

ST. PETERSBURG CITY COUNCIL

Meeting of April 2, 2009

TO: The Honorable Jeff Danner, Chair and Members of City Council

SUBJECT: Authorizing the Mayor, or his Designee, to execute a Fifth Amendment to the December 8, 2004, Property Disposition Agreement ("PDA") by and among the City of St. Petersburg, The Community Redevelopment Agency of the City of St. Petersburg, PEF St. Petersburg FL, LLC, as assignee of Florida Power Corporation, d/b/a Progress Energy Florida, Inc., and Grand Bohemian SP, LLC, as assignee of The Kessler Enterprise, Inc., that modifies the dates of the commencement of construction and completion of construction set forth in the PDA; and to execute all documents necessary to effectuate same; and providing an effective date.

EXPLANATION: Real Estate & Property Management received a request from Grand Bohemian SP, LLC, as assignee of The Kessler Enterprise, Inc. ("Kessler"), to modify portions of the December 8, 2004, Property Disposition Agreement ("PDA") by and among the City of St. Petersburg, The Community Redevelopment Agency of the City of St. Petersburg, PEF St. Petersburg FL, LLC, as assignee of Florida Power Corporation, d/b/a Progress Energy Florida, Inc., and Grand Bohemian SP, LLC, as assignee of The Kessler Enterprise, Inc. (collectively "Parties").

The Parties have previously executed amendments to the PDA on January 27, 2005 (First Amendment), December 21, 2005 (Second Amendment), November 29, 2006 (Third Amendment), and August 7, 2008 (Fourth Amendment). The Fifth Amendment is for the purpose of amending the dates of the commencement of construction and completion of construction set forth in the PDA.

Additionally, the Fifth Amendment will modify certain terms and conditions that relate to the rights and duties of the Parties regarding the sale or repurchase of the Kessler Property in the event that Kessler does not develop the site.

Kessler advises that according to The Mortgage Bankers Association quarterly survey of commercial multi-family mortgage originations, hotel loan originations declined 99% year-over-year in fourth quarter 2008 and 66% from third quarter 2008 to the fourth quarter. Additionally, numerous lenders with whom they have had long and multiple funding relationships have imposed moratoriums on hospitality lending without any ability to predict when they may be able to lend again, including the specific funding source on the Grand Bohemian St. Petersburg project.

Kessler previously requested and received approval at the Development Review Commission ("DRC") meeting on December 3, 2008 (item #5) for an extension to its approved site plan until September 9, 2012 for the construction of the Kessler Phase of the development. Kessler has

significant investment in the land acquisition and has procured full construction documents. While they are poised to start constructing the hotel as soon as practical, the current vagaries in the financial markets preclude them from moving forward at this time. Extending the construction commencement date to coincide with the DRC date would enable Kessler to proceed as soon as the financial markets stabilize.

Accordingly, Kessler would like to amend the PDA to modify the date to commence construction to be not later than the date in the DRC approval, September 9, 2012, with completion of construction within thirty (30) months thereafter.

RECOMMENDATION: Administration recommends that City Council authorize the Mayor, or his Designee, to execute a Fifth Amendment to the December 8, 2004, Property Disposition Agreement ("PDA") by and among the City of St. Petersburg, The Community Redevelopment Agency of the City of St. Petersburg, PEF St. Petersburg FL, LLC, as assignee of Florida Power Corporation, d/b/a Progress Energy Florida, Inc., and Grand Bohemian SP, LLC, as assignee of The Kessler Enterprise, Inc., that modifies the dates of the commencement of construction and completion of construction set forth in the PDA; and to execute all documents necessary to effectuate same.

COST/FUNDING/ASSESSMENT INFORMATION: N/A

ATTACHMENTS: Grand Bohemian letter dated February 23, 2009
Fifth Amendment to PDA
Resolution

APPROVALS: Administrative: R. Dussett 3-12-09 BB
Budget: N/A
Legal: RHS
(As to consistency w/attached legal documents)

GRAND BOHEMIAN SP, LLC

February 23, 2009

VIA EMAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Bruce Grimes, Director
Real Estate & Property Management
City of St. Petersburg
P.O. Box 2842
St. Petersburg, FL 33731-2842

Re: Property Disposition Agreement between the City of St. Petersburg (the "City"), the Community Redevelopment Agency of the City of St. Petersburg ("Agency"), PEF St. Petersburg FL, LLC, as assignee of Florida Power Corporation, d/b/a Progress Energy Florida, Inc. ("Progress") and Grand Bohemian SP, LLC (formerly known as Grand Bohemian SP, Ltd.), as assignee of The Kessler Enterprise, Inc. ("Kessler"), as amended by that certain Amendment to Property Disposition Agreement dated as of January 27, 2005, as further amended by that certain Second Amendment to Property Disposition Agreement dated as of December 21, 2005, and as further amended by that certain Third Amendment to Property Disposition Agreement dated as of November 29, 2006, and as further amended by that certain Fourth Amendment to Property Disposition Agreement dated as of August 7, 2008, (collectively the "PDA")

Dear Mr. Grimes:

As we have discussed with you in our project updates, current credit market conditions are impacting our ability to meet certain construction loan closing and construction commencement requirements. The ambiguities of the current economy, specifically the uncertainties in the banking sector, have essentially eliminated the availability of development financing for commercial real estate, especially in the hospitality sector.

According to The Mortgage Bankers Association quarterly survey of commercial/multifamily mortgage originations, hotel loan originations declined 99% year-over-year in fourth quarter 2008 and 66% from third quarter 2008 to the fourth. Numerous lenders with whom we have had a long and multiple funding relationships have imposed moratoriums on hospitality lending without any ability to prognosticate when they may be able to lend again, including our specific funding source on the Grand Bohemian St. Petersburg.

In light of the current economic and lending environment, we respectfully request an amendment to the PDA to (a) extend the period to commence construction of the Kessler

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Mr. Bruce Grimes, Director
February 23, 2009
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Development to no later than September 9, 2012, commensurate with the existing site plan expiration date. Commencement would be evidenced by the issuance of a site development permit. As stipulated in the prior Fourth Amendment to the PDA, the redesign for the hotel only will consist of not less than 200-275 spacious guest rooms and the lineal footage in the base plate of the ground level and related amenities will remain substantially the same.

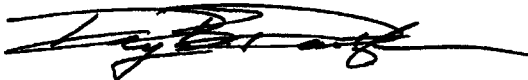
We further request that this amendment be scheduled for consideration at the City Council meeting on March 19, 2009.

We are committed to the successful development and operation of a luxury hotel. We have invested a substantial amount of time and funding to this project and are confident of its viability and success in and with the City of St. Petersburg.

Should you have any questions regarding the foregoing, please contact me immediately.

Sincerely,

GRAND BOHEMIAN SP, LLC



Day B. Dantzler, as its Vice-President

cc: The Honorable Rick Baker, Mayor
City of St. Petersburg, Florida
175 Fifth Street North
St. Petersburg, Florida 33701
(Via Federal Express)

Mr. David Goodwin, Director
(As successor to Mr. Ronald D. Barton)
City of St. Petersburg, Florida
Economic Development and Property Management Department
One Fourth Street North, Ninth Floor
St. Petersburg, Florida 33701
(Via Federal Express)

John C. Wolf, City Attorney
City Attorney's Office
One Fourth Street North, Tenth Floor
St. Petersburg, Florida 33701
(Via Federal Express)

718402.2

FIFTH AMENDMENT TO PROPERTY DISPOSITION AGREEMENT

THIS FIFTH AMENDMENT ("Fifth Amendment"), made and entered into as of _____, 2009, by and among THE CITY OF ST. PETERSBURG, a municipal corporation organized and existing under the laws of the State of Florida, ("City"); the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF ST. PETERSBURG ("Agency"); PEF ST. PETERSBURG FL, LLC, a limited liability company organized and existing under the laws of the State of Delaware, as assignee of FLORIDA POWER CORPORATION, d/b/a PROGRESS ENERGY FLORIDA, INC., a corporation organized and existing under the laws of the State of Florida, ("Progress"); and GRAND BOHEMIAN SP, LLC, a limited liability company organized and existing under the laws of the State of Florida, as assignee of THE KESSLER ENTERPRISE, INC., a corporation organized and existing under the laws of the State of Georgia, ("Kessler"), (collectively, "Parties").

WITNESSETH

WHEREAS, the Parties executed a Property Disposition Agreement on December 8, 2004 ("PDA"); and

WHEREAS, the Parties amended the PDA on January 27, 2005 (First Amendment), December 21, 2005 (Second Amendment), November 29, 2006 (Third Amendment), and August 7, 2008 (Fourth Amendment); and

WHEREAS, the Parties now desire to further amend the PDA and modify certain provisions contained therein.

NOW THEREFORE, for and in consideration of Ten and No/100ths Dollars (\$10.00) and other good and valuable consideration, the City, the Agency, Progress, and Kessler hereby agree to modify and amend, and do here modify and amend, the PDA, as follows:

1. The above recitals are true and correct and are incorporated herein by reference.
2. Section 4.7 of the PDA, as amended, is hereby amended as follows:
 - a) Where the phrase "on or before April 30, 2009" occurs in the last paragraph of Section 4.7 of the PDA, as amended, the date "September 9, 2012" shall be substituted.
3. Section 4.16 of the PDA, as amended, is deleted and replaced with the following:

4.16 Construction of Kessler Development. Kessler shall contract for the construction of the Kessler Development on the Kessler Property, with constructing commencing when required by this section and thereafter being continuously pursued until completed. Kessler shall commence construction of the Kessler Development (as evidenced by the issuance of a Site Development Permit) not later than September 9, 2012. Kessler shall endeavor to complete construction within thirty (30) months, subject to the provisions of Section 9.1(b) hereof. The City shall cooperate in the temporary closure of adjacent public streets, as necessary for construction staging.
4. Section 9.1(b) of the PDA, as amended, is hereby amended as follows:

a) Where the phrase "by April 30, 2009" occurs, the Phrase "by September 9, 2012" shall be substituted;

b) Where the date "April 30, 2009" occurs in subsection (ii), the date "September 9, 2012" shall be substituted.

c) The following shall be added to the end of the first sentence in subsection (ii):

" , which first right of offer shall include both the 50,044 square feet purchased by Kessler from the City and the 4,834 square feet purchased by Kessler from Progress."

d) The second sentence of subsection (iii) shall be restated as follows:

"Kessler shall remit to the City, on the sale of the Kessler Property, including both the 50,044 square feet purchased by Kessler from the City and the 4,834 square feet purchased by Kessler from Progress, any profits over and above the total of (i) the Kessler Purchase Price, including the purchase price for the 50,044 square feet purchased by Kessler from the City and the 4,834 square feet purchased by Kessler from Progress; and (ii) all external development costs incurred by Kessler with respect to the Kessler Development, including but not limited to, (if paid), its share of any excess costs to the Demolition (the "Development Costs")."

e) Subsection (iv) shall be restated as follows:

"If Kessler fails to find a substitute developer to acquire the Kessler Property, including both the 50,044 square feet purchased by Kessler from the City and the 4,834 square feet purchased by Kessler by April 30, 2013, then the City shall have the right to acquire the Kessler Property, including both the 50,044 square feet purchased by Kessler from the City and the 4,834 square feet purchased by Kessler from Progress at the lower of (i) the amount of the Kessler Purchase Price plus its Development Costs, including both the purchase price of the 50,044 square feet purchased by Kessler from the City and the 4,834 square feet purchased by Kessler from Progress; or (ii) the appraised value of the Kessler Property including both the 50,044 square feet purchased by Kessler from the City and the 4,834 square feet purchased by Kessler from Progress."

5. All other provisions of the PDA and conditions set forth therein not specifically addressed in this Fifth Amendment shall remain in full force and effect.

6. If there is any conflict between the terms of the PDA as previously amended and the terms and conditions of this Fifth Amendment, this Fifth Amendment shall prevail.

7. The Parties intend for the PDA, as previously amended, and this Fifth Amendment to be hereafter considered and interpreted together as a single contract between the Parties and that the capitalized terms of the PDA, as amended, not otherwise defined herein shall have the same meaning as defined in the PDA, as amended.

SIGNATURE PAGE FOLLOWS THIS PAGE

IN WITNESS WHEREOF the Parties hereto have caused this document to be executed by their duly authorized representatives effective as of the day and date first written above.

WITNESSES

Sign: [Signature]
Print: DENNIS MONTAGUIS

Sign: [Signature]
Print: Dana Ertler

GRAND BOHEMIAN SP, LLC

By: [Signature]
Day B. Dantzler,
its Vice-President

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 10th day of March 2009, by Day B. Dantzler, the Vice-President of Grand Bohemian SP, LLC, a limited liability company organized and existing under the laws of the State of Florida, on behalf of the company and appeared before me at the time of notarization.

Personally known
Produced _____ as identification.

Notary Public - State of Florida

[Signature]
Notary Signature

8-7-2011
My Commission Expires



WITNESSES

Sign: _____
Print: _____

Sign: _____

Print: _____

PEF ST. PETERSBURG, FL, LLC.

By: 310 WEST 38th, LLC,
its sole Member and Manager

By: _____

JACOB WEINREB, its Manager

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by JACOB WEINREB, as Manager of 310 WEST 38th, LLC, a limited liability company organized and existing under the laws of the State of New York, as sole Member and Manager of PEF ST. PETERSBURG FL, LLC, a limited liability company organized and existing under the laws of the State of Delaware, on behalf of the limited liability company and the limited liability company, and appeared before me at the time of notarization.

Notary Public - State of New York

Notary Signature

My Commission Expires

**THE COMMUNITY
REDEVELOPMENT AGENCY OF THE
CITY OF ST. PETERSBURG**

WITNESSES

Sign: _____
Print: _____

Sign: _____
Print: _____

By: _____
Rick Baker
as its Executive Director

ATTEST:

Eva Andujar, City Clerk

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by Rick Baker and Eva Andujar, as Executive Director and Clerk, respectively, of The Redevelopment Agency of the City of St. Petersburg, on behalf of the Agency. They are personally known to me and appeared before me at the time of notarization.

Notary Public - State of Florida

Notary Signature

Commission Expires

WITNESSES

Sign: _____
Print: _____

Sign: _____
Print: _____

CITY OF ST. PETERSBURG

By: _____
Rick Baker,
as its Mayor

ATTEST:

Eva Andujar, City Clerk

**STATE OF FLORIDA
COUNTY OF PINELLAS**

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by Rick Baker and Eva Andujar, as Mayor and City Clerk, respectively, of the City of St. Petersburg, Florida, a municipal corporation, existing under the laws of the State of Florida, on behalf of the corporation. They are personally known to me and appeared before me at the time of notarization.

Notary Public - State of Florida

Notary Signature

My Commission Expires

Reviewed By: _____
Bruce Grimes, Director,
Real Estate & Property Management

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

City Attorney (Designee)
By: RICHARD B. BADGLEY
Assistant City Attorney

City Attorney (Designee)
By: _____
Assistant City Attorney

A RESOLUTION AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE A FIFTH AMENDMENT TO THE DECEMBER 8, 2004, PROPERTY DISPOSITION AGREEMENT ("PDA") BY AND AMONG THE CITY OF ST. PETERSBURG, THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF ST. PETERSBURG, PEF ST. PETERSBURG FL, LLC, AS ASSIGNEE OF FLORIDA POWER CORPORATION, D/B/A PROGRESS ENERGY FLORIDA, INC., AND GRAND BOHEMIAN SP, LLC, AS ASSIGNEE OF THE KESSLER ENTERPRISE, INC., THAT MODIFIES THE DATES OF THE COMMENCEMENT OF CONSTRUCTION AND COMPLETION OF CONSTRUCTION SET FORTH IN THE PDA; AND TO EXECUTE ALL DOCUMENTS NECESSARY TO EFFECTUATE SAME; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Real Estate & Property Management received a request from Grand Bohemian SP, LLC, as assignee of The Kessler Enterprise, Inc. ("Kessler"), to modify portions of the December 8, 2004, Property Disposition Agreement ("PDA") by and among the City of St. Petersburg, The Community Redevelopment Agency of the City of St. Petersburg, PEF St. Petersburg FL, LLC, as assignee of Florida Power Corporation, d/b/a Progress Energy Florida, Inc., and Grand Bohemian SP, LLC, as assignee of The Kessler Enterprise, Inc.; and

WHEREAS, the Parties have previously executed amendments to the PDA on January 27, 2005 (First Amendment), December 21, 2005 (Second Amendment), November 29, 2006 (Third Amendment), and August 7, 2008 (Fourth Amendment); and

WHEREAS, the Fifth Amendment is for the purpose of amending the dates of the commencement of construction and completion of construction set forth in the PDA; and

WHEREAS, the Fifth Amendment will also modify certain terms and conditions that relate to the rights and duties of the Parties regarding the sale or repurchase of the Kessler Property in the event that Kessler does not develop the site; and

WHEREAS, Kessler advises that according to The Mortgage Bankers Association quarterly survey of commercial multi-family mortgage originations, hotel loan originations declined 99% year-over-year in fourth quarter 2008 and 66% from third quarter 2008 to the fourth quarter; and

WHEREAS, numerous lenders with whom they have had long and multiple funding relationships have imposed moratoriums on hospitality lending without any ability to predict when they may be able to lend again, including the specific funding source on the Grand Bohemian St. Petersburg project; and

WHEREAS, Kessler previously requested and received approval at the Development Review Commission ("DRC") meeting on December 3, 2008 (item #5) for an extension to its approved site plan until September 9, 2012 for the construction of the Kessler Phase of the development; and

WHEREAS, Kessler has significant investment in the land acquisition and has procured full construction documents, and

WHEREAS, while they are poised to start constructing the hotel as soon as practical, the current vagaries in the financial markets preclude them from moving forward at this time; and

WHEREAS, extending the construction commencement date to coincide with the DRC date would enable Kessler to proceed with construction as soon as the financial markets stabilize; and

WHEREAS, Kessler has requested that the date for commencing construction shall be amended to be not later than September 9, 2012 with completion of construction within thirty (30) months thereafter.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida, that the Mayor, or his Designee, is authorized to execute a Fifth Amendment to the December 8, 2004, Property Disposition Agreement ("PDA") by and among the City of St. Petersburg, The Community Redevelopment Agency of the City of St. Petersburg, PEF St. Petersburg FL, LLC, as assignee of Florida Power Corporation, d/b/a Progress Energy Florida, Inc., and Grand Bohemian SP, LLC, as assignee of The Kessler Enterprise, Inc., that modifies the dates of the commencement of construction and completion of construction set forth in the PDA; and to execute all documents necessary to effectuate same.

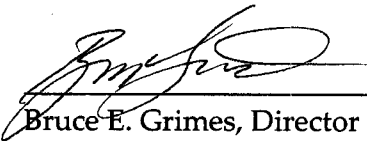
This Resolution shall become effective immediately upon its adoption.

LEGAL



City Attorney (Designee)

APPROVED BY:



Bruce E. Grimes, Director
Real Estate & Property Management