

## **HOTEL DENSITY RESERVE DEVELOPMENT AGREEMENT**

THIS HOTEL DENSITY RESERVE DEVELOPMENT AGREEMENT ("Agreement") is dated the \_\_\_\_\_ day of \_\_\_\_\_, 2019, and entered into between **EAST SHORE INTERNATIONAL ENTERPRISES, LLC & 411 E S**, both being Florida limited liability companies ("Developer"), its successors and assigns, and the CITY OF CLEARWATER, FLORIDA, a municipal corporation of the State of Florida acting through its City Council, the governing body thereof ("City").

### **RECITALS:**

WHEREAS, one of the major elements of the City's revitalization effort is a special area plan for the revitalization of Clearwater Beach adopted under the provisions of the Florida Growth Management Act, Florida Statutes Chapter 163, Part II, and entitled Beach by Design; and

WHEREAS, Florida Statutes Sections 163.3220 - 163.3243, the Florida Local Government Development Agreement Act ("Act"), authorize the City to enter into binding development agreements with persons having a legal or equitable interest in real property located within the corporate limits of the City; and

WHEREAS, under Section 163.3223 of the Act, the City has adopted Section 4-606 of the City of Clearwater Community Development Code ("Code"), establishing procedures and requirements to consider and enter into development agreements; and

WHEREAS, Beach by Design proposed the development of hotel units to equalize development opportunities on the beach and ensure Clearwater Beach remains a quality, family resort community, and further provided for a limited reserve of additional hotel units ("Hotel Density Reserve") to be made available for such mid-sized hotel projects; and

WHEREAS, the Developer owns 1.11 acres of real property ("Property") in the corporate limits of the City, more particularly described on Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, the Developer desires to develop the Property to provide 74 overnight accommodation units, pool, lobby, roof top sun deck and parking, generally conforming to the architectural elevation dimensions shown in composite Exhibit "B" (collectively, the improvements are the "Project"); and

WHEREAS, the Property has not previously acquired density from the Destination Resort Density Pool; and

WHEREAS, upon completion the planned hotel will contain 74 overnight accommodation units, which includes 8 units from the available Hotel Density Reserve ("Reserve Units"); and 11 Units from TDR's to be acquired.

WHEREAS, the City has conducted such public hearings as are required by and in accordance with Florida Statutes Section 163.3225, Code Sections 4-206 and 4-606, and any other applicable law; and

WHEREAS, the City has determined that, as of the date of this Agreement, the proposed project is consistent with the City's Comprehensive Plan and Land Development Regulations; and

WHEREAS, at a duly noticed and convened public meeting on \_\_\_\_\_, 201\_, the City Council approved this Agreement and authorized and directed its execution by the appropriate officials of the City; and

WHEREAS, approval of this Agreement is in the interests of the City in furtherance of the City's goals of enhancing the viability of the resort community and in furtherance of the objectives of Beach by Design; and

WHEREAS, Developer has approved this Agreement and has duly authorized certain individuals to execute this Agreement on Developer's behalf.

## **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 and Code, 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 described in Exhibit "A" is subject to this Agreement ("Property").

3.1 The Property currently has a Land Use designation of Resort Facilities High (RFH) and is Zoned Tourist (T).

3.2. The Property is owned in Fee Simple or under contract to be owned in Fee Simple by the Developer.

3.3 The Property is generally located at 405, 408, 409 & 411 East Shore Drive, Clearwater, FL 33767 as further described in Exhibit "A".

#### **SECTION 4. Scope of Project.**

4.1 The Project shall consist of 74 overnight accommodation units including eight overnight accommodation units from the Hotel Density Reserve with an additional 11 Units acquired through the use of TDR's and have a density no greater than 150 units per acre and a 22-slip publicly accessible marina facility.

4.2 The Project shall include a minimum of 100 parking spaces (1.2 spaces per hotel unit and one space per two publicly accessible slips), as defined in Code.

4.3 The design of the Project, as represented in Exhibit "B", is consistent with "Beach by Design".

4.4 The height of the Project shall be up to 65'-0" feet as measured from Base Flood Elevation, as defined in the Code and as otherwise permitted utilizing the Height Bonus Schedule for the Marina District of *Beach by Design* the consolidation of property totaling one acre or more on both sides of East Shore Drive and the provision of a publicly accessible Boardwalk. The maximum building heights of the various character districts cannot be increased to accommodate hotel rooms allocated from the Hotel Density Reserve.

#### **SECTION 5. Effective Date/Duration of this Agreement.**

5.1 This Agreement shall not be effective until this Agreement is properly recorded in the public records of Pinellas County, Florida and thirty (30) days have elapsed after transmitting to the Florida Department of Economic Opportunity, pursuant to Florida Statutes section 163.3239 and Code section 4-606.G.2.

5.2 Within fourteen (14) days after the City approves the execution of this Agreement, the City shall record the Agreement with the Clerk of the Circuit Court for Pinellas County. The Developer shall pay the cost of such recording. The City shall submit to the Department of Economic Opportunity a copy of the recorded Agreement within fourteen (14) days after the Agreement is recorded.

5.3 This Agreement shall continue in effect for twenty (20) years unless earlier terminated as set forth herein.

#### **SECTION 6. Obligations under this Agreement.**

6.1 Obligations of the Developer:

6.1.1 The obligations under this Agreement shall be binding upon and the benefits of this Agreement shall inure to the Developer, its successors in interests or assigns.

6.1.2 At the time of development of the Property, the Developer will submit such applications and documentation as are required by law and shall comply with the Code applicable at the time of building permit review.

6.1.3 The following restrictions shall apply to development of the Property:

6.1.3.1 To retain the grant of Reserve Units provided for herein, the

Property and improvements located thereon shall be developed in substantial conformance with the Conceptual Site Plan attached as Exhibit "B". Any modifications determined by the Planning and Development Director as either inconsistent with attached Exhibit "B" or constituting a substantial deviation from attached Exhibit "B" shall require an amendment to this Agreement in accordance with the procedures of the Act and the Code, as necessary and applicable. Any and all such approved and adopted amendments shall be recorded in the public records of Pinellas County, Florida.

6.1.3.2 The Developer shall obtain appropriate site plan approval pursuant to a Level One or Level Two development application within one (1) year from the effective date of this Agreement in accordance with the provisions of the Code and shall then obtain appropriate permits and certificates of occupancy in accordance with the provisions of the Code. Nothing herein shall restrict Developer from seeking an extension of site plan approval or other development orders pursuant to the Code or state law. In the event that work is not commenced pursuant to issued permits, or certificates of occupancy are not timely issued, the City may deny future development approvals and/or certificates of occupancy for the Project and may terminate this Agreement in accordance with Section 10.

6.1.3.3 The Developer shall execute, prior to commencement of construction, a mandatory evacuation/closure covenant, substantially in the form of Exhibit "C", stating that the accommodation use will close as soon as practicable after a hurricane watch that includes Clearwater Beach is posted by the National Hurricane Center.

6.1.4 Covenant of Unified Use. Prior to the issuance of the first building permit for the Project, the Developer hereby agrees to execute the covenant of unified use and development for the Project Site providing that the Project Site shall be developed and used as a single project, the form of which covenant is attached as Exhibit "D"; provided however, that nothing shall preclude the Developer from selling all or a portion of the Developer's Property in the event that Developer determines not to construct the Project. It is understood and agreed that, in the event that the Developer enters into the anticipated covenant of unified use and development, and the Developer elects not to construct the Project and notifies the City of its election in writing, and, alternatively, as of the date of expiration, termination or revocation no rights of Developer remain or will be exercised to incorporate the Hotel Density Reserve Units into the Project, the City shall execute and deliver to the Developer a termination of such covenant of unified use and development suitable for recording in the Public Records of Pinellas County, Florida.

6.1.5 Return of Units to Reserve. Any Reserve Units granted to Developer not timely constructed in conjunction with the Project shall be returned to the Hotel Density Reserve and be unavailable to Developer for use on the Project.

6.1.6 Transient Use. A reservation system shall be required as an integral part of the hotel use and there shall be a lobby/front desk area that must be operated as a typical lobby/front desk area for a hotel would be operated. Access to overnight accommodation units must be provided through a lobby and internal corridor. All units in the hotel shall be made available to the public as overnight transient hotel guests at all times

through the required hotel reservation system. Occupancy in the hotel is limited to a term of less than one (1) month or thirty-one (31) consecutive days, whichever is less. Units in the hotel shall not be used as a primary or permanent residence.

6.1.7 No Full Kitchens. No unit shall have a complete kitchen facility as that term is used in the definition of “dwelling unit” in the Code.

6.1.8 Inspection of Records. Developer shall make available for inspection to authorized representatives of the City its books and records pertaining to each Hotel Density Reserve unit upon reasonable notice to confirm compliance with these regulations as allowed by general law.

6.1.9 Compliance with Design Guidelines. The Developer agrees to comply with the Design Guidelines as set forth in Section VII. of Beach by Design

6.1.10 Limitation on Amplified Music. Developer agrees that there shall be no outdoor amplified music at the Project after 11:00 pm. on Sunday through Thursday, or after 12:00 midnight on Friday and Saturday.

6.1.11 Limitation on Marina Facility.

6.1.11.1 The Developer agrees that activities such as servicing, fueling, pumping-out, commercial chartering and/or and dry-storage of boats and boating equipment is strictly prohibited.

6.1.11.2 The Developer agrees that the number of conveyable Marina Slips shall be limited to no more than 22. The City acknowledges that there are 35 additional marina slips for the sole use of the hotel. The Developer may increase the number of conveyable marina slips only if the Developer increases the number of parking spaces to meet compliance with the Community Development Code.

6.1.11.3 The Developer agrees that any conveyable marina slips shall be limited to sale and/or lease to privately-owned boats rather than commercial vessels for hire.

6.1.11.4 The Developer agrees that a deed restriction outlining Sections through 6.1.11.3 shall be submitted to Staff prior to the issuance of any permits.

6.2 Obligations of the City.

6.2.1 The City shall promptly process site and construction plan applications for the Property that are consistent with the Comprehensive Plan and the Concept Plan and that meet the requirements of the Code.

6.2.2 The final effectiveness of the applications referenced in Section 6.2.1 is subject to:

6.2.2.1 The provisions of Chapters 163 and 166, Florida Statutes, as they may govern such amendments; and

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

6.2.3 Upon adoption of this Agreement, the project shall receive 8 units from the Hotel Density Reserve as defined by Beach by Design, contingent upon the provisions of Section 6.1.5.

6.2.4 It is anticipated that as a condition to the approval of the Project by the City, Developer will be required to construct and maintain a boardwalk along the seawall on the Property (the "Boardwalk"), and to permit the general public to enter upon and traverse the Boardwalk at all times, and to exit the Boardwalk via an easement over the Property in favor of the City (or for the benefit of the public at large) to be located at the south end of the Boardwalk, connecting the Boardwalk to East Shore Drive. Said easement shall include terms and conditions acceptable to the City, and which are typical of such other easements for similar access that are currently in effect between the City (or for the benefit of the public at large) and private land owners. Upon the adoption of this Agreement, City shall enter, in favor of Developer and its successors and assigns, a general indemnification and hold harmless agreement, to be effective upon the issuance of a C.O. for the Project, pursuant to which the City shall indemnify and hold harmless Developer, to the extent allowed by law, from and against any and all claims for injury, death, and damage brought in connection with the use of the Boardwalk by the general public at large; provided, however, that such indemnification and hold harmless agreement shall not relieve Developer of any liability for its negligence in maintaining the Boardwalk, or any willful or wanton acts by Developer or those under the authority or control of Developer.

**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 the concurrency ordinance provisions applicable at the time of development approval. The requirements for concurrency as set forth in Article 4, Division 9, of the Code, have been satisfied.

7.1 Potable water is available from the City. The Developer shall be responsible for all necessary main extensions and applicable connection fees.

7.2 Sewer service is currently provided by the City. The Developer shall be

responsible for all necessary main extensions and applicable connection fees.

7.3 Fire protection from the City.

7.4 Drainage facilities for the Property will be provided by the Developer at the Developer's sole expense.

7.5 The Project shall comply with the Metropolitan Planning Organization's [MPO] or its successor's countywide approach to the application of concurrency management for transportation facilities, and the transportation analysis conducted for the Project shall include the following:

- Recognition of standard data sources as established by the MPO;
- Identification of level of service (LOS) standards for state and county roads as established by the MPO;
- Utilization of proportional fair-share requirements consistent with Florida Statutes and the MPO model ordinance;
- Utilization of the MPO Traffic Impact Study Methodology; and
- Recognition of the MPO designation of "Constrained Facilities" as set forth in the most current MPO Annual Level of Service Report.

7.6 All improvements associated with the public facilities identified in Subsections 7.1 through 7.5 shall be completed prior to the issuance of any certificate of occupancy.

7.7 Developer agrees to provide a cashier's check, a payment and performance bond, or letter of credit in the amount of 115% of the estimated costs of the public facilities and services, to be deposited with the City to secure construction of any new public facilities and services required to be constructed by this Agreement. Such construction shall be completed prior to issuance of a Certificate of Occupancy for the Project.

**SECTION 8. Required Local Government Approvals.** The required local government development approvals for development of the Property include, without limitation, the following:

8.1 Site Plan approval(s) and associated utility licenses, access, and right-of-way utilization permits;

8.2 Construction plan approval(s);

8.3 Building permit(s);

8.4 Certificate(s) of occupancy; and

**SECTION 9. Finding of Consistency.** The City finds that development of the Property is consistent with the terms this Agreement is consistent with the City Comprehensive Plan and the Code.

**SECTION 10. Termination.** If the Developer's obligations set forth in this Agreement are not followed in a timely manner, as reasonably determined by the City Manager, after notice to the Developer and an opportunity to be heard, existing permits shall be administratively suspended, and issuance of new permits suspended until the Developer has fulfilled its obligations. Failure to timely fulfill its obligations may serve as a basis for termination of this Agreement by the City, at the discretion of the City and after notice to the Developer and an opportunity for the Developer to be heard.

**SECTION 11. Other Terms and Conditions.** Except in the case of termination, until ten (10) years after the date of this Agreement, the City may apply laws and policies adopted subsequently to the Effective Date of this Agreement if the City has held a public hearing and determined:

- (a) They are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities in the Agreement;
- (b) 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;
- (c) They are specifically anticipated and provided for in this Agreement;
- (d) The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement;  
or
- (e) This Agreement is based on substantially accurate information provided by the Developer

**SECTION 12. Compliance with Law.** The failure of this Agreement to address any particular permit, condition, term or restriction shall not relieve the Developer 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 the Developer: East Shore International Enterprises, LLC  
2753 SR 580 Ste 110  
Clearwater, FL 33761-3351

With Copy to: Thomas C. Nash, III  
625 Court St.  
Clearwater, FL 33756

If to City: City of Clearwater  
600 Cleveland St. Ste 600  
Clearwater, FL 33755  
Attn: City Manager



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 (3<sup>rd</sup>) 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.      Assignments.**

### **14.1    By the Developer:**

14.1.1 Prior to the Commencement Date, the Developer may sell, convey, assign or otherwise dispose of any or all of its right, title, interest and obligations in and to the Project, or any part thereof, only with the prior written notice to the City, provided that such party (hereinafter referred to as the "assignee"), to the extent of the sale, conveyance, assignment or other disposition by the Developer to the assignee, shall be bound by the terms of this Agreement the same as the Developer for such part of the Project as is subject to such sale, conveyance, assignment or other disposition.

14.1.2 If the assignee of the Developer's right, title, interest and obligations in and to the Project, or any part thereof assumes all of the Developer's obligations hereunder for the Project, or that part subject to such sale, conveyance, assignment or other disposition, then the Developer shall be released from all such obligations hereunder which have been so assumed by the assignee, and the City agrees to execute an instrument evidencing such release, which shall be in recordable form.

14.1.3 An assignment of the Project, or any part thereof, by the Developer to any corporation, limited partnership, limited liability company, general partnership, or joint venture, in which the Developer (or an entity under common control with Developer) has either the controlling interest or through a joint venture or other arrangement shares equal management rights and maintains such controlling interest or equal management rights shall not be deemed an assignment or transfer subject to any restriction on or approvals of assignments or transfers imposed by this Agreement, provided, however, that notice of such assignment shall be given by the Developer to the City not less than thirty (30) days prior to such assignment being effective and the assignee shall be bound by the terms of this Agreement to the same extent as would the Developer in the absence of such assignment.

14.1.4 No assignee, purchaser, sublessee or acquirer of all or any part of the Developer's rights and obligations with respect to any one Parcel shall in any way be obligated or responsible for any of the Developer's obligations with respect to any other Parcel by virtue of this Agreement unless and until such assignee, purchaser, sublessee or acquire has expressly assumed the Developer's such other obligations.

14.2    Successors and Assigns. The terms herein contained shall bind and inure to the benefit of the City, and its successors and assigns, and the Developer and, as applicable

to the parties comprising Developer, their personal representatives, trustees, heirs, successors and assigns, except as may otherwise be specifically provided herein.

**SECTION 15. Minor Non-Compliance.** The Developer will not be deemed to have failed to comply with the terms of this Agreement in the event such noncompliance, in the judgment of the City Manager, reasonably exercised, is of 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, a statement evidencing such completion, revocation or termination shall be signed by the parties hereto and recorded in the official records of the City.

**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 the Developer includes the Developer's successors or assigns. This Agreement was the production of negotiations between representatives for the City and the Developer and the language of the Agreement should be given its plain and ordinary meaning and should not be strictly construed against any party hereto based upon draftsmanship. 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 hereto, 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 written notice to the other parties.

**SECTION 22. Code Amendments.** Subsequently adopted ordinances and codes of the City which are of general application not governing the development of land shall be applicable to the Property, and such modifications are specifically anticipated in this Agreement.

**SECTION 23. Governing Law.** This Agreement shall be governed by, and construed in accordance with the laws of the State of Florida.

**SECTION 24. Counterparts.** This Agreement may be executed in counterparts, all of which together shall continue one and the same instrument.

**SECTION 25. Amendment.** This Agreement may be amended by mutual written consent of the City and the Developer so long as the amendment meets the requirements of the Act, applicable City ordinances, and Florida law.

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

In the Presence of: EAST SHORE  
INTERNATIONAL  
ENTERPRISES, LLC & 411 E S

\_\_\_\_\_  
Print Name\_\_\_\_\_

\_\_\_\_\_  
John A. Bodziak, Architect, as Agent  
to Developer

\_\_\_\_\_  
\_\_\_\_\_  
Print Name

CITY OF CLEARWATER, FLORIDA

By: William B. Horne II  
City Manager

Attest:

\_\_\_\_\_  
Rosemarie Call, City Clerk

Countersigned:

\_\_\_\_\_  
George N. Cretekos, Mayor

Approved as to Form:

\_\_\_\_\_  
Michael Fuino, Assistant City Attorney

STATE OF FLORIDA  
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by GEORGE N. CRETEKOS, as Mayor of the City of Clearwater, Florida, who is [ ] personally known to me or has [ ] produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by WILLIAM B. HORNE, II, as City Manager of the City of Clearwater, Florida, who is [ ] personally known to me or who has [ ] produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

## **EXHIBIT A**

Address of subject Property: 411-408 East Shore Drive

Parcel Number(s):     a. 08-29-15-02592-003-0070  
                                 b. 08-29-15-02592-002-0090  
                                 c. 08-29-15-02592-003-0100  
                                 d. 08-29-15-02592-003-0120

Legal description:

                                 a. Barbour-Morrow Sub Blk C, Lots 7, 8 & 9 & S 1/2 of Lot 6 & Subm  
Land/TIF Deed #17,411 per Plat.

                                 b. Barbour-Morrow Sub Blk B, Lots 9 and 10.

                                 c. Barbour-Morrow Sub Blk C, Lot 10 & N 15 Ft of Lot 11 & Subm  
Land/TIF Deed #17,411 per Plat.

                                 d. Barbour-Morrow Sub Blk C, S 35 Ft of Lot 11 & N 1/2 of Lot 12 &  
Subm Land/TIF Deed #17,411 per Plat.

Size of Property: 48,351.6 Sq. Ft. or 1.11 acres