

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("AGREEMENT") is dated the _____ day of _____, 2013, and entered into between **Ted Lenart and Maria Lenart, Trustees of the Lenart Family Trust, utd December 20, 1991** ("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 preliminary plan for the revitalization of Clearwater Beach entitled Beach by Design; and

WHEREAS, Sections 163.3220 - 163.3243, Florida Statutes, which set forth 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 additional hotel units to equalize development opportunities on the beach and ensure Clearwater Beach remains a quality, family resort community by further providing 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 approximately 0.69 acres of real property ("Property") in the corporate limits of the City, more particularly described on Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, the Developer desires to develop the Property to add overnight accommodation units, minimal meeting space for guest use, pool/tiki bar, lobby and parking with parking spaces, generally conforming to the architectural elevation dimensions shown in composite Exhibit "B" (collectively, the improvements are the "Project"); and

WHEREAS, upon completion the planned resort will contain 103 units, which includes a maximum of sixty nine (69) units from the available Hotel Density Reserve ("Reserve Units"); and

WHEREAS, the City has conducted such hearings as are required by and in accordance with Chapter 163.3220 Fla. Stat. (2012) and any other applicable law; and

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

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

WHEREAS, at a duly called public meeting on _____, 2013, 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, agree as follows:

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

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

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

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

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

3.3 The Property is generally located at 625 S. Gulfview Blvd., Clearwater, FL 33767 as more further described in Exhibit "A".

SECTION 4. Scope of Project.

4.1 The Project shall consist of no more than 103 overnight accommodation units and 150 units per acre. Of the 103 overnight accommodation units, no more than 69 of those units shall be from the Hotel Density Reserve.

4.2 The Project shall include a minimum of 126 parking spaces, as defined in the Community Development Code.

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

4.4 The height shall not exceed one hundred (100) feet from Base Flood Elevation, as defined in the Code.

SECTION 5. Effective Date/Duration of this Agreement.

5.1 This Agreement shall not be effective until this Agreement is properly recorded in the public records of Pinellas County, Florida, and thirty (30) days have elapsed after having been received by the Department of Economic Opportunity pursuant to Florida Statutes Section 163.3239 and Clearwater Community Development Code Section 4606G. 2.

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

5.3 This Agreement shall continue in effect until terminated, as defined herein, but for a period not to exceed ten (10) years.

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

6.1.3.2 The Developer shall obtain appropriate site plan approvals pursuant to a Level One or Level Two development application, within three (3) years from the effective date of this Agreement ("Commencement Date") in accordance with the provisions of the Code. Nothing herein shall restrict Developer from seeking an extension of this Agreement, and the Commencement Date, pursuant to the Code or state law.

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", that the accommodation use will closed 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 any rights of Developer 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 this Project. On October 15, 2013, the Community Development Board conditionally terminated the non-

conforming status of the Property pursuant to Case No. FLD2013-08025. In the event the conditions associated with the Termination of Non-conforming Status are met prior to October 15, 2014, thereby vesting the density approved in FLD2013-08025. Developer hereby agrees to return thirty (30) Hotel Density Reserve Units which is the equivalent of the number of existing units determined to be conforming by FLD2013-08025.

6.1.6 Transient Use. Occupancy in the overnight accommodation units from the Hotel Density Reserve is limited to a term of less than one (1) month or thirty (30) consecutive days, whichever is less. No hotel unit in a hotel receiving units from the Hotel Density Reserve shall be used as a primary or permanent residence and each hotel unit shall be available to transient hotel guests. All hotel units shall be required to be submitted to a rental program requiring all hotel units to be available for members of the public as overnight hotel guests on a transient basis at all times.

6.1.7 Inspection of Records. Developer shall make available for inspection to 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.

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

6.1.9 Public Facilities. Developer agrees to provide a cashier's check, a payment and performance bond, or a letter of credit in the amount of 115% of the estimated costs of the public facilities and services, if any, to be deposited with the City to secure construction of any new public facilities and services required to be constructed by this Agreement. Developer and City agree that there are no public facilities contemplated by this Agreement.

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 re-designations 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 The Project shall receive Sixty-Nine (69) units from the Hotel Density Reserve as defined in Beach by Design. Pursuant to section 6.1.5, in the event the Developer meets the conditions for the Termination of Nonconforming Status therefore vesting the existing density, the Developer shall return thirty (30) Hotel Density Reserve Units to the City. In no way shall this be construed as to permit density greater than 150 units per acre on the Property.

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. With respect to transportation and other public infrastructure and services subject to concurrency requirements, all applicable concurrency provisions for the proposed development have been met, including the Metropolitan Planning Organization concurrency management.

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 All improvements associated with the public facilities identified in Subsections 7.1 through 7.4 shall be completed prior to the issuance of any certificate of occupancy.

SECTION 8. Required Local Government Permits. The required local government development permits 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); and

8.4 Certificate(s) of occupancy.

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

SECTION 10. Termination.

10.1 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.

11.1 Except in the case of termination, until ten (10) years after the date of this Agreement, the Property shall not be subject to down-zoning, unit density reduction, or intensity reduction, unless the City has held a public hearing and determined:

11.1.1 That substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or

11.1.2 This Agreement is based on substantially inaccurate information provided by the Developer; or

11.1.3 That the change is essential to the public health, safety, or welfare.

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: Ted and Maria Lenart, Trustees of the Lenart
Family Trust, u/t/d/ December 20, 1991
8556 W. Winnemac, Norridge
Chicago, IL 60656

With Copy to: Katherine E. Cole, Esq.
Hill Ward Henderson
311 Park Place, Suite 240
Clearwater, FL 33759

If to City: City of Clearwater, City Attorney
ATTN: Pamela Akin, Esq.
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. Assignments.

14.1 By the Developer:

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

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

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

such assignment being effective and the assignee shall be bound by the terms of this Agreement to the same extent as would the Developer in the absence of such assignment.

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

14.1.5 Notwithstanding any other provision of this paragraph, the sale of individual Interval Ownership Units in the ordinary course of business shall not be subject to the requirements of this paragraph.

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 is 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 without regard to the conflict of laws principles of such state.

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, the Developer, and the Association so long as the amendment meets the requirements of the Act, applicable City ordinances, and Florida law.

[Signature Pages to Follow]

[Signature Page for Hotel Density Reserve Development Agreement]

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

In the Presence of:

Lenart Family Trust, u/t/d December 20, 1991

Print Name_____

Maria Lenart, Co-Trustee

Print Name_____

Print Name_____

Maria Lenart, Successor Trustee to Ted Lenart

Print Name_____

As to "Developer"

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Maria Lenart, Co-Trustee, Lenart Family Trust, u/t/d December 20, 1991 and Maria Lenart, Successor Trustee to Ted Lenart, , who is [] personally known to me or has [] produced _____ as identification.

Notary Public

Print Name:_____

My Commission Expires:

CITY OF CLEARWATER, FLORIDA

By: _____

William B. Horne II,
City Manager

Attest:

Rosemarie Call, City Clerk

Countersigned:

George N. Cretekos, Mayor

Approved as to Form:

Leslie K. Dougall-Sides
Assistant City Attorney

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by GEORGE N. CRETEKOS, as Mayor of the City of Clearwater, Florida, who is [] personally known to me or has [] produced _____ as identification.

Notary Public
Print Name: _____
My Commission Expires:

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by WILLIAM B. HORNE, II, as City Manager of the City of Clearwater, Florida, who is [] personally known to me or who has [] produced _____ as identification.

Notary Public
Print Name: _____
My Commission Expires:

EXHIBIT “A”

Legal Description

Lots 6 and 7, Block C, BAYSIDE SUBDIVISION NO. 5, according to the plat thereof, as recorded in Plat Book 38, Page 38, of the Public Records of Pinellas County, Florida.

EXHIBIT “B”

Conceptual Site Plan

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 _____, 2013, by **Ted Lenart and Maria Lenart, Trustees of the Lenart Family Trust utd December 20, 1991** ("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 it's 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 resorts as soon as practicable after the National Hurricane Center posts a hurricane watch that includes Clearwater Beach. The purpose of such evacuation is to ensure that such a Resort 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 _____, 2013, 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 resort on the Real Property is restricted as follows:

2.1.1 A minimum of sixty-nine units, which is the number of hotel units allocated to Developer, shall be used solely for transient occupancy of one month or thirty (30) 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 such hotel unit shall be used as a primary or permanent residence.

2.1.2 All other units shall be licensed as a public lodging establishment. No unit shall be used as a primary or permanent residence.

2.1.3 As used herein, the terms "transient occupancy," "public lodging establishment," "hotel," "time share," and "operator" shall have the meaning given to such terms in Chapter 509, Part I, Florida Statutes (2012).

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 evidence 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.

In the Presence of:

Lenart Family Trust, u/t/d December 20, 1991

Print Name_____

Maria Lenart, co-Trustee

Print Name_____

Print Name_____

Maria Lenart, Successor Trustee to Ted Lenart

Print Name_____

As to "Developer"

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Maria Lenart, co-Trustee, Lenart Family Trust, u/t/d December 20, 1991 and Maria Lenart, Successor Trustee to Ted Lneart, who is [] personally known to me or has [] produced _____ as identification.

Notary Public

Print Name:_____

My Commission Expires:

CITY OF CLEARWATER, FLORIDA

By: _____

William B. Horne II,
City Manager

Attest:

Rosemarie Call, City Clerk

Countersigned:

George N. Cretekos, Mayor

Approved as to Form:

Leslie K. Dougall-Sides
Assistant City Attorney

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by GEORGE N. CRETEKOS, as Mayor of the City of Clearwater, Florida, who is [] personally known to me or has [] produced _____ as identification.

Notary Public
Print Name: _____
My Commission Expires: _____

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by WILLIAM B. HORNE, II, as City Manager of the City of Clearwater, Florida, who is [] personally known to me or who has [] produced _____ as identification.

Notary Public
Print Name: _____
My Commission Expires: _____

EXHIBIT "D"

COVENANT OF UNIFIED USE

PLEASE RETURN RECORDED DOCUMENT TO:

COVENANT OF UNIFIED USE

THIS COVENANT OF UNIFIED USE (the "Agreement") is executed this ____ day of _____, 2013, by **Ted Lenart and Maria Lenart, Trustees of the Lenart Family Trust, utd December 20, 1991** ("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 Development Agreement dated _____, 2013 (the "Development 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 Development Agreement (the "Project"); and

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

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 hotel interval ownership project, as described in the Development 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 Development 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 the Presence of:

Lenart Family Trust, u/t/d December 20, 1991

Print Name_____

Maria Lenart, co-Trustee

Print Name_____

Print Name_____

Maria Lenart, Successor Trustee to Ted Lenart

Print Name_____

As to "Developer"

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Maria Lenart, co-Trustee, Lenart Family Trust, u/t/d December 20, 1991 and Maria Lenart, Successor Trustee to Ted Lneart, who is [] personally known to me or has [] produced _____ as identification.

Notary Public

Print Name:_____

My Commission Expires:_____

CITY OF CLEARWATER, FLORIDA

By: _____

William B. Horne II,
City Manager

Attest:

Rosemarie Call, City Clerk

Countersigned:

George N. Cretekos, Mayor

Approved as to Form:

Leslie K. Dougall-Sides
Assistant City Attorney

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by GEORGE N. CRETEKOS, as Mayor of the City of Clearwater, Florida, who is [] personally known to me or has [] produced _____ as identification.

Notary Public

Print Name: _____

My Commission Expires: _____

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by WILLIAM B. HORNE, II, as City Manager of the City of Clearwater, Florida, who is [] personally known to me or who has [] produced _____ as identification.

Notary Public

Print Name: _____

My Commission Expires: _____