

FIFTH AMENDMENT TO DOWNTOWN DEVELOPMENT AGREEMENT

This Fifth Amendment to Downtown Development Agreement (the "Fifth Amendment") is made and entered into as of the 10th day of June, 2019 (the "Effective Date"), between PCH DEVELOPMENT CO., LLC, a North Carolina limited liability company ("Developer"), PRINCE CHARLES HOLDINGS, LLC, a North Carolina limited liability company ("Prince Charles Holdings"), HAY STREET DEVELOPMENT PAD, LLC ("Hay Street Development"), and the CITY OF FAYETTEVILLE, NORTH CAROLINA, a public body corporate and politic ("City")

Any party to this Agreement may be referred to herein as a "Party" and all the parties to this Agreement may be collectively referred to herein as the "Parties."

RECITALS:

A. The Developer, Prince Charles Holdings and the City entered into that certain Downtown Development Agreement dated as of March 28, 2017 concerning the development of the Project Area as therein described, as amended by that certain First Amendment to Downtown Development Agreement (the "First Amendment"), that certain Second Amendment to Downtown Development Agreement (the "Second Amendment") that certain Third Amendment to Downtown Development Agreement (the "Third Amendment") and that certain Fourth Amendment to Downtown Development Agreement (the "Fourth Amendment")(collectively, the Agreement.)

B. The City as Buyer and Hay Street Development, assignee of Developer of the Hotel and Garage Parcel Contract and Developer, entered into the Agreement for Development and Sale of Real Estate "Garage Contract" as of the 28th day of December, 2017 (the "Garage Contract") by the terms of which Hay Street Development agreed to build the Parking Garage, and the City agreed to purchase the completed Parking Garage for a purchase price of \$14,467,888.00 (the "Purchase Price"), subject to adjustments to the Purchase Price as set forth in the Garage Contract. The Developer agreed to guarantee the complete the timely performance by Hay Street Development of the Garage Contract.

C. The terms of the Agreement and the Garage Contract require that construction of the Parking Garage be substantially complete on or before March 15, 2019.

D. Hay Street Development has failed to meet the completion date for substantial construction of the Parking Garage, is subject to assessment of liquidated damages of \$1,000.00 per day from March 15, 2019 until substantial completion of the Parking Garage (the "Liquidated Damages"),

E. Hay Street Development has requested that the City increase the Purchase Price for the Parking Garage in an amount up to but not exceeding \$15,967,888.00, subject to the adjustments to the Purchase Price as set forth in the Garage Contract.

F. The Agreement has described the proposed use of the Multi-Use Building (as defined in the Agreement) to include office space and residential. The Parties wish to clarify that the Multi-Use Building will include the Parking Garage, and Hotel and office use.

G. The Parties have continued to work cooperatively on the various matters relating to the development of the Project as contemplated under the Agreement.

H. The Agreement contemplates that the Parties would work on further amendment(s) to the Agreement to memorialize the further agreements and understandings among the Parties based on the results of the work by the Parties on the Project subsequent to the date of the First Amendment.

NOW, THEREFORE, based upon the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, City, Developer, and Prince Charles Holdings, Hay Street Development do hereby agree as follows:

1. Paragraph number 1. 4. Minimum Assessed Value in the Fourth Amendment is deleted in its entirety and the following paragraph is substituted in lieu thereof:

4. Minimum Assessed Value. The *ad valorem* tax value of the private development within the Project Area owned or to be owned or controlled by Developer and Prince Charles Holdings, and their successors, or affiliates (the "Private Development Properties") as of the Effective Date as defined hereinafter is the greater of \$45,000,000 or the actual appraised tax value. The minimum assessed tax value (the "Revised Minimum Assessed Tax Value") of the Private Development Properties is set forth on the Revised Exhibit A entitled "Minimum Assessed Tax Value of the Private Development Properties", attached hereto and incorporated herein by reference. The Parties acknowledge that the City will rely on ad valorem tax revenues generated by the Private Development Properties taxed at the greater of the Revised Minimum Assessed Tax Value or the actual appraised tax value to pay a portion of the stadium debt (the "Stadium Debt"). Ad Valorem tax revenues on the Private Development Properties shall be calculated by using the City millage rate in effect on the date of this Amendment (.4995 cents per \$100.00) and greater of the Minimum Assessed Tax Value or the actual appraised tax value (the "Private Development Properties Ad Valorem Tax Revenue"). The Developer guarantees the generation of Private Development Properties Ad Valorem Tax Revenues. The Developer and Hay Street Development guarantee the timely payment of the Revised Minimum Tax Assessed Value as assessed against the Private Development Properties.

2. The Parties will enter into a First Amendment to the Declaration of Covenants and Agreement for a Minimum Tax Assessment (the "First Amendment to the Declaration and Agreement") in form and substance identical to Exhibit B entitled First Amendment to the Declaration of Covenants and Agreement for a Minimum Tax Assessment attached hereto and incorporated herein by reference.

3. The Agreement is further amended as follows:

- a. The Multi-Use Building to be constructed by Hay Street Developers will contain the Parking Garage, a Hotel and Class A office space.
 - b. The office use space in the Multi-Use Building to be constructed by Hay Street Development will include seven floors of Class A office space totaling approximately 105,000 square feet of usable office space and approximately 6,000 square feet of retail space all to be set forth in the Mixed-Use Building Plans (as that term is defined in the Agreement).
 - c. Hay Street Development will deliver to the City all draft Condominium documents, plats and plans for the Multi-Use Building as required by the Garage Contract on or before the 15th day of August 2019.
 - d. Hay Street Development will commence construction of the Hotel and Office Condominiums within the Mixed-Use Building on or before the 1st day October 2019 (the "Commencement of Construction for Hotel and Office Date").
 - e. The purchase price to be paid by the City for the Parking Garage will be increased to an amount not to exceed \$15,967,888.00 subject to adjustments to this purchase price as set forth in the Agreement.
 - f. Two Hundred and Fifty (250) of the parking spaces within the completed Parking Garage will be reserved for and dedicated to the Office Condominiums to be constructed within the Multi-Use Building.
 - g. One Hundred and Sixty-Seven parking (167) spaces in the Parking Garage will be delivered to the City upon issuance of the temporary certificate of occupancy for the Parking Garage.
 - h. The exterior façade of the Parking Garage will be completed on or before October 1, 2019.
 - i. Hay Street Development will deliver to the City a written estimated schedule for construction of the Hotel and Office Condominiums within the Multi-Use Building within thirty (30) days of execution by all Parties of this Fifth Amendment.
4. The Parties will enter into a First Amendment to Garage Contract in form and substance identical to Exhibit C entitled First Amendment to the Agreement for Development and Sale of Real Estate "Garage Contract".
 5. All other terms and conditions of the Agreement, to the extent not expressly modified herein, shall remain unchanged and in full force and effect and are incorporated herein by reference.
 6. This Fifth Amendment may be executed in multiple counterparts and may be assembled to form one complete Fifth Amendment. Facsimile or electronic signatures on this Fifth Amendment shall be binding upon the Parties.

[SIGNATURES ON FOLLOWING PAGES]

CITY OF FAYETTEVILLE

[SEAL]



Douglas J. Hewett
Name: DOUGLAS J. HEWETT, ICMA-CM
Title: City Manager

ATTEST:

Pamela J. Megill
PAMELA J. MEGILL, City Clerk

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

I, Jennifer K. Penfield, a Notary Public for said County and State, do hereby certify that PAMELA J. MEGILL personally appeared before me this day and acknowledged that she is the CITY CLERK for the CITY OF FAYETTEVILLE, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the CITY OF FAYETTEVILLE, the foregoing instrument was signed in its name by its CITY MANAGER, DOUGLAS J. HEWETT, sealed with its corporate seal and attested by PAMELA J. MEGILL as its CITY CLERK.

WITNESS my hand and official seal, this 1st day of August, 2019.

(Official Seal)

Jennifer K. Penfield
NOTARY PUBLIC

My commission expires: 9/28/22

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

APPROVED AS TO FORM:

Jay Toland
JAY TOLAND, Chief Financial Officer

Karen M. McDonald
KAREN M. MCDONALD, City Attorney

[Developer Signature Page to Downtown Development Agreement]

PCH DEVELOPMENT CO., LLC (seal)

By: 1st and Main Development, LLC, Authorized Member

By: [Signature]
Name: Roderick Dowling
Title: Manager

STATE OF NORTH CAROLINA, COUNTY OF Wake

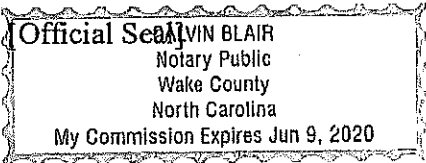
I certify that the following person(s) personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: Roderick Dowling
(name of person signing in blank)

Date: July 12, 2019

[Signature]
Notary Public

Print Name: Calvin Blair

My commission expires: June 9, 2020



[Prince Charles Holdings Signature Page to Downtown Development Agreement]

Prince Charles Holdings, LLC (seal)

By: [Signature]
Name: Jordan A. Jones
Title: Manager

STATE OF NORTH CAROLINA, COUNTY OF Wake

I certify that the following person(s) personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: Jordan A Jones

(name of person signing in blank)

Date: July 12, 2019

[Signature]
Notary Public

Print Name: Calvin Blair

My commission expires: June 9, 2020



Revised Exhibit A

MINIMUM ASSESSED TAX VALUE
OF THE PRIVATE DEVELOPMENT PROPERTIES

<u>PROPERTY</u>	<u>MINIMUM ASSESSED TAX VALUE</u> <u>AS OF THE EFFECTIVE DATE</u>
Prince Charles Hotel – Being all of Lot 1 according to a plat entitled “Recombination Survey of 450 Hay, LLC Tracts (Zero Lot Line)”, the same being duly recorded in Book of Plats 130, Page 152, in the office of the Register of Deeds for Cumberland County, North Carolina	\$6,000,000.00
*Hotel (to be located on Hotel and Garage Parcel): Being all of Lot 3 as shown on plat entitled “Recombination Plat Property of City of Fayetteville” said plat dated February 7, 2017 and recorded on June 16, 2017 in Book 139, Page 148 of the Cumberland County Registry	\$13,000,000.00
*Offices (to be located on Hotel and Garage Parcel): Being all of Lot 3 as shown on plat entitled “Recombination Plat Property of City of Fayetteville” said plat dated February 7, 2017 and recorded on June 16, 2017 in Book 139, Page 148 of the Cumberland County Registry	\$20,600,000.00
Festival Park Plaza Office Building: Being all of Lot 5 As shown on Plat entitled “Recombination of Tracts 3, 4, 5 and 6 for the City of Fayetteville as recorded in Plat Book 139, Page 17-18 of the Cumberland County Registry.	**\$5,400,000.00
Festival Park Plaza Development Parcel: Being all of Lot 6 As shown on Plat entitled “Recombination of Tracts 3, 4, 5 and 6 for the City of Fayetteville as recorded in Plat Book 139, Page 17-18 of the Cumberland County Registry.	**\$
TOTAL	\$45,000,000.00

*To be constructed on portions of Hotel and Garage Parcel

**\$5,500,000.00 allocated between FPP Office Building and FPP Development Parcel