

**FIRST AMENDMENT TO
PROPERTY TAX REIMBURSEMENT AGREEMENT
[315 FLAGLER LP]**

This First Amendment (the "Amendment") to Property Tax Reimbursement Agreement (the "Agreement") with an Effective Date as of the date the last party signs this Agreement, is entered into by and between the **Fort Lauderdale Community Redevelopment Agency**, a community redevelopment agency created pursuant to Part III, Chapter 163, Florida Statutes (the "Agency") and **315 Flagler LP** (individually "315"), a Delaware limited partnership authorized to transact business in the State of Florida, **315 Flagler Owner, LLC** (individually, the "Owner"), a Delaware limited liability company and **315 Flagler QOZB Owner, LLC** (individually, "QOZB"), a Delaware limited liability company (collectively, the "Developer").

WHEREAS, the Agency and 315 entered into that Property Tax Reimbursement Agreement dated December 19, 2016; and

WHEREAS, the Agreement provided for five (5) years of Incremental Payments, on a sliding scale, to the Developer provided a Tier 1 Flag Hotel is built on the Property and other conditions are satisfied; and

WHEREAS, the Agreement contemplates completion of the Project by December 31, 2018, but due to unforeseen delays, the Developer anticipates completion of the Project by December 31, 2020; and

WHEREAS, the Agency sunsets on November 7, 2025 and will receive its last payment of tax increment revenue on or around January 1, 2025; and

WHEREAS, the parties desire to restructure the formula for Increment Payments over four (4) years instead of five (5) and maintain a constant Applicable Percentage of Ninety Five Percent (95%) instead of a sliding scale; and

WHEREAS, title to the Property was transferred to Owner and 315 assigned its interest in this Agreement to Owner, which is a Permitted Transfer under this Agreement; and

WHEREAS, Owner has entered into a Ground Lease dated December 19, 2019, with QOZB and intends to transfer its interest under this Agreement to QOZB; and

WHEREAS, QOZB holds the franchise license to own and operate the Tier I Flag Hotel under the brand name Tru by Hilton and Home2Suites by Hilton; and

WHEREAS, Dev Motwani and Carlos Rodriguez, whether directly or indirectly, retain control over the management and business operations of the Project.

NOW, THEREFORE, for and in consideration of the recitals, the mutual promises, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

TERMS

1. The Recitals are true and correct and incorporated herein.
2. Article I is amended by adding the following definition.

1.27 Project Improvements is defined as an eighteen (18) story hotel with a minimum of 190 guest rooms with amenities.

3. Section 5.4 of the Agreement is deleted and replaced with the following:

5.4. Increment Payment.

(a) Provided the Agency budget includes a line item for the Increment Payment for the applicable year and provided the Developer is not in material default under this Agreement and the conditions set forth in paragraph 5.4 (c) are satisfied, the Agency will make an Increment Payment (defined below) to the Developer in each calendar year during the Property Tax Rebate Period (defined below) in an amount equal to the increase, if any, over the 2017 Base Year Payment (defined below) in ad valorem real property tax revenue collected from the Taxing Authorities (defined below) on the Project Improvements on the Property (less funds allocated for debt service of the Agency) located in the Northwest Progresso Flagler Heights Community Redevelopment Area and received by the Agency ("**Increment**") multiplied by the Applicable Percentage ("**Increment Payment**"). Debt service of the Agency shall be allocated to the Property based on the relationship the assessed value of the Property as determined by the Broward County Property Appraiser bears to the total assessed value of the Community Redevelopment Area. No Increment Payment will be made by the Agency after the Property Tax Rebate Period has expired. No Increment Payment shall be made after Agency sunsets. Increment Payments shall be made on incremental revenue of the Project Improvements only not on the appreciation of the land.

(1) "**2017 Base Year Payment**" is the amount of ad valorem tax revenue received by the Agency from the Taxing Authorities (exclusive of funds allocated for debt service of the Agency) for the Base Year on the Property.

(2) "**Property Tax Rebate Period**" is the four (4) year period starting on January 1, 2022 (which covers the calendar year ending December 31, 2021), January 1, 2023 (which covers the calendar year ending December 31, 2022), January 1, 2024 (which covers the calendar year ending December 31, 2023) and January 1, 2025 (which covers the calendar year ending December 31, 2024), provided

the Certificate of Occupancy is issued by the Governmental Authority for the Project by December 31, 2020 and the Broward County Property Appraiser assessment of value for the Property includes the Project Improvements.

(3) **“Applicable Percentage”** Ninety Five Percent (95%) for the Property Tax Rebate Period.

(4) **“Taxing Authorities”** are the City of Fort Lauderdale, the Children Services Council of Broward County, Broward County, Florida and North Broward Hospital District.

(5) **“Open for Business”** is defined as continuous and uninterrupted operations for the preceding year of a Tier 1 Flag Hotel which provides lodging and other suitable accommodations for travelers and local residents.

(6) **“Construction Commencement Date”** means eighteen months (18) after the Effective Date of this Agreement.

(b) The amount of the Increment Payment will be based on ad valorem real property tax revenue received each year by March 15 by the Agency, during the Property Tax Rebate Period. Provided the Increment has been collected and received by the Agency, the Agency will pay the Increment Payment no later than April 30 of each year during the Property Tax Rebate Period. However, the total Increment Payments to the Developer by the Agency shall not exceed One Million Seven Hundred Eleven Thousand Twenty and No/100 Dollars (\$1,711, 020.00).

(c) The duty of the Agency to pay the Increment Payment, and Agency’s other duties under the terms, covenants, and conditions of this Agreement, are expressly subject to the fulfillment to the satisfaction of, or waiver as provided herein, of the conditions precedent set forth in this section prior to disbursement of any and each of the Increment Payments. The Developer hereby covenants and agrees to satisfy each of the following obligations on or before the first disbursement and each subsequent disbursement, as applicable, unless waived in writing by the Agency as to each covenant or condition to be performed by the Developer.

The Developer shall present satisfactory evidence that:

(1) A Final Certificate of Occupancy, or a Temporary or Partial Certificate Occupancy (as defined by the Florida Building Code as to the Temporary or Partial Certificate of Occupancy) has been issued for the entire Project by December 31, 2020; and

(2) The Developer has provided proof of payment of ad valorem real property taxes to the satisfaction of the Agency in the form of a cancelled check or other verifiable documentation, commencing with the Increment Payment for Year 1 and each subsequent year thereafter during the Property Tax Rebate Period and the Agency has received its tax increment revenue for applicable year; and

(3) Developer executes an affidavit affirming that there is no action or proceeding pending (whether or not on appeal) or threatened, and no statute, regulation, rule or order of any federal, state or local governmental body in effect or proposed, in each case, which in the good faith judgment of either party which adversely affects (or if adopted, would adversely affect) the consummation of the transactions by the Developer contemplated by this Agreement; and

(4) The Developer shall not be in material default of this Agreement; and

(5) Proof of all applicable insurance and payment of premiums related thereto; and

(6) The Project shall be Open for Business continuously for the calendar year applicable to the Increment Payment ; and

(7) The Property and Project are being maintained according to the standards of Article 9.

(d) It is understood and agreed that in the event that any of the conditions precedent provided in subsections (1) through (7) have not been met, then this Agreement may be terminated by Agency and be of no further force and effect.

(e) If a Certificate of Occupancy has not been issued by December 31, 2020, then the Property Tax Rebate Period shall be reduced for each year the Certificate is delayed and no Increment Payment shall be made by the Agency. Notwithstanding, the Applicable Percentage shall remain unchanged.

4. Article 6 is deleted and replaced with the following:

ARTICLE 6

Project Development

6.1. Project Schedule. Developer represents that the Project Completion Date shall occur in accordance with the Project Schedule set forth on **Exhibit D**. No extensions to the Project Completion Date shall be granted, without the express written consent of the Agency. Authority is delegated to the Executive Director or his designee to grant extensions taking into consideration the sunset date of the CRA. Developer acknowledges such an extension may eliminate all or a portion of an Increment Payment.

5. Section 11.1 (a) is deleted and replaced with the following:

(a) The Developer is a limited partnership or limited liability company created

pursuant to the laws of the State of Delaware duly organized and validly existing, and has all requisite power and authority to carry on its business as now conducted, to own or hold under lease or otherwise, its properties and to enter into and perform its obligations hereunder and under each instrument described herein to which it is or will be a party.

6. 12.2 of Article 12 is deleted and replaced with the following:

- 12.2. Developer Good Faith Efforts and Reporting: The Developer shall be required to submit to Agency annually, starting on the Project Completion Date and for four (4) years following the Project Completion Date, an affidavit affirming that there are no pending, or to the knowledge of the Developer, threatened actions or proceedings before any court or administrative agency against the Developer, or against any officer, employee, partner or shareholder of the Developer, which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of the Developer or the Project; that all taxes due on the Project or Property have been paid; and that Developer is not in default with any Developer's Lender.

7. Paragraph 13.20 (d) of Article 13 is deleted and replaced with the following:

- 13.20. Upon completion of said construction, operation or maintenance of the Project, transfer, at no cost, to Agency all public records in possession of Developer or Contractor or keep and maintain public records required by Agency to perform the service. If Contractor transfers all public records to Agency upon completion of the construction, operation or maintenance of the Project, Developer and Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Developer or Contractor keeps and maintains public records upon completion of construction, operation or maintenance of the Project, Developer and Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Agency, upon request from Agency's custodian of public records, in a format that is compatible with the information technology systems of Agency.

If Developer or any contractor has questions regarding the application of Chapter 119, Florida Statutes, to Developer or Contractor's duty to provide public records relating to its contract, contact the Agency's custodian of public records by telephone at 954-828-5002 or by e-mail at PRRCONTRACT@FORTLAUDERDALE.GOV or by mail at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 Attention: Custodian of Public Records.

8. Article 14 is deleted and replaced with the following:

Assignment

- 14.1 **Assignment.** During the Property Tax Rebate Period, the Developer shall not assign, convey or transfer (all of the foregoing, an “Assignment”) its interest in the Project or Property to any Person, without the express written consent of the Agency which consent shall be given in the Agency’s discretion, using commercially reasonable standards and shall either approve such Assignment or specify in reasonable detail the basis for its disapproval within thirty (30) days after request for such approval. Such Assignment shall not be valid until Agency has consented in writing to such Assignment and there shall have been delivered to Agency a true copy of the instrument effecting such Assignment, and an original counterpart of an agreement in which each such assignee assumes and agrees to perform all the terms, covenants and conditions of this Agreement on Developer’s part to be performed, including those for matters that arose or became due prior to the effective date of the Assignment, and proof that the assignee has been approved as the successor to the Developer under the franchise or licensing agreement by the appropriate organization with authority to approve franchise or licensing rights over the Tier 1 Flag Hotel. After the aforesaid instruments have been delivered to Agency and Agency has consented to such Assignments, then from and after the effective date of Assignment, the assigning party shall not be released of all obligations under this Agreement for matters arising after the effective date of the Assignment, but shall remain liable to the Agency for all obligations under this Agreement relating to matters that arose or became due prior to the effective date of the Assignment. The factors upon which Agency may base its decision on whether to grant consent under this Article 14 (to the extent consent is required) will be limited to whether (i) the proposed assignee and/or any of the direct or indirect principals of such proposed assignee (as may be set forth in a certification to the Agency by a certified public accountant) meets standards of creditworthiness and have sufficient financial resources to acquire, operate, manage and maintain the Project, (ii) the proposed assignee has the reasonable ability to perform the obligations of the Developer; (iii) the proposed assignee has prior related business experience for operating property with uses similar to the Project or as existing at the time of proposed Assignment, (iv) the reputation of the proposed assignee, and (vi) the form of the documents evidencing the assignment and the assumption), and (vii) other reasonable factors. Notwithstanding the foregoing, so long as the Property and Project is maintained and operated as a Tier 1 Flag Hotel during the Property Tax Rebate Period and the successor and/or assigns has been approved by the applicable authorizing entity or organization with approval rights over transfer of the Tier 1 Flag Hotel to a successor, no consent from the Agency is required. However, the assignee and/or successor shall be required to execute and deliver an Assignment and Assumption of this Agreement in form and substance acceptable to the City.

The parties recognize that the Developer is a Delaware limited liability company as of the Effective Date of this Agreement which entity is a wholly owned subsidiary of 315 Flagler QOZB LP, the General Partner which is 315 in turn is controlled by its general partner, 315 Flagler GP, LLC and AA Fort Lauderdale

Hotel, GP, LLC. Dev Motwani is the member/manager of 315 Flagler GP LLC and Carlos Rodriguez is the manager/member of AA Fort Lauderdale Hotel, GP LLC. Any assignment, transfer or conveyance by Dev Motwani or Carlos Rodriguez of its controlling interest as manager or member in the General Partners or as manager or member in any entity which controls the General Partners shall be subject to the approval of the City according to the standards and criteria set forth herein. Any assignment, transfer or conveyance to a new entity in which the principals and respective interest of the principals in the new entity are the same as the principals and respective interest of the Developer shall be deemed a Permitted Transfer provided Developer provides satisfactory proof of said interests in the new entity and provided the applicable entity or organization with approval authority over the Tier 1 Flag Hotel has approved the transfer to the new entity and provided the new entity executes an Assignment and Assumption Agreement in form and substance satisfactory to the Agency.

All other than transfers shall require the consent of the Agency which may be granted or denied in the exercise of the Agency's reasonable discretion within a reasonable time. The following entities hold the controlling interest in the Developer with full managerial responsibility and control.

General Partners

315 Flagler GP, LLC- (Dev Motwani-sole member/manager)

AA Fort Lauderdale Hotel, GP, LLC (Carlos J. Rodriguez, David Buddenmeyer and Carlos J. Rodriguez, Jr.-sole managers/members)

9. Unless defined herein, the capitalized terms shall have the meaning ascribed in the Agreement.
10. Except as modified herein, the parties hereby ratify and confirm the Agreement as amended and agrees to bound by the terms thereof.
11. The Owner and OQZB joins and consents to this Agreement as amended and agrees to be bound by the terms hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Agreement is executed the day and year signed by the authorized officials.

AGENCY:

Witnesses:

Fort Lauderdale Community Redevelopment
Agency, a Community Redevelopment Agency
Created pursuant to Part III, Chapter 164,
Florida Statutes

Print Name: _____

By: _____
Dean J. Trantalis, Chairperson

Date: _____

Print Name: _____

Print Name: _____

By: _____
Christopher J. Lagerbloom, Executive Director

Date: _____

Print Name: _____

APPROVED AS TO FORM:
Alain E. Boileau, CRA General Counsel

ATTEST:

By: _____
Lynn Solomon, Assistant General Counsel

By: _____
Jeffrey A. Modarelli, CRA Secretary

DEVELOPER:

WITNESSES:

315 Flagler, LP, a Delaware Limited Partnership

By: 315 Flagler GP, LLC, a Florida Limited Liability Company , as General Partner

Printed Name:

By: _____
Dev Motwani, Manager

Printed Name:

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Dev Motwani, Manager of 315 Flagler GP, LLC, a Delaware limited liability company, as General Partner of 315 Flagler, LP, a Delaware limited partnership by means of ☐ physical presence or ☐ online notarization. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped
My Commission Expires:
Commission Number

DEVELOPER:

WITNESSES:

315 Flagler Owner, LLC, a Delaware Limited Liability Company

Printed Name:

Printed Name:

STATE OF _____:

COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, as _____ of 315 Flagler Owner, LLC, a Delaware limited liability company by means of ☐ physical presence or ☐ online notarization. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

DEVELOPER:

WITNESSES:

315 Flagler QOZB Owner, LLC, a Delaware
Limited Liability Company

Printed Name:

Printed Name:

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____, 2020,
by _____, as _____ of 315 Flagler QOZB Owner, LLC, a
Delaware limited liability company by means of ☐ physical presence or ☐ online
notarization. He is personally known to me or has produced _____ as
identification.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

EXHIBIT “D”
PROJECT SCHEDULE

<u>Estimated Date</u>	<u>Milestone</u>
June 30, 2017	Mobilization
July 31, 2017	Site Prep & Augercast Piles
September 30, 2017	Foundation & First Verticals
December 31, 2017	Substantial Completion of Underground Utilities
May 31, 2018	Structural Top Out
October 31, 2018	Final Asphalt & Site Inspections
December 31, 2020	Project Completion