

## **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 \_\_\_\_\_, 201\_\_, by **DECADE PROPERTIES, INC.** ("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 \_\_\_\_\_, 201\_\_, 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 27 units, which is the number of hotel units allocated to Developer from the Hotel Density Reserve, 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. All other units shall be licensed as a public lodging establishment. No unit shall be used as a primary or permanent residence. Access to overnight accommodation 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 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. 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 Hotel Density Reserve 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 hotel, 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 WITNESS WHEREOF, Developer has caused this Declaration to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

In the Presence of:

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

\_\_\_\_\_  
Print Name \_\_\_\_\_  
As to Developer

By: \_\_\_\_\_

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

CITY OF CLEARWATER, FLORIDA

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

Attest:

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

Countersigned:

\_\_\_\_\_

George N. Cretekos, Mayor

Approved as to Form:

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

STATE OF FLORIDA  
COUNTY OF PINELLAS

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

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

STATE OF FLORIDA  
COUNTY OF PINELLAS

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

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

**EXHIBIT "D"**

**COVENANT OF UNIFIED USE**

PLEASE RETURN RECORDED DOCUMENT TO:

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**COVENANT OF UNIFIED USE**

THIS COVENANT OF UNIFIED USE (the "Covenant") is executed this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by **DECADE PROPERTIES, INC.** ("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 \_\_\_\_\_, 201\_\_ (the "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 Covenant to be executed this \_\_\_\_\_  
day of \_\_\_\_\_, 201\_\_.

In the Presence of:

\_\_\_\_\_  
\_\_\_\_\_

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

By:\_\_\_\_\_

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

\_\_\_\_\_  
Print Name\_\_\_\_\_  
As to Developer

CITY OF CLEARWATER, FLORIDA

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

Attest:

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

Countersigned:

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

Approved as to Form:

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

STATE OF FLORIDA  
COUNTY OF PINELLAS

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

\_\_\_\_\_  
Notary Public

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

My Commission Expires:\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF PINELLAS

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

\_\_\_\_\_  
Notary Public

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

My Commission Expires:\_\_\_\_\_