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THIS INSTRUMENT PREPARED BY
AND RETURN TO:
John P. Daniel, Esq.
Beggs & Lane, RLLP
501 Commendancia Street
Pensacola, Florida 32503

STATE OF FLORIDA
COUNTY OF ESCAMBIA

DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS

THIS DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS (this "Declaration") is made this 21st day of February, 2018 (the "Declaration Effective Date") 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, Florida 32502.

WITNESSETH:

WHEREAS, Declarant is the owner of the Property (hereinafter defined); and

WHEREAS, Declarant desires to impose certain covenants, conditions and restrictions on the Property concerning the development of and construction of improvements on the Property;

WHEREAS, Declarant intends to convey the Property to Hawkshaw Development Group, LLC, a Florida limited liability company, subject to this provisions of this Declaration;

NOW, THEREFORE, DECLARANT HEREBY DECLARES, that subject to the provisions hereof, all of the Property shall be held, sold and conveyed subject to the restrictions, covenants and conditions contained herein for the purpose of ensuring the timely development of the Property for the public good and in accordance with the requirements of Declarant, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of the Declarant.

ARTICLE ONE
GENERAL PROVISIONS

1.01 Restrictive Covenants Running with the Land. The development and use of the Property and the construction of improvements on the Property shall be in accordance with the provisions and restrictions of this Declaration, all of which are to be construed as restrictive covenants running with the land and with the title to each and every portion of the Property (except as otherwise expressly provided herein) and shall be binding upon all Owners and other

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persons having interests therein and upon their heirs, personal representatives, successors, grantees and assigns.

1.02 Terminology. Whenever the context requires, words used in the singular shall be construed to mean or to include the plural and vice versa, and pronouns of any gender shall be deemed to include and to designate the masculine, feminine or neuter gender.

1.03 Definitions. The following terms, when capitalized herein, shall have the meaning set forth in this Section 1.03:

- (a) "Owner" shall mean and refer to Hawkshaw Development Group, LLC, upon conveyance of fee simple title to the Property to such entity, and to each other person and entity who at any time hereafter is the record owner of a fee simple title the Property or any portion thereof or interest therein, including without limitation each purchaser under a contract for deed.
- (b) "Property" shall mean all of land described in Exhibit "A" attached hereto and incorporated herein by reference.

ARTICLE TWO DEVELOPMENT OF PROPERTY

2.01 The Property shall be used and developed only as a mixed-use commercial and multi-family residential development complying with the requirements of this Article (the "Project"), and only improvements complying with the requirements of this Article shall be constructed and allowed to remain on the Property. The Project consists of Phase I and Phase II as described below. Phase I and Phase II may be constructed concurrently or sequentially, subject to the time deadlines provided in Article Three.

- (a) Phase I of the Project shall consist of a 3-story mixed-use commercial and multi-family residential building placed on the southwest corner of the Property with frontage directly on 9th Avenue and Romana Street. The Phase I building shall be elevated to meet current and anticipated revised minimum flood elevations and to help create a "four-story read" along the streets. The first floor of the Phase I building shall consist of (1) restaurant and (2) retail and/or office space. Wine World shall occupy restaurant and/or retail space in the Phase I building. The second and third floors of the Phase I building shall consist of residential condominium units. Phase I of the Project shall also include a paved surface parking lot on a portion of the Property behind the Phase II building site with access from Colfax Street and/or 10th Avenue, which shall include sufficient parking spaces to satisfy, at a minimum, applicable building code, zoning and land use regulations.
- (b) Phase II of the Project shall consist of a 3-story residential building placed on the southerly portion of the Property with frontage directly on Romana Street. Phase II shall consist of residential condominium units. Phase II of the Project shall also include 32 covered parking spaces under the Phase II building and the completion of the Phase I

paved surface parking lot, which shall include sufficient parking spaces to satisfy, at a minimum, applicable building code, zoning and land use requirements.

- (c) The Project buildings and structures shall contain approximately 92,000 conditioned gross square feet and approximately 132,000 total gross square feet including all conditioned square feet, parking under podium, elevated promenade, exterior corridors and balconies. The outward appearance of the buildings shall be substantially in accordance with the renderings contained in the Proposal.
- (d) Landscaping shall include traditional streetscapes along 9th Avenue and Romana Street, unique urban gardens fronting Admiral Mason Park, a mix of planted in-ground materials and materials set in architectural features such as planters, seating and other urban elements.
- (e) The Project shall contain 38 residential units, 14 in Phase I and 24 in Phase II.
- (f) No material deviation shall be made from any of the foregoing requirements of paragraphs (a) through (e), hereinabove, except with the prior written consent of the Declarant in its sole and absolute discretion.

ARTICLE THREE **DEVELOPMENT MILESTONES**

3.01 The Project shall be constructed upon the Property in accordance with the following:

- (a) No later than one (1) year after the Declaration Effective Date, Owner shall commence on-site construction of Phase I of the Project and shall certify in writing to Declarant that on-site construction of Phase I of the improvements has commenced. Thereafter, Owner shall diligently and continuously prosecute such construction to completion. As used herein, the term "on-site construction" shall mean lot grading, lot excavation or other site work pursuant to a construction contract for Phase I of the Project, or a portion thereof, between Owner and contractor physically conducted on the Property after the issuance of the required land disturbing permit.
- (b) No later than eighteen (18) months after the earlier of (i) commencing construction of Phase I or (ii) the deadline under paragraph (a) above, Owner shall achieve substantial completion of Phase I. As used in this Article, the term "substantial completion of Phase I" shall mean the date that a certificate of occupancy for Phase I is issued by the City of Pensacola.
- (c) No later than one (1) year after the earlier of (i) substantial completion of Phase I or (ii) the deadline under paragraph (b) above, Owner shall commence on-site construction of Phase II of the Project and shall thereafter diligently and continuously prosecute such construction to completion. As used herein, the term "on-site construction" shall mean lot grading, lot excavation or other site work pursuant to a construction contract for Phase II of the Project, or a portion thereof, between Owner and contractor physically conducted on the Property after the issuance of the required land disturbing permit.

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- (d) No later than eighteen (18) months after the earlier of (i) commencing construction of Phase II or (ii) the deadline under paragraph (c) above, Owner shall achieve substantial completion of Phase II of the Project. As used in this Article, the term "substantial completion of Phase II" shall mean the date that a certificate of occupancy for Phase II is issued by the City of Pensacola.
- (e) Any of the deadlines set forth in paragraphs (a) through (d) 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.
- (f) If Owner fails to meet any of the deadlines required by paragraphs (a) through (d) above, Owner shall pay Declarant liquidated damages in the amount of \$2,500.00 per day for each day elapsing after the missed deadline until the missed deadline is achieved up to a total sum of \$100,000.00. Hawkshaw Development Group, LLC and all subsequent Owners of the Property or any portion thereof or interest therein shall be jointly and severally liable to the Declarant for the payment of such liquidated damages.

ARTICLE FOUR

DECLARANT'S REPURCHASE RIGHT

4.01 Provided Owner has not closed its construction financing for Phase I of the Project, if Owner fails to meet the deadline required by paragraph (a) of Article Three (the "Phase I Commencement Deadline"), then Declarant, at its election and in its sole discretion, shall have a one hundred eighty (180) day right to repurchase the Property for the sum of \$1,600,000.00, commencing from the Phase I Commencement Deadline. If Declarant desires to exercise its repurchase right, Declarant shall provide written notice to Owner of Declarant's election to exercise its repurchase right within sixty (60) days after the Phase I Commencement Deadline. If Declarant so elects to exercise its repurchase right, Declarant will pay the then-current Owner the sum of \$1,600,000.00 prior to the expiration of such 180-day period and thereupon the then-current Owner shall convey the Property to Declarant by special warranty

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deed free and clear of all liens and encumbrances attaching to the Property after the Declaration Effective Date. Notwithstanding the foregoing, in the event that Declarant does not give Owner written notice of its election to exercise its repurchase rights under this Article prior to the closing of Owner's construction loan financing for Phase I of the Project, Declarant's repurchase rights under this Article shall be deemed extinguished, released, void and of no further force and effect without necessity for any further action of Declarant or Owner, and, at Owner's request, Declarant shall enter into, grant, and deliver any instrument that Owner, or any title insurance company insuring the Property, reasonably deems necessary to clear the title to the Property from the repurchase rights, thereby making title to the Property marketable without further rights reserved herein. The repurchase rights in this Article are for the benefit of Declarant and shall be enforceable by Declarant, and no other.

ARTICLE FIVE
RESIDENTIAL CONDOMINIUM UNITS

5.01 Notwithstanding any contrary provision in this Declaration, all covenants, conditions or restrictions contained in this Declaration shall automatically be deemed extinguished, released, void and of no further effect as to each purchaser of a residential condominium unit in the Project and each such purchaser's mortgagees.

ARTICLE SIX
ENFORCEMENT; ATTORNEYS' FEES; DURATION; AMENDMENT

6.01 Enforcement. Only Declarant, its successors and assigns shall have the right to enforce the covenants, conditions and restrictions of this Declaration and shall have the right to do so by any proceeding at law or in equity. Failure by Declarant, its successors or assigns to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

6.02 Attorneys' Fees. In any action (whether in advance of or prior to the initiation of any legal or equitable proceeding, in arbitration, in trial, in any administrative or other similar proceedings, or in any appeal from any of the same) pertaining to any condition, restriction or covenant herein contained (due to their alleged violation or breach), the prevailing party shall be entitled to recover all costs, including reasonable legal fees and expenses.

6.03 Term. This Declaration is to take effect on and as of the Declaration Effective Date and shall be binding upon all Owners and all persons and entities claiming title under and through them for thirty (30) years after the date this Declaration is recorded in the public records of Escambia County, Florida.

6.04 Amendment. This Declaration may be amended only by a written instrument executed by Declarant, its successors or assigns, and the then current Owner.

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ARTICLE SEVEN
MISCELLANEOUS

7.01 Savings. If any provision or provisions of this Declaration, or any article, section, sentence, clause, phrase, or word herein, or the application thereof, is in any circumstances held invalid, the validity of the remainder of this Declaration and the application thereof shall not be affected thereby.

7.02 Captions. The captions in this Declaration are for convenience only and are not a part of this Declaration and do not in any way limit or amplify the terms and provisions of this Declaration.

7.03 Applicable Law. The laws of the State of Florida shall govern this Declaration. All actions or proceedings in any way, manner or respect, arising out of or from or related to this Declaration shall be litigated only in courts having situs within Escambia County, Florida.

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE ON FOLLOWING PAGE.*

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IN WITNESS WHEREOF, Declarant has executed this Declaration by and through its duly authorized representative as of the date first set forth above.

Signed, sealed and delivered
in the presence of:

M. Helen Gibson
Print Name: M. Helen Gibson

DECLARANT:

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

John P. Daniel
Print Name: John P. Daniel

By: Jewel Cannada-Wynn
Jewel Cannada-Wynn, Its Vice-Chairperson

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 21st day of February, 2018, by Jewel Cannada-Wynn, as Vice-Chairperson of the Community Redevelopment Agency of the City of Pensacola, a public body, corporate and politic, of the State of Florida, on behalf of said agency. Said person is personally known to me or produced a current Florida driver's license as identification.

[SEAL]



JOHN P. DANIEL
Notary Public, State of Florida
My Comm. Expires October 22, 2020
Commission No. GG 30364

John P. Daniel
Notary Public Signature

Notary Public Printed Name

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EXHIBIT "A"

Legal Description of the Property

ALL OF BLOCK 5, NEW CITY TRACT, ACCORDING TO THE MAP OF SAID CITY
COPYRIGHTED BY THOS. C. WATSON IN 1906.

AND

SOUTH 1/2 OF COLFAX ST. WHICH ABUTS TO THE NORTH AND THE WEST 39 FEET
OF 10th AVENUE WHICH ABUTS TO THE EAST.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF BLOCK 5, NEW CITY TRACT, ACCORDING
TO THE MAP OF SAID CITY COPYRIGHTED BY THOMAS C. WATSON IN 1906;
THENCE GO NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE WEST
LINE OF SAID BLOCK 5 A DISTANCE OF 200.00 FEET TO THE NORTHWEST CORNER
OF SAID BLOCK 5; THENCE CONTINUE NORTH 00 DEGREES 00 MINUTES 00
SECONDS EAST A DISTANCE OF 33.50 FEET TO THE CENTERLINE OF COLFAX
STREET (67' R/W), (VACATED); THENCE GO SOUTH 89 DEGREES 59 MINUTES 28
SECONDS EAST ALONG SAID CENTERLINE A DISTANCE OF 390.29 FEET TO THE
INTERSECTION OF SAID CENTERLINE AND THE WEST RIGHT-OF-WAY LINE OF 10th
AVENUE (R/W WIDTH VARIES); THENCE CONTINUE SOUTH 89 DEGREES 59
MINUTES 28 SECONDS EAST A DISTANCE OF 39.00 FEET; THENCE GO SOUTH 00
DEGREES 02 MINUTES 11 SECONDS WEST A DISTANCE OF 233.42 FEET TO AN
EASTERLY EXTENSION OF THE NORTH RIGHT-OF-WAY LINE OF ROMANA STREET;
THENCE GO SOUTH 89 DEGREES 59 MINUTES 53 SECONDS WEST ALONG THE
EASTERLY EXTENSION OF SAID NORTH RIGHT-OF-WAY LINE A DISTANCE OF
39.00 FEET TO THE SOUTHEAST CORNER OF SAID BLOCK 5; THENCE CONTINUE
SOUTH 89 DEGREES 59 MINUTES 53 SECONDS WEST ALONG SAID NORTH RIGHT-
OF-WAY LINE OF ROMANA STREET, AND THE SOUTH LINE OF BLOCK 5, A
DISTANCE OF 390.14 FEET TO THE POINT OF BEGINNING.