

PERFORMANCE AGREEMENT

THIS PERFORMANCE AGREEMENT is hereby made and entered into this 21st day of JANUARY, 2019 (hereinafter "Effective Date"), by and between Central Orange Partners, LLC, a Florida Limited Liability Company, (hereinafter "Developer") or its permitted assigns, and City of New Port Richey, Florida, Community Redevelopment Agency, (hereinafter "City"), superseding and replacing the prior Performance Agreement between the parties, as follows:

WHEREAS the parties entered into that certain Purchase and Sale Agreement, dated October 26, 2016, by assignments, with respect to the sale and purchase of certain real property, described in Exhibit "A" attached thereto ("Property") located in New Port Richey, Pasco County, Florida;

WHEREAS the Property is the subject of a rezoning pursuant to Ordinance 2017-2109 to provide for zoning of the Property as a Planned Development District, (Residential Planned District subcategory) in accordance with City's Land Development Code;

WHEREAS Developer has submitted a site plan (hereinafter "Site Plan") in conjunction with the aforesaid rezoning application, which has been approved as part of said rezoning;

WHEREAS Developer will be receiving tax rebates for the Property through 2027, along with permit and impact fee waivers (not including school impact fees); (Exhibit B)

WHEREAS City has vacated portions of a City right-of-way to accommodate development of the Property in accordance with the approved site plan, pursuant to Ordinance 2017-2110;

WHEREAS City finds that the development of the Property in accordance with the approved Site Plan will provide a direct economic benefit to City and its residents and business owners, and is otherwise beneficial to the overall enhancement of the value of City's downtown area; and

WHEREAS City wants to ensure that the public benefits conferred upon City by the successful development of the Property will be protected by ensuring timely commencement and completion of the development in accordance with the Site Plan.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The foregoing recitals and true and complete and are hereby incorporated into this Agreement by this reference.

2. Development. Within the Completion Period, Developer shall develop the Property and obtain Certificates of Occupancy in accordance with the Site Plan in up to three (3) phases ("Project"), and Developer represents and warrants that it has the financial ability and expertise to

do so. Each undeveloped portion of the Property shall be maintained in accordance with all applicable Codes and Ordinances of the City of New Port Richey, and in a safe, sanitary and attractive condition.

3. Construction Financing. Developer shall obtain construction financing for the Project. For each phase of the Project, and prior to commencement of construction of each phase, Developer shall provide City a fully executed completion guarantee, which shall guarantee to Developer's lender the full and complete performance of the construction of said phase in accordance with the approved Site Plan for the Project. The completion guarantee shall be in the form attached hereto as Exhibit "C".

4. Commencement Period. Developer shall commence development of the Property in accordance with the Site Plan within the following time periods ("Commencement Period"), as demonstrated by the recording of a notice of commencement in the public records of Pasco County, Florida and the actual commencement of construction activities on the site:

Phase One – Within ten (10) months of the Effective Date of this Agreement; and

Phase Two and Three – Within three (3) years of the Effective Date of this Agreement.

5. Completion Period. Developer shall obtain Certificates of Occupancy for each phase of the development of the Property in accordance with the Site Plan, or any revisions approved, within the following time periods (hereinafter "Completion Period"):

Phase One – Within three (3) years of the Effective Date of this Agreement; and

Phase Two and Three – Within five (5) years of the Effective Date of this Agreement.

6. Default. A default in this Agreement shall occur if Developer fails to perform any requirement of this Agreement.

7. Remedies Upon Default. In the event any default occurs as provided in Section 6 of this Agreement, City shall be entitled to obtain a temporary and permanent injunction compelling the enforcement of this Agreement and requiring Developer to comply herewith. Developer hereby consents to the issuance of such injunctions and acknowledges that City would be irreparably harmed and has no remedy at law hereunder. In such action, City shall be entitled to attorneys' fees and court costs incurred.

8. Extensions. Unless otherwise provided herein, in the event Developer encounters unforeseen conditions sufficient to warrant an extension of time for the Commencement or Completion Periods provided herein, it may request such an extension from City, which may be granted or denied within City's discretion, which shall not be unreasonably withheld.

9. Notices. Any notice, request, demand, instruction or other document required or permitted to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally, or by overnight express

courier, or by email, or by facsimile transmission, and addressed to the parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally, or by email, or by confirmed facsimile, or via overnight express courier. (If a fax number listed below is inaccurate or is not working, then the date that a notice is required to be delivered shall be extended by one day.) A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

If to Developer:

Central Orange Partners, LLC
Frank S. Starkey
5742 Main Street
New Port Richey, FL 34652
Email: Starkey.f@gmail.com
Office: 813-294-8029

With a copy to:

Barbara L. Wilhite, P.A.
Barbara L. Wilhite
2523 Permit Place
New Port Richey, FL 34655
Email: Barbara@wilhitelaw.net
Office: (727) 942-0733
Fax: (727) 944-3711

If to City:

City of New Port Richey
Community Redevelopment Agency
Executive Director, Debbie L. Manns
5919 Main Street
New Port Richey, FL 34652
Email: Mannsd@cityofnewportrichey.org
Office: (727) 853-1021
Fax: (727) 853-1023

With a copy to:

General Counsel, Timothy P. Driscoll, Esq.
5919 Main Street
New Port Richey, FL 34652
Email: Driscollt@cityofnewportrichey.org
Office: (727) 853-1027

10. Assignment and Conveyance. This Agreement shall not be assigned, nor shall the obligations provided by this Agreement be conferred on any other person or entity, without the express written consent of City in its sole and absolute discretion. For a period of three (3) years from the Effective Date, Developer shall not sell or convey the Property to any person or entity.

11. Miscellaneous. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement embodies and constitutes the entire understanding between the parties with respect hereto. No provision hereof may be waived, modified, or amended except by an instrument in writing signed by both parties. This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. A facsimile, scanned, or other copy of a signed version of this Agreement has the same effect as an original. Delivery by electronic transmission such as email, download or facsimile shall be deemed effective delivery. Venue for any action related to this Agreement shall be in Pasco County, Florida in the Sixth Judicial Circuit of the State of Florida. The provisions of this Agreement may be enforced by injunctive relief, since damages incurred may be irreparable and unquantifiable.


IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first set forth above.

CITY:

City of New Port Richey,
Community Redevelopment Agency

By: 
Debbie L. Manns, as Executive Director

Attest:

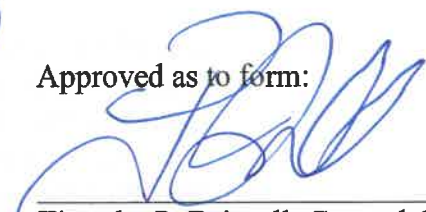

Judy Meyers, City Clerk

DEVELOPER:

Central Orange Partners, LLC,
a Florida limited liability company

By: 
Frank Starkey, Managing Member

Approved as to form:


Timothy P. Driscoll, General Counsel

STATE OF FLORIDA)
COUNTY OF PASCO)

SWORN AND SUBSCRIBED before me the undersigned authority, this 31 day of January, 2019, by Frank Starkey, as Trustee of the Frank S. Starkey Revocable Trust, as managing member of Central Orange Partners, LLC, who acknowledged executing the foregoing and who is (✓) personally known to me, or who produced _____ as identification.




Notary Public
My commission expires:

EXHIBIT "A"

PARCEL 2 (05-26-16-0030-04900-0010):

LOTS 1 AND 2, BLOCK 49, CITY OF NEW PORT RICHEY, FLORIDA, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 4, PAGE 49, PUBLIC RECORDS OF PASCO COUNTY, FLORIDA.

PARCEL 3 (05-26-16-0030-07500-0030):

LOT 3, BLOCK 75, CITY OF NEW PORT RICHEY, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 4, PAGE 49, PUBLIC RECORDS OF PASCO COUNTY, FLORIDA, LESS THE FOLLOWING DESCRIBED PORTION THEREOF:

COMMENCE AT THE MOST EASTERLY CORNER OF LOT 3 FOR A POINT OF BEGINNING; THENCE RUN ALONG THE SOUTHEASTERLY BOUNDARY OF LOT 3, A DISTANCE OF 85.8 FEET TO THE MOST SOUTHERLY CORNER OF LOT 3, THENCE NORTHWESTERLY ALONG THE LINE BETWEEN LOTS 3 AND 4, A DISTANCE OF 90.99 FEET; THENCE NORTHEASTERLY A DISTANCE OF 64.63 FEET TO THE BOUNDARY BETWEEN LOTS 2 AND 3; THENCE SOUTHEASTERLY ALONG SAID BOUNDARY BETWEEN LOT 2 AND 3, A DISTANCE OF 134.80 FEET TO THE POINT OF BEGINNING.

PARCEL 5 (05-26-0030-07500-0010):

LOTS 1, 2 4 AND 5, BLOCK 75, AND PART OF LOT 3, BLOCK 75, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCE AT THE MOST EASTERLY CORNER OF SAID LOT 3 FOR A POINT OF BEGINNING; THENCE RUN ALONG THE SOUTHEASTERLY BOUNDARY OF SAID LOT 3, 85.8 FEET TO THE MOST SOUTHERLY CORNER OF LOT 3; THENCE NORTHWESTERLY ALONG THE LINE BETWEEN LOTS 3 AND 4, 90.99 FEET; THENCE NORTHEASTERLY 64.63 FEET TO THE BOUNDARY BETWEEN LOT 2 AND 3; THENCE SOUTHEASTERLY ALONG SAID BOUNDARY BETWEEN LOTS 2 AND 3, 134.80 FEET TO THE POINT OF BEGINNING, PLAT OF CITY OF NEW PORT RICHEY, FLORIDA, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 4, PAGE 49, PUBLIC RECORDS OF PASCO COUNTY, FLORIDA.

THE NORTH 15 FEET OF CENTRAL AVENUE RIGHT-OF-WAY (80' RIGHT-OF-WAY), AS SHOW ON THE PLAT OF CITY OF NEW PORT RICHEY, AS RECORDED IN PLAT BOOK 4, PAGE 49, OF THE PUBLIC RECORDS OF PASCO COUNTY, FLORIDA. BOUNDED ON THE WEST BY THE EAST RIGHT-OF-WAY LINE OF CIRCLE BOULEVARD. BOUNDED ON THE EAST BY THE WEST RIGHT-OF-WAY LINE OF ADAMS STREET AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF LOT 1, BLOCK 49, OF SAID PLAT OF CITY OF NEW PORT RICHEY, THENCE S.89°50'57"E., A DISTANCE OF 207.88 FEET ALONG THE SOUTH BOUNDARY OF SAID LOT 1, ALSO BEING THE NORTH RIGHT-OF-WAY LINE OF SAID CENTRAL AVENUE TO THE WEST RIGHT-OF-WAY LINE OF SAID ADAMS STREET; THENCE LEAVING SAID SOUTH BOUNDARY, ALONG THE SOUTHERLY EXTENSION OF THE WEST RIGHT-OF-WAY LINE OF SAID ADAMS STREET S.00°34'20"W., A DISTANCE OF 15.00 FEET; THENCE N.89°50'57"W., A DISTANCE OF 206.47 FEET TO THE SOUTHERLY EXTENSION OF THE EASTERLY RIGHT-OF-WAY LINE OF SAID CIRCLE BOULEVARD; THENCE ALONG SAID SOUTHERLY EXTENSION, NORTHERLY, 15.06 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 355.00 FEET AND A CENTRAL ANGLE OF 02°25'48" (CHORD BEARING N.04°46'31"W., 15.06 FEET) TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 3,107 SUARE FEET – 0.071 ACRES, MORE OR LESS.

THE SOUTH 15 FEET OF CENTRAL AVENUE RIGHT-OF-WAY (80' RIGHT-OF-WAY), AS SHOW ON THE PLAT OF CITY OF NEW PORT RICHEY, AS RECORDED IN PLAT BOOK 4, PAGE 49, OF THE PUBLIC RECORDS OF PASCO COUNTY, FLORIDA. BOUNDED ON THE WEST BY THE EAST RIGHT-OF-WAY LINE OF CIRCLE BOULEVARD. BOUNDED ON THE EAST BY THE WEST RIGHT-OF-WAY LINE OF ADAMS STREET AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF LOT 1, BLOCK 75, OF SAID PLAT OF CITY OF NEW PORT RICHEY; THENCE ALONG THE NORTH BOUNDARY OF SAID LOT 1, ALSO BEING THE SOUTH RIGHT-OF-WAY LINE OF CENTRAL AVENUE, N.89°50'57"W., A DISTANCE OF 208.63 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE LEAVING SAID NORTH BOUNDARY, ALONG THE NORTHERLY EXTENSION OF THE EAST RIGHT-OF-WAY LINE OF SAID CIRCLE BOULEVARD, NORTHERLY, 15.06 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 300.00 FEET AND A CENTRAL ANGLE OF 02°52'38" (CHORD BEARING N.05°23'51"E., 15.06 FEET); THENCE S.89°50'57"E., A DISTANCE OF 207.36 FEET; THENCE ALONG THE NORTHERLY EXTENSION OF THE EAST RIGHT-OF-WAY LINE OF SAID ADAMS STREET, S.00°34'20"W., A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 3,119 SQUARE FEET, 0.071 ACRES, MORE OR LESS.

Year	Construction Phase					Property Tax Rebate Phase						
	2019	2020	2021	2022	2023	2024	2025	2026	2027			
Ad Valorem			7,000,000	7,070,000	7,140,700	7,212,107	7,284,228	7,357,070	7,430,641			
City Mills	0.0092500	0.009	0.009	0.009	0.0085	0.0085	0.0085	0.0085	0.0085			
County Mills	0.0076076	0.007	0.007	0.007	0.007	0.007	0.007	0.007	0.007			
Total Millage	0.0168576	0.016	0.016	0.016	0.0155	0.0155	0.0155	0.0155	0.0155			
Rebate Percent	100%	100%	100%	100%	80%	80%	80%	50%	50%			
Rebate	599,398	106,400	107,464	84,117	84,959	85,808	85,808	65,000	65,650			
Perfod	1	2	3	4	5	6	7	8	9			
Cap rate		11%										
Present Value		339,130	77,799	70,790	49,920	45,422	41,330	28,205	25,664			

EXHIBIT "B"



July 5, 2022

City of New Port Richey
Debbie Manns, City Manager

Dear Ms. Manns;

I am writing to request an extension of the dates outlined in the Performance Agreement (“Agreement”) between Central Orange Partners, LLC, and City of New Port Richey, dated January 21, 2019. As a result of the Covid-19 pandemic and subsequent disruptions to the construction industry we have been unable to proceed with Phase Two and Three in the timeframes outlined in the agreement, despite our diligent efforts. We respectfully request, in accordance with Section 8 of the Agreement, that the dates of the Commencement Period and Completion Period for Phase Two and Three be extended as follows:

Notice of Commencement no later than December 31, 2022

Original deadline was January 21, 2022

Construction shall be completed no later than December 31, 2024

Original deadline was January 21, 2024

Phase One commenced in February of 2019 and was completed in stages from March through May of 2020. It has been fully leased since January of 2021.

We submitted minor revisions to Phase Two in the summer of 2021, which were approved by the City in November of that year. We signed a contract for construction of site improvements on Phase Two in December of 2021 and filed a Notice of Commencement in June of 2022.

Thank you for your consideration of this request.

Sincerely,

Frank Starkey,
Manager, Central Orange Partner, llc



NEW PORT RICHEY

5919 MAIN STREET • NEW PORT RICHEY, FL 34652 • 727.853.1016

TO: Members of the Community Redevelopment Agency
FROM: Barbara Carr, Economic Development Director
DATE: 9/26/2022
RE: Request for Extension on Performance Agreement for Central Orange Partners, LLC - Page 11

REQUEST:

The Performance Agreement between Central Orange Partners, LLC, and the Community Redevelopment Agency dated January 21, 2019 has been impacted by Covid-19 pandemic and subsequent disruptions to the construction industry. This has resulted in a change to the timeframe outlined in the agreement for Phase II and III.

DISCUSSION:

Update to the Phase II and III timeline for commencement and completion of the construction is being requested by Central Orange Partners, LLC.

The Performance Agreement dated January 21, 2019 in Section 8 states, "Extensions. Unless otherwise provided herein, in the event Developer encounters unforeseen conditions sufficient to warrant an extension of time for the Commencement and Completion Periods provided herein, it may request such an extension from City, which may be granted or denied within City's discretion, which shall not be unreasonably withheld." This Section 8 of the agreement allows the commencement of and the construction with minor revisions if warranted.

Phase I has been completed and has been fully leased since January 2021.

The requested change is that Phase II would begin commencement no later than December 31, 2022 with construction completed by December 31, 2024. This extension would provide an additional 11 months to the agreement approved by the Community Redevelopment Agency in November of 2021.

RECOMMENDATION:

Staff recommends the commencement of Phase II and III be extended from January 21, 2022 and changed to December 31, 2022 (Additional 11 months to the timeframe)

Staff recommends the construction of Phase II and III be extended from January 21, 2024 and allowed to be changed to December 31, 2024. (Additional 11 months to the timeframe)

BUDGET / FISCAL IMPACT:

Exhibit "B" in the agreement allowed for Property Tax Rebates. The expectation was construction would be completed by 2020 and as a result the TIF incentive will be less for the project after the completion of the construction.

ATTACHMENTS:

	Description	Type
☐	Extension Request Letter	Backup Material
☐	Executed Performance Agreement dated January 21, 2019	Exhibit