

RESOLUTION NO. 23-08

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING A LAND USE DISPUTE SETTLEMENT AGREEMENT WITH RESORT HOSPITALITY ENTERPRISES, LTD AND AUTHORIZING THE ISSUANCE OF REVISED LAND DEVELOPMENT ORDERS CONTEMPLATED BY THE TERMS OF THE AGREEMENT.

BE IT RESOLVED that


1. The appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Agreement between the City and Resort Hospitality Enterprises, LTD., related to an Order of the City Council issued on October 25, 2018, in substantially the form **attached** as Exhibit A and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

2. The Mayor is authorized to issue revised Orders contemplated by and consistent with the terms of the Land Use Dispute Settlement Agreement.

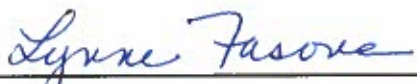
THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 13th day of October, 2022.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

**LAND USE DISPUTE SETTLEMENT AGREEMENT
SECTION 70.51, FLORIDA STATUTES**

This Settlement Agreement (“Agreement”) is entered into by and between **Resort Hospitality Enterprises Ltd. (“RHE”)** and the **City of Panama City Beach, Florida**, a Florida municipal corporation (the “City”). RHE and the City are sometimes herein jointly referred to as the Parties.

RECITALS

WHEREAS, RHE is the fee simple owner of real properties located at 9400, 9500 and 9600 South Thomas Drive, Panama City Beach, Florida. The property located at 9400 South Thomas Drive contains approximately 7.728 acres, identified by the Bay County Property Appraiser as tax parcels #34984-090-000 and 34984-095-000, and legally described in that certain Warranty Deed recorded at Bay County Official Records Book 1454, Page 1775 (the “Eastern Property”). The property located at 9500 and 9600 South Thomas Drive contains approximately 11.048 acres, identified by the Bay County Property Appraiser as tax parcels #34986-000-000 and 34987-000-000, and legally described in that certain Warranty Deed recorded at Bay County Official Records Book 1454, Page 1775 (the “Western Property”), (collectively, the “Properties”).

WHEREAS, RHE submitted an application requesting height increases based on incentives for both the Eastern and the Western Properties. Each application requested an additional 70’ in building height.

WHEREAS, the application for the Eastern Property (the “Eastern Property Application”) proposed the following incentives:

- a. Provision of perpetual cross access and joint parking agreements between abutting parking areas on abutting parcels, to achieve an additional 5 feet in height.
- b. Use of roofing materials with a SRI of 78 for a sloped roof equal to or less than 2:12 and an SRI of 29 for a sloped roof greater than 2:12, or installation of a vegetative roof that covers at least 50% of the roof area, to achieve an additional 5 feet in height.
- c. Use of 50% or more Florida friendly plants, to achieve an additional 5 feet in height.
- d. Provision of architectural lighting highlighting building columns, cornices or other distinguishing architectural features along the front façade of buildings, to achieve an additional 5 feet in height.
- e. Provision of recognizable building top/skyline feature, to achieve an additional 5 feet in height.

- f. Provision of recognizable building base at ground level, to achieve an additional 5 feet in height.
- g. Incorporation of enhanced landscaping, planters, wing walls, structural or vegetative shading features, benches and other seating components near the building's entryways, to achieve an additional 5 feet in height.
- h. Provision of a courtyard seating area and other civic space, no less than 250 square feet, which is directly accessible to the public from the sidewalk, to achieve an additional 5 feet in height.
- i. Provision of 40 public parking spaces between the Gulf and South Thomas Drive, to achieve an additional 40 feet in height.

WHEREAS, the application for the Western Property (the "Western Property Application") proposed the following incentives:

- a. Provision of perpetual cross access and joint parking agreements between abutting parking areas on abutting parcels, to achieve an additional 5 feet in height.
- b. Use of roofing materials with a SRI of 78 for a sloped roof equal to or less than 2:12 and an SRI of 29 for a sloped roof greater than 2:12, or installation of a vegetative roof that covers at least 50% of the roof area, to achieve an additional 5 feet in height.
- c. Use of 50% or more Florida friendly plants, to achieve an additional 5 feet in height.
- d. Provision of architectural lighting highlighting building columns, cornices or other distinguishing architectural features along the front façade of buildings, to achieve an additional 5 feet in height.
- e. Provision of recognizable building top/skyline feature, to achieve an additional [] in height, to achieve an additional 5 feet in height.
- f. Provision of recognizable building base at ground level, to achieve an additional 5 feet in height.
- g. Incorporation of enhanced landscaping, planters, wing walls, structural or vegetative shading features, benches and other seating components near the building's entryways, to achieve an additional 5 feet in height.
- h. Provision of a courtyard seating area and other civic space, no less than 250 square feet, which is directly accessible to the public from the sidewalk, to achieve an additional 5 feet in height.
- i. Provision of public restrooms located between the Gulf and South Thomas Drive, to achieve an additional 10 feet in height.
- j. Provision of 36 public parking spaces between the Gulf and South Thomas Drive, to achieve an additional 36 feet in height.
- k. Expansion of an existing beach access easement by 10', to achieve an additional 20 feet in height.

WHEREAS, on August 13, 2018, the City's Planning Board held properly advertised public hearings to consider RHE's Eastern and Western Property Applications. At the conclusion of the hearings, the Planning Board recommended approval of a height increase of 70', to permit a maximum building height of 220' for each Property, which approval was conditioned on RHE's provision of all the incentives presented for each Property.

WHEREAS, on September 27, 2018, the City Council held properly advertised public hearings to consider RHE's Eastern and Western Property Applications. At the conclusion of the hearings, the City Council approved a height increase of 35', to permit a maximum building height of 185' for each Property, which approval was conditioned upon RHE's provision of all the incentives presented for each Property.

WHEREAS, on November 21, 2018, RHE filed a Request for Relief under the Land Use and Environmental Dispute Resolution Act, Section 70.51, Florida Statutes, challenging the reasonableness of the conditions attached to the City's approvals of the Applications.

WHEREAS, as part of a Section 70.51, Florida Statutes proceeding, the City through its City Manager, Drew Whitman, and RHE have agreed to a settlement which the Parties desire to memorialize herein.

NOW THEREFORE, in consideration of the promises, representations, and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct, and are incorporated herein and made a part hereof by reference.
2. **Modified Order for the Eastern Property.** On or before November 1, 2022, the City shall render a revised Order eliminating all incentives or conditions of its approval and in exchange require the following:
 - a. Upon completion of development of the Eastern Parcel as evidenced through issuance of a certificate of occupancy, conveyance of fee simple title to the City of no less than fifteen (15) public spaces with direct or indirect pedestrian public access to the public beach and construction of improvements necessary for the public to use such parking and access lying between the Gulf of Mexico and South Thomas Drive ("Eastern Parking"). Such Eastern Parking shall be located within one-quarter (1/4) mile by the shortest pedestrian route from the parking spaces to the erosion control line;
 - b. The City shall be responsible for maintenance, lighting and security of the Eastern Parking;

- c. Grant of an appurtenant easement for beach access dedicated to the City along the eastern border of the Eastern Parcel within the existing side eastern setback to be ten (10) feet in width and open, with a direct connection from South Thomas Drive to the Gulf of Mexico (the "Eastern Beach Access"); and
 - d. In consideration of the City granting RHE a height increase of 35', RHE shall provide the contemplated parking spaces for Eastern Parking to the City and the Eastern Beach Access upon completion of development of the Eastern Parcel as evidenced through issuance of a certificate of occupancy. The City agrees that provision for the easement to provide Eastern Beach Access shall not result in any further setbacks from applicable setbacks in existence at the time of the Effective Date of this Agreement.
3. Modified Order for the Western Property. On or before November 1, 2022, the City shall render a revised Order eliminating all incentives or conditions of approval and in exchange require the following:
- a. Upon completion of development of the Western Parcel as evidenced through issuance of a certificate of occupancy, conveyance of fee simple title to the City for thirty-five (35) public spaces with direct or indirect pedestrian public access to the public beach and construction of improvements necessary for the public to use such parking and access lying between the Gulf of Mexico and South Thomas Drive ("Western Parking"). Such Western Parking shall be located within one-quarter (1/4) mile by the shortest pedestrian route from the parking spaces to the erosion control line or between Gulf and South Thomas Drive;
 - b. The City shall be responsible for maintenance, lighting and security of the Western Parking; and
 - c. In consideration of the City granting RHE a height increase of 35' in height, RHE shall provide the contemplated parking spaces for Western Parking to the City upon completion of development of the Western Parcel as evidenced through issuance of a certificate of occupancy.
4. Extension of Time/Failure to Provide Eastern Parking, Western Parking and Beach Access. By approval of this Agreement, the five (5) year time deadlines contained in each Order shall be tolled so that the five (5) year period shall be deemed to have begun on May 1, 2022. If RHE does not take action to provide the Eastern Parking and easement for Eastern Beach Access in a real and substantial way within the time required herein, or as otherwise agreed by the parties, this Agreement shall be null and void and no height increase on the Eastern Parcel shall be granted. If RHE does not take action to provide the Western Parking in a real and substantial way within the time required herein, or as otherwise agreed by the parties, this Agreement shall be null and void and no height increase on the Western Parcel shall be granted.

5. Council approval required. The City is a public entity required to operate in accordance with Chapter 286, Florida Statutes. The effectiveness of this Agreement is subject to and conditioned upon the City Council's approval of this Agreement and rendering of Modified Orders. If the City Council rejects the Agreement, then this Agreement shall be null and void, and this matter shall move forward to a hearing to be conducted by Special Magistrate within 60 days of the City Council's rejection of this Agreement (or such other time and date beyond 60 days agreed to by the Parties or as necessary to accommodate the schedule of the Special Magistrate), unless RHE decides to dismiss or abandon the Section 70.51, Florida Statutes proceeding. If the City Council rejects this Agreement, RHE acknowledges and agrees that such decision by the City Council constitutes a rejection of a settlement proposal and is not reviewable or appealable (via petition for writ of certiorari or otherwise) to a court of law through an action brought by RHE. However, the Parties acknowledge that if the Modified Orders are approved by the City Council that pursuant to law other persons with legal standing may challenge the City Council's approval of the Modified Orders in the appropriate court of law.
6. Release. If the City Council approves the Agreement, RHE agrees that it thereby waives and releases the City and its officials, officers and employees from any and all petitions for writ of certiorari, Bert J. Harris Act claims, Section 70.51, Florida Statutes proceedings, appeals, damages, causes of actions, claims and lawsuits arising out of or relating to the Eastern Property Application or Western Property Application including the City Council's land development process, the City's consideration of the RHE's Applications, the subsequent approval of the Application, the resulting Orders.
7. Public Record. The Parties acknowledge and agree this Agreement and the Modified Orders are public records and are not confidential. This Agreement is required to be considered by the City Council at an open public hearing and as such will be part of a publicly available City Council agenda package or otherwise provided upon request and will be freely discussed in the public realm.
8. Settlement Discussions. This Agreement and the City Council's consideration of this Agreement and Modified Orders constitute a good faith attempt to resolve a disputed matter in a Section 70.51, Florida Statutes, proceeding. If this Agreement and the Modified Orders are not approved by the City Council, then this Agreement and the City Council hearing to consider this Agreement and the Modified Orders and any record containing or referring to this Agreement, the Modified Orders and the related settlement discussions shall not be used by either party as evidence or be admissible in any judicial or administrative proceeding for any purpose.
9. No Waiver. Nothing in this Agreement shall constitute a waiver of or be construed as a restriction or release of the City's police power and zoning authority and regulations.

10. Entire Agreement. This document contains the complete Agreement between the Parties and supersedes all other agreements, whether oral or in writing, made with respect to the subject matter hereof.
11. Modification. This Agreement may be modified only by a written document signed by the Parties. No cancellation, modification, amendment, deletion, addition or other change in this Agreement or any provision hereof, or waiver of any right or remedy herein provided, shall be effective for any purpose unless specifically set forth in writing signed by the Parties. No waiver of any right or remedy regarding any occurrence or event on one occasion shall be deemed a waiver of any such right or remedy regarding such occurrence or event on any other occasion.
12. Binding Agreement. This Agreement shall be binding upon the Parties and their respective successors, predecessors, parents, subsidiaries, shareholders, affiliates, agents, assigns, directors, officers, employees, insurers, and other representatives.
13. No Admission. The Parties agree that this Agreement constitutes a compromise, resolution, and settlement of disputed claims to avoid the uncertainty, time, trouble, and expense of litigation, and that such compromise, resolution, and settlement does not constitute and shall not be taken or construed as an admission of liability by either Party.
14. Invalid Provisions. If one or more of the provisions of this Agreement is held invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby and will remain in full force and effect. In the event any provision is held invalid, illegal, or unenforceable, the Parties shall use reasonable efforts to substitute a valid, legal and enforceable provision that, insofar as is practical, implements the purposes of the section held invalid, illegal, or unenforceable.
15. Counterparts. This Agreement may be executed in identical counterparts, each of which shall constitute an original, and all of which together shall constitute an complete Agreement; but, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Electronic transmission, including via email with a pdf or by facsimile, of any signed original document, and retransmission of any signed document shall be the same as personal delivery of the original.
16. Not Construed Against Drafter. This Agreement has been drafted by the Parties hereto and shall not be construed against one Party or in favor of any other Party by reason of any presumption concerning the party drafting the Agreement.
17. Signatures. A signature affixed to the Agreement shall be acceptable as the original, whether received as an original or by facsimile transmissions, or other electronic means of data transmission capable of truly and correctly duplicating such original signature.

18. Attorney's Fees and Costs. Should either party have to seek legal action to enforce the terms of this Agreement, the prevailing party of said action shall be entitled to reimbursement of its reasonable attorney's fees and costs, including appeal and/or those fees and costs incurred to determine the amount of fees/costs owed to the prevailing party.

City of Panama City Beach



Drew Whitman, City Manager

Date: 10-14-22

ATTEST:



Lynne Fasone, City Clerk

**RESORT HOSPITALITY
ENTERPRISES, LTD**



Date: _____

By:

Its: