

**DEVELOPMENT AGREEMENT
RESTORATION BAY RE-DEVELOPMENT PROJECT
Pinellas County, Florida**

This Development Agreement ("Agreement") is dated _____, 20__, effective as provided in Section 5 of this Agreement, and entered into between TTGC, LLC, a Florida limited liability company ("Owner") and Pinellas County, Florida, a political subdivision of the State of Florida acting through its Board of County Commissioners, the governing body thereof ("County").

R E C I T A L S :

- A. Sections 163.3220 – 163.3243, Florida Statutes, which set forth the Florida Local Government Development Agreement Act ("Act"), authorize the County to enter into binding development agreements with persons having a legal or equitable interest in real property located within the unincorporated area of the County.
- B. Under Section 163.3223 of the Act, the County has adopted Chapter 134, Article VII of Part III, the Pinellas County Land Development Code ("Code"), establishing procedures and requirements to consider and enter into development agreements.
- C. Owner is the owner of approximately ninety-six (96) acres m.o.l. of real property ("Property") located adjacent to 66th Avenue North on the Property's northern boundary,, the County's existing Boca Ciega Millennium Park on the Property's western boundary, and Boca Ciega Bay on the Property's southern boundary, in the unincorporated area of the County, more particularly described on Exhibit "A" attached hereto.
- D. Owner desires to re-develop and re-purpose the Property as a brownfield restoration project to include, inter alia, single-family residential uses, a master storm water system to help address historic, pre-existing area-wide storm water retention-detention issues and water quality discharge issues into Boca Ciega Bay, and the creation of a linear greenway/trail system to connect Millennium Park via a publicly-accessible trail and/or boardwalk system for passive viewing of environmental areas fronting Boca Ciega Bay.
- E. Various portions of the Property currently have land use designations of Recreation/Open Space (R/OS), Preservation (P), and Residential Low (RL), and is zoned A-E and AL; however, historically the County has taken the following actions with regard to the Property:
 - (i) The Property originally was provided a Residential Low (RL) land use designation, and R-1 and R-2 zoning categories, and was platted for 273 single-family residential lots, consistent with the land use, zoning, and actual uses now adjacent to the Property;
 - (ii) The Property's land use designation was changed in 1985 to Recreation/Open Space (R/OS) to reflect its then-current use as a golf course, and the zoning category was unilaterally changed by the County to

A-E and AL; however, the plat for 273 residential lots was not vacated by the County and the BCC acknowledged at the time that the Property owner could request a future zoning modification for other uses; and

- (iii) The residential plat for the Property was not vacated until 1992.
- F. The Property was not previously developed in concert with any surrounding properties or any other project, was not a part of any master development plan or planned unit development with any other surrounding properties, and no density attributed to the Property under its original Residential Low (RL) land use category was ever transferred out of the Property or otherwise used to justify any density increase for development of any other surrounding properties.
- G. The Property was never deed restricted by any governmental action, private deed restriction, homeowner's association master declaration of covenants, development agreement or any other legal use restriction upon the Property.
- H. Owner has requested that the County reinstate the original land use designations of Residential Low (RL) and Preservation (P), and a zoning designation of R-2 on the Property, with a voluntary limit by the Owner on the maximum density of 273 residential single-family lots, to match the prior, recorded plat density of 273 lots for the Property.
- I. The residential density otherwise available to the Owner under the RL land use and R-2 zoning categories cannot legally be limited without a voluntary development agreement under applicable law, and the County cannot justify the requested action absent the restrictions contained in this Agreement and in the deed restriction required in Section 6.1.4, and the County supports the change in zoning and land use designation based upon the provisions of the Agreement.
- J. The County and Owner have determined that it would be mutually beneficial to enter into a development agreement governing the matters set forth herein and have negotiated this Agreement in accordance with the Code and the Act.
- K. The County has found that the terms of this Agreement are consistent with the Pinellas County Comprehensive Plan and the Code.

STATEMENT OF AGREEMENT

In consideration of and in reliance upon the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound and in accordance with the Act, agree as follows:

Section 1. Recitals. The above recitals are true and correct and are a part of this Agreement.

Section 2. Incorporation of the Act. This Agreement is entered into in compliance with and under the authority of the Code and the Act, the terms of which as of the date of this Agreement are incorporated herein by this reference and made a part of this Agreement. Words used in this Agreement without definition that are defined in the Act shall have the same meaning in this Agreement as in the Act.

Section 3. Property Subject to this Agreement. The Property is subject to this Agreement.

Section 4. Ownership. The Property is owned in fee simple by Owner.

Section 5. Effective Date/Duration of this Agreement.

5.1. This Agreement shall become effective as provided for by the Act and shall be contingent upon obtaining final approval, and effectiveness of the land use designation of Residential Low (RL) and Preservation (P), and a zoning designation of R-2, as requested on the Property.

5.2. This Agreement shall continue in effect until terminated as defined herein but for a period not to exceed ten (10) years.

Section 6. Obligations under this Agreement.

6.1. Obligations of the Owner.

6.1.1. Binding Obligations. The obligations under this Agreement shall be binding on Owner, its successors or assigns, and shall run with the land.

6.1.2. Development Review Process. At the time of development of the Property, Owner will submit such applications and documentation as are required by law and shall comply with the County's Code applicable at the time of the effective date of this Agreement.

6.1.3. Development Restrictions. The following restrictions shall apply to development of the Property.

6.1.3.1 The Property shall be platted and used for not more than 273 single-family residential dwelling units.

- 6.1.3.2 The only other uses allowed for the Property shall be storm water retention/detention/treatment, environmental mitigation and/or flood plain compensation areas, a linear greenway/trail system to connect Millenium Park to the Boca Ciega Bay frontage area, typical homeowner's association recreational and common areas, and such excavation, fill, remediation, water quality filtration/treatment system and other site work related to the brownfields program identified in Section 6.1.5, below (collectively the "Residential Supporting Uses").
- 6.1.3.3 There shall be no multi-family use, nor any commercial, office or other non-residential uses for the Property.
- 6.1.3.4 Development Intensities. In addition to the 273-unit lot maximum for the Property, Owner shall comply with the building intensities and height required by the Property's zoning and land use designations, unless otherwise modified by this Agreement.
- 6.1.4 Recording of Deed Restriction. Prior to the approval of a site plan or issuance of a development permit for the Property, Owner shall record a deed restriction encumbering the Property in the official records of Pinellas County, Florida and deliver a copy of such recorded deed restriction to the Director of the County Planning Department or his designee. The deed restriction shall be approved as to form by the County Attorney (which approval shall not be unreasonably withheld) and shall generally describe the development limitations of this Agreement. The deed restriction shall be perpetual and may be amended or terminated only with the consent of the County, which consent shall not be unreasonably withheld.
- 6.1.5 Participation in Brownfield Program. Owner has voluntarily requested that the Property be accepted for the Florida Brownfields Redevelopment Program pursuant to Sections 376.77 – 376.84, F.S. The Owner shall submit such application request, and the County shall process same for consideration and approval by the County concurrent with the pending land use and zoning applications. Such acceptance of the Property for the Florida Brownfields Redevelopment Program shall be contingent upon, and effective concurrent with, the approval of the new land use designation, zoning category, and this Development Agreement on the terms and conditions set forth herein.
- 6.1.6 Traffic Mitigation Improvements. Owner has proposed the implementation of certain pedestrian, bicycle, and vehicular traffic improvements to mitigate the potential traffic impacts from development of the Property consistent with this Development Agreement. Attached as

Schedule 1 is a list of the required mitigation improvements, including the typical streetscape/cross-section for 66th Avenue, which is the primary public access to the Property (the “Traffic Mitigation Improvements”). Owner shall design, permit and construct the Traffic Mitigation Improvements, at Owner’s sole cost and expense, concurrent with the site development work on the Property, and shall complete same prior to issuance of the certificate of occupancy for the first dwelling unit within the Property.

6.2 Obligations of the County.

6.2.1 Concurrent with the approval of this Agreement, the Board amends the land use and zoning designation for the Property as set forth in Recital H above, and accepts the Property for the Florida Brownfields Redevelopment Program.

6.2.2 County will process preliminary and final site plan applications for the Property that are consistent with the Plan and this Development Agreement, and that meet the requirements of the Code at the time of the effective date of this Agreement.

6.2.3 The final effectiveness of the re-designation referenced in Section 6.2.1 is subject to:

6.2.3.1 The provisions of Chapter 125 and 163, Florida Statutes, as they may govern such amendments; and

6.2.3.2 The expiration of any appeal periods or, if an appeal is filed, at the conclusion of such appeal.

Section 7. Public Facilities to Service Development. The following public facilities are presently available to the Property from the sources indicated below. Development of the Property will be governed by and must satisfy the concurrency ordinance provisions applicable at the time of the effective date of this Agreement.

7.1. Potable water from Pinellas County.

7.2. Sewer service from Pinellas County.

7.3. Fire protection from Pinellas County.

7.4. Drainage facilities for the parcel will be provided by Owner.

Section 8. Required Local Government Permits. The required local government development permits for development of the Property include, without limitation, the following:

- 8.1. Site plan approval(s) and associated utility licenses and right-of-way utilization permits;
- 8.2. Construction plan approval(s);
- 8.3. Building permit(s); and
- 8.4. Certificate(s) of occupancy.

Section 9. Consistency. The County finds that development of the Property consistent with the terms of this Agreement is consistent with the Pinellas County Comprehensive Plan.

Section 10. Termination.

10.1. In the event of termination pursuant to Section 10.2 or failure to commence the development of the subject property within the duration of the Agreement as defined in Section 5 above, the Property shall return to its current land use and zoning designations. Owner agrees to cooperate and not contest any administrative procedures necessary to implement restoration of the land use and zoning designations in such event. This obligation survives the termination of the Agreement for the time necessary to accomplish the re-designations.

10.2. If Owner's obligations set forth in this Agreement are not followed in a timely manner, as reasonably determined by the County Administrator, after notice to Owner and an opportunity to be heard, existing permits shall be administratively suspended and issuance of new permits suspended until Owner has fulfilled its obligations. Failure to timely fulfill its obligations may serve as a basis for termination of this Agreement by the County, at the discretion of the County and after notice to Owner and an opportunity for Owner to be heard.

Section 11. Other Terms and Conditions. Except in the case of termination, until ten (10) years after the effective date of this Agreement, the Property shall not be subject to subsequently adopted laws and policies unless the County has held a public hearing and determined:

11.1. They are not in conflict with the laws and policies governing the Development Agreement and do not prevent development of the land uses, intensities, or densities in this Agreement;

11.2. They are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement;

11.3. They are specifically anticipated and provided for in this Agreement;

11.4. The County demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or

11.5. This Agreement is based on substantially inaccurate information provided by Owner.

Section 12. Compliance with Law. The failure of this Agreement to address any particular permit, condition, term or restriction shall not relieve Owner from the necessity of complying with the law governing such permitting requirements, conditions, terms or restrictions.

Section 13. Notices. Notices and communications required or desired to be given under this Agreement shall be given to the parties by hand delivery, by nationally recognized overnight courier service such as Federal Express, or by certified mail, return receipt requested, addressed as follows (copies as provided below shall be required for proper notice to be given):

If to Owner: TTGC, LLC
111 S. Armenia Avenue
Suite 201
Tampa, FL 33609

With copy to: Joel R. Tew, Esquire
Tew & Associates
35595 U.S. Highway 19, North
921
Palm Harbor, FL 34684

If to County: Pinellas County Board of County Commissioners
c/o County Administrator
315 Court St.
Clearwater, FL 33756

With copy to: David S. Sadowsky, Esquire
Senior Assistant County Attorney
Pinellas County Attorneys Office
315 Court Street
Clearwater, Florida 33756

Properly addressed, postage prepaid, notices or communications shall be deemed delivered and received on the day of hand delivery, the next business day after deposit with an overnight courier service for next day delivery, or on the third (3rd) day following deposit in the United States mail, certified mail, return receipt requested. The parties may change the addresses set forth above (including the addition of a mortgagee to receive copies of all notices), by notice in accordance with this Section.

Section 14. Right to Cure. Owner will not be deemed to have failed to comply with the terms of this Agreement until Owner shall have received notice from the County of the alleged non-

compliance and until the expiration of a reasonable period after receipt of such notice to cure such non-compliance. Whether the time period has been reasonable shall be based on the nature of the non-compliance and shall be determined in the sole judgment of the County Administrator, reasonably exercised.

Section 15. Minor Non-Compliance. Owner will not be deemed to have failed to comply with the terms of this Agreement in the event such non-compliance, in the judgment of the County Administrator, reasonably exercised, as a minor or inconsequential nature.

Section 16. Covenant of Cooperation. The parties shall cooperate with and deal with each other in good faith and assist each other in the performance of the provisions of this Agreement and in achieving the completion of development of the Property.

Section 17. Approvals. Whenever an approval or consent is required under or contemplated by this Agreement, such approval or consent shall not be unreasonably withheld, delayed or conditioned. All such approvals and consents shall be requested and granted in writing.

Section 18. Completion of Agreement. Upon the completion of performance of this Agreement or its revocation or termination, the Owner or his successor in interest shall record a statement in the official records of Pinellas County, Florida, signed by the parties hereto, evidencing such completion, revocation or termination, and shall forthwith deliver a copy of this document to the Director of the County Building and Development Review Services Department or his designee.

Section 19. Entire Agreement. This Agreement (including any and all Exhibits attached hereto, all of which are a part of this Agreement to the same extent as if such Exhibits were set forth in full in the body of this Agreement), constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof.

Section 20. Construction. The titles, captions and section numbers in this Agreement are inserted for convenient reference only and do not define or limit the scope or intent and should not be used in the interpretation of any section, subsection or provision of this Agreement. Whenever the context requires or permits, the singular shall include the plural, and plural shall include the singular and any reference in this Agreement to Owner includes Owner's successors or assigns. This Agreement was the production of negotiations between representatives for the County and Owner and the language of the Agreement should be given its plain and ordinary meaning and should not be construed against any party hereto. If any term or provision of this Agreement is susceptible to more than one interpretation, one or more of which render it valid and enforceable, and one or more of which would render it invalid or unenforceable, such term or provision shall be construed in a manner that would render it valid and enforceable.

Section 21. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance is declared invalid or unenforceable, the remainder of this Agreement, including any valid portion of the invalid term or provision and the application of such invalid term or provision to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall with the remainder of this

Agreement continue unmodified and in full force and effect. Notwithstanding the foregoing, if such responsibilities of any party thereto to the extent that the purpose of this Agreement or the benefits sought to be received hereunder are frustrated, such party shall have the right to terminate this Agreement upon fifteen (15) days notice to the other parties.

Section 22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to the conflict of laws principles of such state.

Section 23. Counterparts. This Agreement may be executed in counterparts, all of which together shall continue one and the same instrument.

IN WITNESS WHEREOF, the parties have hereto executed this Agreement the date and year first above written.

End of Substantive Provisions, Signature Page to follow

WITNESSES:

OWNER:

TTGC, LLC,
a Florida limited liability company

By:

Printed Name: _____

Printed Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____,
2011, by _____, who is personally known to me or who produced
_____ as identification.

Notary Public

By:

Print Notary Name
My Commission Expires:

ATTEST:

PINELLAS COUNTY, FLORIDA

KEN BURKE, CLERK

Deputy Clerk

By:

Chairman
Board of County Commissioners

APPROVED AS TO FORM:

County Attorney

SAMPLE