

HDA2013-08006 405 Coronado Dr. (PARCEL C)

HOTEL DENSITY RESERVE DEVELOPMENT AGREEMENT

THIS HOTEL DENSITY RESERVE DEVELOPMENT AGREEMENT ("AGREEMENT") is dated the _____ day of _____, 2014, and entered into between **MAINSTREAM PARTNERS VIII, LTD.**, ("Developer"), its successors and assigns, and the **CITY OF CLEARWATER, FLORIDA**, a political subdivision of the State of Florida acting through its City Council, the governing body thereof ("City").

RECITALS:

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

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

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

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

WHEREAS, the Developer owns 1.32 acres of real property ("Property") in the corporate limits of the City, more particularly described on Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, the Developer desires to develop the Property by demolishing existing hotel rooms and other uses in order to construct One Hundred Sixty-Six (166) overnight accommodation units, meeting space for guest use, pool, new lobby and parking with a minimum of 199 parking spaces (1.2 spaces/unit), generally conforming to the architectural elevation dimensions shown in composite Exhibit "B" (collectively, the improvements are the Project); and

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

WHEREAS, upon completion the planned hotel will contain 166 overnight accommodation units, which includes 100 units from the available Hotel Density Reserve ("Reserve Units"); and

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

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

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

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

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

STATEMENT OF AGREEMENT

In consideration of and in reliance upon the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound and in accordance with the Act and Code, agree as follows:

SECTION 1. Recitals. The above recitals are true and correct and are a part of this Agreement.

SECTION 2. Incorporation of the Act. This Agreement is entered into in compliance with and under the authority of the Code and the Act, the terms of which as of the date of this Agreement are incorporated herein by this reference and made a part of this Agreement. Words used in this Agreement without definition that are defined in the Act shall have the same meaning in this Agreement as in the Act.

SECTION 3. Property Subject to this Agreement. The Property described in Exhibit "A" is subject to this Agreement ("Property").

3.1 The Property currently has a land use designation of Resort Facilities High and is zoned Tourist (T).

3.2. The Property is owned in fee simple or under contract to be owned in fee simple by the Developer.

3.3 The Property is generally located at 405 Coronado Drive, Clearwater, FL 33767, as further described in Exhibit "A".

SECTION 4. Scope of Project.

4.1 The Project shall consist of 166 overnight accommodation units. Of the 166 overnight accommodation units, 100 units shall be from the Hotel Density Reserve.

4.2 The Project shall include a minimum of 199 parking spaces (1.2 spaces per unit), as defined in the Code.

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

4.4 The density of the Project shall be 126 units per acre. In no instance shall the density of a parcel of land exceed 150 units per acre. The height of the Project shall be 100 feet measured from Base Flood Elevation, as defined in the Code. The maximum building heights of the various character districts cannot be increased to accommodate hotel rooms allocated from the Hotel Density Reserve.

SECTION 5. Effective Date/Duration of this Agreement.

5.1 This Agreement shall not be effective until this Agreement is properly recorded in the public records of Pinellas County, Florida pursuant to Florida Statutes Section 163.3239 and Code Section 4-606.

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

5.3 This Agreement shall continue in effect for ten (10) years unless earlier terminated as set forth herein.

SECTION 6. Obligations under this Agreement.

6.1 Obligations of the Developer:

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

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

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

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

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

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

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

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

6.1.6 Transient Use. A reservation system shall be required as an integral part of the hotel use. There shall be a lobby/front desk area that must be operated as a typical lobby/front desk area for a hotel would be operated. Access to all units must be provided through a lobby and internal corridor. All units shall be available to the public for overnight transient hotel occupancy at all times through the required hotel reservation system. Occupancy in the hotel is limited to a term of less than one (1) month or thirty-one (31) consecutive days, whichever is less. No unit in the hotel shall be used as a primary or permanent residence.

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

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

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

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

6.2 Obligations of the City.

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

6.2.2 The final effectiveness of the applications referenced in Section

6.2.1 is subject to:

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

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

6.2.3 Upon adoption of this Agreement, the Project shall receive 100 units from the Hotel Density Reserve as defined in Beach by Design, contingent upon the provisions of Section 6.1.5.

SECTION 7. Public Facilities to Service Development. The following public facilities are presently available to the Property from the sources indicated below. Development of the Property will be governed by the concurrency ordinance provisions

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

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

7.2 Sewer service is currently provided by the City. The Developer shall be responsible for all necessary main extensions and applicable connection fees.

7.3 Fire protection from the City.

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

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

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

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

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

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

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

8.2 Construction plan approval(s);

8.3 Building permit(s);

8.4 Certificate(s) of occupancy; and

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

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

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

- (a) They are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities in the Agreement;
- (b) They are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement;
- (c) They are specifically anticipated and provided for in this Agreement;
- (d) The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or
- (e) This Agreement is based on substantially inaccurate information provided by the Developer

SECTION 12. Compliance with Law. The failure of this Agreement to address any particular permit, condition, term or restriction shall not relieve the Developer from the necessity of complying with the law governing such permitting requirements, conditions, terms or restrictions.

SECTION 13. Notices. Notices and communications required or desired to be given under this Agreement shall be given to the parties by hand delivery, by nationally recognized overnight courier service such as Federal Express, or by certified mail, return receipt requested, addressed as follows (copies as provided below shall be required for proper notice to be given):

If to the Developer: Mainstream Partners VIII, LTD.

10165 NW 19th
Street
Miami, FL 33172-
2529

With Copy to: Mr. Antonio Fernandez
Mainstream Partners VIII, LTD.
2552 22nd Ave.
St. Petersburg, FL
33713

If to City: City of Clearwater, City Attorney
ATTN: City Manager,
112 South Osceola
Avenue
Clearwater, FL
33756

Properly addressed, postage prepaid, notices or communications shall be deemed delivered and received on the day of hand delivery, the next business day after deposit with an overnight courier service for next day delivery, or on the third (3rd) day following deposit in the United States mail, certified mail, return receipt requested. The parties may change the addresses set forth above (including the addition of a mortgagee to receive copies of all notices), by notice in accordance with this Section.

SECTION 14. Assignment

14.1 By the Developer:

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

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

14.1.3 An assignment of the Project, or any part thereof, by the Developer to any corporation, limited partnership, limited liability company,

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

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

14.2 Successors and Assigns. The terms herein contained shall bind and inure to the benefit of the City, and its successors and assigns, and the Developer and, as applicable to the parties comprising Developer, their personal representatives, trustees, heirs, successors and assigns, except as may otherwise be specifically provided herein.

SECTION 15. Minor Non-Compliance. The Developer will not be deemed to have failed to comply with the terms of this Agreement in the event such noncompliance, in the judgment of the City Manager, reasonably exercised, is of a minor or inconsequential nature.

SECTION 16. Covenant of Cooperation. The parties shall cooperate with and deal with each other in good faith and assist each other in the performance of the provisions of this Agreement and in achieving the completion of development of the Property.

SECTION 17. Approvals. Whenever an approval or consent is required under or contemplated by this Agreement such approval or consent shall not be unreasonably withheld, delayed or conditioned. All such approvals and consents shall be requested and granted in writing.

SECTION 18. Completion of Agreement. Upon the completion of performance of this Agreement or its revocation or termination, a statement evidencing such completion, revocation or termination shall be signed by the parties hereto and recorded in the official records of the City.

SECTION 19. Entire Agreement. This Agreement (including any and all Exhibits attached hereto all of which are a part of this Agreement to the same extent as

if such Exhibits were set forth in full in the body of this Agreement), constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof.

SECTION 20. Construction. The titles, captions and section numbers in this Agreement are inserted for convenient reference only and do not define or limit the scope or intent and should not be used in the interpretation of any section, subsection or provision of this Agreement. Whenever the context requires or permits, the singular shall include the plural, and plural shall include the singular and any reference in this Agreement to the Developer includes the Developer's successors or assigns. This Agreement was the production of negotiations between representatives for the City and the Developer and the language of the Agreement should be given its plain and ordinary meaning and should not be strictly construed against any party hereto based upon draftsmanship. If any term or provision of this Agreement is susceptible to more than one interpretation, one or more of which render it valid and enforceable, and one or more of which would render it invalid or unenforceable, such term or provision shall be construed in a manner that would render it valid and enforceable.

SECTION 21. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance is declared invalid or unenforceable, the remainder of this Agreement, including any valid portion of the invalid term or provision and the application of such invalid term or provision to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall with the remainder of this Agreement continue unmodified and in full force and effect. Notwithstanding the foregoing, if such responsibilities of any party hereto, to the extent that the purpose of this Agreement or the benefits sought to be received hereunder are frustrated, such party shall have the right to terminate this Agreement upon fifteen (15) days written notice to the other parties.

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

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

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

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

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

In the Presence of:

MAINSTREAM PARTNERS VIII, LTD.,
a Florida limited partnership

BY: MAINSTREAM GP, LLC,
its General Partner

BY: EDWARD W. EASTON & COMPANY,
INC., its Managing Member

Print Name _____

By: _____
Edward W. Easton, President

Print Name _____
As to "Developer"

CITY OF CLEARWATER, FLORIDA

Print Name: _____

By: _____
William B Home II,
City Manager

Print Name _____
As to "City"

Attest:

Rosemarie Call, CMC, City Clerk

Countersigned:

George N. Cretekos, Mayor

Approved as to Form:

Assistant City Attorney

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing Declaration was acknowledged before me this ____ day of _____, 2014, by Edward W. Easton, as President of Edward W. Easton & Company, Inc., a Florida corporation, the Managing Member of Mainstream GP, LLC, a Florida limited liability company, as General Partner of Mainstream Partners VIII, LTD a Florida limited partnership, on behalf of the aforesaid entities. He is [] personally known to me or has [] produced _____ as identification.

Print: _____
Notary Public – State of Florida
My Commission Expires:

EXHIBIT "A"
PROJECT LEGAL DESCRIPTION

Parcel 5: Lot 1, Columbia Subdivision No. 4, According to the plat thereof as recorded in Plat Book 27, page 50, of the Public Records of Pinellas County, Florida

Parcel 6: Lots 11 and 12, Columbia Subdivision No. 4, According to the plat thereof as recorded in Plat Book 27, page 50, of the Public Records of Pinellas County, Florida; also, beginning at the intersection of the high water mark of the Gulf of Mexico and the East and West center line of Section 8, Township 29 South, Range 15 East; and run thence East along the East and West Center line of said Section 8, 164.38 feet; thence South 1,573.94 feet; thence South 77°25'30" East, 280 feet for a point of beginning; thence South 77°25'30" East, 10 feet; thence South 12°34'30" West, 50.87 feet; Thence North 77°25'30" West, 10 feet; Thence North 12°34'30" East, 50.87 feet to a point of beginning, otherwise described as Lot 1-A of Columbia Subdivision No. 5, According to the plat thereof as recorded in Plat Book 31, page 16, of the Public Records of Pinellas County, Florida.

Parcel 7: Lot 2, Columbia Subdivision No. 4, According to the plat thereof as recorded in Plat Book 27, page 50, of the Public Records of Pinellas County, Florida.

Parcel 8: Parcel 5: Lots 5 and 6, Columbia Subdivision No. 4, According to the plat thereof as recorded in Plat Book 27, page 50, of the Public Records of Pinellas County, Florida.

Parcel 9: Lots 3 and 4, Columbia Subdivision No. 4, According to the plat thereof as recorded in Plat Book 27, page 50, of the Public Records of Pinellas County, Florida.

Containing 1.32 Acres, more or less.

EXHIBIT “B”

Conceptual Site Plans and Elevations

EXHIBIT "C"

COVENANT REGARDING HURRICANE EVACUATION And DEVELOPMENT, USE AND OPERATION DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Declaration") is made as of the ____ day of _____, 2014, by **MAINSTREAM PARTNERS VIII, LTD.**, a Florida limited liability company ("Developer").

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

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

The City has granted, by City Council Resolution _____, passed and approved on _____, 2014, Developer's application for Hotel Density Reserve Units pursuant to the Designation, subject to Developer's compliance with the requirements of the Designation. Developer desires for itself, and its successors and assigns, as owner, to establish certain rights, duties, obligations and responsibilities with respect to the use and operation of the Real Property in accordance with the terms and conditions of the allocation of the Hotel Density Reserve Units to the City and the Designation, which rights, duties, obligations and responsibilities shall be binding on any and all successors and assigns and will run with the title to the Real Property.

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

1. Benefit and Enforcement. These covenants and restrictions are made for the benefit of Developer and its successors and assigns and shall be enforceable by them and also for

the benefit of the residents of the City and shall be enforceable on behalf of said residents by the City Council of the City.

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

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

2.1.1 166 units, 100 of which are units allocated to Developer from the Hotel Density Reserve, shall be used solely for transient occupancy of one month or thirty-one (31) consecutive days or less, must be licensed as a public lodging establishment and classified as a hotel, and must be operated by a single licensed operator of the hotel. No unit shall be used as a primary or permanent residence. Access to the units must be provided through a lobby and internal corridor. A reservation system shall be required as an integral part of the hotel use and there shall be a lobby/front desk area that must be operated as a typical lobby/front desk area for a hotel would be operated. All units shall be required to be submitted to a rental program requiring the units to be available for members of the public as overnight hotel guests on a transient basis at all times. No unit shall have a complete kitchen facility as that term is used in the definition of "dwelling unit" in the Code. Developer shall make available for inspection to authorized representatives of the City its books and records pertaining to each unit upon reasonable notice to confirm compliance with these regulations as allowed by general law. The Developer agrees to comply with the Design Guidelines as set forth in Section VII of Beach by Design.

2.1.2 As used herein, the terms "transient occupancy," "public lodging establishment," "hotel", and "operator" shall have the meaning given to such terms in Florida Statutes Chapter 509, Part I.

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

3 Effective Date. This Declaration shall become effective upon issuance of all building permits required to build the project ("Project") and Developer's commencement of construction of the Project, as evidenced by a Notice of Commencement for the Project. This Declaration shall expire and terminate automatically if and when the allocation of Reserve Units to the Developer expires or is terminated.

4 Governing Law. This Declaration shall be construed in accordance with and governed by the laws of the State of Florida.

5 Recording. This Declaration shall be recorded in the chain of title of the Real Property with the Clerk of the Courts of Pinellas County, Florida.

6 Attorneys' Fees. Developer shall reimburse the City for any expenses, including reasonable attorneys' fees, which are incurred by the City in the event that the City determines that it is necessary and appropriate to seek judicial enforcement of this Declaration and the City obtains relief, whether by agreement of the parties or through order of a court of competent jurisdiction.

7 Severability. If any provision, or part thereof, of this Declaration or the application of this Declaration to any person or circumstance will be or is declared to any extent to be invalid or unenforceable, the remainder of this Declaration, or the application of such provision or portion thereof to any person or circumstance, shall not be affected thereby, and each and every other provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed this ____ day of _____, 2014.

In the Presence of:

MAINSTREAM PARTNERS VIII, LTD.,
a Florida limited partnership

BY: MAINSTREAM GP, LLC,
its General Partner

BY: EDWARD W. EASTON & COMPANY, INC.,
its Managing Member

Print Name_____

By: _____
Edward W. Easton, President

Print Name_____
As to "Developer"

CITY OF CLEARWATER, FLORIDA

Print Name: _____

By: _____
William B Home II,
City Manager

Print Name_____
As to "City"

Attest:

Rosemarie Call, CMC, City Clerk

Countersigned:

George N. Cretekos, Mayor

Approved as to Form:

Assistant City Attorney

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing Declaration was acknowledged before me this ____ day of _____, 2014, by Edward W. Easton, as President of Edward W. Easton & Company, Inc., a Florida corporation, the Managing Member of Mainstream GP, LLC, a Florida limited liability company, as General Partner of Mainstream Partners VIII, LTD, a Florida limited partnership, on behalf of the aforesaid entities. He is [] personally known to me.

Print: _____

Notary Public – State of Florida

My Commission Expires:

SCHEDULE A

Parcel 5: Lot 1, Columbia Subdivision No. 4, According to the plat thereof as recorded in Plat Book 27, page 50, of the Public Records of Pinellas County, Florida

Parcel 6: Lots 11 and 12, Columbia Subdivision No. 4, According to the plat thereof as recorded in Plat Book 27, page 50, of the Public Records of Pinellas County, Florida; also, beginning at the intersection of the high water mark of the Gulf of Mexico and the East and West center line of Section 8, Township 29 South, Range 15 East; and run thence East along the East and West Center line of said Section 8, 164.38 feet; thence South 1,573.94 feet; thence South 77°25'30" East, 280 feet for a point of beginning; thence South 77°25'30" East, 10 feet; thence South 12°34'30" West, 50.87 feet; Thence North 77°25'30" West, 10 feet; Thence North 12°34'30" East, 50.87 feet to a point of beginning, otherwise described as Lot 1-A of Columbia Subdivision No. 5, According to the plat thereof as recorded in Plat Book 31, page 16, of the Public Records of Pinellas County, Florida.

Parcel 7: Lot 2, Columbia Subdivision No. 4, According to the plat thereof as recorded in Plat Book 27, page 50, of the Public Records of Pinellas County, Florida.

Parcel 8: Parcel 5: Lots 5 and 6, Columbia Subdivision No. 4, According to the plat thereof as recorded in Plat Book 27, page 50, of the Public Records of Pinellas County, Florida.

Parcel 9: Lots 3 and 4, Columbia Subdivision No. 4, According to the plat thereof as recorded in Plat Book 27, page 50, of the Public Records of Pinellas County, Florida.

Containing 1.32 Acres, more or less.

EXHIBIT "D"

COVENANT OF UNIFIED USE

PLEASE RETURN RECORDED DOCUMENT TO:

COVENANT OF UNIFIED USE

THIS COVENANT OF UNIFIED USE (the "Covenant") is executed this ____ day of _____, 2014, by ("Developer").

WITNESSETH:

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

WHEREAS, Developer and the City of Clearwater, Florida (the "City") are parties to that certain Hotel Density Reserve Development Agreement dated the ____ day of _____, 2014 ("Agreement"), pursuant to which the City has agreed that Developer may develop and construct upon the Real Property a hotel project as described in the Agreement (the "Project"); and

WHEREAS, Developer intends to develop and operate the Real Property for a unified use, as more particularly described in this Covenant.

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, Developer does hereby agree that, effective as of the date on which Developer receives all permits required to construct the Project and Developer commences construction thereof, as evidenced by a Notice of Commencement for the Project, the Real Property shall be developed and operated as a limited-service hotel project, as described in the Agreement. The restrictions set forth in the preceding sentence shall expire automatically when and if Developer's allocation of additional hotel units (as defined in the Agreement) expires or is terminated. Nothing in this Agreement shall require Developer to develop the Project or restrict Developer's ability to sell, assign, transfer or otherwise convey its right in and to the Real Property or any portion or portions thereof to unrelated third-parties. Developer agrees that the City shall have the right to enforce the terms and conditions of this Agreement.

Notwithstanding the foregoing, all Hotel Units may be operated by a single hotel operator.

IN WITNESS WHEREOF, Developer has caused this Agreement to be executed this _____ day of _____, 2014.

In the Presence of:

MAINSTREAM PARTNERS VIII, LTD.,
a Florida limited partnership

BY: MAINSTREAM GP, LLC,
its General Partner

BY: EDWARD W. EASTON & COMPANY, INC.,
its Managing Member

Print Name_____

By: _____
Edward W. Easton, President

Print Name_____
As to "Developer"

CITY OF CLEARWATER, FLORIDA

Print Name: _____

By: _____
William B Home II,
City Manager

Print Name_____
As to "City"

Attest:

Rosemarie Call, CMC, City Clerk

Countersigned:

George N. Cretekos, Mayor

Approved as to Form:

Assistant City Attorney

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing Declaration was acknowledged before me this ____ day of _____, 2014, by Edward W. Easton, as President of Edward W. Easton & Company, Inc., a Florida corporation, the Managing Member of Mainstream GP, LLC, a Florida limited liability company, as General Partner of Mainstream Partners VIII, LTD a Florida limited partnership, on behalf of the aforesaid entities. He is [] personally known to me.

Print: _____

Notary Public – State of Florida

My Commission Expires:

SCHEDULE A

Parcel 5: Lot 1, Columbia Subdivision No. 4, According to the plat thereof as recorded in Plat Book 27, page 50, of the Public Records of Pinellas County, Florida

Parcel 6: Lots 11 and 12, Columbia Subdivision No. 4, According to the plat thereof as recorded in Plat Book 27, page 50, of the Public Records of Pinellas County, Florida; also, beginning at the intersection of the high water mark of the Gulf of Mexico and the East and West center line of Section 8, Township 29 South, Range 15 East; and run thence East along the East and West Center line of said Section 8, 164.38 feet; thence South 1,573.94 feet; thence South 77°25'30" East, 280 feet for a point of beginning; thence South 77°25'30" East, 10 feet; thence South 12°34'30" West, 50.87 feet; Thence North 77°25'30" West, 10 feet; Thence North 12°34'30" East, 50.87 feet to a point of beginning, otherwise described as Lot 1-A of Columbia Subdivision No. 5, According to the plat thereof as recorded in Plat Book 31, page 16, of the Public Records of Pinellas County, Florida.

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Containing 1.32 Acres, more or less.