

TABLE OF CONTENTS

ARTICLE 1. DEFINITIONS	2
Section 1.01 Definitions	2
Section 1.02 Use of Words and Phrases	4
Section 1.03 Florida Statutes	4
ARTICLE 2. PURPOSE, PROPOSAL AND DESCRIPTION OF PROJECT	4
Section 2.01 Finding of Public Benefit and Purpose	4
Section 2.02 Purpose of Agreement	5
Section 2.03 Scope of Project	5
Section 2.04 Cooperation of the Parties	7
ARTICLE 3. REGULATORY PROCESS	7
Section 3.01 Land Development Regulations	7
Section 3.02 Development Approvals and Permits	8
Section 3.03 Concurrency	9
ARTICLE 4. PLANS AND SPECIFICATIONS	10
Section 4.01 Preparation of Plans and Specifications	10
ARTICLE 5. PROJECT DEVELOPMENT	10
Section 5.01 Ownership of Project Site	10
Section 5.02 Project Site	10
Section 5.03 City Option to Purchase	11
Section 5.04 City's Obligations	11
Section 5.05 Obligations of the Developer	14
ARTICLE 6. PROJECT FINANCING	18
Section 6.01 Notice of Project Financing to City	18
Section 6.02 Copy of Default Notice to City	19
Section 6.03 City Option to Pay Mortgage Debt or Purchase Project	19
ARTICLE 7. CONSTRUCTION	20
Section 7.01 Site Work	20

Section 7.02 Construction	20
Section 7.03 Construction Completion Certificate	22
Section 7.04 City Not in Privity	23
Section 7.05 Construction Sequencing and Staging Area	24
ARTICLE 8. INDEMNIFICATION	24
Section 8.01 Indemnification by the Developer	24
Section 8.02 Indemnification by the City	25
Section 8.03 Limitation of Indemnification	26
ARTICLE 9. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DEVELOPER	26
Section 9.01 Representations and Warranties	26
Section 9.02 Covenants	28
ARTICLE 10. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CITY	29
Section 10.01 Representations and Warranties	29
Section 10.02 Covenants	30
ARTICLE 11. CONDITIONS PRECEDENT	31
Section 11.01 The Developer Acquiring Project Site	31
Section 11.02 Construction of Project	32
Section 11.03 Responsibilities of the Parties for Conditions Precedent	32
ARTICLE 12. DEFAULT; TERMINATION	32
Section 12.01 Project Default by the Developer	32
Section 12.02 Default by the City	34
Section 12.03 Obligations, Rights and Remedies Cumulative	36
Section 12.04 Non-Action on Failure to Observe Provisions of this Agreement	36
Section 12.05 Termination	36
Section 12.06 Termination Certificate	38
ARTICLE 13. RIGHT TO CONTEST	38
Section 13.01 Right to Contest	38
Section 13.02 Conditions	38

ARTICLE 14. ARBITRATION	39
Section 14.01 Agreement to Arbitrate	39
Section 14.02 Appointment of Arbitrators	39
Section 14.03 General Procedures	40
Section 14.04 Majority Rule	41
Section 14.05 Replacement of Arbitrator	41
Section 14.06 Decision of Arbitrators	41
Section 14.07 Expense of Arbitration	42
Section 14.08 Accelerated Arbitration	42
Section 14.09 Applicable Law	43
Section 14.10 Arbitration Proceedings and Records	43
ARTICLE 15. UNAVOIDABLE DELAY	43
Section 15.01 Unavoidable Delay	43
ARTICLE 16. RESTRICTIONS ON USE	44
Section 16.01 Project	44
ARTICLE 17. FIRE OR OTHER CASUALTY; CONDEMNATION	44
Section 17.01 Loss or Damage to Project	44
Section 17.02 Partial Loss or Damage to Project	45
Section 17.03 Project Insurance Proceeds	45
Section 17.04 Notice of Loss or Damage to Project	45
Section 17.05 Condemnation of Project or Project Site; Application of Proceeds	45
ARTICLE 18. MISCELLANEOUS	46
Section 18.01 Assignments	46
Section 18.02 Successors and Assigns	47
Section 18.03 Notices	47
Section 18.04 Applicable Law and Construction	48
Section 18.05 Venue; Submission to Jurisdiction	48
Section 18.06 Estoppel Certificates	49
Section 18.07 Complete Agreement; Amendments	49
Section 18.08 Captions	49
Section 18.09 Holidays	49
Section 18.10 Exhibits	49

Section 18.11	No Brokers	50
Section 18.12	Not an Agent of City	50
Section 18.13	Memorandum of Development Agreement	50
Section 18.14	Public Purpose	50
Section 18.15	No General Obligation	50
Section 18.16	Other Requirements of State Law	50
Section 18.17	Technical Amendments, Survey Corrections	51
Section 18.18	Term; Expiration; Certificate	51
Section 18.19	Approvals Not Unreasonably Withheld	51
Section 18.20	Effective Date	51

EXHIBITS

Legal Description of Controlled Property & Right of Way to Be Vacated A
Project Description B
Project Site C
Project Development Schedule D
Covenant Trip Generation Management Program E
Covenant Regarding Hurricane Watch Closure F
List of Required Permits & Approvals G
Public Improvements H
Appraisal Instructions I
Café Seating J
Covenant of Unified Use K
License Agreement L

This Agreement for Development of Property (the "Agreement") is made as of this 13th day of March, 2001, by and between THE CITY OF CLEARWATER, FLORIDA, a Florida municipal corporation (the "City"), and CLEARWATER SEASHELL RESORT, L.C., a Florida limited liability company (the "Developer").

WITNESSETH:

WHEREAS, the City of Clearwater has embarked on a community revitalization effort for Clearwater Beach;

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

WHEREAS, *Beach by Design* identifies a need for additional public parking on Clearwater Beach;

WHEREAS, *Beach by Design* calls for the removal and replacement of surface parking spaces located to the west of South Gulfview to the south of Pier 60 Park;

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

WHEREAS, Clearwater Seashell Resort, L.C. has proposed to develop a mixed use project on certain property fronting on South Gulfview (the "Project Site") and has proposed to include at least seven hundred and fifty (750) parking spaces of which at least four hundred (400) spaces shall be open to the public;

WHEREAS, it is necessary that the City take certain actions in order to make it possible for Clearwater Seashell Resort, L.C. to develop the Project Site in accordance with the goals and objectives of *Beach by Design*;

WHEREAS, the City has conducted such hearings as are required by and in accordance with Chapter 163.3220 et seq. Fla. Stat. and applicable law;

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

WHEREAS, at a duly called public meeting on March 1, 2001, the City Commission approved this Agreement, and authorized and directed its execution by the appropriate officials of the City; and

WHEREAS, the members of Clearwater Seashell Resort, L.C. have approved this Agreement and has authorized certain individuals to execute this Agreement on its behalf.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

ARTICLE 1. DEFINITIONS.

1.01. Definitions. The terms defined in this Article 1 shall have the following meanings except as herein otherwise expressly provided:

1. "Agreement" means this Agreement for Development of Property including any Exhibits and any amendments thereto.
2. "*Beach by Design*" or "Plan" means the strategic redevelopment plan for Clearwater Beach dated 2001 which was adopted by the City Commission pursuant to the provisions of the Pinellas County Planning Council's Rules for the designation of a Community Redevelopment District.
3. "City" means the City of Clearwater, Florida, a Florida municipal corporation.
4. "City Commission" means the governing body of the City.
5. "Commencement Date" means the date on which Developer commences or causes a Contractor to commence construction (see Section 5.05(12)).
6. "Completion Date" means the date on which the last certificate of occupancy required for the Project is issued.
7. "Construction Completion" means the date a Construction Completion Certificate is issued (see Section 7.03).
8. "Controlled Property" means those properties within the Project Site which are subject to a purchase contract in favor of the Developer or an affiliate or nominee on the Effective Date of this Agreement (see Section 5.01) which are more particularly described in the legal description set out in Exhibit A to this Agreement.
9. "Developer" means, for the purposes of this Agreement, Clearwater Seashell Resort, L.C. and its successors and assigns as provided in Article 18.
10. "Effective Date" means the date of approval and execution of this Agreement.

11. "Exhibits" means those agreements, diagrams, drawings, specifications, instruments, forms of instruments, and other documents attached hereto and designated as exhibits to, and incorporated in and made a part of, this Agreement.
12. "Garage Access Improvements" means the pedestrian overpass, landing, arcade, elevated sidewalk, and facilities to provide concessions along the western facade of the Project which are proposed in conjunction with the development of at least four hundred (400) parking spaces as a part of the Project which are to be available to the general public and to be owned by the City, as more particularly described on Exhibits H and L.
13. "Meeting Space" means any building floor area which can be used in conjunction with conference or meeting activities.
14. "Net Cost of South Gulfview and Beach Walk Improvements" means the total cost of the improvements, including debt service, fees, and return on equity, net of: a) any impact fee credits credited against the cost of the improvements, and b) any other funding made available by or through the City which are not generated by the Project.
15. "Net increase in taxes" means that increase in revenues above the amount in either municipal ad valorem taxes or utility taxes paid by the owner of the Controlled Property as of the Effective Date of this Agreement.
16. "Permits" means all land development approvals and consents required to be granted, awarded, issued, or given by any governmental authority in order for construction of the Project, or any part thereof, to commence, continue or be completed.
17. "Plans and Specifications" means, as to each part of the Project to be developed, the site plan for the Project to be developed, filed with the City as required by the Land Development Regulations for the purpose of review and approval.
18. "Project" means, collectively, the concept of development for a resort hotel proposed by the Developer as described in Section 2.03(1) of this Agreement and the preliminary plans which are attached hereto as Exhibit B.
19. "Project Site" means the land area generally bounded by the western edge of the right-of-way of Coronado Street, on the north by the southern boundary of the Golden Sands Motel property, sometimes referred to as the "Spyglass property", on the south by the northern boundary of the property popularly known as the "Legends property," and on the west by the centerline of South Gulfview, which is more particularly described and depicted on Exhibit C (see Section 5.02).

20. "South Gulfview and Beach Walk Improvements" means the proposed realignment of South Gulfview and the construction of a thirty-five (35) foot wide promenade, a fifteen (15) foot bicycle/skating path, a fifteen (15) foot beachfront pedestrian path, fifty (50) paid surface parking spaces and associated landscaping from the northern edge of the right-of-way of First Street to a line which represents an extension of the southern wall of the South Beach Pavilion eastward to the eastern boundary of the existing right-of-way of South Gulfview, as more particularly shown on Exhibit H.
21. "Termination Date" means the date a termination certificate is issued pursuant to Article 12.
22. "Termination for Cause" means a termination which results from an uncured, material breach of the Agreement.
23. "Unavoidable Delay" means a delay as described in Article 15 hereof.
24. "Vacation of Rights-of-Way" means the abandonment of the right-of-way of Third Street between the right-of-way of Coronado and the centerline of the existing right-of-way of South Gulfview and the eastern half of the existing right-of-way of South Gulfview within the Project Site by the City in favor of Developer, in order that the goals and objectives of the Comprehensive Plan may be better accomplished.

1.02. Use of Words and Phrases. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number, and the word "person" shall include corporations and associations, limited liability corporations and partnerships, including public bodies, as well as natural persons. "Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

1.03. Florida Statutes. All references herein to Florida Statutes are to Florida Statutes (2000), as amended from time to time.

ARTICLE 2. PURPOSE AND DESCRIPTION OF PROJECT.

2.01. Finding of Public Purpose and Benefit. The proposed Project, including the acquisition of the Controlled Property by the Developer and the design, construction, completion and operation of the Project, and each part thereof, is hereby found by the parties hereto: (1) to be consistent with and in furtherance of the objectives of the Comprehensive Plan of the City of Clearwater, (2) to conform to the provisions of Florida law, (3) to be in the best interests of the citizens of the

City, (4) to further the purposes and objectives of the City, (5) to further the public interest on Clearwater Beach, and (6) to implement *Beach by Design* for South Gulfview, including the removal of parking from the dry sand beach, implementation of the South Gulfview and Beach Walk Improvements and the Garage Access Improvements to be constructed as a part of the Project.

2.02. Purpose of Agreement. The purpose of this Agreement is to further the implementation of *Beach by Design* by providing for the development of the Project Site and the construction of certain public improvements, all to enhance the quality of life, increase employment and improve the aesthetic and useful enjoyment of Clearwater Beach and the City, all in accordance with and in furtherance of the Comprehensive Plan of the City of Clearwater and as authorized by and in accordance with the provisions of Florida law.

2.03. Scope of the Project.

1. The Project shall only include public parking, private parking, resort hotel and retail uses and appropriate accessory uses and shall be developed in substantial conformity with the preliminary plans of development which are attached as Exhibit B. When all required approvals including designation of the Project Site as a "Community Redevelopment District," pursuant to the Pinellas County Planning Council's Rules which authorizes an increase in hotel unit density pursuant to the provisions of *Beach by Design* have been granted by the appropriate authorities pursuant to applicable law, the intensity of permitted use on the Project Site shall be:

Public parking - at least 400 spaces

Private parking - at least 350 spaces

Hotel - 250 units including up to 20,000 square feet of Meeting Space

Retail - not more than 50,000 square feet of floor area

If the change described in Section 3.01(2) is not approved pursuant to all applicable rules, regulations and laws and a Community Redevelopment District hotel density bonus program is not established, the City and Developer agree to work together in good faith to agree on an economically viable alternative development, which shall include at a minimum 400 parking spaces to be available to the public. In addition, if the change described in Section 3.01(2) is not approved and the City and the Developer cannot agree on an economically viable alternative development, the City and the Developer agree to negotiate a sale whereby the City may buy the

Controlled Property at fair market value, to be established by an appraisal process. The appraisals shall be conducted by two (2) appraisers retained by the City. One of the appraisers shall be selected from a list of qualified appraisers submitted to the City by the Developer. In the event that the two (2) appraisals are within twenty percent (20%) of each other, the fair market value shall be the average of the two (2) appraisals. In the event that the appraisals differ by more than twenty percent (20%), the two appraisers shall select a third appraiser from the City's master list of qualified appraisers, including the list submitted by the Developer, and the third appraiser shall select among the two (2) appraisals which in the opinion of the third appraiser most accurately represents the fair market value of the property.

2. Nothing shall preclude the Developer from developing or operating all or portions of the Project elements using any ownership format permitted under Florida Statutes including individual ownership formats.
3. Up to twenty-five percent (25%) of the hotel units may be suites with kitchens, including all typical kitchen equipment and amenities.
4. Notwithstanding any other provision of this Agreement, no occupancy in excess of thirty (30) days per stay shall be permitted in any unit which is developed as a part of the Project.
5. As a condition of the allocation of bonus hotel units pursuant to the designation of Clearwater Beach as a Community Redevelopment District pursuant to the Pinellas County Planning Council's Rules, the Developer shall comply with each of the standards established in *Beach by Design*, including:
 - a. The resort hotel which is a part of the Project shall provide a full range of on and off site amenities for the guests of the resort, including a full service restaurant, room service, valet parking, exercise facilities, pool, and meeting areas and access to boating, fishing and golf off-site. Off site amenities may be provided through a concierge service.
 - b. The resort hotel which is a part of the Project shall be operated as a Marriott Resort or other comparable national or international "flag" or brand or as part of another comparable marketing affiliation or program which will ensure the repositioning of Clearwater Beach as a national and international resort destination.
 - c. Prior to the issuance of a certificate of occupancy for the resort hotel which is a part of the Project, the Developer shall record a covenant

and restriction which is enforceable by the City, substantially in accordance with Exhibit E, limiting the use and operation of the resort, which is enforceable by the City, obligating the Developer to develop, implement and operate, at all times when the resort hotel is open, a Trip Generation Management Program which shall include the provision of non-private automobile access to and from the resort which shall include at least an airport shuttle and resort-provided transportation to off-site amenities and attractions.

- d. Prior to the issuance of a building permit authorizing the construction of the resort hotel units, the Developer shall record a covenant and restriction which is enforceable by the City, substantially in accordance with Exhibit F, on the use and operation of the resort, which is enforceable by the City, that obligates the Developer to close and vacate all persons (except for emergency personnel required to secure and protect the facilities) from the resort hotel within twelve (12) hours after the issuance of a hurricane watch by the National Hurricane Center which includes Clearwater Beach .

2.04. Cooperation of the Parties. The City and the Developer recognize that the successful development of the Project and each component thereof is dependent upon the continued cooperation of the City and the Developer, and each agrees that it shall act in a reasonable manner hereunder, provide the other party with complete and updated information from time to time, with respect to the conditions such party is responsible for satisfying hereunder and make its good faith reasonable efforts to ensure that such cooperation is continuous, the purposes of this Agreement are carried out to the full extent contemplated hereby and the Project is designed, constructed, completed and operated as provided herein.

ARTICLE 3. REGULATORY PROCESS.

3.01. Land Development Regulations.

1. Land Use Designation. The Project Site is designated Tourist District in the City's Land Development Regulations.
2. Amendments to Comprehensive Plan & Land Development Regulations. The City agrees to initiate an amendment to the Comprehensive Plan of the City of Clearwater to update the Plan to recognize the Goals and Objectives set forth in *Beach by Design* and to take all steps necessary to designate Clearwater Beach as a Community Redevelopment District in accordance with *Beach by Design* pursuant to Pinellas County Planning Council Rules; and, in the event this designation is obtained, the City shall initiate

appropriate proceedings to allocate an additional one hundred eighty-five (185) hotel units, for a total of two hundred fifty (250) hotel units to the Project Site in accordance with applicable law.

3.02 Development Approvals and Permits.

1. Applications for Development Approval. The Developer shall prepare and submit to the appropriate governmental authorities, including the City, applications for approval of all plans and specifications necessary for the Project, and shall bear all costs of preparing such applications, applying for and obtaining such permits, including payment of any and all applicable application, inspection, regulatory and impact fees or charges, subject to the provisions of Section 5.05(5). The City shall, to the extent possible, expedite review of all applications, including foundation permits. A list of all permits and approvals required to implement the provisions of this Agreement is attached as Exhibit G. The failure of this Agreement to address a particular permit, condition, or term of restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions.
2. Schedule. A Project Development Schedule is attached to this Agreement as Exhibit D that identifies specific tasks to be completed through the entire Project, starting with the issuance of a foundation permit and installation of pilings. Adherence to the schedule will enable the Developer to document a continuous construction project to the State of Florida.
3. City Cooperation and Assistance. The City shall cooperate with the Developer in obtaining all necessary Permits required for the construction, completion and opening for business of the Project. If requested by the Developer and authorized by law, the City will join in any application for any Permit, or, alternatively, recommend to and urge any governmental authority that such Permit or Permits be issued or approved.
4. City Authority Preserved. The City's duties, obligations, or responsibilities under any section of this Agreement, specifically including, but not limited to, this Section 3.02, shall not affect the City's right, duty, obligation, authority and power to act in its governmental or regulatory capacity in accordance with applicable laws, ordinances, codes or other building regulations. Notwithstanding any other provision of this Agreement, any required permitting, licensing or other regulatory approvals by the City shall be subject to the established procedures and substantive requirements of the City with respect to review and permitting of a project of a similar or comparable

nature, size and scope. In no event shall the City, due to any provision of this Agreement, be obligated to take any action concerning regulatory approvals except through its established procedures and in accordance with applicable provisions of law.

5. Impact Fees. The City shall use its best efforts to secure or provide any lawfully available credits against impact fees applicable to the Project which are authorized under existing laws and regulations for public improvements constructed and paid for by the Developer. In the event that the City is unable to secure a credit against any impact fees, the City shall use its best efforts, within the limits of the applicable law, to allocate impact fees collected from the Developer to the public improvements which are described in Exhibit H to this Agreement or other improvements in the immediate vicinity of the Project Site.

3.03. Concurrency.

1. Concurrency Required. The parties hereto recognize and acknowledge that Florida law (specifically, Part II, Chapter 163, Florida Statutes, and Rule 9J-5, Florida Administrative Code, collectively the "Growth Management Act") imposes restrictions on development if adequate public improvements are not available concurrently with that development to absorb and handle the demand on public services caused by development. The City has created and implemented a system for monitoring the effects of development on public services within the City. The Developer recognizes and acknowledges it must satisfy the concurrency requirements of Florida law and the City's regulations as applied to this Project.
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 for a period of three (3) years from the Effective Date of this Agreement and that such period shall be automatically extended for an additional three (3) years if the Developer commences construction within the initial three (3) year period. The City recognizes and acknowledges that the Developer will rely upon such reservation in proceeding with the Project.
3. Required Public Facilities. In addition to the obligations of the City and the Developer set out in Article 5 of this Agreement, the Water Utilities Department of the City will provide potable water service and sanitary sewer service to the Project.

110

ARTICLE 4. PLANS AND SPECIFICATIONS.

4.01. Plans and Specifications.

1. Responsibility for Preparation of Plans and Specifications. The Developer shall be solely responsible for and shall pay the cost of preparing, submitting and obtaining approval of the Plans and Specifications for the Project.
2. Use of Qualified Professionals. The Developer shall retain qualified professionals to prepare the Plans and Specifications and shall cause such professionals to prepare the Plans and Specifications.
3. Approval of Plans and Specifications for the Parking Spaces Which Are To Be Available to the Public. In order to ensure that the design of the parking spaces which are to be available to the public will achieve the City's purpose in making parking available on Clearwater Beach, the Plans and Specifications for the Project shall be submitted to the City for review and comment prior to the submission of any application for a building permit, other than a foundation permit. The City agrees to diligently proceed with and complete its review of the Plans and Specifications, and respond to the Developer as soon as reasonably possible after receipt thereof and advise the Developer in writing of the City's comments and objections, if any, thereto. The City shall notify the Developer in writing within thirty (30) days of receipt that the Plans and Specifications have or have not been approved, and in the case of disapproval, the specific reason(s) for such disapproval. If the Plans and Specifications submitted to the City by the Developer substantially comply with this Agreement and further the purposes of the Comprehensive Plan, the City shall approve the Plans and Specifications as submitted.

ARTICLE 5. PROJECT DEVELOPMENT.

- 5.01. **Ownership of Project Site.** The Developer is the contract purchaser of certain parcels of land within the Project Site which are more particularly described in Exhibit A to this Agreement ("Controlled Property").
- 5.02. **Project Site.** The Project Site consists of those properties located in an area which is bounded by the western right-of-way of Coronado Street, on the north by the southern boundary of a parcel of land generally known as the Golden Sands Motel property, on the south by the northern boundary of a parcel of land generally known

as the "Legends" property, and on the west by the centerline of South Gulfview as more particularly described in Exhibit C.

5.03. City's Option to Purchase. At any time within five (5) years after the issuance of a certificate of occupancy for the parking spaces which are to be available to the public, in the event that the City determines that the parking rates charged by the Developer for the parking spaces which are available to the public are unreasonable, which for the purposes of this Paragraph shall be two and thirty five one hundredths (2.35) times the parking rate necessary to cover debt service required to publicly construct a comparable parking space, the City shall have the option to purchase the parking spaces which are to be available to the public from the Developer, in the form of a condominium ownership, at the fair market value of the spaces at the time the City exercises its option. The fair market value of the parking spaces shall be determined by appraisal of the property pursuant to the appraisal instructions attached hereto as Exhibit I. The appraisals shall be conducted by two (2) appraisers retained by the City. One of the appraisers shall be selected from a list of qualified appraisers submitted to the City by the Developer. In the event that the two (2) appraisals are within twenty percent (20%) of each other, the fair market value shall be the average of the two (2) appraisals. In the event that the appraisals differ by more than twenty percent (20%), the two appraisers shall select a third appraiser from the City's master list of qualified appraisers, including the list submitted by the Developer, and the third appraiser shall select among the two (2) appraisals which in the opinion of the third appraiser most accurately represents the fair market value of the parking spaces.

5.04. City's Obligations.

1. Vacation of Rights-of-Way. The Developer shall apply for and the City Commission shall consider the adoption of an ordinance vacating the right-of-way of 3rd Street between Coronado Avenue and the centerline of the existing right-of-way of South Gulfview Drive and the eastern half of the existing right-of-way of South Gulfview Drive included within the Project Site, as depicted on Exhibit H.
2. Road and Sidewalk Improvements. The City shall take all actions necessary to allow for the re-alignment of South Gulfview Drive between 1st Street and the Adams Mark Resort and the implementation of the South Gulfview and Beach Walk Improvements, as shown on Exhibit H. South Gulfview Drive, as re-aligned, shall be traffic calmed to control speed.
3. Parking Garage. In the event that the City exercises its option to purchase public parking spaces as provided in Section 5.03 of this Agreement, not less than forty percent (40%) of the parking spaces located on the first two levels

of the garage shall be designated as public spaces and such spaces to be conveyed shall be located in discrete areas which are reasonably accessible to the point or points of access to the beach.

4. Permits. The City will cooperate and coordinate with the Developer with regard to all permit applications, including those to state agencies, and will facilitate or expedite, to the greatest extent possible, the permit approval process.
5. Authority for Café Seating. The City shall consider the adoption of a regulation authorizing the use of portions of the west thirty-five (35) feet of the South Gulfview Drive right-of-way existing on the Effective Date of this Agreement for outdoor café seating and associated activities in accordance with the terms of Exhibit J, provided that such activities shall not interfere with the use of the west half of the thirty-five (35) feet of the existing right-of-way of South Gulfview Drive for pedestrian and vehicular movement in accordance with the provisions of *Beach by Design*, including the intra-beach transit system proposed in *Beach by Design*.
6. Garage Access Improvement Approval. The City shall grant the Developer the authority to construct the Garage Access Improvements and associated pedestrian facilities extending from the Project Site across the re-aligned South Gulfview Drive to public land, as shown on Exhibit H.
7. Concessions. The City shall grant the Developer authority to operate concessions on land to the west of the existing centerline of South Gulfview Drive, subject to any existing franchise or concession rights and compliance with all requirements of the City Code, and subject to a long term license agreement to be approved by the City, substantially in the form as Exhibit L. The license agreement shall be for a term of 50 years, commencing on the date the facilities are available for use, and be subject to a right of termination by the City for an uncured breach of a material obligation by the Developer. Such concessions may include a facility open to the public which provides towels, lockers, minimal beach sundries, chairs, and other beach gear required to operate a first-class beach hotel. Such facilities shall be built into the beach landing portion of the pedestrian overpass, as more particularly depicted on Exhibit H.
8. Removal of Parking. In conjunction with the Project, the City agrees to the removal of the off-street parking spaces which are located on the beach between the concession building located between 3rd and 5th Streets and the Pier 60 lot (approximately 317 spaces). The new design for the realignment of South Gulfview Drive and the South Gulfview and Beach Walk

Improvements, as described in Exhibit H, includes two (2) parking areas of twenty-five (25) parking spaces each on the east side of the re-aligned road.

9. Approval of Plans and Specifications for the South Gulfview and Beach Walk Improvements. The Developer is obligated to prepare Plans and Specifications for the South Gulfview and Beach Walk Improvements. At least thirty (30) days prior to applying for a building permit for the South Gulfview and Beach Walk Improvements, the Developer shall submit a complete draft of such plans to the City for review and comment. The City shall promptly review such plans and provide comments and recommended modifications to the Developer within thirty (30) days of receipt. The Developer shall incorporate the City's comments and recommended changes in the Plans for the South Gulfview and Beach Walk Improvements and the City shall review and approve the plans and specifications within thirty (30) days after submission of the Plans and Specifications for the South Gulfview and Beach Walk Improvements.

10. Public Financing of Public Improvements. Subject to agreement and request by the Developer, the City shall provide the Developer with financing, to the extent permitted by law without a referendum, provided that such debt will be serviced only by special revenues generated by the Project. The maximum amount of the financing shall depend on the final design of the South Gulfview and Beach Walk Improvements and the net cost of construction. The cost of the South Gulfview and Beach Walk Improvements shall be net of any credits against impact fees which are available under existing law and the Developer's fair share of the South Gulfview and Beach Walk Improvements. The City agrees to make the following sources of revenue available for debt service of any public financing for the South Gulfview and Beach Walk and Garage Access Improvements:
 - a. Net operating income from the fifty (50) new parking spaces created as a part of the South Gulfview and Beach Walk Improvements; and
 - b. Fifty percent (50%) of the net increase in municipal ad valorem taxes and utility taxes generated by the Project.

11. Timely Completion. The City recognizes the public importance of the timely completion of the proposed improvements, and time is deemed to be of the essence. The City considers this Agreement as overall authority for the Developer to proceed to permit, and agrees to implement a fast-track review, permitting, and inspection program for this Project.

20

12. Additional Public Parking. The City agrees that the City will not use public funds to provide more than three hundred (300) additional parking spaces (net increase in the number of spaces above the number of public parking spaces in existence on the effective date of this Agreement) which are available for use by the public within a radius of a quarter-mile of the Project Site for a period of five (5) years after the issuance of a certificate of occupancy for the Project, unless otherwise agree to by the Parties.

5.05. Obligations of the Developer.

- 1 Resort Hotel and Parking Garage Project. The Developer shall build and operate a two hundred and fifty (250) room resort hotel to be operated as a Marriott resort or other comparable international hotel/resort management company together with a parking garage containing at least seven hundred and fifty (750) parking spaces. In the event that the Developer determines to operate the resort hotel under a different "hotel/resort" name, the Developer shall obtain the City's approval, which shall not be unreasonably withheld, providing that the reputation and- qualifications are comparable to the Marriott organization. The parking spaces shall be no narrower than nine (9) feet and no shorter than eighteen (18) feet, and no two-way aisle shall be less than twenty five (25) feet in width.
- 2 Responsibility for On-Site Costs. The Developer shall be responsible for all on-site costs relative to the development of the Project, including the parking spaces which are required to be open to the public.
- 3 Parking. The Developer agrees to make at least four hundred (400) parking spaces within the Project available to the general public within the parking garage. The Developer may charge the public for use of the parking spaces which are available to the general public on terms and rates which are market-based and commensurate with terms and rates which are in effect for comparable beachfront, covered parking structures in Florida resort areas.
- 40 South Gulfview and Beach Walk and Garage Access Improvements. The Developer shall be responsible for the design and construction of the South Gulfview and Beach Walk and Garage Access Improvements.
5. Cost of South Gulfview and Beach Walk and Garage Access Improvements. The Developer shall be responsible for funding the total cost of the South Gulfview and Beach Walk and Garage Access Improvements, subject only to the following:

- a. In the event that impact fee credits are available to the Developer, such credits shall be credited to the Developer against the cost of the South Gulfview and Beach Walk Improvements.
- b. The Developer shall be responsible for a *pro rata* share of the cost of the South Gulfview and Beach Walk Improvements which shall be equal to the net cost of the South Gulfview and Beach Walk Improvements multiplied by a fraction in which the front footage of the Project Site is the numerator and the total frontage along South Gulfview and Beach Walk Improvements is the denominator.

$$S_{PR} = (F_{PROJ}/F_{SGBW}) \times (C_{SGBW})$$

- S_{PR} = Pro Rata Share
- F_{PROJ} = Frontage of Project Site
- F_{SGBW} = Total Frontage along South Gulfview and Beach Walk Improvements
- C_{SGBW} = Net Cost of South Gulfview and Beach Walk Improvements

- c. In the event that any property which fronts on the South Gulfview and Beach Walk Improvements is proposed for redevelopment using the pool of additional resort units established pursuant to *Beach by Design*, the developer of such property shall be required to pay a *pro rata* share of the cost of the South Gulfview and Beach Walk Improvements as a condition of development approval. The *pro rata* share shall be equal to the total cost of the Improvements multiplied by a fraction in which the front footage of the Project Site is the numerator and the total frontage along South Gulfview and Beach Walk Improvements is the denominator.

$$S_{PR} = (F_{PROJ}/F_{SGBW}) \times (C_{SGBW})$$

- S_{PR} = Pro Rata Share
- F_{PROJ} = Frontage of Project Site
- F_{SGBW} = Total Frontage along South Gulfview and Beach Walk Improvements
- C_{SGBW} = Net Cost of South Gulfview and Beach Walk Improvements

The *pro rata* share paid by any such other developer shall be promptly applied to the outstanding principal on any indebtedness incurred to fund the South Gulfview and Beach Walk Improvements.

- d. The net operating income from the fifty (50) surface parking spaces which are constructed as a part of the South Gulfview and Beach Walk Improvements shall be available to repay the Net Cost of the South Gulfview and Beach Walk Improvements and the Garage Access Improvements, for a period of time not to exceed twenty-five (25) years.
- e. The City shall make an amount available equal to fifty percent (50%) of the net increase in municipal ad valorem and utility taxes above the ad valorem and utility taxes generated by the improvements existing on the Project Site on the Effective Date of this Development Agreement to repay any private indebtedness incurred to repay the Net Cost of the South Gulfview and Beach Walk Improvements and the Garage Access Improvements, for a period of time not to exceed twenty-five (25) years.
- f. The incremental utility tax, a portion of which is to be made available to service the debt incurred to construct South Gulfview and Beach Walk Improvements and the Garage Access Improvements, shall be the increase in utility taxes above the amount of annual utility taxes paid by the owners of the existing improvements on the Project Site in the twelve (12) months preceding the Effective Date of this Agreement, as documented by the Developer. In the event that the Developer fails, for any reason, to document the annual utility taxes paid by the owners of the existing improvements on the Project Site in the twelve (12) months preceding the Effective Date of this Agreement, the incremental utility tax which is to be made available to service the debt incurred to construct South Gulfview and Beach Walk Improvements and the Garage Access Improvements shall be the increase in utility taxes above the amount of annual utility taxes paid by the Developer during the first year of operation of the Project, which amount shall be provided to the City within thirty (30) days after the end of the first year of operation.

6. Financing of Improvements

- a. In the event that the public financing provided for in Paragraph 10 of Section 5.04 of this Development Agreement is, for any reason, unavailable to fund any portion of or all of the Net Cost of the South Gulfview and Beach Walk Improvements and the Garage Access Improvements, the Developer shall provide the financing required to fund the total cost of the improvements.

- b. In the event that public financing is available for all or a portion of the Net Cost of the South Gulfview and Beach Walk Improvements and the Garage Access Improvements, and the Developer provides additional financing pursuant to this paragraph, the Developer shall be entitled, for a period of not more than twenty-five (25) years, to receive an annual payment equal to fifty percent (50%) of the additional incremental ad valorem taxes plus the difference between fifty percent (50%) of the incremental utility tax generated by the Project and the amount required to service the public debt.
7. Other Improvements. The City shall have an option to require the Developer to include the portions of the Additional South Gulfview and Beach Walk Improvements which are described in Exhibit H on a "turn key" basis, provided that the City pays all costs of such share of the South Gulfview and Beach Walk Improvements, including reasonable developer's fees. The City's option period shall be for a term of twelve (12) months from the Effective Date of this Agreement. If the City declines to exercise its option and its twelve (12) months option period expires, then, upon written notice to the City within thirty (30) days after the expiration of the option, the Developer may elect to fund and construct these improvements, and then include the cost of the additional improvements in the South Gulfview and Beach Walk Improvements financing.
8. Covenant of Unified Use. The Developer hereby agrees to execute the covenant of unified use and development for the Controlled Property providing that the Controlled Property shall be developed as a single project and operated and used as a unified mixed use project, which is attached as Exhibit K; provided however, that nothing shall preclude the Developer from selling all or a portion of the Controlled Property in a condominium form of ownership.
9. Quality and Value. The Developer shall design and construct the South Gulfview and Beach Walk Improvements described in Exhibit H as a high quality product in keeping with *Beach by Design* and the Seashell/Marriot design, subject only to a final budget which the Parties agree is approximately three million five hundred thousand dollars (\$3,500,000.00) for the South Gulfview and Beach Walk Improvements not including the Additional South Gulfview Improvements to the south of the beach concession building, as depicted as Phase B in Exhibit H ("Additional South Gulfview Improvements").

10. Project Obligations. The Developer agrees to carry out the redevelopment of the Project Site by completing the purchase of all of the Controlled Property, preparing project plans and specifications, obtaining approvals by governmental authorities necessary for development of the Project, constructing various private improvements on the Project Site and operating the Project as a unified and integrated project. The Developer shall take all actions necessary to maintain control of the Project Site, until a certificate of occupancy is issued by the City.
11. Dedication of Right-of-Way. Prior to the issuance of a building permit, other than a foundation permit, authorizing the construction of the resort hotel units, the Developer shall dedicate ten (10) feet along the entire ~~western~~ ^{eastern} boundary of the Project Site, including any land previously included within the right-of-way of Third Street to the City as additional right-of-way for Coronado Avenue. *WJK*
12. Commencement of Construction. The Developer shall commence construction of the Project within twelve (12) months of the Effective Date of this Agreement, unless the City shall have failed to gain approval of a Community Redevelopment District, of which the Project Site is a part, as provided for in Section 3.01 of this Agreement ("Commencement Date"), or as soon thereafter as possible after the authority for the Community Redevelopment District becomes effective and shall thereafter diligently pursue completion of the Project.
13. Construction and Performance Completion Bond. Prior to commencing construction of the South Gulfview and Beach Walk Improvements and the Garage Access Improvements, and, in the event that the City exercises its option in regard to the Additional South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements, the Developer shall provide the City with a performance bond in a form acceptable to the City guaranteeing the completion of the South Gulfview and Beach Walk Improvements and the Additional South Gulfview Improvements.

ARTICLE 6. PROJECT FINANCING.

6.01. Notice of Project Financing to City. As soon as the Developer shall have obtained any financing for any portion of the Project, the Developer shall provide the City with a sworn statement identifying the Project Lender(s) and documenting the type of financing that the Project Lender(s) has issued in favor of the Developer for the Project.

6.02. Copy of Default Notice to City. The Developer covenants and agrees that any Project Construction Financing documents shall include provisions which provide that in the event any Project Financing shall become due and payable by maturity or acceleration, the Project Lender shall give written notice thereof to the City by certified mail, return receipt requested. Such notice from the Project Lender to the City shall state the basis of the default by the Developer and shall include copies of any pleadings in any proceeding instituted by the Project Lender(s) incident thereto.

6.03. City Option to Pay Mortgage Debt or Purchase Project.

1. Assignment of Mortgage. Any mortgage instrument pertaining to any portion of the Project Site in effect prior to issuance of the Construction Completion Certificate for such portion of the Project Site shall provide that following a failure of the Developer to repay any Project Financing which shall become due and payable by maturity or acceleration, the City is entitled, upon giving reasonable written notice to the Developer, the Project Lender(s) and any other holder of such a mortgage, to an assignment of the mortgage securing the Construction Financing by paying to the Project Lender an amount of money not to exceed a sum equal to the amount of money advanced by the Project Lender(s) to the Developer with respect to the Project Site, together with unpaid accrued interest on such amount, prepayment penalties, and all other accrued charges of the Project Lender(s) (including, without limitation, reasonable attorneys' fees incurred as a result of a default by the Developer under the Project Construction Financing).
2. Entitlement to Conveyance. If prior to the issuance of a Construction Completion Certificate, the ownership of any part of the Project located thereon has vested in a Project Lender(s) or any other person by foreclosure or any other action in lieu thereof, the City shall be entitled, at its election exercisable within sixty (60) days after the Project Lender(s) or other person obtains or receives title to the Project Site or part of the Project Site by notice to such Project Lender(s) or other person, to a conveyance of the Project Site or that part of the Project for which ownership has vested in the Project Construction Lender or other person to the City upon payment to the Project Lender(s) or other person of an amount not greater than the sum of (i) the larger of the money advanced by the Project Lender(s) or other person to the Developer with respect to that Parcel and due and owing at the time of the foreclosure or any other action in lieu thereof or the amount paid at foreclosure, less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings; (ii) all reasonable expenses of the Project Lender(s) or other person incurred in connection with the foreclosure of the Parcel or part of the Project; (iii) the expense, if any, incurred by the Project

Lender(s) or other person in and as a direct result of the subsequent management of the Project; (iv) any prepayment penalties and (v) an amount equivalent to the interest that would have accrued on the aggregate of such amount had all such amounts become part of the money advanced by the Project Lender (s) or other person to the Developer with respect to the Project Site and such money advanced had continued to be due and owing; and less income resulting from the management of the Project subsequent to the termination of foreclosure proceedings or the date that the Project Lender(s) or other person obtained title to the Project Site by deed in lieu of foreclosure, whichever is the earlier.

ARTICLE 7. CONSTRUCTION OF SOUTH GULFVIEW AND BEACH WALK IMPROVEMENTS AND GARAGE ACCESS IMPROVEMENTS.

7.01. Site Work. The Developer shall be responsible for all site investigation, environmental testing, demolition and site clearing in regard to the construction of the South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement and the Garage Access Improvements.

7.02. Construction

1. Commencement. The Developer shall construct the South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement, and the Garage Access Improvements, substantially in accordance with the Plans and Specifications therefor. The Developer shall commence construction within twelve (12) months after the Effective Date of this Agreement in accordance with Section 5.05(12), unless the City shall have failed to gain approval of a Community Redevelopment District, of which the Project Site is a part, as provided for in Section 3.01 of this Agreement ("Commencement Date"), or as soon thereafter as possible after the authority for the Community Redevelopment District becomes effective and shall thereafter diligently pursue completion of the Project.
 - a. For purposes of this Section 7.02, "commence construction" means commencement of meaningful physical development of that part of the Project as authorized by the Building Permit therefor which is continued and diligently prosecuted toward completion of that part of the Project.

- b. All obligations of the Developer (including deadlines in the Commencement Date) with respect to commencement and continuation of construction in regard to the South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement and the Garage Access Improvements, shall be subject to delays and extensions from time to time for Unavoidable Delay (see Article 15). The Developer shall not be deemed to be in default of this Agreement to the extent construction of the Project, or a part thereof, is not complete by reason of Unavoidable Delay.
2. Pursuit of Construction. After the Commencement Date, the Developer shall continue, pursue and prosecute the construction of the South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements, in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement, and the Garage Access Improvements with due diligence to completion, and shall not at any time actually or effectively have abandoned (or its Contractor having actually or effectively abandoned) the work. For purposes of this subsection (b), "abandoned" means to have ceased any construction work which effectively advances the construction of the work toward completion, including removing all or substantially all of the construction work force from the site of the South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements, in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement, and the Garage Access Improvements.
3. Payment of Contractors and Suppliers. The Developer shall promptly pay, or arrange to be paid, all moneys due and legally owing to all persons or organizations doing any work or furnishing any materials, fuel, machinery or supplies to the Developer or any Contractors in connection with construction of any part of the South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements, in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement, and the Garage Access Improvements.
4. Maintenance of Construction Site. During the construction of the South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements, in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement, and the Garage Access Improvements, the Developer shall, at its own expense, keep the site of the South Gulfview and Beach Walk Improvements, the Additional South

Gulfview and Beach Walk Improvements, in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement, and the Garage Access Improvements in good and clean order and condition, and the Developer shall promptly make all necessary or appropriate repairs, replacements and renewals thereof, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen. All repairs, replacements and renewals shall be equal in quality and class to the original work. When making such repairs, replacements or renewals, the Developer shall comply with all laws, ordinances, codes and regulations then applicable to that part of the South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements, in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement, and the Garage Access Improvements. The Developer shall have the right, after written notice to the City, to contest by appropriate legal proceedings conducted in good faith, the validity or applicability of any such law, ordinance, code or regulation, and to delay compliance therewith pending the prosecution of such proceeding, provided that such contest shall be in accordance with the Right to Contest provisions of Article 13.

7.03 Construction Completion Certificate.

1. For purposes of this Section 7.03, "completion, "complete," "substantially complete" or "substantial completion" means, with respect to construction of part of the South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements, in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement, and the Garage Access Improvements, shall be the acceptance of the South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements, in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement, and the Garage Access Improvements by the City.
2. Upon the substantial completion of the construction of each part of the South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements, in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement, and the Garage Access Improvements in accordance with the provisions of the Plans and Specifications, the Developer shall prepare and execute the Construction Completion Certificate, which shall then be delivered to the City. Upon receipt of the certificate, the City shall promptly and diligently proceed to determine if construction of the Project has been completed substantially in accordance with the Plans and Specifications and this Agreement. Upon making such a determination, the City shall execute the certificate and return

it to the Developer. The date of the Construction Completion Certificate shall be the date when all parties shall have executed said certificate.

3. The Construction Completion Certificate shall constitute a conclusive determination by the parties hereto of the satisfaction and termination of the obligations of the Developer hereunder to construct the South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements, in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement, and the Garage Access Improvements described in the certificate; provided, however, that nothing in this Section shall be a waiver of the rights, duties, obligations or responsibilities of the City or any other governmental entity acting in its regulatory or governmental capacity or an approval of said construction.
4. If the City shall refuse or fail to execute the Construction Completion Certificate after receipt of a request by the Developer to do so, then the City shall, within ten (10) days after its receipt of such request, provide the Developer with a written statement setting forth in reasonable detail the reason(s) why the City has not executed the Construction Completion Certificate and what must be done by the Developer to satisfy such objections so that the City would sign the certificate. Upon the Developer satisfying the City's objections, then the Developer shall submit a new request to the City for execution of the Construction Completion Certificate and that request shall be considered and acted upon in accordance with the procedures in this Section for the original request.
5. If the City refuses to execute the certificate and the Developer does not agree with the objections set forth in the City's statement, then the Developer may invoke the arbitration procedures set forth in Article 14 hereof for the purpose of determining if the prerequisites for execution by all parties of the Construction Completion Certificate have been met, and if not, what actions must be taken to satisfy such prerequisites.
6. The Construction Completion Certificate shall be in a form sufficient to be recorded in the public records of Pinellas County, Florida. After execution by the City, it shall be promptly returned to the Developer who shall record the certificate in the public records of Pinellas County, Florida, and pay the cost of such recording.

7.04 City Not in Privity. The City shall not be deemed to be in privity of contract with any Contractor or provider of services with respect to the construction of any part of the Project not constituting all or any part of public improvements.

7.05 Construction Sequencing and Staging Area. The Developer shall construct the South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements, in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement, and the Garage Access Improvements in a manner and fashion which will minimize the inconvenience of the construction on the property owners of Clearwater Beach and the residents of the City. Two (2) lanes of two (2)way traffic capacity shall be maintained between First Street and the southern end of the site of the South Gulfview and Beach Walk Improvements, the Additional South Gulfview and Beach Walk Improvements in the event that the City exercises its option pursuant to Paragraph 5.04(1) of this Agreement and the Garage Access Improvements during the months of March, April, June, July and August and whenever reasonably practicable during the rest of the year. To the extent reasonably practicable, the Developer shall make as many of the existing parking spaces available for public use during construction. The City agrees to allow Developer to use a portion of the area of the existing surface parking lot located to the west of the Project Site which is designated by the City for construction staging and Project office, during construction of the Project, without charge to the Developer, provided that such staging area and Project office does not unreasonably affect the maintenance of traffic provided for in this Paragraph.

ARTICLE 8. INDEMNIFICATION.

8.01. Indemnification by the Developer.

1. The Developer agrees to indemnify, defend and hold harmless, the City, its respective agents, officers, or employees from any and all liabilities, damages, penalties, judgments, claims, demands, costs, losses, expenses or attorneys' fees through appellate proceedings, for personal injury, bodily injury, death or property damage arising out of, or by reason of any act or omission of the Developer, its agents, employees or contractors arising out of, in connection with or by reason of, the performance of any and all services covered by this Agreement, or which are alleged to have arisen out of, in connection with or by reason of, the performance of any and all services covered by this Agreement, or which are alleged to have arisen out of, in connection with, or by reason of, the performance of such services.
2. The Developer shall indemnify, defend and hold harmless the City, its officers and employees from any and all liabilities, damages, costs, penalties, judgments, claims, demands, losses, or expenses (including, but not limited to, actual attorneys' fees and engineering fees) arising from or attributable to any breach by the Developer, as the case may be, of any representations or warranties contained in Section 9.01, or covenants contained in Section 9.02.

3. The Developer's indemnity obligations under subsections (1) and (2) of this Section shall survive the earlier of the Termination Date or the Expiration Date, but shall apply only to occurrences, acts, or omissions that arise on or before the earlier of the Termination Date or the Expiration Date.
4. The Developer's indemnity hereunder is in addition to and not limited by any insurance policy and is not and shall not be interpreted as an insuring agreement between or among the parties to this Agreement, nor as a waiver of sovereign immunity for any party entitled to assert the defense of sovereign immunity.

8.02. Indemnification by the City.

1. To the extent permitted by law, the City agrees to indemnify, defend and hold harmless, the Developer, its respective officers, and employees from any and all liabilities, damages, penalties, judgments, claims, demands, costs, losses, expenses or attorneys' fees through appellate proceedings, for personal injury, bodily injury, death or property damage arising out of, or by reason of, any act or omission of the City, its respective agents or employees arising out of, in connection with or by reason of, the performance of any and all services covered by this Agreement, or which are alleged to have arisen out of, in connection with or by reason of, the performance of any and all services covered by this Agreement, or which are alleged to have arisen out of, in connection with, or by reason of, the performance of such services.
2. The City shall indemnify, defend and hold harmless the Developer, its officers and employees from any and all liabilities, damages, costs, penalties, judgments, claims, demands, losses, or expenses (including, but not limited to, actual attorneys' fees and engineering fees) arising from or attributable to any breach by the City, as the case may be, of any representations or warranties contained in Section 10.01, or covenants contained in Section 10.02.
3. The City's indemnity obligations under this Section 10.02 shall survive the earlier of the Termination Date or the Expiration Date, but shall only apply to occurrences, acts or omissions that arise on or before the earlier of the Termination Date or the Expiration Date. The City's indemnity hereunder is not and shall not be interpreted as an insuring agreement between or among the parties to this Agreement, but is in addition to and not limited by any insurance policy provided that said obligation shall not be greater than that permitted and shall be limited by the provisions of Section 768.28, Florida Statutes, or any successor statute thereto.

8.03. Limitation of Indemnification. Notwithstanding anything to the contrary contained herein, with respect to the indemnification obligations of the Developer (as set forth in Section 8.01) and the City (as set forth in Section 8.02), the following shall apply:

1. The indemnifying party shall not be responsible for damages that could have been, but were not, mitigated by the indemnified party;
2. The indemnifying party shall not be responsible for that portion of any damages caused by the negligent or willful acts or omissions of the indemnified party; and
3. There shall be no obligation to indemnify hereunder in the event that the indemnified party (1) shall have effected a settlement of any claim without the prior written consent of the indemnifying party, or (2) shall not have subrogated the indemnifying party to the indemnified party's rights against any third party by an assignment to the indemnifying party of any cause or action against such third party.

ARTICLE 9. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DEVELOPER.

9.01. Representations and Warranties. The Developer represents and warrants to the City that each of the following statements is currently true and accurate and agrees the City may rely upon each of the following statements:

1. The Developer is a Florida Limited Liability Company duly organized and validly existing under the laws of the State of Florida, has all requisite power and authority to carry on its business as now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party, is qualified to do business in the State of Florida, and has consented to service of process upon a designated agent for service of process in the State of Florida.
2. This Agreement and, to the extent such documents presently exist in a form accepted by the City and the Developer, each document contemplated or required by this Agreement to which the Developer is or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, the Developer, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof: (i) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein,

- (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Developer, (iii) contravenes or results in any breach of, default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the Developer under any indenture, mortgage, deed of trust, bank loan or credit agreement, the Developer's Articles of Incorporation, or, any other agreement or instrument to which the Developer is a party or by which the Developer may be bound.
3. This Agreement and, to the extent such documents presently exist in a form accepted by the City and the Developer, each document contemplated or required by this Agreement to which the Developer is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.
 4. There are no pending or, to the knowledge of the Developer threatened actions or proceedings before any court or administrative agency against the Developer, or against any controlling shareholder, officer, employee or agent of the Developer which question the validity of this Agreement or any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of the Developer.
 5. The Developer has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by the Developer and has paid, or caused to be paid, all taxes shown to be due and payable on such returns or on any assessments levied against the Developer.
 6. All financial information and other documentation, including that pertaining to the Project or the Developer, delivered by the Developer to the City was, on the date of delivery thereof, true and correct.
 7. The principal place of business and principal executive offices of the Developer is in Dunedin, Florida, and the Developer will keep records concerning the Project (such as construction contracts, financing documents and corporate documents) and all contracts, licenses and similar rights relating thereto at an office in Pinellas or Hillsborough Counties.

8. As of the Effective Date, the Developer will have the financial capability to carry out its obligations and responsibilities in connection with the development of the Project as contemplated by this Agreement.
9. The Developer has the experience, expertise, and capability to develop, cause the construction, and complete the Project and, oversee and manage the design, planning, construction, completion and opening for business of the Project.

9.02. Covenants. The Developer covenants with the City that until the earlier of the Termination Date or the Expiration Date:

1. The Developer shall timely perform or cause to be performed all of the obligations contained herein which are the responsibility of the Developer to perform.
2. During each year that this Agreement and the obligations of the Developer under this Agreement shall be in effect, the Developer shall cause to be executed and to continue to be in effect those instruments, documents, certificates, permits, licenses and approvals and shall cause to occur those events contemplated by this Agreement that are applicable to, and that are the responsibility of, the Developer.
3. The Developer shall assist and cooperate with the City to accomplish the development of the Project by the Developer in accordance with the Plan and Specifications, and this Agreement, and will not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto.
4. Subsequent to the Effective Date, the Developer shall maintain its financial capability to develop, construct and complete the Project and shall promptly notify the City of any event, condition, occurrence, or change in its financial condition which adversely affects, or with the passage of time is likely to adversely affect, the Developer's financial capability to successfully and completely develop, construct and complete the Project as contemplated hereby.
5. The Developer shall promptly cause to be filed when due all federal, state, local and foreign tax returns required to be filed by it, and shall promptly pay when due any tax required thereby.
6. Subject to Section 18.01, the Developer shall maintain its existence, will not dissolve or substantially dissolve all of its assets and will not consolidate with

or merge into another corporation, limited partnership, or other entity or permit one or more other corporations or other entity to consolidate with or merge into it without the prior approval of the City unless the Developer retains a controlling interest in the consolidated or merged corporation, and will promptly notify the City of any changes to the existence or form of the corporation or any change in the controlling shareholders, officers or directors of the Developer.

7. Other than sales and assignments contemplated by this Agreement, the Developer shall not sell, lease, transfer or otherwise dispose of all or substantially all its assets without adequate consideration and will otherwise take no action which shall have the effect, singularly or in the aggregate, of rendering the Developer unable to continue to observe and perform the covenants, agreements, and conditions hereof and the performance of all other obligations required by this Agreement.
8. Except for the removal of any structures, plants, items or other things from the Project Site necessary for construction of the Project to commence and continue, the Developer shall not permit, commit, or suffer any waste or impairment of the Project or the Project Site prior to the Completion Date.
9. Provided all conditions precedent thereto have been satisfied or waived as provided herein, the Developer shall acquire the Controlled Property as provided in Article 5 hereof and shall pay the Purchase Price, as the case may be, when due and payable as provided therein.
10. Provided all conditions precedent thereto have been satisfied or waived as provided herein, the Developer shall design, construct and complete the Project such that it is substantially complete as provided in this Agreement no later than the Project Completion Date.

ARTICLE 10. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CITY.

10.01. Representations and Warranties. The City represents and warrants to the Developer that each of the following statements is currently true and accurate and agrees that the Developer may rely on each of the following statements:

1. The City is a validly existing body corporate and politic of the State of Florida, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations hereunder and under each

document or instrument contemplated by this Agreement to which it is or will be a party.

2. This Agreement and, to the extent such documents presently exist in a form accepted by the City and the Developer, each document contemplated or required by this Agreement to which the City is or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, the City, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof (i) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the City, (iii) contravenes or results in any breach of, or default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the City under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Agreement, any other agreement or instrument to which the City is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the City outstanding on the Effective Date.
3. This Agreement and, to the extent such documents presently exist in a form accepted by the City and the Developer, each document contemplated or required by this Agreement to which the City is or will be a party constitute, or when entered into will constitute, legal, valid and binding obligations of the City enforceable against the City in accordance with the terms thereof, except as such enforceability may be limited by public policy or applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

10.02. Covenants. The City covenants with the Developer that until the earlier of the Termination Date or the Expiration Date:

1. The City shall timely perform, or cause to be performed, all of the obligations contained herein which are the responsibility of the City to perform.
2. During each year that this Agreement and the obligations of the City under this Agreement shall be in effect, the City shall cause to be executed and to continue to be in effect those instruments, documents, certificates, permits, licenses and approvals, and shall cause to occur those events contemplated by this Agreement that are applicable to and are the responsibility of the City.

3. The City shall assist and cooperate with the Developer to accomplish the development of the Project in accordance with this Agreement and the Plans and Specifications, will carry out its duties and responsibilities contemplated by this Agreement, and will not violate any laws, ordinances, rules, regulations, orders, contracts, or agreements that are or will be applicable thereto, and, to the extent permitted by law, the City will not enact or adopt or urge or encourage the adoption of any ordinances, resolutions, rules regulations or orders or approve or enter into any contracts or agreements, including issuing any bonds, notes, or other forms of indebtedness, that will result in any provision of this Agreement to be in violation thereof.
4. Except for the demolition of existing structures on the Project Site and the removal of objects from the Project Site as contemplated by this Agreement, the City shall not permit, commit, or suffer any waste or impairment to the Project Site, nor shall the City request or recommend any rezoning of the Project Site, or any part thereof, which will prevent or adversely affect the development of the Project.
5. The City shall maintain its financial capability to carry out its responsibilities as contemplated by this Agreement and shall notify the Developer of any event, condition, occurrence, or change in its financial condition which adversely affects, or with the passage of time is likely to adversely affect, the City's financial capability to carry out its responsibilities contemplated hereby.

ARTICLE 11. CONDITIONS PRECEDENT.

11.01. The Developer Acquiring Project Site. Unless this Agreement has been terminated pursuant to Article 12 hereof, the obligation of the Developer to acquire the Project Site is subject to the fulfillment to the satisfaction of, or waiver in writing by, the Developer of each of the following conditions precedent:

1. The Developer shall have received evidence satisfactory to the Developer that the Project Site permits the uses contemplated in this Agreement.
2. The Plans and Specifications as are required for issuance of the Building Permit required to commence construction of the Project shall have been approved by the City in accordance with applicable ordinances, land use regulations, building codes and other regulations of the City.
3. The Developer shall have obtained commitments from the Project Construction Lender as provided in Article 6 hereof.

4. The City shall have closed and vacated any streets, alleys or other public rights-of-way as may be necessary for the construction and use of the Project Site according to the Plan and Specifications, this Agreement and approved by resolution the abandonment of all such rights-of-way in favor of the Developer, provided however that the abandonment will not be effective unless and until the Construction Financing Commitment is obtained from the Developer as required by Article 6 herein.
5. All Permits and the Building Permit necessary for construction of the Project to commence shall have been issued.

11.02. Construction of Project. Subject to termination of this Agreement pursuant to Article 12, the obligation of the Developer to commence construction of the Project on the Commencement Date is subject to the fulfillment to the satisfaction of, or waiver in writing by, the Developer of the following conditions:

1. The Plans and Specifications that are necessary to commence construction shall have been approved by the City, and the initial Building Permit for the commencement of construction of that part of the Project and all other Permits necessary for construction to commence have been issued.
2. The vacation of rights-of-way as provided in Section 5.04(1) hereof.

11.03. Responsibilities of the Parties for Conditions Precedent. The parties hereto shall not, individually or collectively, knowingly, intentionally or negligently prevent any condition precedent from occurring; provided, however, nothing in this Section is intended or shall be deemed to deny any party the right to reasonably exercise its discretion to the extent permitted by law or this Agreement.

ARTICLE 12. DEFAULT; TERMINATION.

12.01. Project Default by the Developer.

1. There shall be an "event of default" by the Developer pertaining to the entire Project upon the occurrence of any one or more of the following:
 - a. The Developer shall fail to perform or comply with any material provision of this Agreement applicable to it within the time prescribed therefor, after receipt of a notice from the City pursuant to Paragraph 12.02(2)(a); or
 - b. The Developer shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they

become due or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation or shall file an answer admitting, or shall fail reasonably to contest, the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Developer or any material part of such entity's properties; or

- c. Within sixty (60) days after the commencement of any proceeding by or against the Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed or otherwise terminated, or if, within sixty (60) days after the appointment without the consent or acquiescence of the Developer of any trustee, receiver or liquidator of any of such entities or of any material part of any of such entity's properties, such appointment shall not have been vacated; or
2. a. If an event of default by the Developer described in subsection (1) above shall occur, the City shall provide written notice thereof to the Developer, and, if such event of default shall not be cured by the Developer within thirty (30) days after receipt of the written notice from the City specifying in reasonable detail the event of default by the Developer, or if such event of default is of such nature that it cannot be completely cured within such time period, then if the Developer shall not have commenced to cure such default within such thirty (30) day period and shall not diligently prosecute such cure to completion within such reasonable longer period of time as may be necessary (provided, however, if the Developer is proceeding diligently and in good faith, the curative period shall be extended for a period of not exceeding six (6) months without any approval or consent of the City being required, but such approval will be required if the curative period is to be extended beyond six (6) months (after the notice of default has been given by the City to the Developer and such extended curative period may be ended by the City electing to do so upon any Project Lender finding the Developer to be in default of any Project Financing and the curative period therefor has expired without such event of default being cured) then, in addition to any remedy available under Section 12.05, the City may terminate this Agreement or pursue any and all legal or equitable remedies to which the City is entitled, provided, however, if the Developer shall fail to cure such

event of default within said thirty (30) day or longer period or ceases to proceed diligently to timely cure such event of default, then the City may proceed to enforce other available remedies without providing any additional notice to the Developer.

- b. Any attempt by the City to pursue any of the above referenced remedies will not be deemed an exclusive election of remedy or waiver of the City's right to pursue any other remedy to which either may be entitled.
 - c. Any time periods or deadlines provided in this Agreement shall be tolled or extended by the amount of time to cure any event of default hereunder if such event affects the Developer's or City's ability to perform by such deadline or the expiration of such period.
3. Subject to the rights of the Project Lender, if the City elects under Section 6.03 to cure a default under Subsection 12.01(1) by the Developer, construction contracts, contract documents, building permits, development permits, management agreements, and financial commitments (all only to the extent assignable) with respect to the Project shall, if such default has not been previously cured, on the day following receipt by the Developer of notice from the City of its election to cure under Section 6.03, be deemed then assigned to the City making said election, without necessity of any other action being taken or not taken by any party hereto. The Developer shall transfer and deliver to the City upon making said election, all assignable Plans and Specifications, working drawings, construction contracts, contract documents, financial commitments, management agreements, and all Permits, and, at the direction of the City, the defaulting the Developer shall vacate the Parcel(s).
 4. Notwithstanding any provision of this Section, a default by the Developer shall not affect the title of any condominium unit or common area conveyed by the Developer to an unrelated third party or to a condominium association which is not controlled by the Developer.

12.02. Default by the City.

1. Provided the Developer is not then in default under Section 12.01, there shall be an "event of default" by the City under this Agreement in the event the City shall fail to perform or comply with any material provision of this Agreement applicable to it; provided, however, that suspension of or delay in performance by the City during any period in which the Developer is in

default of this Agreement as provided in Section 12.01 hereof will not constitute an event of default by the City under this Subsection 12.02.

2. a. If an event of default by the City described in Subsection 12.02(1) shall occur, the Developer shall provide written notice thereof to the City, and, after expiration of the curative period described in paragraph (b) below, may terminate this Agreement, institute an action to compel specific performance of the terms hereof by the City or pursue any and all legal or equitable remedies to which the Developer is entitled; provided, however, if the event of default by the City occurs, any monetary recovery by the Developer in any such action shall be limited to bona fide third-party out-of-pocket costs and expenses, including reasonable attorneys' fees, incurred by the Developer in connection with this Agreement and the transactions contemplated hereby, unless any such default by the City was willful and committed in bad faith with reckless disregard for the rights of the Developer.
- b. The Developer may not terminate this Agreement or institute an action described in paragraph (2a) above if the City cures such event of default within thirty (30) days after receipt by the City of written notice from the Developer specifying in reasonable detail the event of default by the City, or if any such event of default is of such nature that it cannot be completely cured within such period, then within such reasonably longer period of time as may be necessary to cure such default, provided however, if the City is proceeding diligently and in good faith, the curative period shall be extended for a period of not exceeding six (6) months without any approval or consent of the Developer being required, but such approval will be required if the curative period is to be extended beyond six (6) months after the notice of default has been given by the Developer to the City if the City has commenced to cure such default within such thirty (30) day period and is diligently prosecuting such curative action to completion. The City shall within said thirty (30) day period or such longer period promptly, diligently and in good faith proceed to cure such event of default after receipt of the notice from the Developer and shall succeed in curing such event of default within said period of time, provided, however, if the City shall fail to cure such event of default within said thirty (30) day or longer period or ceases to proceed diligently to timely cure such event of default, then the Developer may proceed with its available remedies without providing any additional notice to the City.

- c. Any attempt by the Developer to pursue any of the remedies referred to in paragraphs (a) and (b) above will not be deemed an exclusive election of remedy or waiver of the Developer's right to pursue any other remedy to which it might be entitled.
- d. Any time periods or deadlines provided in this Agreement shall be tolled or extended by the amount of time to cure any event of default hereunder if such event affects the Developer's or City's ability to perform by such deadline or the expiration of such period.

12.03. Obligations, Rights and Remedies Cumulative. Unless specifically stated herein to the contrary, the specified rights and remedies to which either the City or the Developer are entitled under this Agreement are not exclusive and are intended to be in addition to any other remedies or means of redress to which the City or the Developer may lawfully be entitled and are not specifically prohibited by this Agreement. The suspension of, or delay in, the performance of its obligations by the Developer while the City shall at such time be in default of their obligations hereunder shall not be deemed to be an "event of default." The suspension of, or delay in, the performance of the obligations by the City while the Developer shall at such time be in default of its obligations hereunder shall not be deemed to be an "event of default" by the City.

12.04. Non-Action on Failure to Observe Provisions of this Agreement. The failure of the City or the Developer to promptly or continually insist upon strict performance of any term, covenant, condition or provision of this Agreement, or any Exhibit hereto, or any other agreement, instrument or document of whatever form or nature contemplated hereby shall not be deemed a waiver of any right or remedy that the City or the Developer may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such term, covenant, condition or provision.

12.05. Termination.

- 1. The Developer and the City acknowledge and agree that as of the Effective Date certain matters mutually agreed by the parties hereto to be essential to the successful development of the Project have not been satisfied or are subject to certain conditions, legal requirements or approvals beyond the control of any of the parties hereto or which cannot be definitely resolved under this Agreement, including, but not limited to, failure of a governmental authority to grant an approval required for development of the Project or insurable title to the Project Site has not been obtained. In recognition of these events or conditions, the parties hereto mutually agree that, provided the appropriate or responsible party therefor diligently and in good faith seeks to the fullest extent of its capabilities to cause such event or condition

to occur or be satisfied, the failure of the events or conditions listed in subsection (2) below to occur or be satisfied shall not constitute an event of default by any party under this Article 12, but may, upon the election of any party hereto, be the basis for a termination of this Agreement in accordance with this Section.

2. In addition to any other rights of termination provided elsewhere in this Agreement, this Agreement may be terminated as provided in subsection (3) of this section by the City or the Developer after the occurrence of any of the following events or conditions (except for subsection (b), in which event only the Developer may terminate this Agreement pursuant to this subsection (2)):
 - a. The appropriate governmental authority (including the City in exercise of its governmental and regulatory authority and responsibility), upon petition by the Developer denies or fails to: issue the necessary order or other action necessary, vacate right-of-way as described in Section 5.03, issue the Permits, issue the Building Permits, or approve any other land use necessary to commence construction of the Project on the Project Site, provided the Developer has proceeded diligently, expeditiously and in good faith to obtain such approval, permits or other necessary actions;
 - b. A previously unknown site condition is subsequently discovered and that condition prevents successful development of the Project, or part of the Project on the Project Site, or part of the Project Site (in which case only the Developer at his option can terminate the Project as not feasible).
3. Upon the occurrence of an event described in subsection (2) or in the event that the Developer or the City, after diligently and in good faith to the fullest extent its capabilities, is unable to cause a condition precedent to its respective obligations to occur or be satisfied, then the Developer or the City may elect to terminate this Agreement by giving a notice to the other party hereto within thirty (30) days of the occurrence of such event or the determination of inability to cause a condition precedent to occur or be satisfied, stating its election to terminate this Agreement as a result thereof, in which case this Agreement shall then terminate.
4. In the event of a termination pursuant to this Section 12.05, neither the Developer nor the City shall be obligated or liable one to the other in any way, financially or otherwise, for any claim or matter arising from or as a result of this Agreement or any actions taken by the Developer and the City, or any of them, hereunder or contemplated hereby, and each party shall be

responsible for its own costs, however, the provisions of Sections 9.01 and 10.01 shall apply and shall survive termination of this Agreement, the provisions of this Subsection 12.05(4) to the contrary notwithstanding.

12.06. Termination Certificate.

1. In the event of a termination of this Agreement for any reason prior to the Expiration Date, each of the parties hereto do covenant and agree with each other to promptly execute a certificate prepared by the party electing to terminate this Agreement, which certificate shall expressly state that this Agreement has been terminated in accordance with its terms, is no longer of any force and effect except for those provisions hereof which expressly survive termination, that the rights, duties and obligations of the parties hereto have been terminated and released (subject to those surviving provisions hereof) and that the Project Site is no longer subject to any restrictions, limitations or encumbrances imposed by this Agreement.
2. The certificate described in Subsection (1) shall be prepared in a form suitable for recording and promptly after execution by all of the parties hereto shall be recorded in the public records of Pinellas County, Florida.

ARTICLE 13. RIGHT TO CONTEST.

13.01. Right to Contest. Subject to the conditions set forth in Section 13.02 below, the City or the Developer each may, at its sole discretion and expense, after prior written notice to the other parties hereto, contest by appropriate action or proceeding conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any lien, any payment of any taxes, assessments, impact fees or other public charges of a similar nature that may from time to time be levied upon or assessed by any appropriate governmental authority against the Developer, the Project (or any part thereof), the Project Site, furniture, fixtures, equipment or other personal property thereon, and the revenues generated from the use or operation of any or all of the above, any other payment specifically identified in this Agreement, or compliance with any law, rule, regulation, or other such legal requirement.

13.02. Conditions. The right to contest any charge, payment or requirement pursuant to Section 13.01 is subject to the following:

1. Such proceeding shall suspend the execution or enforcement of such charge, payment or requirement;

2. Such proceeding will not create any risk of impairment of the acquisition or preparation of the Project Site, the construction, completion, operation or use of the Project, the Project Site, or any part thereof, in any material respect, and neither the Project or Project Site, nor any part of the Project or the Project Site, would be subject to any risk of being involuntarily sold, forfeited or lost or the acquisition of the Project Site or the construction, equipping, or completion of the Project or any part thereof be delayed or prohibited;
3. Such proceeding will not subject any other party to criminal liability or risk of material civil liability for failure to comply therewith, or involve risk of any material claim against such party; and
4. The party seeking the benefit of this Article shall have furnished to the other parties such security, if any, as may be required in such proceeding or as may be reasonably requested by the others, to protect the Project and the Project Site, and any part thereof, and any interest of such parties hereunder.

ARTICLE 14. ARBITRATION

14.01. Agreement to Arbitrate. Only as specifically provided in this Agreement and only if any judicial or administrative action or proceeding has not been commenced with regard to the same matter and, if so, the party hereto commencing such action has not dismissed it, any disagreement or dispute between the parties may be arbitrated in the manner set forth in this Article 14. All parties hereby agree such arbitration, once commenced, shall be the exclusive procedure for resolving such disagreement or dispute and agree to be bound by the result of any such arbitration proceeding unless all parties mutually agree to terminate such proceeding prior to decision. If any arbitration proceeding under this part adversely affects the performance of any party hereunder, then any time periods provided herein for such performance by that party shall be tolled during the pendency of the arbitration proceeding affecting such performance.

14.02. Appointment of Arbitrators.

1. a. Unless accelerated arbitration as provided in Section 14.08 hereof is invoked, any party invoking arbitration herewith shall, within five (5) days after giving notice of impasse in the dispute resolution process or upon following the expiration of the time period for such dispute resolution occurrence of the event permitting arbitration to be invoked, give written notice to that effect to the other parties, and shall in such notice appoint a disinterested person who is on the list of qualified arbitrators maintained by the American Arbitration Association or a

disinterested person not on such list to whom an objection is not made by any other party hereto within five (5) days of receipt of the notice of such appointment as the arbitrator or, if more than one (1) arbitrator is to be appointed, as one of the arbitrators.

- b. Within ten (10) days after receipt of the notice described in paragraph (1), the other parties shall by written notice to the original party acknowledge that arbitration has been invoked as permitted by this Agreement, and shall either accept and approve the appointment of such individual set forth in the original notice as a sole arbitrator or shall appoint one (1) disinterested person per party of recognized competence in such field as an arbitrator.
2.
 - a. If two (2) arbitrators are appointed pursuant to subsection (a) above, the arbitrators thus appointed shall appoint a third disinterested person who is on the list of qualified arbitrators maintained by the American Arbitration Association, and such three (3) arbitrators shall as promptly as possible determine such matter.
 - b. If the second arbitrator shall not have been appointed as provided in subsection (a), the first arbitrator shall, after ten (10) days notice to the parties, proceed to determine such matter.
 - c. If the two (2) arbitrators appointed by the parties pursuant to subsection (a) shall be unable to agree within fifteen (15) days after the appointment of the second arbitrator upon the appointment of a third arbitrator, they shall give written notice of such failure to agree to the parties, and, if the parties then fail to agree upon the selection of such third arbitrator within fifteen (15) days thereafter, then within ten (10) days thereafter each of the parties upon written notice to the other parties hereto may request the appointment of a third arbitrator by the office in or for the State of Florida (or if more than one office, the office located closest to the City) of the American Arbitration Association (or any successor organization thereto), or, in its absence, refusal, failure or inability to act, request such appointment of such arbitrator by the United States District Court for the Middle District of Florida (which request shall be filed in the division of that court responsible for the geographic area including the City), or as otherwise provided in Chapter 682, Florida Statutes, known and referred to as the Florida Arbitration Act, as amended.

14.03. General Procedures. In any arbitration proceeding under this part, those parties appointing arbitrators shall each be fully entitled to present evidence and argument

to the sole arbitrator or panel of arbitrators. The arbitrator or panel of arbitrators shall only interpret and apply the terms of this Agreement and may not change any such terms, or deprive any party to this Agreement of any right or remedy expressed or implied in this Agreement, or award any damages or other compensation to any party hereto. The arbitration proceedings shall follow the rules and procedures of the American Arbitration Association (or any successor organization thereto) unless specifically modified by this Agreement, or as then agreed to by the parties hereto.

14.04. Majority Rule. In any arbitration proceeding under this part, the determination of the majority of the panel of arbitrators, or of the sole arbitrator if only one (1) arbitrator is used, shall be conclusive upon the parties and judgment upon the same may be entered in any court having jurisdiction thereof. The arbitrator or panel of arbitrators shall give written notice to the parties stating his or their determination within thirty (30) days after the conclusion of the hearing or final submission of all evidence or argument.

14.05. Replacement of Arbitrator. In the event of the failure, refusal or inability of any arbitrator to serve as such, promptly upon such determination being made by the affected arbitrator, the affected arbitrator shall give notice to the other two (2) arbitrators (if applicable) and to the parties hereto, and then a new arbitrator shall be promptly appointed as a replacement, which appointment shall be made by the party or the arbitrators who appointed the affected arbitrator in the same manner as provided for in the original appointment of the affected arbitrator in Section 14.02 hereof.

14.06. Decision of Arbitrators.

1. If any decision reached by arbitration as provided in this part requires performance by the Developer, the Developer covenants and agrees to comply with any decision of the arbitrator(s) promptly after the date of receipt by the Developer of such decision, and to continue such performance to completion with due diligence and in good faith.
2. If any such decision requires performance by the City, the City covenants and agrees to comply promptly with any decision reached by arbitrators) promptly after the date of receipt by the City of such decision, and to continue such performance to completion with due diligence and in good faith.
3. Nothing in this part, nor in any arbitration decision rendered under this part, shall be construed to require any payment by the City to the Developer not otherwise provided for herein.

14.07. Expense of Arbitration. The expenses of any arbitration proceeding pursuant to this part shall be borne equally by the parties to such proceeding, provided, however, for the purpose of this Section 14.07, "expenses" shall include the fees and expenses of the arbitrators and the American Arbitration Association with respect to such proceeding, but shall not include attorneys' fees or expert witness fees, or any costs incurred by attorneys or expert witnesses, unless (and to the extent) agreed to by the parties to such proceeding, which in the absence of such Agreement shall be the responsibility of the party incurring such fees or costs.

14.08. Accelerated Arbitration.

1.
 - a. If any of the parties to any arbitration proceeding under this part determines the matter for arbitration should be decided on an expedited basis, then after an initial election to invoke arbitration pursuant to Section 14.02 hereof has been made, either party to such proceeding may invoke accelerated arbitration by giving notice thereof to the other parties no later than three (3) days after arbitration has been initially invoked and the other parties do not object within three (3) days thereafter.
 - b. Accelerated arbitration, for purposes of this Section 14.08, shall be accomplished by either party notifying the American Arbitration Association (or any successor organization thereto) that the parties have agreed to a single arbitrator, qualified to decide the matter for arbitration, to be appointed by the American Arbitration Association (or any successor organization thereto) with the consent of the parties to such proceeding within three (3) days after receipt of the request and to decide such matter within five (5) days after such appointment.
 - c. If an arbitrator is not so appointed with consent of the parties to the proceeding within three (3) days after the notice referred to in paragraph (2) is received by the American Arbitration Association, the accelerated proceeding under this Section 14.08 shall terminate and the procedures otherwise set forth in this Article 14 shall apply, unless the parties mutually agree to an extension of such time period.
2. The Developer and the City hereby agree to use such accelerated procedure only when reasonably necessary, to not contest the appointment of the arbitrator or his or her decision except as may be permitted by law, and that all other provisions of this part, except as are in conflict with this Section 14.08, remain in effect and applicable to an accelerated arbitration proceeding.

14.09. Applicable Law. To the extent not inconsistent with this article, any arbitration proceeding under this article shall be governed by the provisions of Chapter 682, Florida Statutes, as amended, known and referred to as the Florida Arbitration Code.

14.10. Arbitration Proceedings and Records. Any arbitration hearing under this article shall be considered a meeting subject to Section 286.011, Florida Statutes, and shall be open to any member of the public. Unless otherwise rendered confidential pursuant to or by the operation of any applicable law or order (other than an order by a sole arbitrator or panel of arbitrators acting under this part), the record of such proceedings shall be a public record under Chapter 119, Florida Statutes.

ARTICLE 15. UNAVOIDABLE DELAY.

15.01. Unavoidable Delay.

1. Any delay in performance of or inability to perform any obligation under this Agreement (other than an obligation to pay money) due to any event or condition described in paragraph (b) as an event of "Unavoidable Delay" shall be excused in the manner provided in this Section 15.01.
2. "Unavoidable Delay" means any of the following events or conditions or any combination thereof: acts of God, litigation which has the effect of precluding reasonable satisfaction of the obligations of this Agreement, acts of the public enemy, riot, insurrection, war, pestilence, archaeological excavations required by law, unavailability of materials after timely ordering of same, epidemics, quarantine restrictions, freight embargoes, fire, lightning, hurricanes, earthquakes, tornadoes, floods, extremely abnormal and excessively inclement weather (as indicated by the records of the local weather bureau for a five-year period preceding the Effective Date), strikes or labor disturbances, delays due to proceedings under Chapters 73 and 74, Florida Statutes, restoration in connection with any of the foregoing or any other cause beyond the reasonable control of the party performing the obligation in question, including, without limitation, such causes as may arise from the act of the other party to this Agreement, or acts of any governmental authority (except that acts of the City shall not constitute an Unavoidable Delay with respect to performance by the City).
3. An application by any party hereto (referred to in this paragraph (c) and in paragraph (d) as the "Applicant") for an extension of time pursuant to this subsection must be in writing, must set forth in detail the reasons and causes of delay, and must be filed with the other party to this Agreement within seven (7) days following the occurrence of the event or condition causing the Unavoidable Delay or seven (7) days following the Applicant

becoming aware (or with the exercise of reasonable diligence should have become aware) of such occurrence.

4. The Applicant shall be entitled to an extension of time for an Unavoidable Delay only for the number of days of delay due solely to the occurrence of the event or condition causing such Unavoidable Delay and only to the extent that any such occurrence actually delays that party from proceeding with its rights, duties and obligations under this Agreement affected by such occurrence.

ARTICLE 16. RESTRICTIONS ON USE.

16.01. Project. Prior to the earlier of the Termination Date or the Expiration Date, no use of the Project, other than as described in Section 2.03, shall be permitted, other than the operation of improvements existing on the Effective Date until those improvements are demolished, unless and until the Developer or the person, if other than the Developer, intending to so use the Project or Project Site, shall file with the City a request for a release from the restriction imposed by this Section. The Governing Body of the City shall promptly consider such request and either deny the request, approve the request as filed, or approve the request subject to such terms, conditions and limitations as the City may reasonably require. Unless specifically requested and approved, a release of the restriction imposed by this Section shall not release the Developer from any obligations or restrictions imposed by this Agreement or any agreement, instrument or document contemplated hereby.

ARTICLE 17. FIRE OR OTHER CASUALTY; CONDEMNATION.

17.01. Loss or Damage to Project.

1. Until the Project Completion Date, and without regard to the extent or availability of any insurance proceeds, the Developer covenants and agrees to diligently commence and complete the reconstruction or repair of any loss or damage caused by fire or other casualty or by eminent domain (provided the City is not the condemning authority) to each and every part of the Project on a Parcel which it owns to substantially the same size, floor area, cubic content and general appearance as existed prior to the occurrence of such loss or damage, promptly after the City approves the Plans and Specifications for such reconstruction or repairs.
2. The City shall review the Plans and Specifications for such reconstruction or repairs as soon as possible after filing thereof by the Developer. The City agrees to approve the Plans and Specifications for such reconstruction or repairs if the reconstruction or repairs contemplated by such Plans and

Specifications will restore the Project, or the damaged portion thereof, to substantially the same condition as existed prior to the occurrence of such loss or damage and if such Plans and Specifications conform to the applicable laws, ordinances, codes, and regulations in effect at the time of filing with the City of the plans and specifications for such reconstruction or repairs.

17.02. Partial Loss or Damage to Project. Until the Project Completion Date, any loss or damage by fire or other casualty or exercise of eminent domain to the Project or Project Site, or any portion thereof, which does not render the Project or Project Site unusable for the use contemplated by Section 2.03 of this Agreement, shall not operate to terminate this Agreement or to relieve or discharge the Developer from the timely performance and fulfillment of the Developer's obligations pursuant to this Agreement, subject to an extension of time for an Unavoidable Delay.

17.03. Project Insurance Proceeds.

1. Whenever the Project, or any part thereof, shall have been damaged or destroyed, the Developer shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon such damage or destruction.
2. Subject to the rights of a Project Lender, the Developer agrees that all proceeds of property or casualty insurance received by the Developer as a result of such loss or damage shall be available and shall be used for payment of the costs of the reconstruction or repair of the Project to the extent necessary to repair or reconstruct the Project.

17.04. Notice of Loss or Damage to Project. The Developer shall promptly give the City written notice of any significant damage or destruction to the Project stating the date on which such damage or destruction occurred, the expectations of the Developer as to the effect of such damage or destruction on the use of the Project, and the proposed schedule, if any, for repair or reconstruction of the Project.

17.05. Condemnation of Project or Project Site; Application of Proceeds. In the event that part, but not all, of the Project or Project Site, or both, shall be taken by the exercise of the power of eminent domain at any time before the Expiration Date, subject to the rights of a Project Lender, the compensation awarded to and received by the Developer shall be applied first to the restoration of the Project, provided the Project can be restored and be commercially feasible for its intended use as contemplated by Section 2.03(1) of this Agreement after the taking, and, if not, can be retained by the Developer.

ARTICLE 18. MISCELLANEOUS

18.01. Assignments.

1. By the Developer.

- a. 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 consent of the City, which consent is hereby granted for assignment to Bella Vista Seashell Resort, L.L.C., 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.
- b. 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.
- c. An assignment of the Project, or any part thereof, by the Developer to any corporation, limited partnership, general partnership, or joint venture, in which the Developer is the or a general partner or has either the controlling interest or through a joint venture or other arrangement shares equal management rights with a financial institution 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 Section 18.01, 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.
- d. No assignee, purchaser, sublessee or acquire 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.

2. City's Right to Assign Rights. The Developer agrees that the City shall have the unqualified right to assign its rights under Section 5.04 and 6.03 of this Agreement to any person, subject only to applicable laws in regard to the disposition of an interest in real property.

18.02. 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 its successors and assigns, except as may otherwise be specifically provided herein.

18.03. Notices.

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 addressed as follows:

To the Developer:

To the City:

Clearwater Seashell Resort, LC
748 Broadway, Suite 202
Dunedin, FL 34698
Attn: Richard Gehring

City of Clearwater
112 S. Osceola Avenue
Clearwater, FL 33756

with copies to:

with copies to:

William J. Kimpton, Esquire
28059 U.S. Highway 19 North, #100
Clearwater, FL 33761

Pam Akins, Esquire
Clearwater City Attorney
112 S. Osceola Avenue
Clearwater, FL 33756

2. Notices given by courier service or by hand delivery shall be effective upon delivery and notices given by mail shall be effective on the third (3rd) business day after mailing. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it may be

changed) shall be deemed to have been an effective delivery as provided in this Section 18.03. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other parties and such notices shall be effective upon receipt. Until notice of change of address is received as to any particular party hereto, all other parties may rely upon the last address given.

18.04. Applicable Law and Construction. The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. This Agreement has been negotiated by the City and the Developer and the Agreement, including, without limitation, the Exhibits, shall not be deemed to have been prepared by the City or the Developer, but by all equally.

18.05. Venue; Submission to Jurisdiction.

1. For purposes of any suit action, or other proceeding arising out of or relating to this Agreement, the parties hereto do acknowledge, consent, and agree that venue thereof is Pinellas County, Florida.
2. Each party to this Agreement hereby submits to the jurisdiction of the State of Florida, Pinellas County and the courts thereof and to the jurisdiction of the United States District Court for the Middle District of Florida, for the purposes of any suit, action, or other proceeding arising out of or relating to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.
3. If at any time during the term of this Agreement the Developer is not a resident of the State of Florida or has no office, employee, City or general partner thereof available for service of process as a resident of the State of Florida, or if any permitted assignee thereof shall be a foreign corporation, partnership or other entity or shall have no officer, employee, agent, or general partner available for service of process in the State of Florida, the Developer hereby designates the Secretary of State, State of Florida, its agent for the service of process in any court action between it and the City, or both, arising out of or relating to this Agreement and such service shall be made as provided by the laws of the State of Florida for service upon a non-resident; provided, however, that at the time of service on the Florida Secretary of State, a copy of such service shall be delivered to the Developer at the address for notices as provided in 18.03.

18.06. Estoppel Certificates. The Developer and the City shall at any time and from time to time, upon not less than ten (10) days prior notice by another party hereto, execute, acknowledge and deliver to the other parties a statement in recordable form certifying that this Agreement has not been modified and is in full force and effect (or if there have been modifications that the said Agreement as modified is in full force and effect and setting forth a notation of such modifications), and that to the knowledge of such party, neither it nor any other party is then in default hereof (or if another party is then in default hereof, stating the nature and details of such default), it being intended that any such statement delivered pursuant to this Section 18.06 may be relied upon by any prospective purchaser, mortgagee, successor, assignee of any mortgage or assignee of the respective interest in the Project, if any, of any party made in accordance with the provisions of this Agreement.

18.07. Complete Agreement; Amendments.

1. This Agreement, and all the terms and provisions contained herein, including without limitation the Exhibits hereto, constitute the full and complete agreement between the parties hereto to the date hereof, and supersedes and controls over any and all prior agreements, understandings, representations, correspondence and statements, whether written or oral.
2. Any provision of this Agreement shall be read and applied in *para materia* with all other provisions hereof.
3. This Agreement cannot be changed or revised except by written amendment signed by all parties hereto.

18.08. Captions. The article and section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any article, section, subsection, paragraph or provision hereof.

18.09. Holidays. It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday observed in the City, it shall be postponed to the next following business day.

18.10. Exhibits. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto shall be treated as if they are part of this Agreement.

20

- 18.11. No Brokers.** The City and the Developer hereby represent, agree and acknowledge that no real estate broker or other person is entitled to claim or to be paid a commission as a result of the execution and delivery of this Agreement, including any of the Exhibits, or any proposed improvement, use, disposition, lease, conveyance or acquisition of any or all of the Project Site.
- 18.12. Not an Agent of City.** During the term of this Agreement, the Developer hereunder shall not be an agent of the City with respect to any and all services to be performed by the Developer (and any of its agents, assigns, or successors) with respect to the Project.
- 18.13. Memorandum of Development Agreement.** The City and the Developer agree to execute, in recordable form, on the Effective Date, the short form "Memorandum of Agreement for Development and Disposition of Property" and agree, authorize and hereby direct such Memorandum to be recorded in the public records of Pinellas County, Florida, as soon as possible after execution thereof. The Developer shall pay the cost of such recording.
- 18.14. Public Purpose.** The parties acknowledge and agree that this Agreement satisfies, fulfills and is pursuant to and for a public purpose and municipal purpose and is in the public interest, and is a proper exercise of the City's power and authority.
- 18.15. No General Obligation.** In no event shall any obligation of the City under this Agreement be or constitute a general obligation or indebtedness of the City or the City, a pledge of the ad valorem taxing power of the City or the City or a general obligation or indebtedness of the City or the City within the meaning of the Constitution of the State of Florida or any other applicable laws, but shall be payable solely from legally available revenues and funds. Neither the Developer nor any other party under or beneficiary of this Agreement shall ever have the right to compel the exercise of the ad valorem taxing power of the City, the City or any other governmental entity or taxation in any form on any real or personal property to pay the City's or the City's obligations or undertakings hereunder.
- 18.16. Other Requirements of State Law.** Nothing in this Agreement shall be deemed to relieve either party from full compliance with any provision of State law which is applicable to any of the obligations or undertakings provided for in this Agreement. In the event that this Agreement omits an obligation to comply with any provision of State law in regard to any of the obligations or undertakings provided for in this Agreement, it is the intention of the parties that such applicable State law shall be deemed incorporated into this Agreement and made a part thereof. In the event that there is any conflict between the provisions of this Agreement and applicable State law, it is the intention of the parties that the Agreement shall be construed to incorporate such provisions of State law and that such provisions shall control.

18.17. Technical Amendments; Survey Corrections. In the event that due to minor inaccuracies contained herein or any Exhibit attached hereto or any other agreement contemplated hereby, or due to changes resulting from technical matters arising during the term of this Agreement, the parties agree that amendments to this Agreement required due to such inaccuracies, unforeseen events or circumstances which do not change the substance of this Agreement may be made and incorporated herein. The City Manager is authorized to approve such technical amendments on behalf of the City, respectively, and is authorized to execute any required instruments, to make and incorporate such amendment to this Agreement or any Exhibit attached hereto or any other agreement contemplated hereby.

18.18. Term; Expiration; Certificate.

1. If not earlier terminated as provided in Section 12.05, this Agreement shall expire and no longer be of any force and effect on the tenth anniversary of the Effective Date.
2. Upon completion of the term of this Agreement, all parties hereto shall execute the Agreement Expiration Certificate. The Agreement Expiration Certificate shall constitute (and it shall be so provided in the certificate) a conclusive determination of satisfactory completion of all obligations hereunder and the expiration of this Agreement.
3. In the event of any dispute as to whether any party is required to execute the Agreement Expiration Certificate, the dispute shall be resolved by arbitration as provided in Article 14.
4. The Agreement Expiration Certificate shall be in such form as will enable it to be recorded in the public records of Pinellas County, Florida. Following execution by all of the parties hereto, the Agreement Expiration Certificate shall promptly be recorded by the Developer in the public records of Pinellas County, Florida and the Developer shall pay the cost of such recording.

18.19. Approvals Not Unreasonably Withheld. The parties hereto represent that it is their respective intent as of the Effective Date and do covenant and agree in the future that all approvals, consents, and reviews will be undertaken and completed as expeditiously as possible, in good faith, and will not be arbitrarily or unreasonably withheld, unless otherwise expressly authorized by the terms of this Agreement.

18.20. Effective Date. The Effective Date shall be the date of the last signature to this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and their respective seals affixed as of this 13th day of March, 2001.

COUNTERSIGNED:

THE CITY OF CLEARWATER, FLORIDA

Brian J. Aungst
Brian J. Aungst
Mayor-Commissioner

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

Approved as to form:

Attest:

Pamela K. Akin
Pamela K. Akin
City Attorney

Cynthia E. Goudeau
Cynthia E. Goudeau
City Clerk

STATE OF FLORIDA)
)
COUNTY OF PINELLAS)

The foregoing instrument was acknowledged before me this 13th day of March, 2001 by William B. Horne II and Brian J. Aungst, Mayor and Cyndie Goudeau City Clerk, respectively, for the City of Clearwater, Florida, on behalf of the City.

By: Carolyn L. Brink
Signature of Notary Public

My Commission Expires:

Printed, typed or stamp

NOTARY PUBLIC - STATE OF FLORIDA
CAROLYN L. BRINK
COMMISSION # CC834678
EXPIRES 5/22/2003
BONDED THRU ASA 1-888-NOTARY1

CLEARWATER SEASHELL RESORT, L.C.

Attest:

By:

Richard E. Gehring Member

By:

William J. Kimpton
Member

STATE OF FLORIDA)
)
COUNTY OF PINELLAS)

The foregoing instrument was acknowledged before me this 12th day of March, 2001 by William J. Kimpton and Richard E. Gehring, as authorized Members of Clearwater Seashell Resort, L.C., a Florida limited liability company, on behalf of Clearwater Seashell Resort, L.C..

By:

Janis M. Przywara
Signature of Notary Public



Janis M. Przywara
MY COMMISSION # CC762257 EXPIRES
September 16, 2002
BONDED THRU TROY FAIN INSURANCE, INC.

My Commission Expires:

Printed, typed or stamp

Clearwater Beach Seashell Resort

DEVELOPMENT AGREEMENT EXHIBIT LIST

March 1, 2001

Legal Description of Controlled Property & Right of Way to be Vacated	.....A
Project Description	.....B
Project Site	.....C
Project Development Schedule	.....D
Covenant Trip Generation Management Program	.....E
Covenant Regarding Hurricane Watch Closure	.....F
List of Required Permits & Approvals	.....G
Public Improvements	.....H
Appraisal Instructions	.....I
Café Seating	.....J
Covenant of Unified Use	.....K
License Agreement	.....L

EXHIBIT A

TOTAL PROJECT LEGAL DESCRIPTION, including Controlled Project & Right of Way to be Vacated

A PARCEL OF LAND LYING IN SECTION 8, TOWNSHIP 29, 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, 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, THE LLOYD-WHITE-SKINNER SUBDIVISION, AS RECORDED IN PLAT BOOK 13, PAGE 12, OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA.

TOGETHER WITH LOT 58 AND 59, 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 TO BE VACATED, 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 GULFVIEW 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 GULFVIEW BOULEVARD TO BE VACATED, BOUNDED ON THE NORTH BY THE WESTERLY EXTENSION OF THE NORTH PROPERTY LINE OF LOTS 57 AND 104, AND ON THE SOUTH BY THE WESTERLY EXTENSION OF THE SOUTH LINE OF LOT 59.

CONTAINING 1.63 acres (71,068 sq ft) more or less

CONTROLLED PROPERTY LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN SECTION 8, TOWNSHIP 29, 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, 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, THE LLOYD-WHITE-SKINNER SUBDIVISION, AS RECORDED IN PLAT BOOK 13, PAGE 12, OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA.

TOGETHER WITH LOT 58 AND 59, THE LLOYD-WHITE-SKINNER SUBDIVISION, AS RECORDED IN PLAT BOOK 13, PAGE 12, OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA.

EXHIBIT B

Seashell Project Description – as defined in presentations and applications

The properties are developed with The Glass House Motel at 229 South Gulfview Boulevard, The Beach Place Motel at 301 South Gulfview Boulevard, and a single family house and out buildings at 300 Coronado Drive abutting the Beach Place Motel and operated under a common ownership. The proposed project assembles these parcels into a single development site, which incorporates the vacated Third Street right-of-way. Under the terms of the proposed development agreement, Gulfview Boulevard is proposed to be rebuilt to the west; this parcel seeks rights to use the eastern 1/2 of the vacated Gulfview Boulevard right-of-way.

Surrounding land uses are: Gulfview Boulevard to the west, a single family unit and the Spyglass Motel to the north, Legends Steakhouse to the south and Coronado Drive to the east. Across Gulfview Boulevard, there is a public parking lot abutting the Gulf of Mexico.

The existing buildings consist of two motels which contain 66 hotel units. The existing properties contain several structures, all of which were built between 1941 and 1956. Most of the value in these properties is in the land. The present assessed value of the properties is \$2,690,500. Land values are \$1,910,000. The value of the existing structures is \$780,500. The value of the new structure will be approximately \$65,000,000.

Redevelopment is proposed for these obsolete structures. The proposed use is a 250-unit full service hotel with banquet, restaurant and retail and an 750-space(min.) parking garage which will serve both hotel users and the general public. In order to accomplish the proposed development, the applicants propose to implement the Gulf Walk improvement outlined in Beach by Design. This improvement will extend for approximately 1,000 feet, beginning at the exit to the existing Pier 60 parking lot and extending southward. The Gulf Walk will provide landscaping, pedestrian and bicycle routes and a limited amount of surface public parking, as well as a relocated travelway for vehicles. This travelway will be built in a curvilinear design and will include "traffic calming" features. Public parking will be replaced in the parking garage to be built as part of the hotel. The public will access the beach by a pedestrian overpass.

SEE PLANS IN FILE

EXHIBIT C

SEE PLANS IN FILE

EXHIBIT D

EXHIBIT E

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made as of the ___ day of _____, 2001 by Clearwater Seashell Resort, L. C.

Clearwater Seashell Resort, L. C. is the owner of fee simple title to all of the real property described in Exhibit 1 attached hereto and made a part hereof (hereinafter the "Real Property"). The City of Clearwater 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 preliminary design for the revitalization of Clearwater Beach.

The designation of Clearwater Beach as a Community Redevelopment District provide for the allocation of bonus resort units as an incentive for the development of destination quality resorts with a full complement of resort amenities. Pursuant to the designation of Clearwater Beach as a Community Redevelopment District, the allocation of bonus resort units is subject to compliance with a series of performance standards, including a requirement that the resort hotel to be developed on the Real Property implements a trip generation management program to reduce the number of vehicle trips generated by the use and operation of the Real Property.

The City of Clearwater has granted, by City Commission Resolution _____ passed and approved on _____, Clearwater Seashell Resort, L. C.'s application for an allocation of bonus resort units pursuant to the provisions of the designation of Clearwater Beach as a Community Redevelopment Districts subject to compliance with the requirements of the designation of Clearwater Beach as a Community Redevelopment District. Clearwater Seashell Resort, L. C. desires for itself, and its successors and assigns, as owners 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 bonus resort units to Clearwater and the designation of Clearwater Beach as a Community Redevelopment District, 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 resort units to Clearwater Seashell Resort, L. C. and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Clearwater Seashell, L. C. hereby declares, covenants and agrees as follows:

1. Benefit and Enforcement. These covenants and restrictions are made for the benefit of Clearwater Seashell Resort, L. C. and its successors and assigns and shall be enforceable by them and also for the benefit of the residents of the City of Clearwater, Florida and shall be enforceable on behalf of the said residents by the City Commission of the City of Clearwater.

2. Covenant to Prepare and Implement a Trip Generation Management Program. Clearwater Seashell Resort, L. C. hereby covenants and agrees to the development, use and operation of the Real Property in accordance with the provisions of this Declaration.

2.1 Trip Generation Management Program. Clearwater Seashell Resort, L. C. shall prepare a Trip Generation Management Program which includes, at a minimum, the program elements which are set out in Exhibit 2 which is attached hereto and incorporated herein.

2.2 Implementation. Clearwater Seashell, L. C. shall take all necessary and appropriate steps to implement the approved Trip Generation Management Program and the selected management strategies.

3. Effective Date. This Declaration shall become effective immediately upon its recording.

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. Clearwater Seashell Resort, L. C. shall reimburse the City of Clearwater for any expenses, including attorneys fees, which are incurred by the City of Clearwater in the event that the City determines that it is necessary and appropriate to seek judicial enforcement of these Declarations and the City obtains relief, whether by agreement of the parties or through order of the court.

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.

IN WITNESS WHEREOF, Clearwater Seashell Resort, L. C. has caused this Declaration of Covenants and Restrictions to be executed this _____ day of _____, 2001.

Signed and sealed and delivered
in the presence of:

Clearwater Seashell Resort,
L. C.

By:

Name:

Title: _____

Date: _____

STATE OF FLORIDA)
)
COUNTY OF PINELLAS)

This instrument was acknowledged before me this ____ day of _____, 2001 by _____ on behalf of Clearwater Seashell Resort, L. C.

Notary Public
State of Florida

My commission expires:

22

EXHIBIT 2

Trip Generation Management Program

1. Prior to issuance of a Certificate of Occupancy for the Seashell Resort, the developer shall implement a Transportation System Management Plan. This Plan shall establish practices, procedures and costs/fees for services to reduce the number of trips to and from the site. Examples of methods, which may be considered are:
 - a. Guest shuttle services/airport
 - b. Guest shuttle services/activities
 - c. Employee shuttle
 - d. Non-motorized modes for guests
 - e. Fixed route transit
 - f. Taxis/demand responsive transit
 - g. Non-motorized modes for employees
 - h. Staggered working hours

The plan will address the trip characteristics of resort occupancy, compare and contrast the generation and reduction methods against non transient units and create a supporting trip utilization projection for the Beach by Design transit proposal from both hotel visitors and garage patrons. The plan will apply a best methods approach. City and County transportation programs may also generate additional methods based on special studies or intergovernmental program funding (County-wide Gulfview Trolley System).

2. Prior to issuance of a Certificate of Occupancy for the Seashell Resort, the developer shall submit a Hurricane Evacuation Plan to the City. This Plan shall establish practices and procedures to be implemented when a hurricane watch is established for Clearwater. These practices and procedures will lead to evacuation of the Seashell Resort when a hurricane watch is issued for Clearwater.

EXHIBIT F

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made as of the ___ day of _____, 2001 by Clearwater Seashell Resort, L. C.

Clearwater Seashell Resort, L. C. is the owner of fee simple title to all of the real property described in Exhibit 1 attached hereto and made a part hereof (hereinafter the "Real Property"). The City of Clearwater 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 preliminary design for the revitalization of Clearwater Beach.

The designation of Clearwater Beach as a Community Redevelopment District provide for the allocation of bonus resort units as an incentive for the development of destination quality resorts with a full complement of resort amenities. Pursuant to the designation of Clearwater Beach as a Community Redevelopment District, the allocation of bonus resort units is subject to compliance with a series of performance standards, including a requirement that resorts developed with bonus resort units pursuant to the Community Redevelopment District shall be closed and all guests evacuated from the resort within twelve (12) hours after the National Hurricane Center posts a hurricane watch that includes Clearwater Beach. The purpose of the evacuation of the Real Property within twelve (12) hours of the issuance of a hurricane watch is to ensure that the Real Property 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 of Clearwater has granted, by City Commission Resolution _____ passed and approved on _____, Clearwater Seashell Resort, L. C.'s application for an allocation of bonus resort units pursuant to the provisions of the designation of Clearwater Beach as a Community Redevelopment Districts subject to compliance with the requirements of the designation of Clearwater Beach as a Community Redevelopment District. Clearwater Seashell Resort, L. C. desires for itself, and its successors and assigns, as owners 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 bonus resort units to Clearwater and the designation of Clearwater Beach as a Community Redevelopment District, 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 resort units to Clearwater Seashell Resort, L. C. and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Clearwater Seashell, L. C.

hereby declares, covenants and agrees as follows:

1. Benefit and Enforcement. These covenants and restrictions are made for the benefit of Clearwater Seashell Resort, L. C. and its successors and assigns and shall be enforceable by them and also for the benefit of the residents of the City of Clearwater, Florida and shall be enforceable on behalf of the said residents by the City Commission of the City of Clearwater.

2. Covenant of Development, Use and Operation. Clearwater Seashell Resort, L. C. 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 bonus resort units allocated to Clearwater Seashell Resort, L. C. shall be limited to overnight accommodations with occupancy limited to stays of thirty (30) days or less.

2.2 Closure of Improvements and Evacuation. The improvements developed on the Real Property shall be promptly closed upon the issuance of a hurricane watch by the National Hurricane Center which hurricane watch includes Clearwater Beach and all guests, visitors and employees other than emergency and security personnel required to protect the improvements, shall be evacuated from the Real Property within twelve (12) hours of 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 ensure that the guests, visitors and employees will be evacuated substantially in advance of the issuance of a forecast of probable landfall.

3. Effective Date. This Declaration shall become effective immediately upon its recording.

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. Clearwater Seashell Resort, L. C. shall reimburse the City of Clearwater for any expenses, including attorneys fees, which are incurred by the City of Clearwater in the event that the City determines that it is necessary and appropriate to seek judicial enforcement of these Declarations and the City obtains relief, whether by agreement of the parties or through order of the court.

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.

IN WITNESS WHEREOF, Clearwater Seashell Resort, L. C. has caused this Declaration of Covenants and Restrictions to be executed this _____ day of _____, 2001.

Signed and sealed and delivered
in the presence of:

Clearwater Seashell Resort, L. C.

By:

Name: _____

Title: _____

Date: _____

STATE OF FLORIDA)
)
COUNTY OF PINELLAS)

This instrument was acknowledged before me this ___ day of _____, 2001 by _____ on behalf of Clearwater Seashell Resort, L. C.

Notary Public
State of Florida
My commission expires:

EXHIBIT G

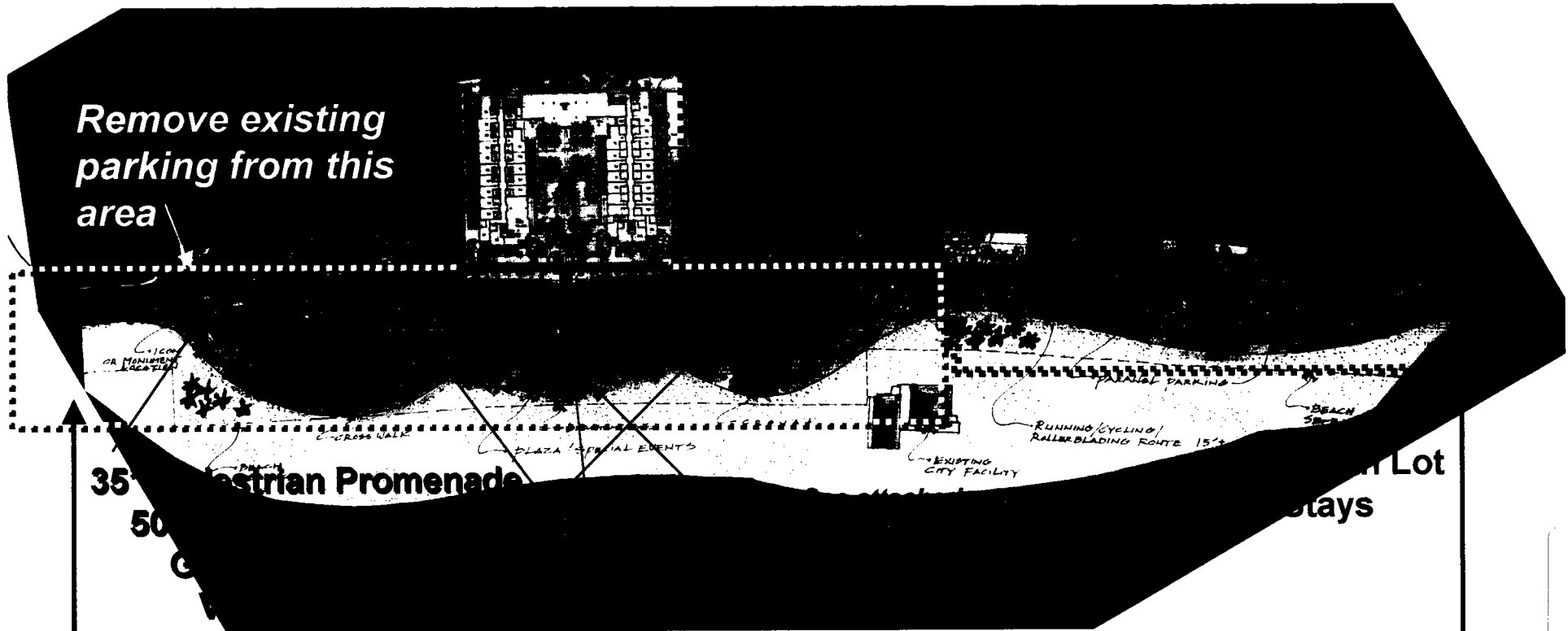
APPROVALS & PERMIT LIST

- Site plan, height, vacation approval
- Piling & foundation permit
- Demolition permit
- Site alteration/drainage permit
- Utility relocation permit
- Vacation condition & replat approval
- Building permits package
 - Structural
 - Mechanical
 - Electrical
 - Plumbing
- Beach Improvement permits
 - CCCL permit - *from Florida Beaches and Shores*
 - Utility & Drainage permit - *with City Engineer & SWFMD approval*
 - Roadway Permit - *approved by City Engineer*
 - Landscape, Irrigation (graywater) & Lighting – *approved by Recreation & Parks*
 - Pedestrian Bridge, Elevated Walk & Beach Elevator Public Service Facility (*building permit*)

EXHIBIT H

Public Improvements

Gulfview, Beach Walk, Garage Access Improvements & Public Facilities Area

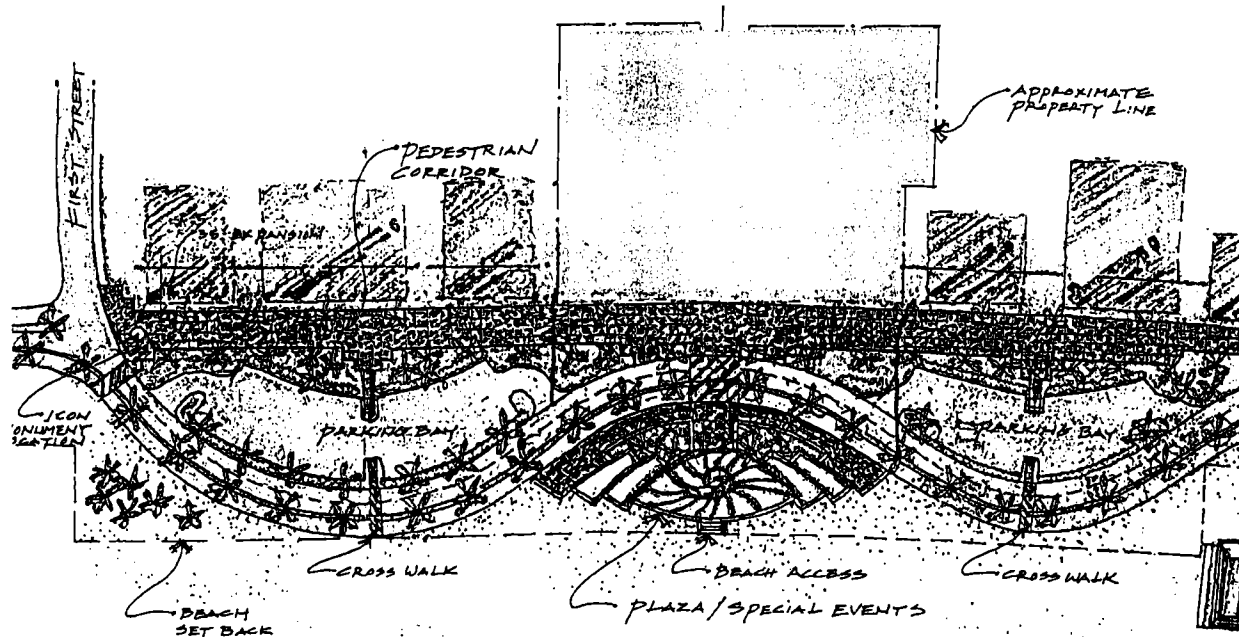


South Gulfview & Beach Walk Improvements

Phase "A" Gulfview Beach Walk: Roadway, Bikeway Pedestrian & Transit Elements Conceptual Design, subject to design and permitting - more complete description contained in Adopted Beach By Design Document. Project delivered by the terms of the Development Agreement

Additional Improvements

Phase "B" Gulfview Beach Walk: Roadway, Bikeway Pedestrian & Transit Elements Conceptual Design continuation to the south at City Option within six months of start of construction. Parking removed except as noted



BASIC CONCEPT		
Quantity	Item Description	Unit
205,800	Demolition existing site features	SF
1	Retrofit underground utilities	LS
4,766	Asphalt pavement roadway/bikeway	SY
3,885	Asphalt parking lots incl. Striping and wheel stops	SY
3,600	Crosswalks, concrete pavers over concrete slab	SY
10,000	6-8" wide concrete curb, std	LF
17,500	Plaza pavement, concrete pavers over concrete slab	SF
37,350	Promenade pavement	SF
500	Seating wall	LF
1	Steps to beach	LS
61	New pedestrian lighting (by FPC)	EA
1	Signage (allowance)	LS
45	Bollards, custom precast	EA
52,600	Accents, shrubs and ground cover	EA
52	Specimen Medjool date palms	EA
48	Washingtonia palms clustered in key locations	EA
36	Sabal palms at crosswalks	EA
55	Ornamental trees	EA
1,000	Clean fill	CY
600	Mulch, Shredded cypress, 3" depth	CY
13,200	Turf, St. Augustine "Floratum"	SF
65,800	Irrigation (allowance)	SF
1	Irrigation meters and connections	LS

OPTIONAL UPGRADES (BUDGET-DEPENDENT)		
750	Berms/earthwork	CY
52	Uplighting on specimen trees	EA
2	Gateway features	EA
2	Lighting on gateway features	EA

Gulfview Beach Walk Landscape Plan
Clearwater Seashell Resort LC

PINELLAS COUNTY FLA.
OFF. REC. BK 11278 PG 993

EXHIBIT I

Appraisal Instructions

Typically, an appraisal of this type will use three appraisal methods, separately assessing Comparable Sales Value, Income Approach, (Net Present Value of Future Income Stream), and Replacement Cost. Furthermore, a typical appraisal is to determine fair market value, as defined under Title XI of the Financial Institutions, Reform, Recovery and Enforcement Act of 1989, 12 CFR Part 323.2.f. This definition is: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well-informed or well-advised, and acting in what they consider to be their own best interests;
3. A reasonable time is allowed for exposure to the open market;
4. Payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto;
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

There is no known open market with comparable garage sales within the Florida West Coast market area, which precludes use of the Comparable Sales Approach to valuation. This public garage is to be held as a commercial condominium and will form one of the components of a mixed-use project comprised of a hotel, restaurants, retail, and additional parking used by the other components. The underlying land is therefore owned by the condominium, and a determination of the value of the portion of land to be attributed to the public garage would be subjective, at best. If the appraiser were to assume the garage were free-standing using a Replacement Cost method, the land would have to be valued at its Highest and Best Use, which would not be as a parking garage. Therefore, the Replacement Method is not useful for this appraisal. The remaining, the Income Approach, is the only reasonable method for determination of the transaction value under these conditions.

Therefore, for purposes of calculating the fair market value of the public parking garage to equal to the projected net operating income to be generated from the

operation percent (6%), said rate exceeding the City's cost of funds at the Effective Date of this Agreement.

The projected net operating income shall equal the projected gross revenue minus the operating expenses. The operating expenses shall equal the owner's actual cost incurred if the public parking garage has been operated for a period of one (1) year, or in the event that the garage has been operated for less than one (1) years, the owner's budget.

EXHIBIT J

Café Seating

The ordinance to be adopted by the City of Clearwater shall authorize the use of the easterly [17.5] feet of the West 35 feet of the existing right-of-way of South Gulf View Boulevard, as well as portions of the elevated sidewalk located adjacent to the easterly edge of the Project Site for the purpose of placing chairs and tables to operate restaurants/cafés within such areas. Such areas may be used for the service of food and beverages, including beer, wine and alcoholic beverages so long as the alcoholic beverages are for on-premises consumption only. Additionally, such ordinance shall authorize the operators of the restaurants/cafés to install access control barriers, which are not permanent structures, around the perimeter of café seating areas.

EXHIBIT K

THIS INSTRUMENT PREPARED BY
AND WHEN RECORDED, RETURN TO:

Stephen J. Szabo, III, Esq.
Annis, Mitchell, Cockey,
Edwards & Roehn, P.A.
Post Office Box 3433
Tampa, Florida 33601

COVENANT OF UNIFIED USE

THIS COVENANT OF UNIFIED USE (the "Agreement") is executed this ____ day of _____, 2001 (the "Effective Date") by CLEARWATER SEASHELL RESORTS, L.C., a Florida limited liability company ("Owner").

WITNESSETH:

WHEREAS, Owner is the owner of the real property legally described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Owner and the City of Clearwater (the "City") are parties to that certain Development Agreement dated _____, 2001 (the "Development Agreement") pursuant to which the City has agreed that Owner may develop and construct upon the Property a multi-use project consisting of not less than 750 parking spaces (of which not less than 400 shall be public parking spaces), up to 50,000 square feet of retail space and 250 residential hotel units, all as more particularly described in the Development Agreement; and

WHEREAS, Owner has agreed that the Property shall be developed and operated for a unified use, as more particularly described hereinbelow.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner does hereby agree that the Property shall be developed and operated as a unified mixed-use project such that the residential hotel units constructed upon the Property shall be occupied and operated as a single hotel. The restrictions set forth in the preceding sentence shall survive for a period of _____ () years from the Effective Date of this Agreement. Nothing in this Agreement shall preclude the purchase and sale of the residential hotel units and all other components of the mixed-use project constructed upon the Property to separate, unrelated third party owners, so long as the residential hotel units are operated and occupied as a single hotel throughout the term of this Agreement. Owner agrees that the City shall have the right to enforce the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Covenant effective the day and year first above written.

Witnesses:

CLEARWATER SEASHELL RESORTS,
L.C., a Florida limited liability company

Print Name: _____

By: _____

Print Name: _____

Print Title: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of February, 2001, by _____, as _____ of CLEARWATER SEASHELL RESORTS, L.C., a Florida limited liability company, on behalf of the limited liability company, who is personally known to me or has produced _____ as identification.

NOTARY PUBLIC

Name: _____

Serial No. _____

My Commission expires: _____

#770137 v1 - 10814-020

EXHIBIT L

THIS LICENSE AGREEMENT, made and entered into this ___ day of _____, 200_, by and between the CITY OF CLEARWATER, FLORIDA, a Florida municipal corporation ("Licensor") and CLEARWATER SEASHELL RESORT, L. C., ("Licensee"):

WITNESSETH:

WHEREAS, Licensor is the owner of fee simple title to the area described in Exhibit A attached hereto and incorporated herein;

WHEREAS, Licensee is the developer of a mixed use resort project on Clearwater Beach which will include at least four hundred (400) parking spaces which will be open to the public;

WHEREAS, in conjunction with the construction of the mixed use resort project Licensee is constructing an elevated beach access facility between the parking spaces which will be open to the public and the public beach ("Elevated Beach Access Facility");

WHEREAS, the support structures for the Elevated Beach Access Facility on the gulfside of South Gulfview will be improved for the public convenience and benefit with public beach service improvements ("Beach Service Facility");

WHEREAS, the Elevated Beach Access Facility and Beach Service Facility will be dedicated to the public;

WHEREAS, the City has determined that it is in the best interests of the residents of the City of Clearwater to have the Beach Service Facility operated by the Licensee;

WHEREAS, the Licensor is willing to grant a license to Licensee to use and operate the Beach Service Facility for the purposes stated in this agreement;

NOW, THEREFORE IT IS MUTUALLY AGREED, AS FOLLOWS:

1. License Granted. The City hereby grants a license to use and operate the Beach Service Facility.

2. Term. The term of the license is fifty (50) years, beginning on the first (1st) day that beach service facilities are available for use, and ending on the same day, fifty (50) years thereafter, unless terminated pursuant to paragraph 3 of this License Agreement;

3. Termination. The license may be cancelled by the Licensor at any time, ninety (90) days after providing Licensee written notice that the Beach Service Facility is not being operated in accordance with the requirements of this License Agreement. The written notice shall specify each and every way in which the Licensee has failed to operate the Beach Service Facility in accordance with the requirements of this License Agreement and the Licensee shall have ninety (90) days to reasonably cure such failures.

4. Exclusive Rights. The Licensee shall have the exclusive right to conduct the activities described in Exhibit "1", which is attached hereto and incorporated herein in or at the Beach Services Facility.

5. Payment for Services. The goods and services provided by Licensor shall be available to the general public, however, the City agrees that the Licensee may make special provision for payment of services rendered to the public through the Licensee's resort or other resort properties on Clearwater Beach.

6. Hours of Operation. The Beach Service Facility shall be open at normal periods of beach use.

7. Operation and Maintenance. Licensee shall be responsible for the operation and maintenance of the Beach Service Facility including operation, maintenance, upkeep, repair and replacement. Licensee shall maintain the Beach Services Facility in good order, condition and repair, reasonable wear and tear excepted.

8. Use of the Facility. Licensee hereby covenants and agrees to make no unlawful, improper, or offensive use of the Beach Service Facility. Licensee shall not permit any person other than Licensee to conduct a business in or from the Beach Service Facility without the written consent of the Licensor.

9. Assignment. Licensee hereby covenants not to assign, pledge, hypothecate the license created herein, in whole or in part, without the prior written consent of the Licensor except to Bella Vista Seashell Resort LLC and/or the hotel operator for which no consent shall be required. The paragraph is intended to and shall be construed to include a prohibition on the assignment of the license by operation of law.

10. Taxes. Licensee shall promptly pay any and all taxes, including but not limited to state sales taxes, occupation license taxes, beverage license and permit fees due in regard to the operation and use of the Beach Services Facility, but not ad valorem taxes or personal property taxes, if any, which shall be paid by Licensor.

11. Utilities. Licensee agrees to be responsible for all costs related to any utilities provided to the Beach Services Facility.

12. Modifications to Structure. Licensee is not authorized to make any material change to the Beach Services Facility without the written approval of the City.

13. Indemnification. Licensee agrees to indemnify and hold Licensor and its employees harmless from and against any and all claims, demands, causes of action or lawsuits of whatever kind or character arising out of this License Agreement and/or performance hereunder. Licensee agrees to investigate, handles, provide defense for and defend any such claims, demands, causes of action or lawsuits at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claim, demand, cause of action or lawsuit is groundless, false or fraudulent.

14. Insurance. Licensee shall at his own expense purchase and maintain during the term of this License Agreement the following insurance coverages:

[to be inserted at time of execution]

Licensee shall provide the City with copies of all insurance policies required by this License Agreement.

15. Destruction of Facility. In the event that the Beach Service Facility is destroyed, by whatever means, Licensee shall be required to rebuild the Facility in accordance with the original plans and specifications. The City agrees that any insurance proceeds received by the City in conjunction with the destruction of the facility shall be provided to Licensee for use in rebuilding the Facility.

16. Compliance with Government Regulations. Licensee agrees to comply with the requirements of all agencies of government.

17. Signs. All signage shall be in conformance with the City of Clearwater's Land Development Regulations.

18. Costs of Enforcement. In the event that Licensor incurs any cost to enforce any of the provisions of this License Agreement, including but not limited to attorneys fees, Licensee agrees to pay said costs.

Countersigned:

Mayor

Approved as to form:

City Attorney's Office

CITY OF CLEARWATER

By:

City Manager

Attest:

City Clerk

CLEARWATER SEASHELL
RESORT, L. C.

By: _____

EXHIBIT 1

1. Rental of beach towels.
2. Rental of chairs, umbrellas and cabanas.
3. The sale of packaged snacks and non-alcoholic beverages.
4. The sale of beach sundries.
5. The rental of showers and lockers.