS ONE (1), TWO (2), FOUR (4), AND FIVE (5), AND LESS THE EASTERLY 24 FEET OF LOTS SIX (6) AND FIFTEEN (15), PER OFFICIAL RECORDS BOOK 514, PAGE 924, ACCORDING TO THE PLAT OF SEA CREST BEACH, AS RECORDED IN PLAT BOOK 3, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

### PARCEL III

LOTS ONE (1) AND TWO (2), BLOCK SIXTEEN (16), SEA CREST BEACH SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 3, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

### PARCEL IV

THAT PORTION OF HOLLY AVENUE AS SHOWN ON PLAT OF SEA CREST BEACH, PLAT BOOK 3, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, LYING EAST OF THE EAST RIGHT OF WAY OF A-1-A WHICH WAS VACATED BY RESOLUTION NO. 80-34 BY THE CITY COMMISSIONER OF THE CITY OF COCOA BEACH, FLORIDA, DATED OCTOBER 16, 1980.

### **Being more particularly described as follows:**

Holiday Inn Site by Surveyor:

All of Blocks 13, 14, and 15, and a portion of Block 16, the South one-half of Vacated Laurel Avenue, Vacated Banks Street lying between Blocks 13 and 14 and also lying between Blocks 15 and 16, the Vacated Alley in Block 14 and that portion of Holly Avenue vacated by the City of Cocoa Beach in Resolution No. 80-34, all in SEA CREST BEACH according to the plat thereof as recorded in Plat Book 3, Page 3 of the Public Records of Brevard County, Florida, and lying within Section 3, Township 25 South, Range 37 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Southwest corner of Lot 9, in said Block 15; thence N89°38'11"E, along the South line of said Block 15, a distance of 25.01 feet, to the East right of way line of State Road A-1-A (North Atlantic Avenue) and the POINT OF BEGINNING of the herein described parcel; thence N03°03'58"E, along said East right of way line, a distance of 280.00 feet, to the North line of said Block 15; thence N89°37'39"E, along said North line, a distance of 50.00 feet, to the West line of that portion of Holly Avenue vacated by City of Cocoa Beach Resolution No. 80-34 as recorded in Official Records Book 2266, page 178 through 180; thence N03°00'02"E, along said West line, a distance of 49.98 feet, to the South line of said Block 13; thence S89°37'39"W, along said South line, a distance of 50.00 feet, to said East right of way line of State Road A-1-A; thence N03°03'58"E, along said East right of way line, a distance of 307.27 feet, to the centerline of Laurel Avenue vacated by the Brevard County Commissioners by resolution recorded in Deed Book 355, Page 619; thence N89°38'48"E, along the centerline of said Laurel Avenue, a distance of 1,183.30 feet, to the Erosion Control Line, created by resolution recorded in Official Records Book 4242, Page 492, and maps recorded in Survey Book 8, Pages 38 through 56; thence the following 4 courses along said Erosion Control Line: (1) S05°47'36"W, a distance of 68.84 feet; (2) S05°18'05"W, a distance of 273.29 feet; (3) S05°36'49"W, a distance of 131.77 feet; (4) S04°41'55"W, a distance of 52.14 feet, to the South line of Lot 3 in said Block 16; thence S89°34'42"W, along said South line, a distance of 469.74 feet, to the Southwest corner of said Lot 3; thence N03°29'13"E, along the West line of Lots 1, 2, and 3 in said Block 16, a distance of 168.06 feet, to the South line of said Holly Avenue; thence S89°36'54"W, along said South line, a distance of 40.09 feet, to the West line of the East 24.00 feet of Lots 15 and 16 in said Block 16; thence S03°28'56"W, the West line of the East 24.00 feet of Lots 15 and 16 in said Block 16, a distance of 280.33 feet, to the South line of said Block 16; thence S89°38'11"W, along the South line of said Blocks 15 and 16, a distance of 651.33 feet, to the POINT OF BEGINNING.

## Exhibit B

### List of Included Eligible Expenses

For the purposes of the Agreement, Eligible expenses shall include, but are not limited to:

1. costs related to the website,
2. public relations,
3. marketing (development and management of marketing strategy; virtual marketing, discovery advertising campaigns, airport displays, etc.),
4. advertising (social media, streaming, podcast ads, publications and trade magazines, print, billboards, and similar advertising media),
5. print collateral,
6. customer relationship management,
7. trade shows,
8. membership,
9. special events

Exhibit C: Anticipated Ownership

