

RESOLUTION 17-143

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA APPROVING A HORIZONTAL INFRASTRUCTURE COMPLETION AGREEMENT AND BOND IN THE AMOUNT OF \$1,637,117.95 WITH THE BREAKFAST POINT, LLC COMPANY, RELATED TO BREAKFAST POINT PHASE 3B.

BE IT RESOLVED that the appropriate officers of the City are authorized but not required to execute and deliver on behalf of the City that certain Horizontal Infrastructure Completion Agreement between the City and the Breakfast Point, LLC Company, relating to the installation and construction of utilities and transportation improvements in Breakfast Point Phase 3B, which improvements shall be secured by a performance bond in the amount of One Million Six Hundred Thirty Seven Thousand One Hundred Seventeen Dollars and Ninety Five Cents (\$1,637,117.95) in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 28th day of September, 2017.

CITY OF PANAMA CITY BEACH

By: 

Mike Thomas, Mayor

ATTEST:



Deputy
City Clerk

HORIZONTAL INFRASTRUCTURE COMPLETION AGREEMENT

THIS HORIZONTAL INFRASTRUCTURE COMPLETION AGREEMENT (“HICA”) made and entered into this ___ day of _____, 2017, by and between BREAKFAST POINT, LLC Company, a Florida corporation (the “Developer”), and THE CITY OF PANAMA CITY BEACH (the “City”);

WITNESSETH:

WHEREAS, the Developer is requesting final approval from the City Council of Panama City Beach, Florida for a plat of Breakfast Point—Phase 3B, (the “Plat”) a proposed subdivision located immediately southeast of Breakfast Point Phase 3A (the “Subdivision”), and

WHEREAS, the City intends to provide water and utility service within the Subdivision, and

WHEREAS, the City intends to maintain the roadways, sidewalks, and those portions of the stormwater collection system located within the right of ways and public easements, and

WHEREAS, the Developer intends to complete construction of roadway and sidewalk improvements within road right-of-ways (the “Transportation Facilities”), stormwater ponds (the “Stormwater Treatment and Attenuation Facilities”) and water and sewer utilities and stormwater collection system (the “Horizontal Infrastructure,” which definition does not include landscaping or lighting) as specified in the plans and specifications titled “Breakfast Point Subdivision Phase 3B” prepared and sealed by Preble-Rish, Inc., Project No. 190.246, submitted on behalf of the Developer and approved by the City on February 23, 2016 (the “Plans”) and the reduction of elevations of the culverts previously installed near the intersection of North Richard Jackson Boulevard and Breakfast Point Boulevard consistent with the plans and specifications previously approved by the City for Breakfast Point Phase 1 (the “Entrance Culvert Plans”) to correct drainage issues that would be exacerbated by additional Phase 3 Construction, and

WHEREAS, City policy requires Developer's dedication and the City's acceptance of the Transportation Facilities and Horizontal Infrastructure within the Subdivision before providing service, and

WHEREAS, the City has reviewed the Plans for construction and design of the Transportation Facilities and Horizontal Infrastructure, but the City is unwilling to accept the Transportation Facilities and Horizontal Infrastructure pending the completed construction, inspection and approval of the Transportation Facilities and Horizontal Infrastructure, and

WHEREAS, the Developer desires immediate Plat approval prior to the Developer's construction and City's acceptance of the Transportation Facilities and Horizontal Infrastructure, and

WHEREAS, the City is unwilling to approve the Plat unless the Developer covenants to construct the Transportation Facilities and Horizontal Infrastructure to City standards, maintain and repair the Transportation Facilities and Horizontal Infrastructure until City acceptance and post an unconditional Performance Bond to secure performance of these covenants; and

WHEREAS, the Developer and the City wish to document the obligations and conveyances contemplated by each party, and the order and procedure by which these obligations shall be discharged;

NOW THEREFORE, in consideration of the mutual covenants hereinafter expressed, and the City's reliance upon those presents, the parties agree and commit themselves as follows:

1. The foregoing recitals are true, correct and complete.
2. Term and Termination. This Agreement shall commence immediately upon execution by both parties and thereafter shall terminate upon the acceptance of both the Transportation Facilities and Horizontal Infrastructure, at which time the Performance Bond shall be released.
3. Performance Bond. Prior to the recording of the Plat, the Developer shall provide a performance bond in the amount of One Million, Six Hundred and Thirty-Seven Thousand, One Hundred and Seventeen Dollars and Ninety Five Cents (\$1,637,117.95) in favor of the City issued by a surety reasonably acceptable to

the City to secure the full and timely performance of Developer's covenants set forth in this Agreement (the "Performance Bond").

4. Transportation Facilities. Within twelve (12) months of the City's execution of this Agreement, and prior to requesting any Certificate of Occupancy for any structure within the Plat boundary, the Developer will complete construction of the Subdivision's Transportation Facilities as specified in the Plans. All construction shall be performed in accordance with sound engineering practices and according to the Plans, all as determined and interpreted by the City using its reasonable discretion.
5. The Plat.
 - A. Concurrent with execution of this agreement, the City will approve the Plat, in the form reviewed and approved by City staff and presented to the Council for consideration simultaneous with this Agreement. The promise of Developer's timely and proper completion of construction of the Transportation Facilities and Horizontal Infrastructure and its maintenance and repair until acceptance by the City is a material covenant upon which reliance is placed by the City in making this Agreement and approving the Plat.
 - B. Developer agrees that monuments will be set on all lot corners prior to the expiration of the Performance Bond described in Paragraph 3 above.
6. The Horizontal Infrastructure. Within twelve (12) months of the City's execution of this Agreement, the Developer will complete construction of the Subdivision's Horizontal Infrastructure as specified in the Plans. City agrees that the construction may proceed, and Developer understands that no Certificate of Occupancy will be issued by the City for structure until all Horizontal Infrastructure is accepted by the City. All construction shall be performed in accordance with sound engineering practices and according to the Plans, all as determined and interpreted by the City using its reasonable discretion. Developer shall timely and properly secure all applicable local, county, state and federal permits to construct the Horizontal Infrastructure and shall pay any fees or costs associated therewith. Developer, his agents, subcontractors and the employees of any one of them, shall comply with all applicable laws, regulations and permit

conditions related to the construction of the Horizontal Infrastructure. The Developer agrees to dedicate to the City, by Plat dedication, the Horizontal Infrastructure constructed and installed on Developer's property, at no cost to the City. Developer shall ensure that no potable water service shall be provided through the Horizontal Infrastructure to any third-party user or occupant of the Subdivision until all bacteriological and pressure testing has been completed and the Horizontal Infrastructure have been approved for such use by the Department of Environmental Protection.

7. Stormwater Facilities.

- a. *Construction.* Prior to issuance of the first Certificate of Occupancy for any structure within a phase, the Developer will complete construction of the Subdivision's Stormwater Treatment and Attenuation Facilities as specified in the Plans necessary to support the development in that phase.
- b. All construction shall be performed in accordance with sound engineering practices and according to the Plans, all as determined and interpreted by the City using its reasonable discretion. *Plat and dedication.* Developer agrees to dedicate the stormwater management facilities and any necessary drainage easements to the Breakfast Point Community Association, Inc. for the maintenance of the drainage ponds, on the face of that plat or concurrent with the recording of that plat.

8. City Acceptance of Infrastructure. Upon completion of the Transportation Facilities and Horizontal Infrastructure in accordance with the Plans, and inspection by the City, the City will accept and maintain the Transportation Facilities and Horizontal Infrastructure, together with all easements necessary for the City's use, access and maintenance thereof, in a manner consistent with the maintenance of other City streets and City infrastructure similarly situated. The Developer or its assignee shall be responsible for maintenance and repair of the Horizontal Infrastructure until acceptance of Horizontal Infrastructure by the City. The City shall not accept stormwater treatment or attenuation facilities within the Subdivision, even if the City constructs these improvements, unless such

stormwater facilities are located within right of ways or easements dedicated to the City.

9. City Performance. If for any reason the Developer fails to timely and substantially complete the installation and construction of any element of the Transportation Facilities or Horizontal Infrastructure and the City undertakes to complete such installation and construction: (i) Developer hereby grants the City a construction license to use, access, construct and install the Transportation Facilities and/or Horizontal Infrastructure, and (ii) Developer hereby agrees to reimburse the City for any cost differential between the amount of the Performance Bond and the actual cost reasonably incurred by the City upon demand.
10. Fees and Costs. The Developer will pay the fees and costs reasonably incurred to effect the design, engineering and construction of the Transportation Facilities and Horizontal Infrastructure, including but not limited to, any fees and costs imposed by City ordinance or resolution with respect to the review of the Plans, the inspection of the Transportation Facilities and Horizontal Infrastructure or the preparation of the necessary instruments contemplated herein.
11. Developer's Warranty of Infrastructure. Developer warrants the workmanship and material of the Horizontal Infrastructure for a period of one year after the City's acceptance of the Horizontal Infrastructure. The Developer further warrants that said improvements are fit for use as part of the City's utility system, and the Developer agrees to defend, indemnify and hold harmless the City from any and all liability claims by a third party due to faulty workmanship and materials within the aforementioned one-year warranty period.
12. Notice of Changes. Each party shall have the obligation of notifying the other party of any events or circumstances that will affect either party's ability to carry out their duties under this Agreement.
13. Indemnification and Hold Harmless.
 - A. For a period of one year after City's acceptance of the Transportation Facilities and Horizontal Infrastructure, Developer shall indemnify and hold harmless and defend the City and its officers, employees, agents and

representatives from and against any and all damages, lawsuits, liabilities, claims, costs and expenses including reasonable attorney's fees ("Damages") arising in whole or in part from: (i) the construction, installation, maintenance or repair of the Transportation Facilities and Horizontal Infrastructure by Developer; or (ii) the breach of any of Developer's representations, warranties, covenants or agreements hereunder. The covenants contained in this sub-paragraph shall survive the termination of this Agreement, but shall expire one year from the City's acceptance of the Transportation Facilities and Horizontal Infrastructure.

B. If any third-party claim is made against the City that, if sustained, would give rise to indemnification liability of the Developer under subsection A above, the City shall promptly cause notice of the claim to be delivered to the Developer and shall afford the Developer and its counsel, at the Developer's sole expense, the opportunity to join in defending or compromising the claim. The obligation to provide notice contained in this sub-paragraph shall survive the termination of this Agreement, but shall expire one year from the City's acceptance of the Transportation Facilities and Horizontal Infrastructure.

14. Time. Time is of the essence in this Agreement.
15. Remedies. In the event Owner fails to comply with any term or condition of this Agreement, the City shall have the right to terminate utility service to the Owner's property in addition to any other remedies available to it. All rights and remedies conferred upon the parties in this Agreement shall be cumulative and in addition to those available under the laws of the State of Florida.
16. Attorney's Fees. In the event of any litigation hereunder, each party shall be responsible for its own attorney's fees and court costs at all trial and appellate levels and at any mediation or arbitration.
17. Assignment. This Agreement is not assignable, except to the extent that the assignee assumes the obligation to complete the Agreement and post the appropriate performance bond or letter of credit to insure the Agreement's completion.

18. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
19. Modification. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City and Owner.
20. Waiver. Failure by the City to enforce any provision of this Agreement shall not be deemed a waiver of the provision or modification of this Agreement. A waiver by the City of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
21. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supercedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are not representations, warranties, covenants or other agreements among them.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Signed in the presence of:

BREAKFAST POINT, LLC

April Wilkes
Print Name: April Wilkes

Mark Baker
By: Mark Baker
Its VP/Treasurer

Veronica K Morgan
Print Name: Veronica K Morgan

CITY OF PANAMA CITY BEACH
a municipal corporation

By Mario Gisbert, City Manager

ATTEST:

City Clerk