

Prepared by:  
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RE-17-1279

### **THIRD AMENDMENT TO THE DECLARATION OF CONDITIONS, COVENANTS, AND RESTRICTIONS**

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

This Third Amendment to the Declaration of Conditions, Covenants, and Restrictions is made this \_\_\_\_ day of August, 2019, 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 of the public records of Escambia County, Florida; and by Second Amendment to Declaration of Conditions, Covenants and Restrictions dated June 28, 2019 and recorded in Official Record Book 8140, at Page 471 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 requirements of the Project.

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. The above and foregoing recitals are true and correct and adopted herein.
2. Article Two, shall hereby be deleted in its entirety with the following substituted in its place:

**ARTICLE TWO**  
**DEVELOPMENT OF THE 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.

- (a) The Project shall consist of:
  - (i) one (1) 3-story mixed-use commercial/retail and multi-family residential building placed along the western boundary of the Property. The building shall contain (A) a restaurant and (B) retail and/or office spaces and (C) no less than eight (8) residential condominium units, and
  - (ii) two (2) 4-story residential condominium buildings placed on the easterly portion of the Property. These buildings shall contain residential condominium units.
- (b) The buildings shall be elevated to meet current and anticipated revised minimum flood elevations.
- (c) The Project shall contain paved surface parking with sufficient parking spaces to satisfy, at a minimum, applicable building code, zoning, and land use regulations.
- (d) The Project buildings and structures shall contain approximately 92,000 conditioned gross square feet and approximately 132,000 total gross square feet including 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 presented to the Declarant at its August 5, 2019 meeting.
- (e) Landscaping shall include traditional streetscapes along South 9<sup>th</sup> 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.
- (f) The Project shall contain no less than 50 residential units.

(g) No material deviation shall be made from any of the foregoing requirements of paragraphs (a) through (f), hereinabove, except with the prior written consent of the Declarant in its sole and absolute discretion.

3. 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 in accordance with the following:

(a) No later than September 30, 2019, Owner shall commence on-site construction of the Project and shall certify in writing to CRA that on-site construction 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, including site work to relocate the ECUA water main, pursuant to a construction contract for 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 thirty (30) months after commencement of construction, Owner shall achieve substantial completion of the Project. 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.

(c) Any of the deadlines set forth in paragraphs (a) through (b) 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 CRA 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.

(d) If Owner fails to meet any of the deadlines required by paragraphs (a) through (c) above, Owner shall pay CRA 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. Declarant and all subsequent Owners of the Property or any portion thereof or interest therein shall be jointly and severally liable to the CRA for the payment of such liquidated damages.

4. Except as specifically set forth above, the Declaration is hereby ratified and confirmed.

*(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:

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

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

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

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

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_\_ day of August, 2019,  
by \_\_\_\_\_, as \_\_\_\_\_ of Community Redevelopment Agency of the  
City of Pensacola, a public body, corporate and politic, of the State of Florida.

\_\_\_\_\_  
NOTARY PUBLIC

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

\_\_\_\_ 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:

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

HAWKSHAW DEVELOPMENT GROUP,  
LLC, a Florida limited liability company

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

\_\_\_\_\_  
By: Robert B. Montgomery  
Its: Manager

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of August 2019, by Robert B. Montgomery, as Manager of Hawkshaw Development Group, LLC, a Florida limited liability company, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
Print Name: \_\_\_\_\_

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

## JOINDER OF MORTGAGEE

Summit Bank, as holder of a mortgage encumbering the Property, as described in the Declaration, hereby consents to and joins in this First Amendment to the Declaration of Conditions, Covenants and Restrictions.

Nothing contained herein shall be deemed to or in any way limit or affect the mortgage held by Summit Bank over the priority of the lien created thereby and the sole purpose of this Joinder is to acknowledge the consent of said mortgagee to the Declaration.

Signed, sealed and delivered in  
our presence as witnesses:

SUMMIT BANK

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

\_\_\_\_\_  
By: Norris F. McMahon  
Its: Senior Vice President

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

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was sworn to and acknowledged before me this \_\_\_\_ day of August 2019, by Norris F. McMahon, as Senior Vice President of Summit Bank.

\_\_\_\_\_  
NOTARY PUBLIC

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

\_\_\_\_\_  
Personally Known

OR

\_\_\_\_\_  
Produced Identification

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