

**SECOND AMENDMENT TO THE**  
**HOTEL DENSITY RESERVE DEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO THE HOTEL DENSITY RESERVE DEVELOPMENT AGREEMENT ("AMENDMENT") is dated the \_\_\_\_ day of \_\_\_\_\_, 2021, and entered into by and between **411ES, LLC**, a Florida limited liability company ("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 ("City").

**WITNESSETH:**

WHEREAS, Developer and the City entered into that certain Hotel Density Reserve Development Agreement dated July 18, 2019 (the "Development Agreement") a full copy of which is attached hereto as **Exhibit 1** which allocated eight (8) units from the Hotel Density Reserve to that certain real property located at 400, 405, 408, 409, and 411 East Shore Drive, Clearwater, FL 33767 (the "Property"); and

WHEREAS, on or about May 1, 2020, Developer filed a Flexible Development Application (FLD 2020-05012) and a Transfer of Development Rights Application (successor application number: TDR 2020-07002) to develop the Project. The applications were consistent with the conceptual site plan and elevations approved as part of HDA2019-03001; and

WHEREAS, on October 1, 2020, the City Council approved the First Amendment to Hotel Density Reserve Development Agreement extending the deadline for the Developer to obtain site plan approval from one (1) year from the effective date of the Development Agreement to two (2) years from the effective date of the Agreement a full copy of which is attached hereto as **Exhibit 2**; and

WHEREAS, on November 17, 2020, the Community Development Board approved the Developer's site plan as part of application FLD2020-05012 and a Transfer of Development Rights ("TDR") as part of application TDR2020-07002 which included the use of 11 transferred hotel units; and

WHEREAS, the current proposal includes the use of an additional 17 units yielding a total of 28 transferred hotel unit; and

WHEREAS, as a condition of approval of applications FLD2020- 05012/TDR2020-07002 (condition 6), the Developer is required to file amended TDR and FLD applications in order to use any more than seven (7) transferred hotel development units; and

WHEREAS, the Developer intends to submit TDR and FLD applications to construct the remaining seven (7) transferred hotel units and to transfer in 10 additional hotel units increasing the total number of overnight accommodation units from 74 units to 91 units; and

WHEREAS, eight (8) units from the Hotel Density Reserve were previously allocated to the Project (HDA2019-03001 as amended), the Developer is not seeking to add any additional units from the Hotel Density Reserve through this amendment, and the Developer intends to fully construct all eight (8) allocated units; and

WHEREAS, the Developer and the City agree to increase the total number of overnight accommodation units in the Project from 74 units to 91 units, to increase the required parking spaces from 89 spaces to a minimum of 113 spaces or 1.2 spaces per hotel unit and one space per two publicly accessible boat slips, whichever is greater, to increase the height from 65 feet as measured from the point at which minimum floor elevations have been established by law to up to 80 feet as measured from the point at which minimum floor elevations have been established by law, and to amend certain other provisions of the Development Agreement as set forth herein; and

WHEREAS, upon completion the planned hotel will contain 91 overnight accommodation units, which includes eight (8) units previously allocated from the Hotel Density Reserve (“Reserve Units”); and 28 transferred hotel units of which 11 have been approved for use (FLD2020-05012/TDR2020-05001) and 17 will need to be approved for use by amending applications FLD2020-05012 and TDR2020-05001.

NOW THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and the City agree as follows:

RECITALS:

1. The recitals listed above are true and correct and incorporated herein by reference.

AMENDMENT TO DEVELOPMENT AGREEMENT:

2. The sixth (6th) recital of the Development Agreement is hereby deleted and the following is substituted in lieu thereof:

“WHEREAS, the Developer desires to develop the Property to provide 91 overnight accommodation units, pool, lobby, and parking, generally conforming to the architectural elevation dimensions shown in composite Exhibit “B” (collectively, the improvements are the “Project”); and”

3. The eighth (8th) recital of the Development Agreement is hereby deleted, and the following is substituted in lieu thereof:

“WHEREAS, upon completion the planned hotel will contain 91 overnight accommodation units, which includes eight (8) units from the available Hotel Density Reserve (“Reserve Units”); and 28 Units from TDR’s to be acquired.”

4. Amendment of SECTION 4. Scope of Project. Sections 4.1, 4.2, and 4.4 are hereby deleted, and the following is substituted in lieu thereof:

“4.1 The Project shall consist of 91 overnight accommodation units including eight (8) overnight accommodation units previously allocated from the Hotel Density Reserve with a total of an additional 28 units acquired through the use of TDR’s and have an overall density no greater than 150 units per acre and a 50-slip dock which will include a maximum of eight (8) marina facility slips that are publicly accessible.

“4.2 The Project shall include a minimum of 113 parking spaces (1.2 spaces per hotel unit and one space per two publicly accessible slips), as defined in Code.”

“4.4 The height of the Project shall be up to 80 feet as measured from the point at which minimum floor elevations have been established by law as defined by Article 8 of the City’s Community Development Code and as otherwise permitted utilizing the Height Bonus Schedule for the Marina District of *Beach by Design* the consolidation of property totaling one acre or more on both sides of East Shore Drive and the provision of a publicly accessible Boardwalk. The maximum building heights of the various character districts cannot be increased to accommodate hotel rooms allocated from the Hotel Density Reserve.”

5. Amendment of SECTION 6. Obligations under this Agreement. Sections 6.1.11.2 and 6.1.11.3 are hereby deleted, and the following is substituted in lieu thereof:

“6.1.11.2 The Developer agrees that the number of conveyable Marina Slips shall be limited to no more than eight (8). The Developer may not increase the number of conveyable marina slips without an amendment to this Development Agreement. The Developer may, however, decrease the number of conveyable marina slips through removal or conversion to slips as accessory to the hotel (commercial dock) without the need to further amend this agreement.”

“6.1.11.3 The Developer agrees that any conveyable marina slips shall be limited to sale and/or lease to privately-owned boats rather than commercial vessels for hire including the rental of PWC.”

Section 6.1.12 is hereby added as follows:

“6.1.12 Prohibition on Lockout Units. The Developer agrees there shall be no locking internal door within any unit that creates a lock-out unit which can create additional hotel units greater than the approved maximum density of 91 overnight accommodation units.”

6. Amendment of Exhibit “B”. Exhibit “B” to the Development Agreement is hereby deleted and Amended Exhibit “B” attached hereto is substituted in lieu thereof.

7. No Further Changes. Except as set forth herein there are no further changes, amendments or modifications to the Development Agreement.

Developer:

411ES, LLC

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

By: \_\_\_\_\_  
Huijun Yang, Managing Member

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
As to "Developer"

City:

CITY OF CLEARWATER, FLORIDA

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

By: \_\_\_\_\_  
Jon Jennings,  
City Manager

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
As to "City"

Attest:

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

Countersigned:

\_\_\_\_\_  
Frank V. Hibbard, Mayor

Approved as to Form:

\_\_\_\_\_  
Matthew Mytych  
Assistant City Attorney