

**THIS INSTRUMENT PREPARED BY**

~~AND RETURN TO:~~

*Stephen J. Szabo, III, Esquire*  
*Foley & Lardner LLP*  
*Post Office Box 3391*  
*Tampa, Florida 33601-3391*

**DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Declaration") is made as of the 12 day of July, 2006, by Beachwalk Resort, LLC (individually and collectively, "Developer").

Developer is the owner of fee simple title to the real property described in Schedule 1 attached hereto and made a part hereof (hereinafter, the ("Real Property")). The City of Clearwater, Florida (the "City"), has amended its Comprehensive Plan to designate Clearwater Beach as a Community Redevelopment District pursuant to the Pinellas County Planning Council Rules in order to implement the provisions of *Beach By Design*, a plan for the revitalization of Clearwater Beach.

The designation of Clearwater Beach as a Community Redevelopment District (the "Designation") provides for the allocation of bonus resort hotel units ("Bonus Units") as an incentive for the development of destination quality hotel resorts with a full complement of resort amenities. Pursuant to the Designation, the allocation of Bonus Units is subject to compliance with a series of performance standards, including a requirement that resorts containing a hotel developed with Bonus Units ("Hotel") shall be closed and all Hotel guests evacuated from such resorts as soon as practicable after the National Hurricane Center posts a hurricane watch that includes Clearwater Beach. The purpose of such evacuation is to ensure that such a Hotel is evacuated in advance of the period of time when a hurricane evacuation would be expected in advance of the approach of hurricane force winds.

The City has granted, by City Council Resolution 04-35, passed and approved on December 2, 2005, Developer's application for Bonus Units pursuant to the Designation, subject to Developer's compliance with the requirements of the Designation. Developer desires for itself, and its successors and assigns, as owner, to establish certain rights, duties, obligations and responsibilities with respect to the use and operation of the Real Property in accordance with the terms and conditions of the allocation of the Bonus Units to the City and the Designation, which rights, duties, obligations and responsibilities shall be binding on any and all successors and assigns and will run with the title to the Real Property.

THEREFORE, in consideration of the covenants and restrictions herein set forth and to be observed and performed, and in further consideration of the allocation of Bonus Units to Developer, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Developer hereby declares, covenants and agrees as follows:

1. Building and Enforcement. These covenants and restrictions are made for the benefit of Developer and its successors and assigns and shall be enforceable by them and also for the benefit of the residents of the City and shall be enforceable on behalf of said residents by the City Council of the City.

2. Covenant of Development, Use and Operation. Developer hereby covenants and agrees to the development, use, and operation of the Real Property in accordance with the provisions of this Declaration.

2.1. Use. The use of the resort on the Real Property is restricted as follows:

2.1.1 The Hotel Units shall be restricted as follows:

i. No Hotel Unit shall be occupied by the Unit Owner or any other occupant for more than 30 consecutive days per stay. When such Hotel Units are not being occupied by their respective owners, the Hotels Units shall be made available to the public for rental as overnight accommodations as defined in the Clearwater Community Development Code. The Hotel Units shall be made available to the public for rental as overnight accommodations for no fewer than 305 days in any calendar year.

ii. All Hotel Units shall be licensed as a public lodging facility in accordance with *Florida Statutes*, Chapter 509.

iii. All Hotel Units shall be maintained and operated to the operating standards (the "Operating Standards") set forth in Exhibit N of that certain Second Amended and Restated Development Agreement as recorded in O.R. Book 13996, Page 2409, Public Records of Pinellas County, Florida (the "Development Agreement"). Owners of the Hotel Units may act on their own behalf to rent their respective units or may retain either the Developer or a third party rental agent to provide rental services, however, in such event the owners of the Hotel Units shall be responsible for compliance with the Operating Standards and the terms and conditions of the Development Agreement, as amended, including, but not limited to, Exhibits E, F and N. Upon request of the City, such Hotel Unit owner (other than those Unit Owners whose Hotel Unit is managed by the hotel operator for the Hotel) shall be required to provide, at the owner's expense, independent certification by a mutually agreed upon Hotel Inspector, of the Hotel Unit's compliance with the Operating Standards and the terms and conditions of the Development Agreement, as amended, including, but not limited to, Exhibits E, F and N. In addition to remedies available by law, the City shall have the right to prohibit use of and access to any unit that is not operated to the Operating Standards until such time as the owner of such unit demonstrates to the reasonable satisfaction of the City that unit is in compliance with this section.

2.1.2 The Other Areas of the Hotel, including the front desk, shall be operated by a single, licensed operator of the Hotel.

2.1.3 No Hotel Units shall be used as other than overnight accommodations as provided in the Land Development Code, nor shall any Hotel Unit be used as a primary or permanent residence.

2.1.4. As used herein, the terms “transient occupancy” “public lodging establishment” “hotel”, “resort condominium, and “operator” shall have the meaning given to such terms in Chapter 509, Part I, Florida Statutes (2004).

2.2. Closure of Improvements and Evacuation. The Hotel developed on the Real Property shall be closed as soon as practicable upon the issuance of a hurricane watch by the National Hurricane Center, which hurricane watch includes Clearwater Beach, and all units owners and their guests and invitees and all hotel guests, visitors and employees, other than emergency and security personnel required to protect the resort Hotel (as designated by the Developer and/or its hotel operator) shall be evacuated from the Hotel as soon as practicable following the issuance of said hurricane watch. In the event that the National Hurricane Center shall modify the terminology employed to warn of the approach of hurricane force winds, the closure and evacuation provisions of this Declaration shall be governed by the level of warning employed by the National Hurricane Center which precedes the issuance of a forecast of probable landfall in order to insure that all units owners and their guests and invitees and all hotel guests, visitors and employees will be evacuated in advance of the issuance of a forecast of probable landfall.

3. Effective Date. This Declaration shall become effective upon issuance of all building permits required to build the project of which the Hotel is a part (“Project”) and Developer’s commencement of construction of the Project, as evidence by a Notice of Commencement for the Project. This Declaration shall expire and terminate automatically if and when the allocation of Bonus Units to the Developer expires or is terminated.
4. Governing Law. This Declaration shall be construed in accordance with and governed by the laws of the State of Florida.
5. Recording. This Declaration shall be recorded in the chain of title of the Real Property with the Clerk of the Courts of Pinellas County, Florida.
6. Attorneys’ Fees. Developer shall reimburse the City for any expenses, including reasonable attorneys’ fees, which are incurred by the City in the event that the City determines that it is necessary and appropriate to seek judicial enforcement of this Declaration and the City obtains relief, whether by agreement of the parties or through order of a court of competent jurisdiction.
7. Severability. If any provision, or part thereof, of this Declaration or the application of this Declaration to any person or circumstance will be or is declared to any extent to be invalid or unenforceable, the remainder of this

Declaration, or the application of such provision or portion thereof to any person or circumstance, shall not be affected thereby, and each and every other provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

12 IN WITNESS WHEREOF, Developer has caused this Declaration to be executed this day of July, 2006.

Signed, sealed and delivered in the presence of:

CRYSTAL BEACH CAPITAL, LLC

By: NJR DEVELOPMENT COMPANY, L.L.C., its sole manager

Chris Bastas  
Print Name: CHRIS BASTAS

Neil J. Rauenhorst  
Neil J. Rauenhorst, its Manager

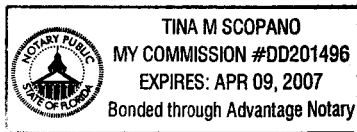
Randy Gibbons  
Print Name: RANDY GIBBONS

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 12 day of July, 2006, by Neil J. Rauenhorst, manager of NJR Development Company, L.L.C., sole manager of Crystal Beach Capital, LLC, a Florida limited liability company, on behalf of the companies. He [select one:]

- is personally known to me;
- or
- produced a Florida driver's license as identification

Tina M. Scopano  
Notary Public - Signature  
Print Name: Tina M. Scopano



My Commission Expires: 4-9-07

Schedule 1Legal Description

A parcel of land lying in Section 8, Township 29 South, Range 15 East, Pinellas County, Florida being more particularly described as follows:

Lot 57, Lot 104, the South 20.00 feet of Lot 56, and the South 20.00 feet of Lot 103, of the LLOYD-WHITE SKINNER-SUBDIVISION, as recorded in Plat Book 13, Page 12, of the Public Records of Pinellas County, Florida.

Together with Lot 105, Lot 106, and the North half of Lot 107, of the LLOYD-WHITE SKINNER-SUBDIVISION, as recorded in Plat Book 13, Page 12, of the Public Records of Pinellas County, Florida.

Together with Lots 58 and 59, of the LLOYD-WHITE-SKINNER SUBDIVISION, as recorded in Plat Book 13, Page 12, of the Public Records of Pinellas County, Florida.

Together with that portion of Third Avenue a 60.00 foot right-of-way, being bounded on the East by the West right-of-way line of Coronado Drive, and on the West by the East right-of-way line of Gulf View Boulevard, on the North by the South property line of Lot 57 and Lot 104, and the South by the North property line of Lot 58 and Lot 105.

Together with the East 35.00 feet of a 70.00 foot right-of-way of Gulf View Boulevard; bounded on the North by the Westerly extension of a line lying 20 feet North of and parallel with the North property line of Lots 57 and 104, and on the South by the Westerly extension of the South line of Lot 59.

Less and except the East 10.00 feet thereof, as per terms and conditions and provisions as recorded in instrument recorded in O.R. Book 12189, Page 2198 and amended in O.R. Book 13996, Page 2409, of the Public Records of Pinellas County, Florida.