

PREPARED BY AND WHEN RECORDED RETURN TO:

J. Paul Raymond, Esq.
625 Court Street, Suite 200
Clearwater, FL 33756

SECOND AMENDMENT TO THE FIRST AMENDED AND RESTATED
AGREEMENT FOR DEVELOPMENT OF PROPERTY

BETWEEN

THE CITY OF CLEARWATER, FLORIDA

AND

K & P CLEARWATER ESTATE, LLC

DATED AS OF _____, 2014

THIS SECOND AMENDMENT TO THE FIRST AMENDED AND RESTATED AGREEMENT FOR DEVELOPMENT OF PROPERTY (the "Second Amendment") is made as of this ____ day of _____, 2014 (the "Effective Date"), by and between THE CITY OF CLEARWATER, FLORIDA, a Florida municipal corporation (the "City") and K & P CLEARWATER ESTATE, L.L.C., a Florida limited liability company (the "Developer").

RECITALS

WHEREAS, the City and Developer entered into a Development Agreement on March 3, 2005 and recorded in O.R. book 14168, Page 2397 regarding the certain property located at generally 100 Coronado Drive, 201, 215 and 219 South Gulfview Boulevard ("Developer's Property"); and

WHEREAS, the City and Developer subsequently amended the Agreement on March 22, 2006 and recorded in Pinellas County Records O.R. Book 15023, Page 1494-1500;

WHEREAS, the City and the Developer entered into to a First Amended and Restated Development Agreement for Development of Property on December 30, 2008, as recorded in O.R. Book 16466, Pages 1500-1640, Public Records of Pinellas County, Florida (the "Amended and Restated Development Agreement"); and

WHEREAS, one of the major elements of the City's revitalization effort is a preliminary plan for the revitalization of Clearwater Beach entitled *Beach by Design*;

WHEREAS, *Beach by Design* called for the construction of pedestrian-oriented improvements along the east and west sides of South Gulfview Boulevard ("South Gulfview"), which improvements are known as Beach Walk;

WHEREAS, the City adopted *Beach by Design* pursuant to the Pinellas Planning Council's Rules in support of the Comprehensive Plan adopted by the City;

WHEREAS, *Beach by Design* created a limited number of catalytic resort projects to reposition and re-establish Clearwater Beach as a quality, family resort community and further provided for a limited pool of additional hotel units ("Destination Resort Density Pool") to be made available for such projects;

WHEREAS, the Destination Resort Density Pool ("DRDP") has a limited life after which time the unused units will expire; and

WHEREAS, the Developer was allocated 250 DRDP units in 2005 and the City accelerated construction of Beach Walk; and

WHEREAS, all other units allocated from the DRDP have been constructed; and

WHEREAS, a key criteria for eligibility for the Destination Resort Density Pool is the operation of a proposed project as resort hotel operating under a national or international "flag" or other comparable marketing affiliation or program; and

WHEREAS, the Developer proposes to develop a Resort Hotel consisting of Hotel Units and Interval Ownership Units and associated amenities on certain property fronting on South Gulfview, as contemplated by the Amended and Restated Development Agreement; and

WHEREAS, the Amended and Restated Development Agreement was previously amended by the adoption of the FIRST AMENDMENT TO THE FIRST AMENDED AND RESTATED AGREEMENT FOR DEVELOPMENT OF PROPERTY IN THE CITY OF CLEARWATER dated January 23, 2012 (the "First Amendment"); and

WHEREAS, the Amended and Restated Development Agreement, as amended by the First Amendment shall hereinafter be collectively referred to as the "Development Agreement"). A copy of the First Amendment is attached hereto and incorporated herein by this reference as Exhibit "A";

WHEREAS, the City and Developer intend to again amend certain of the terms and provisions of the Development Agreement; and

WHEREAS, the City has conducted such hearings as are required by and in accordance with applicable laws; and

WHEREAS, the City has determined that, as of the Effective Date of this Second Amendment, the proposed Project (as defined in the Development Agreement) is consistent with the City's Comprehensive Plan and Land Development Regulations; and

WHEREAS, the City has conducted public hearings as required by § 4-206 and 4-606 of the Community Development Code; and

WHEREAS, at a duly called public meeting on _____, 2014, the City Council approved this Second Amendment and authorized and directed its execution by the appropriate officials of the City; and

WHEREAS, approval of this Second Amendment 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 Second Amendment and has duly authorized certain individuals to execute this Second Amendment on Developer's behalf; and

WHEREAS, the City and the Developer desire to amend certain terms and provisions of the Development Agreement, as more fully set forth in this Second Amendment.

NOW, THEREFORE the City and the Developer agree as follows:

1. Recitals. The parties agree that the Recitals (the "Recitals") are true and correct, and the Development Agreement is incorporated herein by this reference. In the

event of any conflict between the Development Agreement and this Second Amendment, the Second Amendment shall prevail. The parties acknowledge and agree that the Development Agreement is in full force and effect and no defaults exist thereunder.

2. Section 1.01, Paragraph 14. Section 1.01, Paragraph 14 as amended by the First Amendment to the First Amended and Restated Agreement for Development of Property in the City of Clearwater is amended as follows:

14. "Interval Ownership Units" means a maximum of (200) ~~internal ownership/timeshare units, as defined in the Community Development Code, which will be sold to more than one owner for use for a period of time not to exceed 30 consecutive days. Applicant is no longer seeking interval ownership/timeshare use for units, therefore paragraph 14 is hereby intentionally deleted as are all references to same contained herein.~~ timeshare units, as defined by Section 721.05, Florida Statutes, in the Project."

3. Section 1.01, Paragraph 16. Section 1.01, Paragraph 16 is amended as follows:

"16. "Hotel Units" means the ~~250 Destination Resort Density Pool Units, Hotel Units, other than Interval Ownership Units, authorized by the density historically allocated to the property together with the 250 Destination Resort Density Pool Units allocated to the property to be constructed in the Project."~~

4. Section 1.10, Paragraph 18. Section 1.01, Paragraph 18 is amended as follows:

"18. "Meeting Space" means any building floor area within the Project which can be used for conference or meeting activities. A breakdown of the floor area dedicated to meeting space is ~~listed herein below:~~

Grand Ballroom:	11,000 square feet
Junior Ballroom:	7,500 square feet
Meeting Rooms:	4,100 square feet

shown on Exhibit O hereto.

5. Section 1.01, Paragraph 29. Section 1.01, Paragraph 29 is amended to read as follows:

"Resort Hotel Units" means both the Interval Ownership Units and Hotel Units in an aggregate amount not to exceed 450 units."

6. Section 1.01, Paragraph 34. Section 1.01 is modified to add the following Paragraph 34:

“Timeshare Interests. “Timeshare Interests” in one or more “Timeshare Plans” each as defined by Section 721.05, Florida Statutes, are permitted to be created and offered for sale and may be used for periods of time not to exceed thirty (30) consecutive days, in a maximum of two hundred (200) Interval Ownership Units at the Resort Hotel. No further approvals from the City of Clearwater shall be required to create such Timeshare Interests, or to market, offer and sell Timeshare Interests and other related products at the Resort Hotel. Nothing contained in this Development Agreement shall be deemed to prohibit a mixed-use Project consisting of a combination of hotel and timeshare related uses.”

7. Section 2.03, Paragraph 1, subparagraph c. Subparagraphs c. of Section 2.03 , Paragraph 1 is amended as follows:

“c. Hotel – The Hotel shall include ~~250~~ the Hotel Units, a minimum of twenty thousand (20,000) square feet of Meeting Space and other amenities accessory to the Hotel, including, but not limited to restaurants, bars, exercise and spa facilities, outdoor recreation space, storage, back office and administration areas and other functional elements related to the Hotel, including not more than thirty-seven thousand (37,000) square feet of retail/ restaurant floor area as described in Exhibit “O” attached hereto. Hotel Units shall be required to be submitted to a rental program requiring that such units be available for overnight hotel guests on a transient basis at all times, subject to force majeure events or renovation activities making such rooms unavailable for occupancy.

8. Section 2.03, Paragraph 1, subparagraphs d. Subparagraphs d. of Section 2.03 , Paragraph 1 is amended by inserting the following:

d. Timeshare – The portion of the Resort Hotel where the maximum of two hundred (200) Interval Ownership Units will be located.”

9. Section 5.04 Paragraph 7. Section 5.04 Paragraph 7 is amended by adding the following paragraph to the provisions thereof:

The Developer shall enter into a shared use and cross easement agreement with respect to the operational spaces, amenities, common areas and recreational facilities with respect to the Hotel and Timeshare portions of the Project (the “Shared Use Agreement”). Such Shared Use Agreement shall provide for the joint use of operational spaces, amenities, recreational facilities and common areas of the Project by the owners and occupants of the Project. Such Shared Use Agreement granting such rights shall be executed and recorded in the Official Records of Pinellas County, Florida, the benefits and burdens of which shall run with the Project Site. The City acknowledges that the Hotel and Timeshare portions of the Project may not be operated by a single operator.

10. Section 2.03, Paragraph 2. The standards contained in Exhibit C are amended by inserting the following additional language under the bold heading **Minimum Quality Standards:**

“Developer shall develop and operate the Resort Hotel in accordance with the Wyndham Grand Resort operating standards. A City Quality Default Notice shall not be issued, nor shall the City have any right to impose upon the Developer, or its successors or assigns, the any fines, or pursue any other remedies related thereto against the Developer or its successors or assigns, as long as the Hotel is operated as a Wyndham Grand Resort consistent with the plans and specification submitted to and approved by the City of Clearwater, Florida, and the Developer, or its successors and assigns remain in compliance with the Wyndham Grand operating standards, pursuant to its hotel management agreement with Wyndham Hotel Management, Inc. or an affiliate thereof. The Interval Ownership Units shall be operated consistent with those standards.”

11. Commencement Date. All references to the required Commencement Date in the Development Agreement, including without limitation in Section 3.01(3) of the Development Agreement, are amended to be on or before February 12, 2015.

12. Section 3.03, Paragraph 2. Section 3.03, Paragraph 2 is amended as follows:

“2. Reservation of Capacity. The City hereby agrees and acknowledges that, as of the Effective Date of this ~~Agreement~~ Second Amendment, the Project satisfies ~~the~~ all concurrency requirements of Florida law. The City agrees to reserve the all concurrency capacity to serve the Project for the Developer and to maintain such capacity ~~until three (3) years following the Effective Date.~~ September 12, 2018. The City recognizes and acknowledges that the Developer will rely upon such reservation in proceeding with the Project.”

13. Section 5.03. Section 5.03 is amended by adding Paragraph 10 thereto as follows:

“10. Escrow Agreement. The City and Developer will execute an escrow agreement in the form attached hereto as an exhibit hereto with First American Title Company serving as escrow agent thereunder. The City will execute and deliver to the escrow agent thereunder a Quit Claim Deed to the property to be conveyed by it pursuant to Section 5.05 and Exhibit K to the Development Agreement which shall contain an acknowledgment of the satisfaction of all conditions to the right of way vacations and the Developer will execute a deed to the property to be conveyed by it pursuant to such Exchange Agreement which deeds shall be delivered and recorded upon the commencement of construction of the intended improvement.

14. Section 2.03 Paragraph (1) is amended by deleting Exhibit B thereto and substituting Exhibit B hereto in its place and stead, which Site Plan is consistent with the site plan upon which the foundation permit was issued and with the site plan contained in the submittals with the building permit application now pending with the City and the City acknowledges that such site plan meet the requirements of the Development Agreement.

15. Section 5.04. The following Paragraph 11 is hereby added to Section 5.04:

“11. The City and Developer acknowledge and agree that the Commencement Date for the Project shall be on or before February 12, 2015.”

16. Section 5.04 Paragraph 10. Section 5.04 paragraph 10 is amended by adding the following to the provisions thereof:

“The City acknowledges that the Developer has complied with the Performance Assurance Milestones required by Section 5.04, Paragraph 10, subparagraphs (a), (b) and (c).”

17. Section 16.01. The provisions of Section 16.01 are amended to add the following subparagraph f. thereto:

“f. Notwithstanding anything to the contrary contained herein, any transfer of any ownership interest in the Project Site, or any part thereof, to any mortgage lien holder, or any assignee or successor to such mortgage lien holder, as a result of foreclosure, deed in lieu of foreclosure, or such other similar proceeding, shall not require the consent of or notice to the City.”

18. Remaining Terms and Conditions. Except as modified hereby, the terms of the Development Agreement shall remain unchanged, in full force and effect, and the Development Agreement is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals as of the date set forth in the first paragraph of this Second Amendment.

Countersigned:

CITY:

**THE CITY OF CLEARWATER,
FLORIDA**

By: _____
George N. Cretekos, Mayor

By: _____
William B. Horne II, City Manager

Approved as to form:

ATTEST:

By: _____
Pamela K. Akin, City Attorney

By: _____
Rosemarie Call, City Clerk

WITNESSES:

DEVELOPER:

K & P CLEARWATER ESTATE, LLC,
a Florida limited liability company

Print Name: _____

Print Name: _____

By: _____
Dr. Kiran C. Patel, as Managing Member of
K&P Holdings, L.C., general partner of
K&P Partners Limited Partnership,
managing member of Developer

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by Kiran C. Patel, M.D., as Managing Member of K&P Holdings, L.C., General Partner of K&P Partners Limited Partnership, a Florida Limited Partnership, Managing Member of **K&P CLEARWATER ESTATE, LLC**, a Florida limited liability company, on behalf of the company, who is personally known to me or has produced _____ as identification.

Notary Public
Print Name: _____
My Commission Expires: _____

(NOTARIAL SEAL)

EXHIBIT A

**FIRST AMENDMENT TO
FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT
FOR DEVELOPMENT OF PROPERTY IN THE CITY OF CLEARWATER**

PREPARED BY AND WHEN RECORDED RETURN TO:

J. Paul Raymond, Esq.
625 Court Street, Suite 200,
Clearwater FL 33756

FIRST AMENDMENT TO THE FIRST AMENDED AND RESTATED AGREEMENT FOR
DEVELOPMENT OF PROPERTY IN THE CITY OF CLEARWATER

BETWEEN

THE CITY OF CLEARWATER, FLORIDA

AND

K & P CLEARWATER ESTATE, LLC

DATED AS OF January 23, 2012

THIS FIRST AMENDMENT TO THE FIRST AMENDED AND RESTATED AGREEMENT FOR DEVELOPMENT OF PROPERTY IN THE CITY OF CLEARWATER (the "Amendment") is made as of this 23 day of January, 2012 (the "Effective Date"), by and between THE CITY OF CLEARWATER, FLORIDA, a Florida municipal corporation (the "City") and K & P CLEARWATER ESTATE, L.L.C., a Florida limited liability company (the "Developer").

W I T N E S S E T H

WHEREAS, the City and Developer entered into a Development Agreement on March 3, 2005 and recorded in O.R. book 14168. Page 2397 regarding the certain property located at generally 100 Coronado Drive, 201, 215 and 219 South Gulfview Boulevard ("Developer's Property"); and

WHEREAS, the City and Developer subsequently amended the Agreement on March 22, 2006 and recorded in Pinellas County Records O.R. Book 15023, Page 1494-1500;

WHEREAS, the City and the Developer entered into to a First Amended and Restated Development Agreement on December 30, 2008, as recorded in O.R. Book 16466, Pages 1500-1640, Public Records of Pinellas County, Florida (the "Development Agreement"); and

WHEREAS, one of the major elements of the City's revitalization effort is a preliminary plan for the revitalization of Clearwater Beach entitled *Beach by Design*;

WHEREAS, *Beach by Design* called for the construction of pedestrian-oriented improvements along the east and west sides of South Gulfview Boulevard ("South Gulfview"), which improvements are known as Beach Walk;

WHEREAS, the City adopted *Beach by Design* pursuant to the Pinellas Planning Council's Rules in support of the Comprehensive Plan adopted by the City;

WHEREAS, *Beach by Design* created a limited number of catalytic resort projects to reposition and re-establish Clearwater Beach as a quality, family resort community and further provided for a limited pool of additional hotel units ("Destination Resort Density Pool") to be made available for such projects;

WHEREAS, the Destination Resort Density Pool ("DRDP") has a limited life after which time the unused units will expire; and

WHEREAS, the Developer was allocated 250 DRDP units in 2005 and committed to promptly commence construction; and

WHEREAS, as a result of the Developer's commitment, the City accelerated construction of Beach Walk; and

WHEREAS, the Developer's failure to perform resulted in slower redevelopment of the area and reduced ad valorem taxes for the property; and

WHEREAS, all other units allocated from the DRDP have been constructed; and

WHEREAS, a key criteria for eligibility for the Destination Resort Density Pool is the operation of a proposed project as resort hotel operating under a national or international "flag" or other comparable marketing affiliation or program;

WHEREAS, the Developer proposes to develop a resort hotel including both a high end resort hotel and a mid range resort hotel and associated amenities on certain property fronting on South Gulfview and, subject to the mutual promises set forth of this Amendment; and

WHEREAS, Developer has requested a three (3) year extension to the commencement date for the Project as provided herein; and

WHEREAS, in consideration for such extension the City requires and the Developer agrees to certain assurances that the Project will be aggressively and actively pursued; and

WHEREAS, the Developer proposes to reduce the gross area of the previously approved Project by approximately 160,000 square feet which will require a modification of Exhibit B to be reviewed for consistency with Beach By Design by City Council at a later date; and

WHEREAS, the City has conducted such hearings as are required by and in accordance with Chapter 163.3220 Fla. Stat. (2010) and any other applicable law; and

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

WHEREAS, the City has conducted public hearings as required by § 4-206 and 4-606 of the Community Development Code;

WHEREAS, at a duly called public meeting on _____, 2012, the City Council approved this Amendment and authorized and directed its execution by the appropriate officials of the City;

WHEREAS, approval of this Amendment 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 Amendment and has duly authorized certain individuals to execute this Amendment on Developer's behalf;

WHEREAS, the City and the Developer desire to amend certain terms and provisions of the Development Agreement, as more fully set forth herein below.

NOW, THEREFORE the City and the Developer agree as follows:

1. That Section 1.01 paragraphs 14 and 18 are hereby amended to read as follows:

14. "Interval Ownership Units" means a maximum of 200 interval ownership/timeshare units as defined in the Community Development Code, which will be sold to more than one owner for use for a period of time not to exceed 30 consecutive days. The Applicant is no longer seeking interval ownership/timeshare use for units, therefore paragraph 14 is hereby intentionally deleted as are all references to same contained herein.

18. "Meeting Space" means any building floor area within the Project which can be used for conference or meeting activities. A breakdown of the floor area dedicated to meeting space is attached hereto as Exhibit "O," and listed herein below:

Grand Ballroom:	11,000 square feet
Junior Ballroom:	7,500 square feet
Meeting Rooms:	4,100 square feet

2. Section 2.03(1)(c) and (d) are hereby amended as follows:

2.03. Scope of the Project.

* * * * *

c. Hotel – The Hotel shall include 250 Hotel Units, a minimum of twenty thousand (20,000) square feet of Meeting Space and other amenities accessory to the Hotel, including, but not limited to restaurants, bars, exercise and spa facilities, outdoor recreation space, storage, back office and administration areas and other functional elements related to the Hotel, including not more than thirty-seven thousand (37,000) square feet of retail/ restaurant floor area as described in Exhibit O attached hereto. Hotel Units shall be required to be submitted to a rental program requiring that such units be available for overnight hotel guests on a transient basis at all times, subject to force majeure events or renovation activities making such rooms unavailable for occupancy.

d. ~~Timeshare~~ The portion of the Resort Hotel where the Interval Ownership Units shall be located as shown on the Development Plan in Exhibit B. Such area shall include no more than the 200 Existing Hotel Units and shall not include the 250 Destination Resort Density Pool.

3. Section 3.01 paragraph 3 is hereby amended to read as follows:

3. Grant of Additional Hotel Units. Subject to the terms and conditions of this Agreement and compliance with applicable law, the City hereby allocates and grants to Developer from the Destination Resort Density Pool the right to build two hundred fifty (250) hotel rooms in addition to the Existing Hotel Units, making the Project Site eligible to contain a maximum of four hundred fifty (450) Resort Hotel Units. The allocation of the Destination Resort Density Pool Units shall expire and be of no further force and effect unless Developer completes payment of Developer's *Pro Rata* Share as provided in Paragraph 5.05 and the Commencement Date occurs on or before three (3) years after the Effective Date of this Agreement. Notwithstanding the foregoing, the Developer may request an amendment to this Agreement as provided by the Community Development Code. ~~The Applicant hereby requests City hereby grants a three year an extension of the Effective Commencement Date from February 11, 2012 to on or about February 11, 2012 three (3) years from the effective date of this amendment which is contemplated to be February 11, 2012. The parties acknowledge that Developer has completed payment of the Pro-rata share as required by the Agreement.~~

4. Section 3.03 paragraph 2. is hereby amended to read as follows:

2. Reservation of Capacity. The City hereby agrees and acknowledges that, as of the Effective Date of this Agreement, the Project satisfies the concurrency requirements of Florida law. The City agrees to reserve the required capacity to serve the Project for the Developer and to maintain such capacity until three (3) years following the Effective Date of this Amendment. The City recognizes and acknowledges that the Developer will rely upon such reservation in proceeding with the Project. ~~The Applicant hereby requests an extension of the Effective Date from February 11, 2009 to on or about February 11, 2012.~~

5. Section 5.04 Paragraph 10. is hereby added to read as follows:

10. Performance Assurance Milestones

As an inducement to the City to extend the time periods as provided herein, the Developer agrees to the following Performance Assurance Milestones, listed herein as follows:

- a) On or before February 12, 2012, Developer shall pay \$1,000,000 into an interest bearing escrow account pursuant to a written escrow agreement. Developer, as an additional condition to the extension, shall provide a copy of the executed contract with the Architect for the design of the development and preparation of working drawings.
- b) (1) If Developer has filed the application for the building permit for the project on or before February 12, 2013, on February 12, 2013, an additional \$500,000 shall be required to be deposited into the interest bearing escrow account to continue the extension of the Development Agreement, increasing the principal balance of the escrow account to \$1,500,000. Failure to timely pay such additional amount into the escrow account shall terminate the Development Agreement.

(2) If Developer has not filed the application for the building permit for the project on or before February 12, 2013, an additional \$1,000,000 shall be required to be deposited into the interest bearing escrow account to continue the extension of the Development Agreement, increasing the principal balance of the escrow account to \$2,000,000. Failure to timely pay such additional amount into the escrow account shall terminate the Development Agreement.

(3) If Developer files the application for the building permit for the project after February 12, 2013, but on or before August 1, 2013, Developer shall be entitled to a \$500,000 distribution from the escrow account upon the submission of the application for the building permit for the project. In the event a design change requiring a modification to the Development Order and/or Development Agreement is mandated by the hotel flag, the entitlement to such credit shall be extended until eight (8) months following the date the design change is finally approved by the City.

c) (1) If Developer has actually pulled the building permit for the project on or before February 12, 2014, an additional \$500,000 shall be required to be deposited into the interest bearing escrow account to continue the extension of the Development Agreement, thereby increasing the principal balance in the escrow account to \$2,000,000 if the application for the building permit for the project has been timely filed and to a balance of \$2,500,000 if not. Failure to timely pay such additional amount into the escrow account shall terminate the Development Agreement.

(2) If Developer has not pulled the building permit for the project on or before February 12, 2014, an additional \$1,000,000 shall be required to be deposited into the interest bearing escrow account to continue the extension of the Development Agreement, thereby raising the principal balance in the escrow account to a minimum of \$2,500,000 if the application for the building permit for the project was timely filed and to \$3,000,000 if the application for the building permit for the project was not timely filed. Failure to timely pay such additional amount into the escrow account shall terminate the Development Agreement. When Developer actually pulls the building permit for the project, Developer shall be entitled to a \$500,000 distribution from the escrow account.

d) Developer shall be entitled to immediate payment of the entire balance of the escrow account, if on or before February 12, 2015:

- 1) Developer closes on a construction loan for project construction;
- 2) Developer has commenced construction of the project; and
- 3) Developer has entered into a Management Agreement with a Hotel/Resort manager who meets the following criteria:
 - a. Demonstrated experience managing beach resort facilities;
 - b. Demonstrated experience managing quality facilities with 4 star attributes;
 - c. Demonstrated experience managing facilities that participate in Flag hotel franchise programs;

- d. Demonstrated experience managing hotel facilities with large volume food and beverage operations; and
- e. Demonstrated experience managing group/convention sales efforts for resort facilities.

e) If the Developer does not close on the construction loan and actually commence construction on or before February 12, 2015, or if Developer does not make a timely escrow deposit as required herein; or if Developer does not enter into a Management Agreement with a Hotel/Resort manager who meets the above criteria on or before February 12, 2015, on or before the anniversary of the extension grant, City shall be entitled to immediate distribution of the escrow deposit upon its demand to the Escrow Agent and the extension of the term of the Development Agreement will terminate.

f) The escrow agent shall be Macfarlane, Ferguson & McMullen, P.A. and the City and Developer shall be parties to an Escrow Agreement, a copy of which is attached hereto. The escrow agent shall be permitted to enter into an agreement, as approved by the City, for the cash management of the funds held in escrow with any earnings thereon distributable to the Developer annually. Monthly statements shall be rendered for such account and provided to Developer and City. Developer shall restore any losses incurred by the escrow account on account of fluctuations in the value of permitted investments thereof within 30 days of the date of any statement evidencing any reduction in the balance of such account below the minimum principal balance required as of such date.

g) ~~Except as modified hereby or the terms of the Application for the Amendment of the First Amended and Restated Development Agreement, the terms of the First Amended and Restated Development Agreement dated 12/30/08 are hereby ratified and confirmed.~~

6. Section 16.03 paragraph 1 is hereby amended to read as follows:

1. All notices, demands, requests for approvals or other communications given by either party to another shall be in writing, and shall be sent by registered or certified mail, postage prepaid, return receipt requested or by courier service, or by hand delivery to the office for each party indicated below and addresses as follows:

To the Developer:

K & P Clearwater Estate, LLC
Attn: Dr. Kiran C. Patel
5600 Mariner, Suite 200
Tampa, FL 33609

with copies to:

J. Paul Raymond, Esq.
625 Court Street, Suite 200
Clearwater, FL 33756

To the City:

City of Clearwater
112 S. Osceola Avenue
Clearwater, FL 33756
Attn: City Manager

with copies to:

Pamela K. Akin, Esq.
Clearwater City Attorney
112 S. Osceola Avenue, 3rd Floor

Clearwater, FL 33756

7. **Effective Date.** As provided by §163.3239, Florida Statutes (2010), this agreement will become effective after being recorded in the public records in the county and 30 days after having been received by the state land planning agency. ~~The Applicant hereby requests an extension of the Effective Date from February 11, 2009 to on or about February 11, 2012.~~

IN WITNESS WHEREOF, the parties hereto have set their hands and their respective seals affixed as of the date set forth in the first paragraph of this Amendment.

THE CITY OF CLEARWATER, FLORIDA

Countersigned:

By: Frank V. Hibbard
Frank V. Hibbard, Mayor

By: William B. Horne II
William B. Horne II, City Manager

Approved as to form:

By: Pamela K. Akin
Pamela K. Akin, City Attorney

ATTEST:

By: Rosemarie Call
Rosemarie Call, City Clerk



OWNER:

~~K & P CLEARWATER ESTATES, LLC~~

Witness:

Patty Tibboits
Patty Tibboits
Printed Name:

By: [Signature]
~~Dr. Kiran C. Patel as Managing~~
~~Member of K & P Holdings, L.C.,~~
~~General Partner of K & P~~
~~PARTNERS LIMITED~~
~~PARTNERSHIP, A FLORIDA~~
~~LIMITED PARTNERSHIP,~~
~~Managing Member of K & P~~
~~Clearwater Estate, LLC~~

EXHIBIT B

PRELIMINARY PROJECT PLANS

[Project Site Plan and Architectural Plans]

A-0

10/07/2013

NICHOLS
BROSCH
WURST
WOLFE
& ASSOCIATES, INC.
Architecture & Planning



Wynndham Grand Resort

100 Coronado Drive
Clearwater, FL 33767

5
4
3
2



EA PLAN LEVEL 600 - 1100
EA PLAN LEVEL 1400
EA PLAN LEVEL 1500
DE
LDING ELEVATION

Sheet Name

Wyndham Grand Resort

100 Coronado Drive
Clearwater, FL 33767

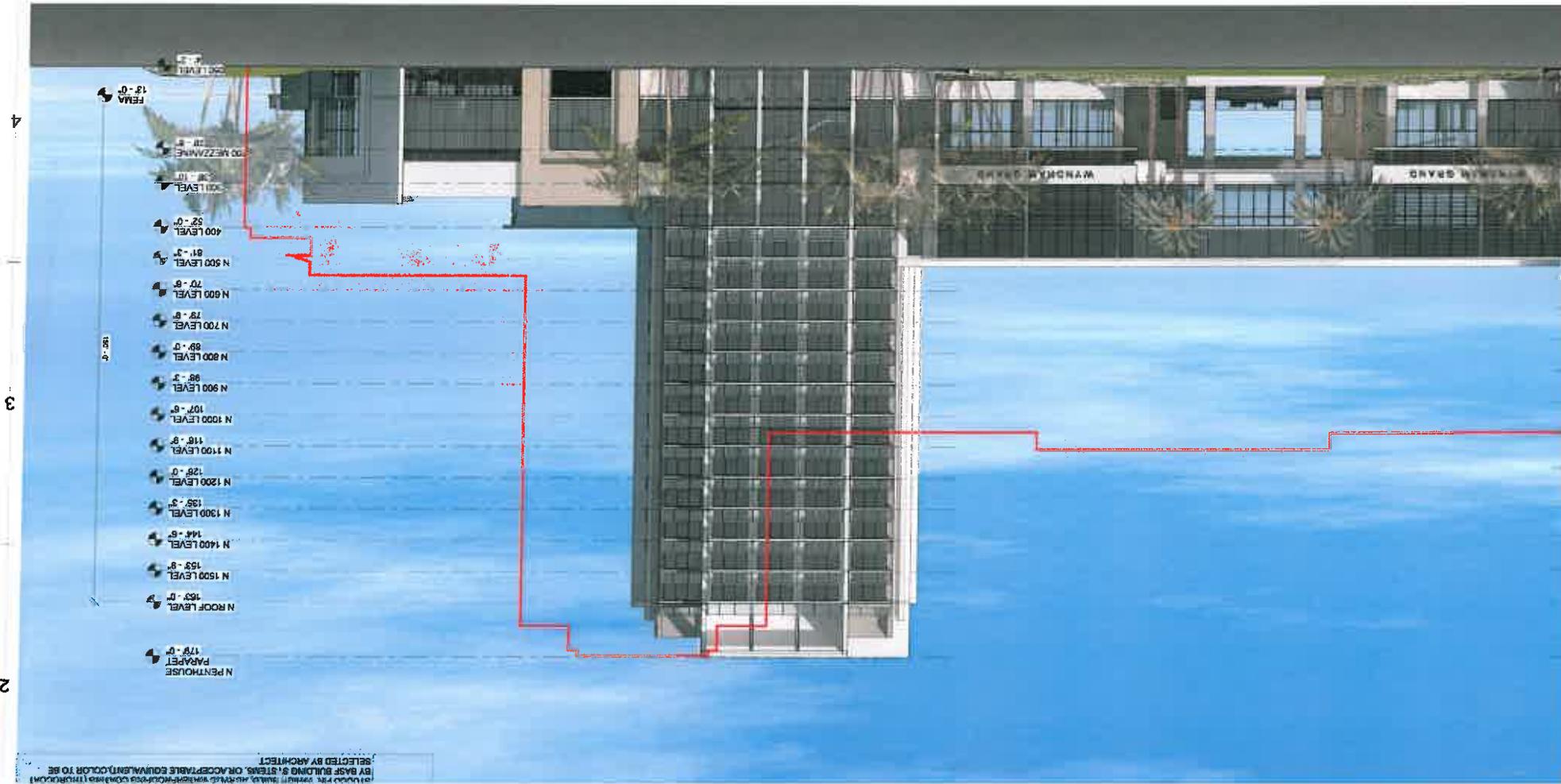


NICHOLS
BROSCH
WURST
WOLFE
Architecture & Interiors

A-12

10/07/2013

1 EAST (CORONADO STREET) ELEVATION
1
A-12
1" = 20'-0"



WYNDHAM GRAND RESORT
Clearwater Beach, FL

SCHEDULE 0

MEETING SPACE	
GRAND BALLROOM	16,959 GSF
(DIVISIBLE INTO JR. BALLROOM & MULTIPLE SALONS)	
MEETING ROOMS	8,044 GSF
(7 MEETING ROOMS)	
TOTAL MEETING SPACE	25,003 GSF
FOOD & BEVERAGE	
HOTEL INDOOR SEATING AREA	3,442 GSF
HOTEL OUTDOOR SEATING AREA	3,125 GSF
BARISTA (COFFEE / BAR)	562 GSF
HOTEL KITCHEN AREA	4,264 GSF
POOL BAR OUTDOOR SEATING AREA	1,697 GSF
POOL BAR KITCHEN AREA	1,671 GSF
TOTAL FOOD & BEVERAGE	14,761 GSF
SPA & FITNESS	
SPA	5,930 GSF
FITNESS	1,617 GSF
TOTAL SPA & FITNESS	7,547 GSF
GROUND LEVEL RETAIL	
(BEACH WALK LEVEL)	1,812 GSF

Escrow Agreement

This Escrow Agreement effective this ____ day of _____, 2014, by and between K & P Clearwater Estate, LLC (“Developer”), City of Clearwater, Florida (“City”) and First American Title Insurance Company (“Escrow Agent”).

Recitals

A. A SECOND AMENDMENT TO THE FIRST AMENDED AND RESTATED AGREEMENT FOR DEVELOPMENT OF PROPERTY (the “Second Amendment”) was entered into as of the ____ day of _____, 2014 (the “Effective Date”), by and between THE CITY OF CLEARWATER, FLORIDA, a Florida municipal corporation (the “City”) and K & P CLEARWATER ESTATE, L.L.C., a Florida limited liability company (the “Developer”

B. Under the terms of the Second Amendment, the Escrow Agent is to hold deeds from Developer to the City and from the City to the Developer, subject to the terms of this Escrow Agreement.

Agreement

NOW, THEREFORE, in consideration of the Recitals, the parties agree as follows:

1. **Appointment of Escrow Agent.** Developer and City hereby appoint Escrow Agent as escrow agent pursuant to the Agreement and said Escrow Agent agrees to serve in such capacity in accordance with the terms hereof. Developer and City agree to delivery their respective deeds to complete the Exchange Agreement (Exhibit k to the Development Agreement between Developer and City originally dated March 3, 2005, and recorded in OR Book 14168, Page 2397, as the same has been amended from time to time to be held and delivered by it pursuant to the terms hereof.
2. **Escrow Deliveries.** City has executed a QCD conveying certain property to Developer and acknowledging satisfaction of certain contingencies contained in a

the Vacation Ordinances enumerated in the Quit Claim Deed attached hereto from the City to Developer and in the Development Agreement between City and Developer and irrevocably delivered such deed to Escrow Agent to deliver to Developer conditioned only upon the commencement of construction by Feb 12, 2015.

Developer has executed a deed conveying certain property to City and irrevocably delivered such deed to Escrow Agent to deliver to City conditioned only upon the delivery of the QCD described above. The Escrow Agent, through its authorized agent, has delivered an owner's title commitment to City committing to issue an owner's title policy relating to the property to be conveyed to the City by Developer. Said policy shall be issued as soon as practical following the delivery of the deed out of escrow.

Escrow agent is authorized and directed to deliver the deeds to the respective grantees thereof upon commencement of construction by Developer of the resort hotel. It is hereby agreed commencement of vertical construction shall mean the recordation of a notice of commencement and the actual commencement of any work pursuant thereto. Escrow Agent shall be authorized to deliver such deeds three (3) days after notifying City in writing of its receipt of written notice by the general contractor certifying that construction has commenced absent receipt of the City's objection to such delivery.

Should escrow agent not receive the general contractor's notice of commencement of construction on or before February 12, 2015, Escrow agent shall be authorized to return the deeds to the respective grantor thereof.

3. **Limit on Escrow Agent's Duties.** Escrow Agent undertakes and agrees to perform only such duties as expressly set forth herein. The duty of the Escrow Agent hereunder shall be limited to the safekeeping of the Deeds and the disposition of same in accordance with the provisions of this Agreement. Except to the extent provided to the contrary in this Agreement, the Escrow Agent shall have the right, but not the obligation, to require written instruments signed by all parties to this Agreement confirming its authority to act in a proposed manner.

4. **Indemnification of Escrow Agent.** The undersigned acknowledge that Escrow Agent has entered into this Agreement at their specific request and, in order to induce Escrow Agent to accept said escrow, do hereby agree to indemnify and hold Escrow Agent harmless from all loss, cost and expense, including reasonable attorneys' fees and court costs, which it may suffer or incur as a result of acting as Escrow Agent under this Agreement. In the event of any dispute as to the disposition of the Deeds deposited with Escrow Agent, Escrow Agent shall

have the right to bring a suit in interpleader in any court of competent jurisdiction naming the parties to this Agreement and any other parties as may be appropriate in the opinion of Escrow Agent. The undersigned shall indemnify and hold harmless Escrow Agent from all costs, including attorneys' fees, in connection with such interpleader action. Upon the filing of said suit and deposit of the deeds with the clerk of the Court, Escrow Agent shall have the right to withdraw from said suit, and all obligations of Escrow Agent shall cease and terminate.

5. Notices:

(a) Any notice or demand given or required by any party hereunder shall be in writing and shall be sufficiently given or served by being deposited, postage prepaid, in a United States Post Office depository, sent by registered mail or certified mail, return receipt requested, or by hand delivery to the addresses stated on the signature pages hereof. Simultaneous with any notice or demand or written instruction by Developer or City, such party shall send a copy to the other party and to Escrow Agent by fax and email at the fax number and email addresses set forth below, but the giving of fax and/or email notices shall NOT substitute for giving the notice by certified mail, return receipt requested or hand delivery.

(b) Escrow Agent may act upon any written notice, request, waiver, certificate, receipt, authorization, power of attorney or other instrument or document which complies with the terms hereof and which Escrow Agent in good faith believes to be genuine and to be what it purports to be.

6. Controlling Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida.

7. Litigation Costs. In connection with any litigation arising out of this Agreement, the prevailing party therein shall be entitled to recover from the non-prevailing party all costs incurred in connection therewith including, without limitation, all attorneys' fees, paralegals' fees and court costs, whether incurred at bankruptcy, administrative, trial and/or appellate levels or proceedings.

Agreed to and acknowledged this _____ day of _____, 2014.

DEVELOPER

K & P Clearwater Estate, LLC, a
Florida limited liability company

By: K & P Partners Limited

Partnership, Manager
By: K & P Holding, LC, general
partner

By: _____
Name: Kiran C. Patel, M.D.
Title: Manager

5600 Mariner, Suite 200
Tampa, Florida 33609
813-506-6000

ESCROW AGENT
First American Title Insurance
Company

By: _____
Name: _____
Title: _____
Telephone: _____
Fax# _____
Date: _____, 2014

Countersigned: _____ CITY OF CLEARWATER, FLORIDA

George N. Cretekos, Mayor
By: _____
William B. Horne, II, City Manager

Approved as to form: _____
Pamela K. Akin
City Attorney
Attest: _____
Rosemarie Call
City Clerk

PREPARED BY AND RETURN TO:

J. PAUL RAYMOND, Esquire
Macfarlane Ferguson & McMullen
625 Court Street, Suite 200
Post Office Box 1669 (33757)
Clearwater, Florida 33756

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED made this _____ day of _____, 2014, by and between **K & P CLEARWATER ESTATE, LLC**, a Florida limited liability company, whose address is 5600 Mariner Street, Suite 140, Tampa, FL 33609, hereinafter called the "Grantor", to **CITY OF CLEARWATER, FLORIDA**, a Florida municipal corporation, whose address is 112 S. Osceola Avenue, Clearwater, FL 33756, hereinafter called the "Grantee". Whenever used herein, the terms "Grantor" and "Grantee" shall include all of the parties to this instrument and their heirs, legal representatives, successors and assigns.

WITNESSETH:

THAT THE GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, the receipt whereof is hereby acknowledged, by these presents, does grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, all that certain land situate in Pinellas County, Florida, (the "Premises"), being more particularly described on Exhibit "A" attached hereto and made a part hereof.

THIS CONVEYANCE is made subject to the exceptions set forth on Exhibit "B" attached hereto and made a part hereof.

TOGETHER WITH all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND the Grantor hereby covenants with the said Grantee that is lawfully seized of said land in fee simple; that it has good right and lawful authority to sell and convey said land; that it hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under the said Grantor, but not otherwise.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name, and its seal to be affixed hereunto, affixed, by its proper officers, thereunto duly authorized, the day and year first above written.

In the Presence of:

K & P CLEARWATER ESTATE, LLC,
a Florida corporation

Print Name: _____

By: _____ (SEAL)

Name _____

Title _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF PINELLAS

I HEREBY CERTIFY that before me personally appeared _____ as _____ of K & P CLEARWATER ESTATE, LLC, a Florida limited liability company, to me personally known to be the person described in and who executed the foregoing instrument or has produced _____ as identification and who acknowledged the execution thereof, for the uses and purposes therein expressed.

WITNESS my hand and official seal at _____, said County and State, this day of _____, 2014.

Notary Public
Print Name _____

My Commission Expires:

EXHIBIT "A"

Parcel C

The Easterly 18 feet of Lot 93; together with the Westerly 1.86 feet of the right of way of Coronado Drive abutting Lot 93, LLOYD-WHITE-SKINNER SUBDIVISION as recorded in Plat Book 13, Pages 12 and 13, Public Record of Pinellas County, Florida;

Together with a portion of Lot 1, Block A, COLUMBIA SUBDIVISION as recorded in Plat Book 23, Page 60, Public Records of Pinellas County, Florida and together with a portion of the Westerly 1 foot of the platted right of way of Coronado Drive adjacent to said Lot 1, all of the above being further described as follows:

Beginning at the Southeast corner of Lot 93, LLOYD-WHITE-SKINNER SUBDIVISION, thence N84°27'30"W along the Southerly boundary of Lot 93 a distance of 18.00 feet; thence N05°32'30" E along a line 18 feet Westerly of and parallel to the Easterly boundary of said Lot 93 a distance of 132.32 feet; thence 5.24 feet along the arc of a curve to the left having a radius of 40.00 feet, a chord of 5.23 feet and a chord bearing N01°47'31" E to a point on a non-tangent curve; thence 35.43 feet along the arc of said curve in the right having a radius of 28.66 feet, a chord of 33.22 feet and a chord bearing S30°04'20"E; thence N90°00'00"E, along the Easterly projection of the Northerly boundary of said Lot 93 a distance of 0.86; thence S05°32'30"W, along a line 1.86 feet Easterly of and parallel to the Easterly boundary of said Lot 93 a distance of 110.62 feet; thence N84°27'30"W a distance of 1.86 feet to the point of beginning.

AND

Parcel D

The Easterly 18.0 feet of Lots 97, 98, 99, 100, and 101;
Together with the Easterly 18.0 feet of Lot 102 less the Southerly 30.0 feet thereof, LLOYD-WHITE-SKINNER SUBDIVISION as recorded in Plat Book 13, Pages 12 and 13, Public Records of Pinellas County, Florida.

EXHIBIT "B"

1. Subject to taxes for the year 2014 and subsequent years, not yet due and payable.
2. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of LLOYD-WHITE-SKINNER SUBDIVISION, as recorded in Plat Book 13, Page(s) 12 and 13, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
3. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of COLUMBIA SUBDIVISION, as recorded in Plat Book 23, Page(s) 60, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
4. Terms and conditions of the Agreement for Development Property between The City of Clearwater, a Florida municipal corporation and K & P Clearwater Estate, LLC., dated March 3, 2005 recorded in Book 14168, Page 2397; as amended by the First Amendment thereto recorded in Book 15023, Page 1494; and by First Amended and Restated Agreement for Development of Property recorded in Book 16466, Page 1500.
5. Terms, conditions, and provisions contained Reciprocal Air Rights Easement Agreement recorded in Book 15847, Page 1778.

PREPARED BY AND RETURN TO:

J. PAUL RAYMOND, Esquire
Macfarlane Ferguson & McMullen
625 Court Street, Suite 200
Post Office Box 1669 (33757)
Clearwater, Florida 33756

QUIT CLAIM DEED

THIS INDENTURE, made this _____ day of _____, 2014, between **CITY OF CLEARWATER**, a Florida municipal corporation, of the County of Pinellas, in the State of Florida, Party of the First Part, whose mailing address is 112 S. Osceola Avenue, Clearwater, FL 33756, and **K & P CLEARWATER ESTATE, LLC**, a Florida municipal corporation, of the County of Pinellas, in the State of Florida, Party of the Second Part, whose mailing address is 5600 Mariner Street, Suite 140, Tampa, FL 33609.

WITNESSETH, that the said Party of the First Part, for and in consideration of the sum of Ten and no/100 Dollars (\$10.00), in hand paid by the said Party of the Second Part, the receipt whereof is hereby acknowledged, has remised, released and quit claimed, and by these presents does remise, release and quit claim unto the said Party of the Second Part all the right, title, interest claim and demand which the said Party of the First Part has in and to the following described lot, piece or parcel of land, situate lying and being in the County of Pinellas, State of Florida, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

TO HAVE AND TO HOLD the same, together with all the singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of the said Party of the First Part, either in law or equity, to the only proper use, benefit and behoof of the said Party of the Second Part.

1-All conditions to the effectiveness of the ordinances listed below have been performed, satisfied or waived:

Ordinance No. 7372-05, recorded OR Book 14168, Page 2536

Ordinance No. 7598-06 recorded OR Book 15023, Page 1518

Ordinance No. 7947-08 recorded OR Book 16229, Page 1974

Ordinance No. 7948-08 recorded OR Book 16229, Page 1978

Ordinance No. 8041-09 recorded OR Book 16522, Page 809

Ordinance No. 8040-09 recorded OR Book 16522, Page 812

Ordinance No. 8308-12 recorded OR Book 17488, Page 1091

Ordinance No. 8309-12 recorded OR Book 17488, Page 1094

2-All obligations of the Grantee arising under paragraph 5.05 of the Development Agreement between Grantor and Grantee originally dated March 3, 2005, and recorded in OR Book 14168, Page 2397, as the same has been amended from time to time, have been performed.

All references to OR Book and Pages means Official Record Books and Pages of the Public Records of Pinellas County, Florida.

IN WITNESS WHEREOF, the said Party of the First Part has hereunto set our hand and seal the day and year first above written.

Countersigned: **CITY OF CLEARWATER, FLORIDA**

George N. Cretekos, Mayor

By: _____
William B. Horne, II, City Manager

Approved as to form:

City Attorney

Attest: _____

Deputy City Clerk

STATE OF FLORIDA
COUNTY OF PINELLAS

I HEREBY CERTIFY, that on this day personally appeared George N. Cretekos, the Mayor of the City of Clearwater, Florida to me well known to be the person who executed the foregoing instrument and acknowledged the execution thereof to be his act and deed for the use an purposes herein set forth

Witness my hand and official seal this _____ day of _____, 2014.

Notary Public
Print Name _____
My Commission Expires: _____

STATE OF FLORIDA
COUNTY OF PINELLAS

I HEREBY CERTIFY, that on this day personally appeared William B. Horne, II the City Manager of the City of Clearwater, Florida to me well known to be the person who executed the foregoing instrument and acknowledged the execution thereof to be his act and deed for the use an purposes herein set forth.

Witness my hand and official seal this _____ day of _____, 2014.

Notary Public

Print Name

My Commission Expires: