

Prepared by:  
Stephen R. Moorhead, Esquire  
Moorhead Law Group  
127 Palafox Place, Suite 200  
Pensacola, FL 32502  
RE-17-1279

**FIFTH AMENDMENT TO THE DECLARATION OF  
CONDITIONS, COVENANTS, AND RESTRICTIONS**

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

This Fifth Amendment to the Declaration of Conditions, Covenants, and Restrictions is made this 8<sup>th</sup> day of March, 2022, by Community Redevelopment Agency of the City of Pensacola, a public body, corporate and politic, of the State of Florida ("Declarant"), whose address is 222 West Main Street, Pensacola, FL 32502, and Hawkshaw Development Group, LLC, a Florida limited liability company ("Owner"), whose address is 657 E. Romana St., Pensacola, FL 32502. Defined terms shall have the meaning ascribed to them in the Declaration.

WITNESSETH:

WHEREAS, on February 21, 2018, Declarant executed a Declaration of Conditions, Covenants, and Restrictions, which was recorded in Official Records Book 7860, at Page 540 of the public records of Escambia County, Florida, encumbering the Property therein described (as amended, as set forth below, the "Declaration");

WHEREAS, the Declaration was amended by First Amendment to Declaration of Conditions, Covenants and Restrictions dated April 18, 2019, and recorded in Official Records Book 8080, at Page 1546; by Second Amendment to Declaration of Conditions, Covenants and Restrictions dated June 28, 2019 and recorded in Official Record Book 8140, at Page 471; by Third Amendment to Declaration of Conditions, Covenants and Restrictions dated August 15, 2019, and recorded in Official Records Book 8151, at Page 1137; and by Fourth Amendment to the Declaration of Conditions, Covenants and Restrictions dated October 13, 2021, and recorded in Official Records Book 8640, at Page 284; all of the public records of Escambia County, Florida;

WHEREAS, the Declarant has the absolute right to amend the Declaration in accordance with Article Six, Section 6.4, by a written instrument executed by Declarant, its successors or assigns and the then-current Owner;

WHEREAS, the Declarant and Owner desire to amend the Declaration to modify the Development Milestones pursuant to which the Project shall be constructed and reflect changes in the development team;

NOW, THEREFORE, Declarant and Owner hereby amend the Declaration as follows, with the intent and purpose that the amendments will encumber the Property and will run with the land and be binding on and inure to the benefit of the Owner.

1. Recitals. The above and foregoing recitals are true and correct and adopted herein.
2. Amendment of Article Three. Article Three shall hereby be deleted in its entirety with the following substituted in its place:

**ARTICLE THREE**  
**DEVELOPMENT MILESTONES**

3.01 The Project shall be constructed upon the Property and the Owner shall provide to the Declarant written documentation of completion in accordance with the following:

- (a) Complete Schematic Design Development Package for the Project and General Contractor Candidates selected by December 27, 2021.
- (b) Total Project Cost Estimate based on the schematic design development package by January 18, 2022.
- (c) The Owner shall submit final plans for permitting no later than May 31, 2022.
- (d) No later than thirty (30) days after the permit is issued, Owner shall submit proof of anticipated Project costs as evidenced by a fully executed construction contract between Owner and a qualified general contractor pertaining to construction of the Project.
- (e) No later than thirty (30) days after the date on which anticipated Project costs are due pursuant to Article III, Section 3.01(d), above, Owner shall submit proof of closing on construction financing from an institutional lender. "Proof of closing on construction financing," as used in this part, means loan documents of a type customarily required by institutional lenders providing construction financing for developments similar to the Project, and includes, but is not limited to, any note, mortgage, guaranty, security agreement, or collateral assignment executed by Owner and any guarantor in favor of the institutional lender providing construction financing for the Project. In addition, Owner must submit proof of Owner's ability to pay the cost of the Project in excess of construction financing.

(f) Vertical construction shall begin within thirty (30) days after the date on which proof of construction financing is due pursuant to Article III, Section 3.01(e), above. Vertical construction includes piling installation.

(g) The substantial completion of the Project shall be no more than 30 months following commencement of vertical construction. As used in this Article, the term "substantial completion of the Project" shall mean the date that a certificate of occupancy for the Project is issued by the City of Pensacola.

(h) The deadline set forth in paragraphs (a) – (g) above shall be extended day-for-day if Owner is unable to achieve such deadline by reason of delays caused by a Force Majeure Event (hereinafter defined); provided that prior to the applicable deadline, Owner shall give Declarant written notice of the occurrence of the Force Majeure Event, including the full particulars of the Force Majeure Event and the reasons for the Force Majeure Event preventing Owner from, or delaying Owner in, achieving the applicable deadline and provided, further, that Owner shall use its reasonable efforts to mitigate the effect of the Force Majeure Event. "Force Majeure Event" is defined as an event or circumstance which is beyond the control and without the fault or negligence of Owner or Owner's architects, engineers or contractors and which by the exercise of reasonable diligence the party affected was unable to prevent, which events and circumstances shall include, without limitation, the following: (a) financial upheaval, riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority; (b) abnormal weather conditions, earthquakes, flood, tornado, hurricane, other physical natural disaster or other acts of God; and (c) labor or material shortages at regional or national levels, strikes at a national level or industrial disputes at a national level, or strike or industrial disputes by labor not employed by Owner, its architects, engineers or general contractors and which affect an essential portion of the development or construction of the Project.

3.02 If Owner fails to meet any of the deadlines required by paragraphs (a) – (g) above, Owner shall pay Declarant liquidated damages in the amount of \$2,500.00 per day for each day elapsing after each missed deadline until the missed deadline is achieved up to a total sum of \$100,000.00 for each deadline missed; this provision is not intended as a penalty but as an incentive to the Owner to prosecute construction in a timely manner. Owner, and all

subsequent owners with an ownership interest in the Property or any portion thereof or interest therein at any time that a deadline above is missed, shall be jointly and severally liable to the Declarant for the payment of such liquidated damages.

4. Amendment of Article Four, Section 4.03. Article Four, Section 4.03 shall hereby be deleted in its entirety with the following substituted in its place:

**ARTICLE FOUR**  
**REPORTING MILESTONES**

4.03 Owner discloses the following members of the development team:  
Robert B. Montgomery; Chan Cox; Brian Spencer; Ray Russenberger. Owner shall disclose the legal address of any member of the development team as identified herein.

5. Ratification. Except as specifically set forth above, the Declaration is hereby ratified and confirmed. All terms and conditions of the Declaration and as previously amended shall continue to be of full force and effect.

*[End of text. Signature pages to follow.]*

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed the day and year first above written.

Witnesses:

M.H.L.

Print Name: M. Helen Gibson

COMMUNITY REDEVELOPMENT  
AGENCY OF THE CITY OF PENSACOLA,  
a public body, corporate and politic, of the  
State of Florida

Tiffany Whiting

Print Name: Tiffany Whiting

Teniale J. Broughton  
By: Teniale T. Broughton  
Its: Chairperson

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of March 2022, by Teniale T. Broughton as Chairperson of Community Redevelopment Agency of the City of Pensacola, a public body, corporate and politic, of the State of Florida. Board

Erica L. Burnett

NOTARY PUBLIC

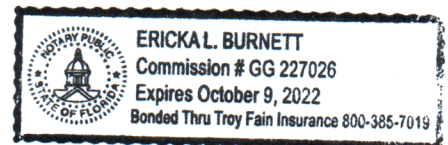
Print Name: Erica L. Burnett

☒ Personally Known

OR

☐ Produced Identification

Type of Identification Produced \_\_\_\_\_



IN WITNESS WHEREOF, Owner has caused this Amendment to be executed the day and year first above written.

Witnesses:

Andrea Bennett  
Print Name: Andrea Bennett

HAWKSHAW DEVELOPMENT GROUP,  
LLC, a Florida limited liability company

Beth Fredrich  
Print Name: Beth Fredrich

Robert Montgomery  
By: Robert Montgomery  
Its: Manager

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 4<sup>th</sup> <sup>physical presence</sup> day of March 2022, by Robert B. Montgomery, as Manager of Hawkshaw Development Group, LLC, a Florida limited liability company, on behalf of the company.

Andrea Bennett  
NOTARY PUBLIC  
Print Name: Andrea Bennett

☒ Personally Known  
OR  
☐ Produced Identification  
Type of Identification Produced \_\_\_\_\_

