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City Attorney's Office
City of Clearwater
P.O. Box 4748
Clearwater, FL 33758

**THIRD AMENDMENT TO HOTEL DENSITY RESERVE
DEVELOPMENT AGREEMENT**

THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT (this "Third Amendment") is dated this ____ day of February 2023 (the "Effective Date") and entered into between Triprop Clearwater, LLC, a Florida limited liability company (the "Developer"), its successors and assigns, and the City of Clearwater, Florida, a municipality of the State of Florida acting through its city council, the governing body thereof (the "City").

Recitals:

WHEREAS, Sections 163.3220 - 163.3243, Florida Statutes, which set forth the Florida Local Government Development Agreement Act (the "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 (the "Code"), establishing procedures and requirements to consider and enter into development agreements; and

WHEREAS, the City and Alanik Properties, LLC, a Florida limited liability company, Anco Holdings, LLC, a Florida limited liability company, and Nikana Holdings LLC, a Florida limited liability company (collectively, the "Original Developer") entered into a development agreement (HDA2014-06004, Resolution 14-29) dated September 24, 2014 and recorded at Official Records Book 18541, Page 1887 in the public records of Pinellas County (the "Original Development Agreement") as amended by that certain First Amendment to the Hotel Density Reserve Development Agreement (HDA2015-06001, Resolution 15-19) between the aforementioned parties dated August 20, 2015 and recorded in the public records of Pinellas County at Official Records Book 19207, page 2409 (the "First Amendment"), and as further amended by that certain Second Amendment to the Hotel Density Reserve Development Agreement (HDA2014-06004A, Resolution 23-02) between the Developer and the City dated November 21, 2019 and recorded in the public records of Pinellas County at Official Records Book 20912, page 1710 (the "Second Amendment")(collectively, the Original Development Agreement and its amendments are the "Development Agreement"); and

WHEREAS, the Original Developer's interest in the Development Agreement was assigned to the Developer pursuant to that certain Assignment of Hotel Density Reserve Development Agreement dated May 9, 2016 as consented to by the City; 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 Original Development Agreement allocated one hundred (100) units from the Hotel Density Reserve to the Developer to be utilized on 1.994 acres of real property and subsequently the Second Amendment added 0.426 acres to the Property (as described in the Development Agreement as the “Property”); and

WHEREAS, the maximum density permitted on the Property, pursuant to *Beach by Design*, is 150 units per acre; and the Development Agreement provided for a density of 114 hotel units per acre; and

WHEREAS, the Developer has requested the City vacate a portion of S. Gulfview Blvd. as described in Exhibit “A-2” attached hereto and made part hereof (the “Vacated Right-of-Way”) and desires to include this Vacated Right-of-Way into the development project (the “Amended Project”); and

WHEREAS, the City anticipates the inclusion of the Vacated Right-of-Way into the Amended Project will activate the Beach Walk corridor as envisioned in *Beach by Design*; and

WHEREAS, the Developer will provide improvements, relocation and reconstruction of certain utilities and infrastructure in the Vacated Right-of-Way and Beach Walk as preliminarily shown in Exhibit “B-2” and to be further detailed at time of amending the approved site plan; and

WHEREAS, the Vacated Right-of-Way is 0.1837 acres in size providing a total project area of 2.5997 acres after the City vacates the area; and

WHEREAS, the Developer desires to modify the Project as provided for herein and in Exhibit “B-2”, attached hereto and made part hereof; and

WHEREAS, upon completion of the Project contemplated in the Agreement, the Amended Project will contain a total of two hundred and forty-eight (248) overnight accommodation units (95.396 (96) units per acre), which includes one hundred (100) units originally granted from the available *Beach by Design* Hotel Density Reserve; and

WHEREAS, the City has conducted such hearings as are required by and in accordance with Chapter 163.3220 Fla. Stat. (2022) and any other applicable law; and

WHEREAS, the City has determined that, as of the Effective Date of this Third Amendment, the Amended 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 (the “Code”); and

WHEREAS, upon approval by the City of Clearwater City Council (the “City Council”), the Developer will seek to amend the site plan approved pursuant to FLD2015-09036A pursuant to the Code (the “Site Plan”) which has been extended pursuant to state and local law; and,

WHEREAS, at a duly called public meeting on February 16, 2023, the City Council approved this Third Amendment and authorized its execution by appropriate City officials; and

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

STATEMENT OF AGREEMENT

NOW THEREFORE, 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 Third Amendment.

SECTION 2. Incorporation of the Act. This Third Amendment 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 Third Amendment are incorporated herein by this reference and made a part of this Third Amendment. Words used in this Third Amendment without definition that are defined in the Act shall have the same meaning in this Third Amendment as in the Act.

SECTION 3. Amendments to Development Agreement. Notwithstanding anything contained in the Development Agreement to the contrary, the Development Agreement shall be amended as follows and all other references in the Development Agreement and Exhibits regarding the Amended Project shall be consistent with the following:

- a. Section 3 of the Development Agreement shall be amended to include the Vacated Right-of-Way and Exhibit “A” shall be amended to include the property referenced in Exhibit “A-2” of this Third Amendment. Any exhibit which includes a legal description is hereby amended to include the Vacated Right-of-Way (collectively, the “Property” and the “Vacated Right-of-Way” are the “Property”).
- b. Section 4.3 shall be amended to read: The design of the Project, as represented in Exhibit “B-2”, is consistent with *Beach by Design*.

- c. Section 4.4 is amended to read: The density of the Project shall be 96 units/acre. In no instance shall the density of a parcel of land exceed 150 units per acre. The height of the Project shall be 150 feet as measured from Design 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.
- d. Section 6.1.3.1 shall reference Exhibit “B-2” attached as the Conceptual Site Plan.
- e. Section 6 shall be amended to include the following new provision: 6.1.11 Right-of-Way Utilities Relocation and Reconstruction of Beachwalk. Developer agrees that it shall be a condition precedent to the issuance of a certificate of occupancy for the Amended Project, as it may be amended, for the Developer, at its sole cost and expense, to remove any and all existing utilities and infrastructure from the Vacated Right-of-Way, relocate said utilities and infrastructure within *Beach Walk*, and reconstruct any and all areas of *Beach Walk* including hardscape and landscape impacted by the relocation of utilities and infrastructure all in accordance with City specifications and standards.”
- g. Section 13 shall be revised to update the notice addresses for the Developer as follows:

If to the Developer: TriProp Clearwater, LLC
 ATTN: Mark Walsh
 1001 E. Atlantic Ave.
 Delray Beach, FL 33483
 Deb.howard@oplhotels.com

With a copy to: Katherine E. Cole, Esq.
 Hill Ward Henderson PA
 600 Cleveland Street, Suite 800
 Clearwater, FL 33755
 Katie.cole@hwhlaw.com

SECTION 4. Amendments to Restrictive Covenants. This Agreement requires two (2) restrictive covenants to be recorded in conjunction with the operation of the Property and such covenants shall be amended and recorded in the public records of Pinellas County prior to issuance of a Building Permit consistent with the terms herein.

- a. Section 6.1.3.3 shall be amended, together with the Hurricane Evacuation Agreement included as Exhibit “C” therein, to include the legal description of the additional property attached hereto and made part hereof.
- b. Section 6.1.4 and the Covenant of Unified Use included as Exhibit “D” therein shall be updated to include the addition of the property described in Exhibit “A-2”.

SECTION 5. Approvals. Notwithstanding anything to the contrary contained in the Development Agreement, as amended including section 6.1.3.2, the Developer shall receive site plan approval for the Amended Project within one (1) years of the Effective Date of this Third Amendment. Approval of this Third Amendment requires the approval of a substantial amendment to FLD2015-09036A which, if granted, shall supersede the existing approval.

SECTION 6. Expiration Date. The Development Agreement, as amended, shall expire ten (10) years after the adoption of this Third Amendment.

SECTION 7. Ratification. Except as specifically modified herein, all terms, conditions and obligations contained in the Development Agreement shall retain in full force and effect and are reaffirmed by the parties hereto.

(Signature Pages to Follow)

**Signature Page to Third Amendment
To Development Agreement HDA 2014-06004A**

DEVELOPER:

TRIPROP CLEARWATER, LLC,
a Florida limited liability company.

In the Presence of:

Print name: _____

Print name: _____

By: Mark Walsh

Title: Manager

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization the ____ day of _____, 2023, by Mark Walsh, as manager of Triprop Clearwater, LLC, a Florida limited liability company, for the Company. He is [] personally known to me or has [] produced as identification.

Notary Public

Print Name: _____

My Commission Expires: _____

**Signature Page to Third Amendment
To Development Agreement HDA 2014-06004A**

CITY:

CITY OF CLEARWATER, FLORIDA, a
municipal corporation of the State of Florida.

Frank V. Hibbard
Mayor

By: _____
Jon P. Jennings
City Manager

Approved as to form:

Attest:

Matthew J. Mytych, Esq.
Assistant City Attorney

Rosemarie Call
City Clerk

Exhibit A-2
Proposed Vacated Right of Way

DESCRIPTION:

A portion of the East 1/2 of the Gulf View Boulevard right-of-way (now known as South Gulfview Boulevard), shown on THE LLOYD-WHITE-SKINNER SUBDIVISION plat, recorded in Plat Book 13, Pages 12 and 13 of the Public Records of Pinellas County, Florida, being more particularly described as follows:

BEGIN at the Northwest corner of Lot 72 of said THE LLOYD-WHITE-SKINNER SUBDIVISION; thence along the Easterly right-of-way line of said South Gulfview Boulevard the following course and curve; S.00°00'00"W, 85.15 feet to the beginning of a curve concave to the East, having a radius of 777.00 feet, thence Southeasterly, 160.28 feet along said curve through a central angle of 11°49'09" (chord bears S.05°50'10"E., 160.00 feet); thence non-tangent to said curve, N.55°08'15"W., 49.74 feet to the center line of said right-of-way and the beginning of a non-tangent curve concave to the East, having a radius of 812.00 feet, thence Northwesterly, 131.30 feet along said curve and center line through a central angle of 09°15'52" (chord bears N.04°34'14"W., 131.15 feet); thence N.00°00'00"E., 80.83 feet along said center line to the Westerly extension of the Northerly boundary line of said Lot 72; thence N.82°58'18"E., 35.26 feet along said extension to the POINT OF BEGINNING.

Containing 8,000.5653 Square Feet (0.1837 Acres), more or less.