

HORIZON HOSPITALITY
MANAGEMENT INC.

January 3, 2017

Mr. Erik Bredfeldt
Economic Development and Innovation Director
City of Gainesville
200 East University Avenue
Gainesville, FL 32601

Dear Mr. Bredfeldt,

Horizon Hospitality Management Inc. (Horizon) and its authorized representatives, Sean Whitlock, Managing Principal of Whitlock Capital Group (WCG), and Avis Butler and Rodney Long, Project Consultants, offer the following responses to your letter of December 15, 2016:

Response 1:

Your letter states that the plain language and intent was that the letter(s) of intent (LOIs) from all lenders and equity partners should have been provided to the city by November 11, 2016. It also stated that the date passed without receipt of any documents and the City then provided the required notice for the Buyer to cure the default on or before 3:02 p.m. on Tuesday, November 29, 2016.

In accordance with the language of Section H, Page 15 of the 'Amended and Restated Contract for Sale and Purchase', any date that falls on a Friday or a legal holiday is extended to 5:00 p.m. of the next business day (**Exhibit A -1**). November 11, 2016 was not only a Friday, but a legal holiday, Veteran's Day. Accordingly, the LOIs were due by the next business day, November 14, 2016, at 5:00 p.m.

On Monday, November 14th, Ms. Butler called Mr. Bredfeldt at 4:50 p.m. (**Exhibit A-2**) to inform him that the LOIs would not be submitted by the 5 p.m. deadline, but that Horizon would provide the LOIs during the 'cure' period. At the time of their conversation, Mr. Bredfeldt was not aware of the automatic extension of the original November 11th deadline provided in the contract. Ms. Butler referred him to the appropriate section of the amended contract granting the extension, however, Mr. Bredfeldt indicated that the default letter had been sent almost 2 hours earlier for certified mailing by the City. They discussed the premature mailing of the default letter, as well as, the reasons for Horizon's delay in submitting the LOIs.

The default letter of November 14th was received on November 17th, however, it did not specifically include a deadline for the cure period. Given the non-recognition of the initial extension period by Mr. Bredfeldt, Mr. Long requested the cure period's deadline from the City on November 18th by email and subsequently, by telephone on November 19th. A deadline of November 29th at 3:02 p.m., was provided by Mr. Bredfeldt to Horizon on November 21st via email.

Excerpts from Exhibit A-1

H. TIME: In computing time periods of less than six (6) days, Fridays, Saturdays, Sundays and state or national legal holidays shall be excluded. **Any time periods provided herein which shall end on a Friday, Saturday, Sunday or a legal holiday shall extend to 5:00 p.m. of the next business day. Time is of the essence in this Contract.**

Response 2:

The dual nature of a commitment, conditional versus binding, was recognized during the recent two-month negotiations with the City in Horizon's request of an extension to its previously amended contract, 'First Amendment to Contract for Purchase' (**Exhibit B**). The negotiations included three (3) in-person meetings with Anthony Lyons, City Manager, Nicolle Shalley, City Attorney, and Erik Bredfeldt, Economic Development & Innovation Director. During these meetings, Horizon's representatives presented comments provided by the six (6) financial service providers and a capital investment company, all offering conditional commitments to the project. The unanimous agreement among the financial services providers and investment company was the unrealistic request in the 'First Amendment to Contract for Purchase' to provide binding financial commitments for the project at the predevelopment phase of the project. Additional comments made by these prospective debt and equity providers that preclude the issuance of a formal, binding commitment in the predevelopment phase are:

- only an estimate of the project's funding requirements are available. The actual amount of debt and equity needed for the project can not be determined until the Guaranteed Material Pricing (GMP) is determined.
- The GMP can only be determined after the architectural renderings are completed and approved by the City's Planning and Development Board and the Hotel Flagship, and after the construction bids have been received from the contractor and their subcontractors.
- the site and in-house due diligence assessments must be completed successfully prior to the issuance of a binding commitment.

Horizon's representatives offered the City Commission and staff the opportunity to view the conditional commitments received from all of the financial service providers and the investment company. However, during the September 14th meeting with the City Manager and City staff, the City Manager declined the offer to review the LOIs presented during the meeting. Had Mr. Lyons reviewed all of the Conditional Commitments (LOIs), it would have been evident that none of the prospective financial service companies revealed their funding investors at this stage of the funding process. Because WCG's business model also requires them to keep the identity of their investors unknown during the predevelopment phase, WCG's debt and equity commitments are 'soft' commitments. WCG does, however, provide the identity of their investors before final commitment. (See WCG Letter)

As a result of our September 14th discussions, the City revised Horizon's contractual requirement in its 'Amended and Restated Contract for Sale and Purchase' (**Exhibit C**) from securing binding commitments to securing "letter(s) of intent" for the debt and equity financing.

A 'Letter of Intent' (LOI) is exactly that - a written statement expressing the serious intentions of the undersigned to engage in a certain action or business transaction. It does not, however, constitute a binding promise or a contract, as recognized by the City in its language included in Section 4b, Performance Benchmarks, of the 'Amended and Restated Contract for Sale and Purchase'. The amended contract states that the LOI "may state generally that the commitment is subject to terms and conditions as disclosed to the Buyer."

The amended contract also states, "the documents shall be executed by the duly authorized representative of the party providing the commitment to the Buyer and shall state with specificity the nature of the commitment. Nowhere in the amended contract does it require the commitments to be classified as 'hard' or 'soft', and neither is there a list of any kind as to the specific items that should be included in the LOIs. Absent of, 1) any classification other than 'binding' or 'letter of intent', and 2) any detail listing of the specific requirements to be included in the LOIs implies that these decisions are left to the duly authorized representative of the party providing the commitment. To decide after the fact what constitutes the specific and general nature of the commitments and its conditions is both prejudicial and unfair.

As provided in the executed LOIs, Sean Whitlock, Managing Principal of Whitlock Capital Group, is the duly authorized representative of the party providing the debt and equity commitments, WCG. Where and how WCG obtains its funding is not relevant to the conversation, as WCG has made the sole commitment to provide the project funding.

Excerpt from Exhibit B

4. DEBT/LOAN, EQUITY AND HOTEL FRANCHISE: On or before October 1, 2016, the Buyer shall obtain and provide to Seller copies of commitment letters that evidence that Seller has secured binding commitments for: a) all necessary debt/loan funding for the Development ; b) all necessary equity funding for the Development;

Excerpt from Exhibit C

4b. PERFORMANCE BENCHMARKS: On or before the dates specified below, the Buyer shall obtain and provide to Seller appropriate documents that evidence that Seller has satisfied each performance benchmark specified below. The documents shall be executed by the duly authorized representative of the party providing the commitment to the Buyer and shall state with specificity the nature of the commitment and may state generally that the commitment is subject to terms and conditions as disclosed to the Buyer. Upon providing the documents, Buyer will thereafter use reasonable diligence to satisfy the terms and conditions and proceed to Closing. If Buyer fails to satisfy a performance benchmark, then the City Manager, or his designee, may provide written demand (in accordance with Section 20) for performance to Buyer. Buyer shall have 5 days (after receipt, as defined in Section 20) to satisfy the performance benchmark, failing which this Contract shall automatically terminate, without further action necessary by either party, and Seller shall retain deposits paid to date as specified in Section 4.

Response 3:

The letter states that the commitment letters were dated November 27, 2016, well beyond the November 11th benchmark deadlines. This is consistent with the conversation between Ms. Butler and Mr. Bredfeldt on November 14th, as discussed in Response 1 above, that the commitment letters would be provided during the cure period. In accordance with Section 4b, Page 2 of the 'Amended and Restated Contract for Sale and Purchase', the 5-day cure period is extended from November 17th, the date of receipt of the default letter, to November 29th because of the 3-day weekends (Friday, Saturday, and Sundays) and the Thanksgiving Holidays. There is no language in the amended contract that bars Horizon from obtaining its commitment letters at or near the end of the cure period. Mr. Bredfeldt was informed during the December 8th telephone conference call that the initial request for financial services from the Whitlock Capital Group was made in June 2016.

Response 4:

The letter states that Horizon's Conditional Commitments state an expiration date of December 4, 2016. As explained to Mr. Bredfeldt during the December 8th conference call, Horizon accepted the Conditional Commitments on November 29th, as evidenced by the signed commitments. Mr. Whitlock also stated during the conference call that WCG will provide Horizon with their decision on the selection of the firm(s) that will provide the site and environmental assessments. It was made clear that the decision will be made solely by WCG and not any other respective party. Deposits are due for transactions like the subject transaction once WCG begins to finalize third party costs for the site and environmental assessments. **(Exhibit D)** As documentation of available due diligence and equity participation funds, Horizon provided 'proof of funds' statements on November 17, 2016 and forwarded it via Dropbox to WCG on November 18, 2016. **(Exhibit E)**

As of the date of this letter, January 3, 2017, WCG's Conditional Commitments with Horizon are still in full force and effect. The signed Conditional Commitments are what WCG needs for valid Conditional Commitments. **Section 4b of the amended contract states that the Buyer will use reasonable diligence to satisfy its commitments after the City receives the LOIs.** Horizon has met this requirement with WCG. (See WCG Letter)

In closing, Horizon has not been able to move forward since November 29, 2016 as a result of the City's telephone and written requests for further explanations of its LOI submissions. Consequently, the future 'Performance Benchmarks' will be delayed by the number of days expiring from November 29th until a decision is made by the City upon receipt of this response letter. As a result, Horizon will make a formal request to the City Commission to amend its contract to include the additional days necessary to adequately perform its benchmarks.

Best regards,



Nim Patel / by Avis Butler and Rodney Long

Nimish Patel, CEO
Horizon Hospitality Management Inc.

Cc: Sean Whitlock, Managing Principal,
Whitlock Capital Group, LLC



130847E

Lake Calhoun Center, Suite 10
3033 Excelsior Boulevard
Minneapolis, MN 55416

Whitlock Capital Group, LLC

O. 612.924.6485
www.whitlockcapitalgroup.com

January 2, 2017

Nimish Patel
CEO Horizon Hospitality Mgt. Inc.
4555 Mansell Rd. Suite 300
Alpharetta, GA 30022

RE: Gainesville Embassy Suites – Response to City of Gainesville Default Letter

Mr. Patel,

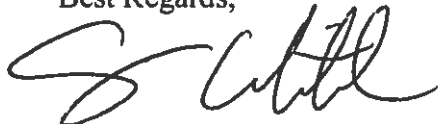
We received the default letter addressed to you regarding WCG participation in financing the above reference project.

First, the letter references WCG's soft commitments. At this point in the process, we can only obtain "soft" commitments. We do not have final project cost numbers and therefore cannot give or obtain hard commitments at this point in time. We do provide the identity of our investors before final commitment; our business model requires us to keep the identity of our investors unknown until final commitment and not at the LOI stage of the process. Moreover, it was our understanding you have already adjudicated this issue (the ability to only obtain LOIs and not hard commitments) with the City of Gainesville.

Second, the letter references WCG's Conditional Commitment expiration – As of the date of this letter, January 2, 2017 WCG's Conditional Commitment with Horizon is still in full force and effect. The signed Conditional Commitment is what we need for a valid Conditional Commitment. In transactions like the subject transaction, deposits are due once we once we begin to finalize third party cost. It is our understanding the Performance Benchmark requires that you use reasonable diligence after the City receives the LOIs for debt and equity. Your group has met this requirement with us.

Keep in mind any contract ambiguity is construed against the drafter. It is my understanding the City drafted the contracts for this transaction.

Best Regards,

A handwritten signature in black ink, appearing to read "S. Whitlock". The signature is fluid and cursive, with the first letter of the last name being a large, stylized "W".

Sean Whitlock, Esquire
Managing Principal

EXHIBIT A-1

improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing of this Contract.

G. PLACE OF CLOSING: Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by the party paying for the title insurance, or, if no title insurance, designated by Seller.

H. TIME: In computing time periods of less than six (6) days, Fridays, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided herein which shall end on a Friday, Saturday, Sunday or a legal holiday shall extend to 5:00 p.m. of the next business day. **Time is of the essence in this Contract.**

I. CLOSING DOCUMENTS: Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments.

J. EXPENSES: Buyer will pay taxes and recording fees on notes, mortgages and financing statements, and recording fees for the deed. Seller will pay taxes on the deed and recording fees for documents needed to cure title defects. Unless otherwise provided by law or rider to this Contract, charges for the following related title services, namely title evidence, title examination, and closing fee (including preparation of closing statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph 6.

K. PRORATIONS; CREDITS: Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing. Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties; failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of tax bill on condition that a statement to that effect is signed at Closing.

L. SPECIAL ASSESSMENT LIENS: Certified, confirmed and ratified special assessment liens imposed by public bodies as of Closing are to be paid by Seller. Pending liens as of Closing shall be assumed by Buyer. If the improvement has been substantially completed as of Effective Date, any pending lien shall be considered certified, confirmed or ratified and Seller shall, at Closing, be charged an amount equal to the last estimate or assessment for the improvement by the public body.

M. INSPECTION, REPAIR AND MAINTENANCE: N/A, vacant land.

Buyers Initials: 

Sellers Initials: 

EXHIBIT A-2



Billing period Oct 20, 2016 - Nov 19, 2016

803.707.6017 | Samsung Galaxy S 5

Talk activity

Date	Time	Number	Origination	Destination	Min.	Airtime Charges	Long Dist/ Other Chgs	Total
Nov 14	4:50 PM	352.393.8614	Gainesvill, FL	Gainesvl, FL	13	--	--	--

EXHIBIT B

FIRST AMENDMENT TO CONTRACT FOR PURCHASE

THIS FIRST AMENDMENT ("First Amendment") is made by and between **CITY OF GAINESVILLE, a Florida municipal corporation ("Seller")** and **HORIZON HOSPITALITY MANAGEMENT, INC., a Georgia corporation ("Buyer")**.

RECITALS

- A. Seller and Buyer are parties to a CONTRACT FOR PURCHASE dated October 1, 2015 (the "Contract") for certain real property located in Alachua County, State of Florida, as more particularly described in the Contract; and
- B. Seller and Buyer desire to amend the Contract as set forth in this First Amendment; and
- C. The capitalized terms used herein have the meanings assigned to them in the Contract and this Amendment.

NOW, THEREFORE, the parties hereto, based on good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree to amend the Contract as follows:

- 1. Section 4 of the Contract titled "FINANCING" is deleted in its entirety and replaced with the following new Section 4:

4. DEBT/LOAN, EQUITY AND HOTEL FRANCHISE: On or before October 1, 2016, the Buyer shall obtain and provide to Seller copies of commitment letters that evidence that Seller has secured binding commitments for: a) all necessary debt/loan funding for the Development; b) all necessary equity funding for the Development; and c) a Full-Service Hotel franchise agreement. "Full-Service Hotel" being industry defined as a hotel with on-site high-end restaurant(s) and lounge(s), group meeting spaces with banquet facilities and additional selective amenities such as spas, elaborate banquet rooms, doormen, valet parking, extended room service, concierge services, and high-end boutique(s). The commitment letters shall be executed by the duly authorized representative of the party providing the binding commitment to the Buyer and shall state with specificity the nature of the commitment and may state generally that the commitment is subject to terms and conditions as disclosed to the Buyer. Upon providing the commitment letters, Buyer will thereafter use reasonable diligence to satisfy the terms and conditions and proceed to close on or otherwise secure the debt/loan, equity and Full-Service Hotel franchise.

If Buyer fails to provide the commitment letters on or before October 1, 2016, then either party thereafter, by written notice to the other, may cancel this Contract and Buyer shall be refunded the Deposit.

- 2. Section 6 of the Contract is amended to extend the Closing Date from on or by April 1, 2016 to on or by November 1, 2016. Provided however, Closing cannot occur before the Buyer provides the binding commitment letters to the Seller.

EXHIBIT C

Page 2 of 17

- c. Upon execution of this Amended and Restated Contract for Sale and Purchase by both parties, the Original Contract and First Amendment shall be deemed automatically terminated and of no further force and effect, without requiring further action by either party.
4. a. **DEPOSITS:** On or before the dates specified below, the Buyer shall make additional deposits to the City in the amounts specified below. The original deposit and additional deposits (collectively, the "deposits") shall be credited to the Purchase Price at Closing. However, if Buyer fails to satisfy any of the performance benchmarks specified in Section 4b (after written demand from City and 5 day cure period to satisfy the benchmark), this Contract shall automatically terminate, without further action necessary by either party, and Seller shall retain all deposits paid to date.

On or before February 1, 2017, Buyer shall make an additional deposit of \$25,000.

On or before June 1, 2017, Buyer shall make an additional deposit of \$25,000.

On or before October 30, 2017, Buyer shall make an additional deposit of \$25,000.

b. **PERFORMANCE BENCHMARKS:** On or before the dates specified below, the Buyer shall obtain and provide to Seller appropriate documents that evidence that Seller has satisfied each performance benchmark specified below. The documents shall be executed by the duly authorized representative of the party providing the commitment to the Buyer and shall state with specificity the nature of the commitment and may state generally that the commitment is subject to terms and conditions as disclosed to the Buyer. Upon providing the documents, Buyer will thereafter use reasonable diligence to satisfy the terms and conditions and proceed to Closing. If Buyer fails to satisfy a performance benchmark, then the City Manager, or his designee, may provide written demand (in accordance with Section 20) for performance to Buyer. Buyer shall have 5 days (after receipt, as defined in Section 20) to satisfy the performance benchmark, failing which this Contract shall automatically terminate, without further action necessary by either party, and Seller shall retain deposits paid to date as specified in Section 4a.

Deadline (on or before)	Performance benchmark
11/11/2016	(1) Letter(s) of Intent from all lenders and equity partners
2/1/2017	(2) Title Commitment (3) Submit complete application for hotel franchise (4) Complete survey (5) Provide plan for property due diligence as required by Buyer, its lenders, equity partners and hotel franchisor
6/1/2017	(6) Approval of hotel franchise (7) Complete all property due diligence as required by Buyer, its lenders, partners and hotel franchisor (8) File complete application for all necessary City planning, zoning and development approvals
10/30/2017	(9) Binding Commitments to Fund and Close from all lenders and equity partners (10) Approval of all necessary City planning, zoning and development approvals

Buyers Initials: AW

Sellers Initials: AM

EXHIBIT D

From: Sean Whitlock <seanw@whitlockcapitalgroup.com>

To: avisbutler <avisbutler@aol.com>

Cc: lvaughn <lvaughn@utfinancialservicesllc.com>

Subject: RE: Gainesville Project | Sample Surety Bond Forms for Clancy & Theys

Date: Fri, Dec 2, 2016 11:38 am

Guys,

Can we speak now?

Regards,

Sean Whitlock, Esquire
Managing Principal
Whitlock Capital Group, LLC
Lake Calhoun Executive Center
3033 Excelsior Blvd., Suite 10
Minneapolis, MN 55416
Office: 612-924-6485
seanw@whitlockcapitalgroup.com
www.whitlockcapitalgroup.com

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<http://www.twitter.com/whitcapgroup>

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From: avisbutler <avisbutler@aol.com>

To: seanw <seanw@whitlockcapitalgroup.com>

Cc: nimishp <nimishp@horizonhmi.com>; rodneyjlong <rodneyjlong@gmail.com>; lvaughn <lvaughn@utfinancialservicesllc.com>

Subject: Engineers Company Profile & Budget - George F. Young

Date: Fri, Dec 2, 2016 1:49 pm

Attachments: George F. Young Company Profile.pdf (9622K), HHMI - George F. Young Budget Proposal -4-27-2016.pdf (153K)

Sean,

It was a pleasure speaking with you again today.

Attached are the Company Profile and the Engineering Budget for our engineering firm, George F. Young. Their budget includes a fee of **\$35,500** to complete the site due diligence that includes the Topo and Boundary Survey, the Phase I and II Environmental Assessments, and other initial planning efforts.

Please let me know your decision to use this engineering firm or a different firm to provide the requisite 3rd-party site verifications for the loan.

Please let me know if you need any additional information.

Thanks Sean.

Avis
803.707.6017

EXHIBIT E

From: nimish patel <nimishp@horizonhmi.com>

To: Avis Butler <avisbutler@aol.com>

Subject: Fwd: BB&T Bank Balance as of 11/14/16

Date: Thu, Nov 17, 2016 4:34 pm

Attachments: StatementView.pdf (449K)

Thanks,

Nim Patel
CEO Horizon Hospitality Mgt. Inc.
4555 Mansell Rd.
Suite 300
Alpharetta, Ga. 30022
Cell: 513-227-8708

----- Forwarded message -----

From: apatel@horizonhmi.com <apatel6069@aol.com>

Date: Thu, Nov 17, 2016 at 3:43 PM

Subject: BB&T Bank Balance as of 11/14/16

To: nimishp@horizonhmi.com

Cc: xnpatel1@gmail.com, papatel6069@hotmail.com

See attached most current BB&T statement.

Thank you,

AI Patel
Phone: [678-521-6013](tel:678-521-6013)
Fax: [678-574-8009](tel:678-574-8009)
Email: apatel@horizonhmi.com

Clipboard: Copy, Paste, Cut, Copy path, Paste shortcut

Organize: Move to, Copy to, Delete, Rename

New: New folder, New item, Easy access


Open: Properties, Open, Edit, History

Select: Select all, Select none, Invert selection

Navigation bar: Back, Forward, Home, Up, Path: Avis > Dropbox > Gainesville, FL Embassy Suites - Loan File - Whitlock Capital > Sponsor Liquidity, Search Sp...

Action icons: Window, Cut, Copy, Paste, Delete, Checkmark, Mail

- ★ Favorites
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 - Recent places
- Libraries
 - Documents
 - Music
 - Pictures
 - Videos
- Computer
 - OS (C:)
- Network

Name	Date modified	Type	Size
 Bank Statements.pdf	11/18/2016 8:52 AM	Adobe Acrobat D...	269 KB