

RESOLUTION 2023-06-05

A RESOLUTION OF THE DOWNTOWN INVESTMENT AUTHORITY (“DIA”) AUTHORIZING REVISIONS TO, AND RECOMMENDING CITY COUNCIL APPROVAL OF AMENDMENTS TO THE PERFORMANCE SCHEDULE AND OTHER ASSOCIATED TERMS OF THE REDEVELOPMENT AGREEMENT BETWEEN THE CITY, DIA, AND FUQUA ACQUISITIONS, LLC, DATED DECEMBER 20, 2021 (THE “RDA”) AS ASSIGNED TO FUQUA BCDC ONE RIVERSIDE PROJECT OWNER, LLC, (THE “DEVELOPER”) AND AS MODIFIED BY AMENDMENT ONE THERETO DATED OCTOBER, 2022; THE TERMS OF THE SECOND AMENDMENT SHALL BE SUBSTANTIALLY IN THE FORM OF AMENDMENT TWO ATTACHED HERETO AS EXHIBIT A AND SUMMARIZED IN THE TERM SHEET ATTACHED HERETO AS EXHIBIT B WITH ALL OTHER TERMS AND CONDITIONS OF THE RDA AS AMENDMED REMAINING UNCHANGED; AUTHORIZING THE CEO OF THE DIA TO TAKE ALL NECESSARY ACTION TO EFFECTUATE THE PURPOSES OF THIS RESOLUTION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The City of Jacksonville (the “City”), the Downtown Investment Authority (“DIA”) and Fuqua Acquisitions, LLC (“Fuqua”) entered into that certain Redevelopment Agreement dated December 20, 2021 (the “RDA”), as authorized by City Ordinance 2021-796-E; and

WHEREAS, Fuqua’s interest in the RDA was assigned to Developer; and

WHEREAS, the City, DIA and Developer entered into Amendment One to the Redevelopment Agreement dated October 12, 2022, as authorized by Ordinance 2022-493-E; and

WHEREAS, the City, Developer and DIA have agreed to certain modifications in the Performance schedules and associated terms of the RDA which extend the dates for both the Project and City Improvements as a result of force majeure delays which among other things, have prevented the City’s commencement of the McCoy’s Creek Improvements; and

WHEREAS, Developer and the City continue to work in good faith to complete that Project and the McCoy’s Creek Improvements; and

WHEREAS, despite the adverse impacts that such delays have on both parties, the parties have agreed to a revised schedule that will resolve any disputes between them under the RDA; and

WHEREAS, DIA is the designated Community Redevelopment Agency for the North Bank CRA, for which a BID Plan, inclusive of a Community Redevelopment Plan, was adopted by Ordinance 2014-560-E and updated pursuant to Ordinance 2022-0372; and

WHEREAS, the Strategic Implementation Committee of the DIA considered the proposed term sheet and amendment at its June 15, 2023, meeting, and it is recommended by the committee that the DIA Board approve this resolution authorizing modifications to the RDA herein substantially in the form of Amendment Two as Exhibit A and summarized in the performance Schedule attached as Exhibit B.

NOW THEREFORE, BE IT RESOLVED by the Board of the Downtown Investment Authority:

Section 1. The DIA finds that the recitals set forth above are true and correct and are incorporated herein by this reference.

Section 2. The DIA Board, to the extent permissible in accordance with the terms of the RDA as amended, authorizes all extensions contained in Amendment Two attached hereto as Exhibit A and summarized in Exhibit B.

Section 3. The DIA hereby recommends that City Council authorize all amendments to the Performance Schedule summarized in Exhibit B and Amendment Two and such other amendments to the RDA substantially in the form contained in Amendment Two attached hereto as Exhibit A.

Section 4. The CEO of the DIA is hereby authorized to file legislation necessary to effectuate the purposes of this Resolution.

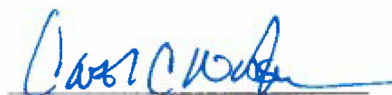
Section 5. The DIA hereby authorizes the CEO of the Downtown Investment Authority to take all action necessary to effectuate the purposes of this Resolution 2023-06-05, including the execution of contracts, agreements, and other documents.

Section 6. This Resolution shall become effective on the date it is signed by the Chair of the DIA Board.

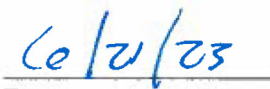
WITNESS:

DOWNTOWN INVESTMENT AUTHORITY





Carol Worsham, Chair



Date

VOTE: In Favor: 6 Opposed: 0 Abstained: 0

Exhibit A to Resolution 2023-06-05

**AMENDMENT TWO TO REDEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF JACKSONVILLE
AND
FUQUA BCDC ONE RIVERSIDE PROJECT OWNER, LLC**

THIS AMENDMENT TWO TO REDEVELOPMENT AGREEMENT (“Amendment”) is made and entered into this ___ day of _____, 2022 (the “Effective Date”), by and between the CITY OF JACKSONVILLE (the “City”), a municipal corporation existing under the Constitution and the laws of the State of Florida, the DOWNTOWN INVESTMENT AUTHORITY, a community redevelopment agency on behalf of the City (the “DIA”) and FUQUA BCDC ONE RIVERSIDE PROJECT OWNER, LLC, a Delaware limited liability company (the “Developer”). Any capitalized terms herein not otherwise defined shall have the respective meanings as set forth in the RDA, defined below.

RECITALS:

WHEREAS, City, DIA and Developer (as Assignee of Fuqua Acquisitions II, LLC) have previously entered into that certain Redevelopment Agreement dated December 20, 2021 (the “RDA”), as authorized by City Ordinance 2021-796-E and DIA Resolution 2021-08-01; and

WHEREAS, City, DIA and Developer entered into Amendment One to the Redevelopment Agreement dated October 12, 2022, as authorized by Ordinance 2022-493-E which extended the performance schedule for the demolition on the City Parcel and the City improvements for McCoy’s Creek; and;

WHEREAS, the Developer and City are diligently proceeding with the Project and the McCoy’s Creek Improvement Project, respectively, but have experienced certain delays, so the Developer, City and DIA have agreed to revised Performance Schedules for both the Project and the McCoy’s Creek Improvements Project as set forth herein; and

WHEREAS, this Amendment is authorized by City Ordinance 2023-___-E;

NOW THEREFORE, in consideration of the mutual undertakings and agreements herein of City, DIA, and Developer, and for Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are acknowledged, City, DIA and the Developer agree that the above Recitals are true and correct, and represent, warrant, covenant and agree as follows:

Definitions. Article 2 of the RDA is hereby amended to revise the definitions of Substantial Completion:

“2.39 Substantial Completion.

...As to the McCoy's Creek Improvements, "Substantially Completed", "Substantial Completion" or "Completion" means as to the Phase 1 McCoy's Creek Improvements that (a) such improvements have been substantially completed in accordance with the McCoy's Creek Improvement Plans for the excavation and construction of a new creek channel and that the same has been connected to the river and water is flowing through such new channel and diverted away from the Creek Parcel;(b) May Street has been substantially completed in accordance with the May Street Project Plans and Specifications such that it is available for use in accordance with its intended purpose, without material interference from uncompleted work and subject to commercially reasonable punch list items; and (c) May Street, as extended and relocated, has been dedicated to public use.

As to the McCoy's Creek Improvements, "Substantially Completed", "Substantial Completion" or "Completion" means as to the Phase 2 McCoy's Creek Improvements that (a) the Phase 2 McCoy's Creek Improvement have been substantially completed in accordance with the McCoy's Creek Improvement Plans for the filling and grading of the existing creek channel and restoration of the Creek Parcel in accordance with Exhibit K such that the uncompleted work does not cause any material interference with the commencement of construction on the Creek Parcel; (b) the City has delivered to Developer a certification from the engineer of record confirming that the McCoy's Creek Improvements are substantially complete according to the McCoy's Creek Improvement Plans; (c) the City has obtained the final inspections and approvals of the completed work from all appropriate governmental authorities; (d) all applicable permits for the McCoy's Creek Improvements have been closed, or if not closed, all applicable governmental agencies will permit commencement of construction on the Creek Parcel notwithstanding such open permits; and (e) the City has delivered to Developer final lien waivers from all materialmen, suppliers, contractors and subcontractors who provided services or materials for the McCoy's Creek Improvements performed on the Phase II Mixed-Use Component Parcel and the Creek Parcel.

Developer Performance Schedule. Article 4 of the RDA is hereby amended to extend various Performance Schedule dates and as amended shall read as follows:

Article 4.

DEVELOPERPERFORMANCE SCHEDULE

4.1 Developer Performance Schedule.

The City, the DIA and the Developer have jointly established the following dates for the Developer's or its Designated Assignee's obligations under this Agreement (collectively, the "Developer Performance Schedule");

(a) Phase I Improvements

- (i) Developer shall purchase and obtain title to the Project Parcel and City Parcel by no later than February 4, 2022, and shall notify City of its election to undertake the Demolition Project as of this date.
- (ii) If electing to undertake such work, the Developer shall commence the Demolition Project no later than April 30, 2022 (for the purposes of this Paragraph 4.1(a)(ii), evidence of performance (acceptable to the DIA in its reasonable discretion) by Developer of abatement work on existing vertical improvements located on the City Parcel in connection with the Demolition Project shall be deemed sufficient to demonstrate commencement of the Demolition Project.
- (iii) Developer shall commence demolition of all buildings on the Project Parcel by no later than April 30, 2022 and shall continue such work to completion without any Impermissible Delays; for the purposes of this Paragraph 4.1(a)(iii), evidence of performance (acceptable to the DIA in its reasonable discretion) by Developer of abatement work on existing vertical improvements located on the Project Parcel in connection with the demolition work shall be deemed sufficient to demonstrate commencement of the demolition of all buildings on the Project Parcel.
- (iv) Developer shall apply for and receive final design approvals, inclusive of **DDRB** final approval, for the Phase I Residential Improvements and Restaurant Improvements by no later than April 30, 2022.
- (v) Developer shall submit applications for all Permit Approvals necessary to Commence Construction of the Phase I Residential Improvements and Restaurant Improvements no later than June 30, 2022.
- (vi) Developer shall Substantially Complete the

Demolition Project by September 30, 2022 (the "Demolition Project Completion Date").

- (vii) Developer shall submit applications for all Permit Approvals necessary to Commence Construction of the Phase I Retail Improvements no later than August 31, 2023.

- (viii) Developer shall Commence Construction of the Phase I Residential Improvements and the Restaurant Improvements within ninety (90) days after Permit Approval for the same, but, subject to Force Majeure Events, no later than March 31, 2023 (the "Residential Commencement of Construction Date"), and thereafter shall proceed through Substantial Completion of each applicable Improvement component without any Impermissible Delays, other than for Force Majeure Events.

- (ix) Developer shall Commence Construction of the Phase I Retail Improvements no later than July 31, 2025 (the "Retail Commencement of Construction Date"), and thereafter shall proceed through Substantial Completion of each applicable Improvement component without any Impermissible Delays, other than for Force Majeure Events.

- (x) Developer shall apply for and receive final design approvals, inclusive of DDRB final approval, and Permit Approvals for the Phase I Retail Improvements necessary to commence construction by no later than July 31, 2024, and shall thereafter diligently pursue all permits and governmental approvals necessary to complete construction without any Impermissible Delays.

- (xi) Developer shall have Substantially Completed construction of the Phase I Residential Improvements and the Restaurant Improvements on or before thirty-six (36) months from the Residential Commencement of Construction Date, but no later than March 31, 2026 (the "Residential Completion Date"), subject to extension for Force Majeure Events.

- (xii) Developer shall have Substantially Completed construction of the Phase I Retail Improvements no later than September 30, 2026 (the "Retail Completion Date"), subject to extension for Force Majeure Events.
- (xiii) Developer shall submit applications for all Permit Approvals necessary to Commence Construction of the Phase II Improvements and diligently pursue the same within six (6) months after the date of final DDRB approval for the Phase II Improvements;

(b) The City, DIA and the Developer have approved this Developer Performance Schedule. By the execution hereof, and subject to the terms of this Agreement, the Developer or its Designated Assignee hereby agrees to undertake and complete the construction and development of the Improvements in accordance with this Agreement and the Developer Performance Schedule, and to comply with all of the Developer's obligations set forth herein. The CEO of the DIA may extend each component of the Developer Performance Schedule (exclusive of the Demolition Project) for up to six (6) months in her sole discretion for good cause shown by Developer. For purposes of clarity, each of the Commencement of Construction Date and the Completion Date may receive up to a six (6) month extension by the CEO of the DIA and the DIA Board, respectively. Any extensions greater than one year (with the exception for extensions due to Force Majeure Events) shall require City Council approval. Any change to the Commencement of Construction Date pursuant to this paragraph shall automatically result in a corresponding extension to the related Completion Date. Extensions to any other dates within the Developer Performance Schedule shall serve only to extend the individual date referenced.

City Performance Schedule. Section 7.2 of the RDA is hereby amended to extend each of the commencement and completion dates for the McCoy's Creek Improvements Project and, as amended, shall read as follows:

Article 7.

CITY IMPROVEMENTS

7.1 McCoy's Creek Improvements.

As of the Effective Date of this Agreement, McCoy's Creek is located within the Creek Parcel. The City agrees to realign McCoy's Creek from its location as of the Effective Date hereof to the City Parcel by excavating and constructing a new riverbed for McCoy's Creek on the City Parcel, removing the bulkheads from the Creek Parcel and filling the existing McCoy's Creek site to the grade of the bulkhead in existence as of the Effective date of this Agreement, and in accordance with **Exhibit K** attached hereto. The City will also extend and realign May Street from its terminus at Leila Street to the Project Parcel as depicted on **Exhibit J** at the City's sole cost and expense. Nothing contained in this Agreement or any other document attached hereto or contemplated hereby shall constitute or create any duty on or warranty or representation by the City or the DIA as to whether the McCoy's Creek and Creek Parcel will be suitable for Developer or Designated Assignee's intended uses thereon after Substantial Completion of the McCoy's Creek Improvements, including, without limitation, with respect to load bearing, support or construction of any improvements. The excavation and construction of a new creek channel on the City Parcel and the extension and realignment of May Street to provide access to the Phase 1 Retail Parcel from May Street are herein referred to as the Phase 1 McCoy's Creek Improvements. The filling of the existing creek channel in accordance with Exhibit K is herein referred to as the Phase 2 McCoy's Creek Improvements. Collectively the Phase 1 McCoy's Creek Improvements and the Phase 2 McCoy's Creek Improvements constitute the McCoy's Creek Improvements.

7.2 City Performance Schedule.

The City agrees to the following schedule with regard to the McCoy's Creek Improvements (collectively, the "City Performance Schedule"):

- (a) Prior to Commencing Construction of the McCoy's Creek Improvements, the Developer shall have received the plans and specifications prepared by the City's design team for the McCoy's Creek Improvements (the "McCoy's Creek Improvement Plans"), it being agreed that Developer shall have a right to provide comments regarding the location of the juncture of the May Street extension to the Project Parcel, however the City will have no obligation to make any changes to the McCoy's Creek Improvements Plans; within five (5) days of the Effective Date, the DIA shall provide its conceptual plans as to the location of the McCoy's Creek Improvements.
- (b) The City shall Commence Construction of the McCoy's Creek Improvements by no later than October 1, 2023, subject to extension for Force Majeure Events.
- (c) The City shall have Substantially Completed construction of the Phase 1 McCoy's Creek Improvements by March 30, 2025 (the "Phase 1 Completion Date"), subject to extension for Force Majeure Events.

- (d) The City shall have Substantially Completed construction of the McCoy's Creek Improvements, inclusive of the Phase 2 McCoy's Creek Improvements by October 30, 2025 (the "City Completion Date"), subject to extension for Force Majeure Events.

7.3 Repurchase Right on City Parcel. In the event the City does not Commence Construction of the McCoy's Creek Improvements on or before October 1, 2023, as such date may be extended by an Event of Force Majeure (the "Repurchase Trigger Date"), the Developer or its Designated Assignee, shall have the right and option (the "Repurchase Right") to purchase the City Parcel from the City for the Purchase Price, exercisable by delivering written notice of such intent to the City, within thirty (30) days of such Repurchase Trigger Date. If Developer fails to provide its written notice within thirty (30) days of such Repurchase Trigger Date, this Repurchase Right shall automatically terminate. Closing on the City Parcel shall occur within forty-five (45) days of the date of such notice.

If the Developer exercises its Repurchase Right, title, survey, all closing costs and conveyance documents shall be the responsibility of the Developer, except for the City's legal fees. The instruments of conveyance shall be substantially the same as those executed and delivered upon conveyance of the City Parcel to the City except that conveyance by the City shall be made via a Quitclaim deed. If the City has encumbered all or any portion of the City Parcel with a mortgage, security agreement or the City Parcel has other liens placed on it during City's ownership of the City Parcel, the City shall secure a full release of the same as to the property being purchased by the Developer and the cost of paying or discharging the same in full shall be at the City's sole expense. Ad valorem taxes will be prorated between the Developer and the City as of the date of conveyance of title to the Developer.

The Repurchase Right shall run with and be a burden upon title to the City Parcel, binding upon the City and any successor-in-title to the City Parcel or any portion thereof.

7.4 Put Option on Phase II Mixed-Use Component Parcel. In the event the City does not Substantially Complete the Phase 1 McCoy's Creek Improvements by March 30, 2025, as such date may be extended by a Force Majeure Event (the "Outside Phase 1 City Completion Date"), the Developer may elect to require the City (the "Put Option") to purchase the Phase II Mixed-Use Component Parcel (exclusive of any land underlying the required view and access corridor running from the juncture of the realigned May Street with the Project Parcel to the Riverwalk easement, the "Put Option Parcel"), at the rate of \$60 per square foot of the Phase II Mixed-Use Component Parcel, plus all related submerged lands at its appraised value as of the Effective Date, plus \$60 per square foot of the 0.53 acre upland portion of the Creek Parcel to the extent not included in the View and

Access Corridor, and \$2.43 per square foot of the 0.31 submerged portion of the Creek Parcel (collectively, the "Put Purchase Price") by delivering written notice of such intent to City, within thirty (30) days of such Outside Phase 1 City Completion Date. If Developer fails to provide its written notice within thirty (30) days of such Outside Phase 1 City Completion Date, this Put Option shall automatically terminate. Closing on the Put Option Parcel shall occur within sixty (60) days of the date of such notice. For avoidance of doubt, if the Developer exercises the Put Option, the Title Company shall release the Creek Parcel Deed from escrow and shall return it to the City, and the 0.53 acre upland portion of the acreage of the Creek Parcel shall be included in the Put Purchase Price, it being agreed that the Purchase Price for the City Parcel has already been reduced by the value of the Creek Parcel. The DIA and the City, as applicable, covenant to file legislation timely to request appropriation by City Council of such funds as may be necessary to consummate the acquisition of the Put Option Parcel in accordance with the schedule set forth in this Section 7.4.

The City Completion Date and Outside Phase 1 City Completion Date shall be extended (i) on a day-for-day basis in the event that City's failure to meet the City Completion Date is a result of a Force Majeure Event (as defined in the Agreement), (ii) on a day-for-day basis in the event the Developer elects to undertake the Demolition Project and does not Substantially Complete the Demolition Project by the Demolition Project Completion Date. In the event that such delay is caused by a fire or other casualty which damages the unfinished improvements, the City and Developer agree that the aforementioned day-for-day extension shall be based upon the time period required to return the unfinished improvements to the condition such improvements were in immediately prior to the fire or other casualty.

If the Developer exercises its Put Option, title, survey, closing costs and conveyance documents shall be consistent with terms and conditions of this Agreement and the Purchase and Sale Agreement for the conveyance of the City Parcel. The instruments of conveyance shall be substantially the same as those executed and delivered upon conveyance of the City Parcel to the City. If the Developer has encumbered all or any portion of the Phase II Mixed-Use Component Parcel with a mortgage, security agreement or the Phase II Mixed-Use Component Parcel has other liens placed on it, the Developer shall secure a full release of the same as to the property being purchased by the City and the cost of paying or discharging the same in full shall be at the Developer's sole expense. In the event the City acquires fee title to the Put Option Parcel between January 1 and November 1, Developer shall, in accordance with Section 196.295, Florida Statutes, place in escrow with the tax collector an amount equal to the current taxes prorated to the closing date, based upon the current assessment and millage rates on the Put Option Parcel. In the event the City acquires fee title to the Put Option Parcel on or after November 1, Developer shall pay to the tax collector an amount equal to the taxes that are determined to be legally due and payable by the tax collector.

Counterparts. This Amendment may be executed in counterparts, which when later combined shall constitute one and the same document as if originally executed together. Scanned signatures shall suffice as original signatures, and the parties may exchange executed counterparts by email, which shall be binding for all purposes.

IN WITNESS WHEREOF, the parties have executed and delivered this Amendment, to be effective on the Effective Date.

ATTEST:

CITY OF JACKSONVILLE

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Donna Deegan, Mayor

Form Approved:

Office of General Counsel

IN COMPLIANCE WITH the Ordinance Code of the City of Jacksonville, I do hereby certify that there is or will be an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement in accordance with the terms and conditions thereof and that provision has been made for the payment of monies provided therein to be paid.

Director of Finance

**DOWNTOWN INVESTMENT
AUTHORITY**

By: _____
Lori N. Boyer, CEO
Chief Executive Officer

Signed, sealed and delivered
in the presence of:

**FUQUA BCDC ONE RIVERSIDE
PROJECT OWNER, LLC**

(Printed
Name) _____

By: _____

Name: Jeffrey S. Fuqua

(Printed
Name) _____

Its: President

Exhibit B to Resolution 2023-06-05**1. Amend Developer's Performance Schedule as follows:**

- | | |
|--|------------------------|
| (a) Submit for all permit approvals for Phase 1 Retail | August 31, 2023 |
| (b) Commence Construction Phase 1 Retail | July 31, 2025 |
| (c) Obtain permits for Phase 1 Retail sufficient to commence | July 31, 2024 |
| (d) Substantially complete Phase I Residential | 36 mos./ March 31,2026 |
| (e) Substantially complete Phase 1 Retail | September 30, 2026 |

2. Define Phase 1 McCoy's Creek Improvements and Phase 2 McCoy's Creek Improvements**3. Amend City Performance Schedule as follows:**

- | | |
|---|------------------|
| (a) Commence Construction of McCoy's Creek Improvements | October 1, 2023 |
| (b) Repurchase trigger Date | October 1, 2023 |
| (c) Deliver Notice of Repurchase | October 31, 2023 |
| (d) Subst. Complete Phase 1 McCoy's Creek | March 30, 2025 |
| (e) Subst. Complete Phase 2 McCoy's Creek | October 31, 2025 |
| (f) Outside Phase 1 City Completion Date | March 30, 2025 |
| (g) Deliver Put Option Notice | April 29, 2025 |