

CMO/15-001

**THIRD AMENDMENT TO
ACQUISITION AND REDEVELOPMENT AGREEMENT
FOR MIXED USE DEVELOPMENT**

THIS THIRD AMENDMENT TO ACQUISITION AND REDEVELOPMENT AGREEMENT FOR MIXED USE DEVELOPMENT (the "Third Amendment"), is entered into effective date of execution by the last of the parties hereto, by and between:

- City of Ocala, a Florida municipal corporation ("City"); and
- Downtown Ocala, LLC, a Florida limited liability company ("Developer").

WHEREAS:

- A. City and Developer are parties to an Acquisition and Redevelopment Agreement for Mixed Use Development (the "Original Agreement") as recorded in OR Book 6305, Page 1466, Public Records of Marion County, Florida, pursuant to which, among other things, City agreed to convey the Property¹ to Developer so that Developer could utilize it in connection with the development of the Project.
- B. City and Developer are parties to a First Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development (the "First Amendment") as recorded in OR Book 6445, Page 1557, and re-recorded in OR Book 6449, page 527, both in the Public Records of Marion County, Florida, pursuant to which certain terms and provisions of the Original Agreement were amended.
- C. City and Developer are parties to a Second Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development (the "Second Amendment") as recorded in OR Book 6613, Page 1452, Public Records of Marion County, Florida, pursuant to which certain terms and provisions of the Original Agreement, as amended by the First Amendment, were further amended. (The Original Agreement, as amended by the First Amendment and Second Amendment, are hereinafter referred to as the "Amended Agreement").
- D. City and Developer now desire to further amend the Amended Agreement.

NOW, THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Revised or New Definitions.** Paragraph 1 of the Original Agreement is amended to revise or add the following definitions:
 - 1.1. *Approval* – The final, unconditional approvals from all applicable government agencies reasonably necessary to allow for the immediate issuance of building permits and commencement of construction of the Hotel or Second Building including, without limitation, City approval of the site plan and building plans. As set forth in this Agreement, there may be separate Approvals for the Hotel and the Second Building.

¹ Terms capitalized herein and not otherwise defined herein are defined in the Amended Agreement (as defined herein).

- 1.2. *Second Building* – The building to be constructed by Developer as part of the Project located along the eastern boundary of the Property and as further described in paragraphs 3.3 and 3.7.1.2.d. of the Original Agreement.

2. **Property Description.**

- 2.1. Pursuant to paragraph 3.5.4 of the Original Agreement, Developer was obligated to obtain a survey of the Property to be used to determine the legal description for the Property. Developer has done so and City and Developer have agreed upon the legal description of the Property.
- 2.2. The legal description of the Property is set forth in the attached **Exhibit A**. Such **Exhibit A** replaces Exhibit A to the Original Agreement and Exhibit A to the First Amendment.
- 2.3. Developer shall cause the survey to be updated as and when set forth in the attached **Exhibit B**.

3. **Revised Schedule.** Paragraph 6.1 of the Original Agreement (which was amended by paragraph 8.1 of the First Amendment) is further amended to read as set forth on the attached **Exhibit B**. Matters designated as “Already Occurred” have already been performed or occurred. By virtue of these changes the Schedule attached to the Second Amendment as Exhibit B is no longer accurate and is hereby deleted.

4. **Revised Components for Project.**

- 4.1. Paragraph 3.7.1.2.c. of the Original Agreement is amended to read as follows:

- c. In connection with the Hotel, provide a restaurant containing at least 4,000 square feet; a hotel lobby and back of house (operations) areas containing approximately 3,000 square feet; meeting space containing approximately 520 square feet; a banquet room containing approximately 4,000 square feet; two break-out rooms containing (in aggregate) approximately 2,000 square feet; an open and enclosed pre-function area containing approximately 3,300 square feet; additional back of house and service areas containing approximately 6,400 square feet; and ground floor retail/additional restaurant areas continuing approximately 7,000 square feet (of which at least 3,000 square feet shall be retail.)

- 4.2. Paragraph 3.7.1.2.d. of the Original Agreement is amended to read as follows:

- d. Provide a two (2) story second (eastern) building adjacent to the easterly boundary of the Property, containing approximately 10,000 square feet of improvements of which at least 5,000 square feet shall be residential.

5. **Effect on Amended Agreement.** Except as expressly set forth herein, the Amended Agreement is not amended or modified. All references herein or in the Amended Agreement to “this Agreement,” “the Agreement,” or similar terms shall be deemed to refer to the Amended Agreement, and as further amended hereby.

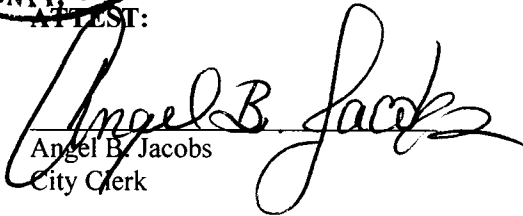
IN WITNESS WHEREOF, the parties have executed this Third Amendment effective as of the date referred to above.

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SIGNATURES START ON NEXT PAGE**



SIGNATURE PAGE OF CITY OF OCALA
TO
THIRD AMENDMENT

ATTEST:

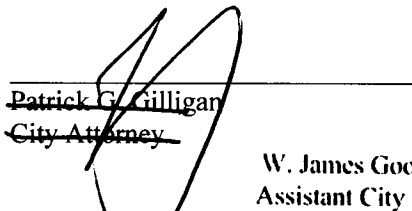

Angel B. Jacobs
City Clerk

City of Ocala, a Florida municipal corporation


Brent R. Malever
President, Ocala City Council

Date: 11-7-17

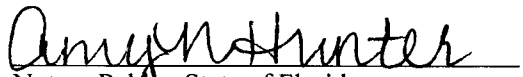
Approved as to form and legality


~~Patrick G. Gilligan~~
~~City Attorney~~

W. James Gooding III
Assistant City Attorney

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this November 7, 2017, by Brent R. Malever, as City Council President of the City of Ocala, Florida, a Florida municipal corporation, on behalf of the City.


Notary Public, State of Florida
Name: Amy N. Hunter
(Please print or type)

Commission Number:
Commission Expires:



AMY N. HUNTER
Commission # GG 140705
Expires September 24, 2021
Bonded Thru Budget Notary Services

Notary: Check one of the following:

☒ Personally known OR
☐ Produced Identification (if this box is checked, fill in blank below).
Type of Identification Produced: _____

ACCEPTED BY CITY COUNCIL
November 7, 2017
DATE
OFFICE OF THE CITY CLERK

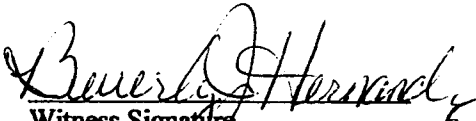
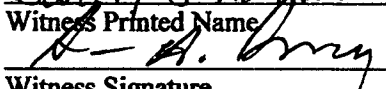
**SIGNATURE PAGE OF DOWNTOWN OCALA, LLC
TO
THIRD AMENDMENT**

AS TO DEVELOPER

Downtown Ocala, LLC, a Florida limited liability company

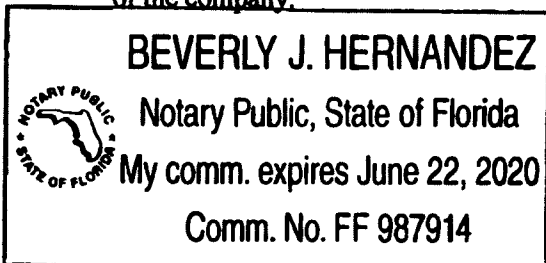
By: 
Digvijay Gaekwad as Manager

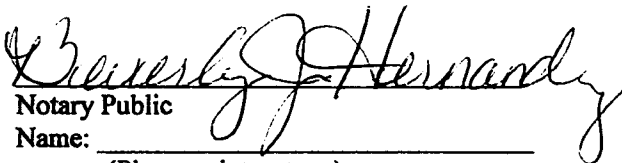
Date: October 12, 2017


Witness Signature
Beverly J. Hernandez
Witness Printed Name

Witness Signature
STEVEN H. GARY
Witness Printed Name

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this Oct. 12, 2017, by Digvijay Gaekwad, as Manager of Downtown Ocala, LLC, a Florida limited liability company, on behalf of the company.




Notary Public
Name: _____
(Please print or type)
Commission Number: _____
Commission Expires: _____

Notary: Check one of the following:

☒ Personally known OR
☐ Produced Identification (if this box is checked, fill in blank below).
Type of Identification Produced: _____

**EXHIBIT A
PROPERTY**

BLOCK 65, OLD SURVEY OF OCALA, AS RECORDED IN PLAT BOOK E, PAGE 1, PUBLIC RECORDS OF MARION COUNTY, FLORIDA; AS SUCH BLOCK WAS AFFECTED BY A RESOLUTION PASSED BY THE BOARD OF COMMISSIONERS OF MARION COUNTY, FLORIDA, AT A MEETING DATED APRIL 6, 1847, AND RECORDED IN VOLUME 1, PAGE 28, OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA (IN WHICH SAID RESOLUTION RESIZED THE DIMENSIONS OF CITY BLOCKS SHOWN ON THE ABOVE MENTIONED PLAT); LESS THAT PORTION THEREOF LYING WITHIN THE RIGHT-OF-WAY OF STATE ROAD NUMBER 40 (SILVER SPRINGS BOULEVARD) AS DESCRIBED IN OFFICIAL RECORD BOOK 367, PAGE 453 AND OFFICIAL RECORD BOOK 374, PAGE 161, PUBLIC RECORDS OF MARION COUNTY, FLORIDA; AND LESS THE EAST 5.00 FEET THEREOF; AND LESS A 5.00 FOOT CORNER CLIP AT THE SOUTHEAST CORNER;

THE FOREGOING ALSO DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE, COMMENCE AT THE SOUTHWEST CORNER OF BLOCK 65, AS ORIGINALLY PLATTED (BEFORE THE RESIZING PURSUANT TO THE AFOREMENTIONED RESOLUTION) THENCE RUN S 00°22'02" W, ALONG THE SOUTHERLY EXTENSION OF THE ORIGINAL WEST LINE OF BLOCK 65, A DISTANCE OF 20.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF S.E. BROADWAY STREET, SAID LINE ALSO BEING THE SOUTH LINE OF BLOCK 65; THENCE N 89°37'58" W, ALONG SAID LINE A DISTANCE OF 20.00 FEET TO THE SOUTHWEST CORNER OF BLOCK 65 AND THE POINT OF BEGINNING; THENCE RUN N 00°17'06" E, ALONG THE WEST LINE OF BLOCK 65, ALSO BEING THE EAST RIGHT-OF-WAY LINE OF S.E. 1ST AVENUE A DISTANCE OF 206.32 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE ROAD NUMBER 40 (EAST SILVER SPRINGS BOULEVARD); THENCE ALONG SAID RIGHT-OF-WAY LINE RUN S 89°27'36" E, A DISTANCE OF 206.38 FEET TO; THENCE S.45°51'44"E. A DISTANCE OF 18.61 FEET; THENCE S.89°35'05"E. A DISTANCE OF 6.92 FEET TO A POINT ON A LINE THAT IS 5.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF BLOCK 65; SAID EAST LINE ALSO BEING THE WESTERLY RIGHT-OF-WAY LINE OF S.E. OSCEOLA AVENUE; THENCE S.00°29'54"W. ALONG SAID PARALLEL LINE A DISTANCE OF 187.83 FEET; THENCE S.45°25'58"W. A DISTANCE OF 7.08 FEET TO THE AFOREMENTIONED NORTHERLY RIGHT OF WAY LINE OF S.E. BROADWAY STREET ALSO BEING THE SOUTH LINE OF BLOCK 65; THENCE N.89°37'58"W. A DISTANCE OF 221.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.07 ACRES.

EXHIBIT B
REVISED SCHEDULE

6. Schedule and Deadlines.

- 6.1. City and Developer shall perform the following obligations pursuant to the following schedule (the “*Schedule*”); the date by which an obligation is required to be performed is referred to as the “Deadline” for such obligation.
 - 6.1.1. [Already Occurred].
 - 6.1.2. [Already Occurred].
 - 6.1.3. [Already Occurred].
 - 6.1.4. [Already Occurred].
 - 6.1.5. [Already Occurred].
 - 6.1.6. [Already Occurred].
 - 6.1.6.1. [Already Occurred].
 - 6.1.6.2. [Already Occurred].
 - 6.1.7. [Already Occurred].
 - 6.1.8. Prior to November 30, 2017:
 - 6.1.8.1. City and Developer shall agree as to the form of the Reservation for the Reserved Easements pursuant to paragraph 2.2 of the First Amendment.
 - 6.1.8.2. Developer shall obtain Approval for the Hotel (including site plan approval and issuance of a building permit).
 - 6.1.8.3. Intentionally Deleted.
 - 6.1.9. Within one month after obtaining Approval of the Hotel under paragraph 6.1.8.2 of this **Exhibit B**, Developer shall complete the Second Financial Review pursuant to paragraph 3.14.1.2 of the Original Agreement.
 - 6.1.10. Within one (1) month after completion of the Second Financial Review, City Council shall make the determination of financial ability pursuant to paragraph 3.15 of the Original Agreement.
 - 6.1.11. At least thirty (30) days before Closing, Developer shall:

- 6.1.11.1. Obtain the Subsequent Commitment pursuant to paragraph 3.6.2 of the Original Agreement. The Subsequent Commitment shall contain the new legal description for the Property as set forth in **Exhibit A** to this Third Amendment.
- 6.1.11.2. Update its existing survey so that it complies with all requirements of paragraph 3.5.4.1 of the Original Agreement, and provide a copy of the updated survey to City.
- 6.1.12. City and Developer shall close the transfer of title to the Property on the Closing Date as set forth in paragraph 5.1 of the Original Agreement.
- 6.1.13. Developer shall commence construction of the Hotel within one (1) month after the Closing Date (subject to extension as set forth in this Agreement (e.g., paragraph 7.3 of the Original Agreement)).
- 6.1.14. Developer shall cause Completion of the Hotel to occur within the earlier of the following:
 - 6.1.14.1. Nineteen (19) months after commencing construction of the Hotel; or
 - 6.1.14.2. June 16, 2019.
- 6.1.15. Prior to December 16, 2018, Developer shall obtain Approval for the Second Building (including site plan approval and issuance of a building permit), and shall commence construction of the Second Building.
- 6.1.16. Developer shall cause completion of the Second Building to occur prior to June 16, 2019.

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