

Prepared by:
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RE-17-1279

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

STATE OF FLORIDA
COUNTY OF ESCAMBIA

This Fourth Amendment to the Declaration of Conditions, Covenants, and Restrictions is made this ___ day of ~~September~~October, 2021, 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; and by Third Amendment to Declaration of Conditions, Covenants and Restrictions dated August 15, 2019, and recorded in Official Records Book 8151, at Page 1137; 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 requirements of the Project;

WHEREAS, the parties desire to reduce the terms of their agreements and understandings into this Declaration and for the covenants and terms of the Purchase and Sale Agreement dated November 14, 2017 ("Purchase Agreement") to merge into this Declaration;

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 Two. 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 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) between 195 and 210 units of 175,000 to 185,000 rentable square feet;
 - (ii) 2 levels of structured parking under podium, concealed from streetview, consistent with the plan shared in June 2021 with the Declarant;
 - (iii) a 5-level building above parking; and
 - (iv) 2-level residential buildings along S. 9th Avenue.
 - (b) The buildings shall be elevated to meet current and anticipated revised minimum flood elevations.
 - (c) The Project shall contain paved parking with sufficient parking spaces to satisfy, at a minimum, applicable building code, zoning, and land use regulations.
 - (d) The outward appearance of the buildings shall be substantially in accordance with the renderings presented to the Declarant at its June 14, 2021 meeting, to include the following: six, two-story row houses on the west portion of the block and a seven-story multi-family complex in the center, with proposed aesthetics drawing on Savannah- and Gulf Coast-style architecture with an overall modern design to compliment the adjacent developments to the west, as well as future developments to the north. A hidden parking garage will be located on levels 1 and 2, with amenities such as a club house, infinity pool, and fitness center on level 3. The early design phase façade shows a stucco and painted-brick exterior, exposed rafter tails, metal canopies, and large windows and French doors. A green wall system is also shown along the E. Romana Street elevation which will visually tie

into an outdoor plaza greenspace above.

(e) Landscaping shall include traditional streetscapes along South 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. Owner shall ensure that the development team preserves existing street trees to the greatest extent feasible.

(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.

3. 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 October 25, 2021.

(b) ~~Design Development Document Pricing &~~ Total Project Cost Estimate based on the schematic design development package by November 16, 2021.

(c) Proof of Closing on Construction Financing by ~~December 1, 2021~~ no later than thirty (30) days after Project costs are determined by a qualified general contractor (evidenced by documentation by a reliable institutional lender and accepted and executed by the Owner(s) and all project guarantors named in such document, together with evidence of Owner(s)' ability to pay the cost of construction of the Project in excess of such construction funding).

~~(d) Final Construction Documents by February 6, 2022.~~

~~(e)~~ (d) The Owner shall submit final plans for permitting no later than March 31, 2022.

~~(f)~~ (e) Vertical construction shall begin within 60 days after the permit is issued. Vertical construction includes piling installation.

~~(g)~~ (f) 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.

(~~hg~~) The deadline set forth in paragraphs (a) – (~~gf~~) 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.

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3.02 If Owner fails to meet any of the deadlines required by paragraphs (a) – (~~gf~~) 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, ~~including and all individuals and entities~~ 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. Article Four shall hereby be deleted in its entirety with the following substituted in its place:

ARTICLE FOUR
REPORTING MILESTONES

4.01 On a monthly basis, developer representatives shall meet with CRA representatives at mutually agreeable times, or at either party's request, attend the CRA's public meetings to provide an update regarding the status of plans, the selection of a general contractor, the project budget, financing, and continuing prosecution of construction.

4.02 Owner acknowledges and agrees that the identities of the persons who manage and control the property and the development process should be disclosed to the Declarant. Robert Montgomery is the sole ~~member~~manager of the ~~corporate~~limited liability company entity which is the Owner and shall retain managerial and voting control over the development process unless written approval is obtained from Declarant.

4.03 Owner discloses the following members of the development team: Robert B. Montgomery; Chan Cox; Foye Tatum; Zachary Biggs; Brian Spencer; Ray Russenberger. ~~Owner shall disclose the legal address and any financial interests related to the Project of any member of the development team as identified herein.~~

4.04. Prior to completion of construction, as evidenced by a certificate of occupancy, and not less than twenty-one (21) days prior to a regularly scheduled meeting of Declarant, Owner shall give written notice of any proposed change in the development team referenced in 4.03 above. Such notice shall state the names and addresses of all proposed new members as well as any change in control over the Project and shall include such other information as Declarant may reasonably request. Owner shall not make, suffer or permit any change in the development team without the prior written notice to Declarant, which approval shall not be unreasonably withheld, conditioned or delayed. Unless Declarant disapproves the requested change at the next regularly scheduled meeting of the Community Redevelopment Agency that is more than twenty-one (21) days after Owner gives the written notice required by this paragraph, the requested change shall be deemed approved.

4.05 Prior to completion of construction, as evidenced by a certificate of occupancy, and not less than twenty-one (21) days prior to a regularly scheduled meeting of Declarant, shall give written notice of any proposed change in the management or voting control of Owner. Such notice shall state the names and addresses of all proposed new managers and, in the event of a proposed change in voting control, the names and addresses of the person or persons who will have voting control of Owner as a result of such change, and their respective percentage ownership and voting rights and shall include such other information as Declarant may reasonably request. Owner shall not make, suffer or permit any change in the management or voting control of without the prior written notice to Declarant, which approval shall not be unreasonably withheld, conditioned or delayed. Unless Declarant disapproves the requested change at the next regularly scheduled meeting of the Community Redevelopment Agency that is more than twenty-one (21) days after Owner gives the written notice required by this paragraph, the requested change shall be deemed approved.

4.06 Prior to completion of construction, as evidenced by a certificate of occupancy, and not less than twenty-one (21) days prior to a regularly scheduled meeting of the Community Redevelopment Agency, Owner shall give written notice of any proposed transfer or assignment, in whole or in part, or of any of its legal or beneficial right, title or interest in the Property to any other person or entity. Such notice shall state the names and addresses of the proposed assignee and all principals, managers, officers and directors, as applicable, and those shareholders or members, as applicable, having voting control of the proposed assignee, and shall include such other information as Declarant may reasonably request. Unless Declarant disapproves the requested transfer or assignment at the next regularly scheduled meeting of the Community Redevelopment Agency that is more than twenty-one (21) days after Owner gives the written notice required by this paragraph, the requested transfer or assignment shall be deemed approved.

4.07 Owner acknowledges and agrees that ~~SMP Architects, Inc.~~ SMP Architecture, PA will continue to be the architect of record for the Project and that Owner will supervise the general contractor for the Project. Not less than twenty-one (21) days prior to a regularly scheduled meeting of Declarant, Owner shall give written notice of any proposed change in such architect of record or general contractor, together with such information as Declarant may reasonably request. Owner shall not change such architect of record or contractor without the prior written consent of Declarant, which consent shall not be unreasonably withheld, conditioned, or delayed. Unless Declarant disapproves the requested change at the next regularly scheduled meeting of Declarant that is more than twenty-one (21) days after Owner gives Declarant the written notice required by this Section, the requested change shall be deemed approved.

5. Article Five Deleted. Article Five shall hereby be deleted in its entirety.

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

7. Merger of Purchase Agreement. The Purchase Agreement merged into this Declaration and the other closing documents and shall have no further force or 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:

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
~~September~~October 2021, 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 ~~September~~ October 2021, 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
~~September~~, October 2021 by Norris F. McMahon, as Senior Vice President of Summit Bank.

NOTARY PUBLIC
Print Name: _____

Personally Known
OR

Produced Identification
Type of Identification Produced _____