

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20060163

1. ACTION REQUESTED/PURPOSE:

Approve Agreement between Lee County and Meristar Sub 5J, LLC (South Seas Resort) for the relocation and maintenance of the Redfish Pass navigation channel.

2. WHAT ACTION ACCOMPLISHES:

The Agreement formalizes the scope, purposes and responsibilities associated with a mutually beneficial project to reestablish the channel between Redfish Pass and the Intracoastal Waterway in a location that is more economically and environmentally sound, than the historic location.

3. MANAGEMENT RECOMMENDATION:

Approve Agreement.

4. Departmental Category: 08

C8B

5. Meeting Date: 02-28-2006

6. Agenda:

- Consent
- Administrative
- Appeals
- Public
- Walk-On

7. Requirement/Purpose: (specify)

- Statute
- Ordinance
- Admin. Code
- Other

8. Request Initiated:

Commissioner _____
Department Public Works
Division Natural Resources
By: Roland Ottolini, P.E.

9. Background: Redfish Pass provides the only safe navigational Gulf access to the Intracoastal Waterway (ICW) between Boca Grande Pass and San Carlos Bay. It is utilized by large numbers of recreational boaters. Historically, the channel to the ICW had been marked and maintained by South Seas Resort, and required frequent dredging. Studies of the area have suggested a more stable alignment, following a naturally occurring tidal channel. The process to relocate the channel requires an extensive permitting effort in the short term, but is expected to result in a long term solution that minimizes dredging frequency and cost, helps restore historically impacted seagrasses, provides a safe and stable navigation corridor, and helps protect adjacent seagrasses and manatees.

Large vessels utilizing South Seas Resort are dependent upon the same access channel. That is why the Resort historically maintained the channel and is interested to continue in this cooperative project. Studies have shown that about 80% of the traffic is not affiliated with the Resort. The non-resort use and the environmental benefits mentioned above are the basis for the County involvement. Both parties will work cooperatively to complete the project. The primary responsibilities of the Resort are the completion of design, engineering, and permitting, and the provision of spoil sites if needed. The primary responsibility of the County is the initial construction and maintenance dredging, and installation of channel markers.

No funds are required at this time. Funds will be available as needed through navigation improvement grants from the West Coast Inland Navigation District.

Attachments: Agreement (3)

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr	
<i>J. J. Jumper</i> 2-10-06	<i>Wright</i> 2/10/06	N/A	N/A	<i>[Signature]</i> 2/13/06	<i>[Signature]</i> 2/10/06	<i>[Signature]</i> 2/10/06	<i>[Signature]</i> 2/10/06	<i>[Signature]</i> 2/10/06	<i>J. J. Jumper</i> 2-10-06

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
 COUNTY ADMIN: *[Signature]*
 2-13-06
 11:10
 COUNTY ADM-N
 FORWARDED TO: *[Signature]*
 2/16/06
[Signature]

Rec. by CoAtty
 Date: 2/13/06
 Time: 8:00 AM
 Forwarded To:
[Signature]

AGREEMENT
for the
RELOCATION AND MAINTENANCE
of
REDFISH PASS NAVIGATION CHANNEL

THIS AGREEMENT FOR THE RELOCATION AND MAINTENANCE OF REDFISH PASS NAVIGATION CHANNEL (the "**Agreement**"), is made and entered into this ___ day of _____, 2006, by and between **LEE COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "**County**," and **MERISTAR SUB 5J, LLC**, a Delaware limited liability company, hereinafter referred to as "**Resort**".

WITNESSETH:

WHEREAS, the County and the Resort are concerned about the health, safety and welfare of the boating general public and navigation in general in Pine Island Sound area in the vicinity of Redfish Pass and the north end of Captiva Island; and

WHEREAS, the Resort, by and through various affiliates, is the owner and operator of the South Seas Resort located at the north end of Captiva Island (the "**South Seas Resort**") and has acquired any and all interests of the prior owner of the South Seas Resort to any and all entitlements, easements and rights pertaining thereto; and

WHEREAS, the existing permitted channel (the "**EPC**") in the Redfish Pass Area, owned and maintained by Resort to benefit all boaters accessing the South Seas Resort and Redfish Pass, frequently shoals in due to tidal influences and tidal changes and becomes difficult to navigate by the boating general public; and

WHEREAS, the EPC is a critical navigation channel for area boaters seeking access to the Gulf of Mexico, or access to a safe harbor from the Gulf of Mexico, and is described on the aerial attached hereto as **Exhibit "A"**; and

WHEREAS, general public boating has substantially increased in the Redfish Pass Area and navigation patterns have changed, necessitating a more clearly marked, accessible, and maintained channel area connecting the Gulf of Mexico at Redfish Pass with Roosevelt Channel and the Intracoastal Waterway; and

WHEREAS, according to a boating survey completed in 2001 by Antonini & Associates, eighty percent (80%) of all boats observed in the vicinity of Redfish Pass during the study period did not use the South Seas Resort's facilities; and

WHEREAS, the EPC connects the Gulf of Mexico to the Intracoastal Waterway at Redfish Pass and is the only marked navigation pass between Boca Grande Pass and San Carlos Bay entrance; and

WHEREAS, in order to provide safer transit for the general boating public in the Redfish Pass Area, a new channel needs to be developed in the area described on the aerial attached hereto as **Exhibit "B"** (the "**New Channel**"), which New Channel shall be more navigable to area boaters and require substantially less dredging frequency and substantially less volume of dredged materials to be removed; and

WHEREAS, the New Channel would, by directing boat traffic into a clearly marked and more accessible navigation channel, help to protect area manatees and seagrass beds and would minimize width and depth impacts through shallow water resource areas; and

WHEREAS, the development of the New Channel and the continued maintenance thereof is required for the health, safety and welfare of the general boating public.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the County and Resort agree as follows:

SECTION ONE: RECITALS

1.1 The “Whereas” recitals described above are significant factors in the consideration and establishment of the Agreement and are therefore incorporated herein and made a part of this Agreement.

SECTION TWO: SCOPE, PURPOSE, AND PROJECT DEFINITION.

2.1 The purpose of this Agreement is to define the obligations of the Resort and the County in permitting and constructing the Project and maintaining the New Channel.

2.2 The County and Resort will cooperate with each other to plan, permit, construct, and complete the development of the New Channel and the partial filling in and abandonment of the EPC; and to, thereafter, maintain the New Channel as specifically provided for herein.

2.3 The “**Project**” for purposes of this Agreement will be the initiation and prosecution to completion of the planning, permitting, and development of the New Channel and the partial filling in and abandonment of the EPC and shall include, but not be limited to, (a) the dredging of areas for the New Channel to a depth of seven feet (7') mean low water (“**MLW**”), (b) the placement of all markers required for the New Channel, (c) the filling in and restoration of portions of the EPC to ambient grade for seagrass re-colonization and removal of channel markers therefrom, and (d) the removal and placement of dredged materials to the area described in 2.3(c) above or an upland

disposal area designated by Resort. The New Channel will be constructed and the EPC abandoned in accordance with all issued local, state and federal approvals and permits.

2.4 Subsequent to completion of the Project, the New Channel will be maintained by the County, as provided for herein, at a depth of seven feet (7') MLW for the entire length of the New Channel from the Intracoastal Waterway to the South Seas Resort.

SECTION THREE: OBLIGATIONS OF THE COUNTY.

3.1 Under the terms of this Agreement, the County shall:

(a) Apply for, and obtain, the necessary U.S. Army Corps of Engineers, United States Coast Guard, and Florida Department of Environmental Protection permits, and all other applicable permits, approvals, and consents to construct and complete the dredging of the New Channel and the abandonment of the EPC, and all other elements of the Project, as appropriate.

(b) Acquire all necessary rights and interests in and to the submerged lands by fee ownership, leasehold, easement, or right-of-way dedication, required for the development and operation of the New Channel and other applicable elements of the Project, and for the continued and perpetual use of the New Channel by the boating public.

(c) Provide funding of all Project costs, except as provided in Section 6.1.

(d) Within two (2) years of final permit issuance construct the New Channel and thereafter maintain the New Channel and the New Channel markers, all as herein provided, and to remove all channel markers defining the EPC and to remove excess dredged material as described herein as set forth in Section 2.3C and Section

2.3D and to provide such monitoring of the New Channel and/or EPC areas as may be required under all applicable permits or approvals.

(e) Upon the signing of this Agreement, the County shall assume responsibility for any and all permits, rights, and interests pertaining to the construction and maintenance of the New Channel and the abandonment and partial filling of the EPC.

SECTION FOUR: OBLIGATIONS OF THE RESORT.

4.1 Under the terms of this Agreement, the Resort shall:

(a) In cooperation with the County, and, as necessary, prepare detailed permit submittals, construction plans, specifications and a general program outlining the order, rate of prosecution, and method of accomplishing the Project.

(b) Upon the signing of this Agreement, Resort shall assign or cause to be assigned to the County, and the County shall assume responsibility for, any and all permits, rights, and interests pertaining to the permitting, construction and maintenance of the New Channel, the removal of channel markers from the EPC, and partial filling of the EPC.

(c) As necessary for future maintenance, provide the County with an upland area for depositing the dredged material removed during the maintenance dredging of the New Channel that is not used in filling in portions of the EPC. To the extent permitted, the dredged material to be so deposited on an upland area may be used for beach renourishment or dune construction below the Erosion Control Line adjacent to lands of the South Seas Resort in areas permitted for, and designated as, beach or dune restoration areas.

(d) To fund all amounts required to be funded by the Resort pursuant to Section 6.1 of this Agreement for the permitting and engineering of the Project.

SECTION FIVE: MAINTENANCE OBLIGATION OF THE COUNTY.

5.1 The channel applied for shall have a -7 foot MLW controlling depth and a minimum bottom width of 50 feet, with 3:1 side slopes, to a maximum channel width of 65 feet at the shallowest point of -4.5 feet MLW.

5.2 The basic criterion for the County to initiate maintenance of the New Channel is a controlling depth in the New Channel of less than six foot (6') MLW within an operating width of less than fifty feet (50'). Resort recognizes the need for seven foot (7') MLW access for vessels commonly utilizing resort facilities. To accommodate the additional one foot of dredged material to be removed in maintaining the New Channel to a seven foot (7') MLW depth, and/or a fifty foot (50') operating width. Resort shall, as described in Section 4.1(c), provide the County with an upland dredged material containment location for handling all dredged materials, as described above, other than the amount used to fill in portions of the EPC, in exchange for the maintenance dredging by the County to the seven foot (7') mean low water controlling depth.

5.3 Should a natural event occur that results in the sudden filling or shoaling of all, or any portion of, the New Channel that constrains the channel operating depth and width as heretofore provided in Section 5.2, the Resort agrees to immediately take such steps as necessary to notify the County of the constriction/obstruction. Within 60 days of written notification by the Resort to the County, the County will confirm the extent of the obstruction/constriction and submit for necessary permits within 60 days. County will proceed with the construction bid process within 60 days of issuance of all necessary local, state, and federal authorizations to clear the New Channel to the specifications

described in Section 5.1. If the County does not undertake such efforts within 120 days of determination that the channel is constricted, the County will provide the Resort written authorization to undertake, at its own cost and expense, the clearing of the New Channel to satisfy the specifications described in Section 5.1.

5.4 In the event the County determines to abandon the New Channel after completion of the Project, the County shall notify Resort in writing that the County will no longer maintain the New Channel. Upon receipt of such written notice Resort, at its sole option, may notify the County, in writing, of Resort's intention to assume ownership and maintenance responsibilities of the New Channel. The County, at the County's sole cost and expense, shall expeditiously obtain and cause the transfer to Resort of all approvals, consents, and conveyance instruments necessary to immediately transfer to Resort the submerged fee, leasehold, easement, or right-of-way in and to the New Channel, and all permits and approvals necessary for Resort to operate and maintain the New Channel thereafter, including all channel markers in accordance with applicable permits. Resort shall thereafter, at its own expense, assume all maintenance responsibilities of the New Channel, and comply with all state and federal authorizations, as required.

SECTION SIX: COST ALLOCATION.

6.1 Resort shall be responsible for the costs and expenses associated with the permitting of the Project, including all engineering and consulting fees, as required.

6.2 The County agrees to pay for all costs pertaining to the construction and permit compliance of the Project including, but not limited to, dredging of the New Channel, installation of the New Channel markers, abandonment of the EPC, removal of EPC markers, filling in or partially filling in the EPC, depositing the spoiled materials as

hereinafter described and compliance with all state and federal authorizations, as required.

SECTION SEVEN: LIABILITY.

7.1 The County will be liable for money damages in tort for any injuries to or losses of property, personal injury, or death caused by the negligent or wrongful act(s) or omission(s) of any official or employee of the County while acting within the scope of the official's or employee's office or employment under circumstances in which a private person would be held to be liable in accordance with the general laws of the State of Florida, subject to the limitations as set out in section 768.28, Florida Statutes, as it may be revised or amended from time to time.

SECTION EIGHT: INSURANCE.

8.1 During construction of the New Channel, any County contractors will be required to have appropriate insurance coverage and name the County and the Resort as additional insured.

SECTION NINE: NOTICES.

9.1 Notices to the respective parties hereto shall be forwarded, in writing, to the following parties or their written designee(s):

Chairman, Board of County Commissioners
Lee County, Florida
Post Office Box 398
Fort Myers, FL 33902

Hans Wilson, Agent
Hans Wilson & Associates
1938 Hill Ave.
Fort Myers, FL 33901

Chris Van der Baars, General Manager
South Seas Resort
5400 Captiva Road
Captiva, FL 33924

SECTION TEN: TERM AND TERMINATION.

10.1 The parties hereto acknowledge and agree that the Project shall be constructed no later than two (2) years from the date of issuance of all necessary authorizations. Both parties shall exercise due diligence in insuring that all permits are timely issued and that the construction of the Project takes place in a timely and cost efficient manner.

10.2 This Agreement shall become effective on the date first executed by the County, and shall remain in effect until terminated by either party. The party desiring to terminate this Agreement must give sixty (60) days written notice to the other party by certified mail of its intention to cancel this Agreement. Such notice, if given by the County shall constitute abandonment as described in section 5.4 herein.

10.3 If this Agreement is cancelled, all terms and conditions of this Agreement will be null and void except for any conditions necessitated by a permit which cannot reasonably be modified because it is a requirement of a regulatory permitting agency.

SECTION ELEVEN: MISCELLANEOUS.


11.1 This Agreement shall be binding on the successors and assigns of the parties to this Agreement.

IN WITNESS WHEREOF, the Resort and County have signed this Agreement on the day, month, and year first written above.

MERISTAR SUB 5J, LLC, a Delaware limited liability company

By: Meristar Hospitality Operating Partnership, L.P., a Delaware limited partnership, its managing member

By: Meristar Hospitality Corporation, a Maryland corporation, its general partner

By: 

Bruce Wiles, President

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM

By: _____
Office of the County Attorney

STATE OF MARYLAND
COUNTY OF MONTGOMERY

The foregoing instrument was acknowledged before me this 27th day of January, 2006, by Bruce Wiles, as President of Meristar Hospitality Corporation, a Maryland corporation, the general partner of Meristar Hospitality Operating Partnership, L.P., a Delaware limited partnership, the managing member of MERISTAR SUB 5J, LLC, a Delaware limited liability company, on behalf of the corporation, the limited partnership and the company. He is personally known to me as identification.



Notary Public My Comm. Exps 4/1, 2007

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this ____ day of January, 2006, by _____, as the Chairman of the BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, a body politic under the laws of the State of Florida, on behalf of the Board of County Commissioners of Lee County, Florida. He/She is personally known or has produced _____ as identification.

Notary Public



EXHIBIT A - Existing Channel

Not to Scale

HANS J.M. WILSON
REGISTERED PROFESSIONAL ENGINEER
FLORIDA REGISTRATION NO. 39690
DATE: February 02, 2005 6:09:44 p.m.
Drawing: SSP10EXHIBITA.DWG (HW)

PERMIT USE ONLY, NOT FOR CONSTRUCTION



HANS WILSON & ASSOC., INC.
2025 W. First St. Ft. Myers, Florida 33901
Tel: 941-334-6870 Fax: 941-334-7810
MARINE and ENVIRONMENTAL CONSULTANTS

2.2.05

South Seas Resort
Limited Partnership

SHEET

0 500 1000

February 02, 2005 4:18:39 P.M.
Drawing: SSP10EXHIB1B.DWG (HW)

SHEET

*South Seas Resort
Limited Partnership*

2.2.05

PERMIT USE ONLY, NOT FOR CONSTRUCTION

HANS WILSON & ASSOC., INC.
1938 Hill Ave. Ft. Myers, Florida 33901
Tel: 239-334-6870 Fax: 239-334-7810
MARINE and ENVIRONMENTAL CONSULTANTS

