

CMO/15-001

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

THIS FOURTH AMENDMENT TO ACQUISITION AND REDEVELOPMENT AGREEMENT FOR MIXED USE DEVELOPMENT (the "Fourth 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 previously amended, were further amended.
- D. City and Developer are parties to a Third Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development (the "Third Amendment") as recorded in OR Book 6676, Page 1080-87 Public Records of Marion County, Florida, pursuant to which certain terms and provisions of the Original Agreement, as previously amended, were further amended. (The Original Agreement, as amended by the First Amendment, Second Amendment and Third Amendment, are hereinafter referred to as the "Amended Agreement").
- E. 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. **Staging.** In lieu of City and Developer entering into an agreement concerning staging pursuant to paragraph 4.7 of the Original Agreement, Developer and City agree as follows:
 - 1.1. As set forth in paragraph 4.8 of the Original Agreement, Developer shall be permitted to use Osceola Avenue for staging construction. In connection therewith, Developer shall obtain all permits from City necessary to utilize Osceola Avenue. Further, the provisions

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

of paragraph 4.9 of the Original Agreement shall apply concerning the use of Osceola Avenue for staging (except the reference therein to SE Broadway Avenue shall be deemed to refer to SE Broadway Street).

- 1.2. Further, Developer shall be permitted to use SE Broadway Street for staging construction. In connection therewith, Developer shall obtain all permits from City necessary to utilize SE Broadway Street. Further, during any period during which SE Broadway Street is used for staging construction, Developer shall maintain on SE Broadway Street at least one lane of traffic between Osceola Avenue and SE 1st Avenue for local vehicular traffic.

2. **Provisions Concerning Second Building.**

- 2.1. Pursuant to the Third Amendment, Developer was permitted to obtain Approval and cause Completion of the Project in two phases: the Hotel and the Second Building.
- 2.2. Developer acknowledges and agrees that all provisions of the Original Agreement concerning the Project refer to both the Hotel and Second Building.
- 2.3. Therefore, and without limitation:
 - 2.3.1. The Adequate Assurance to be provided by Developer shall be retained until completion of both the Hotel and Second Building.
 - 2.3.2. The Project Development Costs shall be calculated based upon the Development Costs of both the Hotel and the Second Building.
 - 2.3.3. Developer's failure to cause completion of both the Hotel and Second Building as and when required by the Amended Agreement shall constitute a failure of the condition set forth in paragraph 4.5.5.1 of the Original Agreement, for purposes of paragraphs 4.5.5 and 5.4.5 of the Original Agreement.

3. **Revision to Schedule Concerning Approval for Second Building.** 6.1.15 of Exhibit B to the Third Amendment is amended to read as follows:

Prior to June 1, 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.

4. **Property Description.**

- 4.1. 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.
- 4.2. Pursuant to the Third Amendment, the legal description of the Property was revised consistent with Developer's survey. City and Developer have discovered that the legal description set forth in the Third Amendment had a scrivener's error. The correct legal description of the property is set forth in the attached **Exhibit A**. Such **Exhibit A** replaces Exhibit A to the Third Amendment.

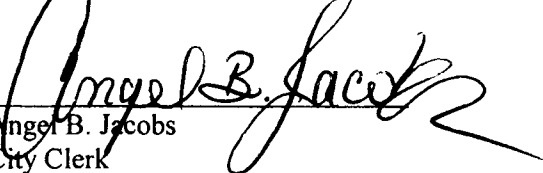
- 4.3. Developer shall cause the survey to be updated as and when set forth in the attached **Exhibit B** to the Third Amendment.
5. **Effect on Amended Agreement.** Except as expressly set forth herein, the Amended Agreement is not amended or modified. All references herein or in the Amended Agreement 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 Fourth Amendment effective as of the date referred to above.

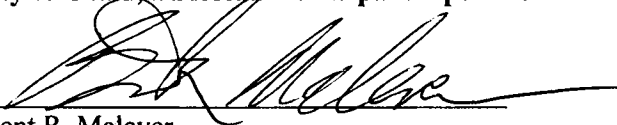
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SIGNATURES START ON NEXT PAGE**

SIGNATURE PAGE OF CITY OF OCALA
TO
FOURTH AMENDMENT

ATTEST:



Angel B. Jacobs
City Clerk

City of Ocala, a Florida municipal corporation


Brent R. Malever
President, Ocala City Council


Date: 11/21/17

Approved as to form and legality


Patrick G. Gilligan
City Attorney

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this November 21, 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: Roseann J. Fusco
(Please print or type)

Commission Number:

Commission Expires: *



ROSEANN J. FUSCO
MY COMMISSION # FF 238813
EXPIRES: July 30, 2019
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 21, 2017
DATE
OFFICE OF THE CITY CLERK


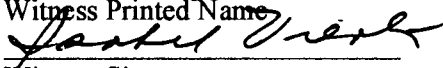
**SIGNATURE PAGE OF DOWNTOWN OCALA, LLC
TO
FOURTH AMENDMENT**

AS TO DEVELOPER

Downtown Ocala, LLC, a Florida limited liability company

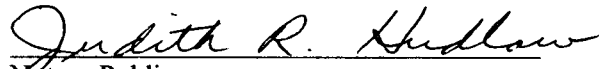
By: 
Digvijay Gaekwad as Manager

Date: 11/21/17


Witness Signature
Manisha Gaekwad
Witness Printed Name

Witness Signature
ISABEL VIERCK
Witness Printed Name

STATE OF FLORIDA
COUNTY OF MARION

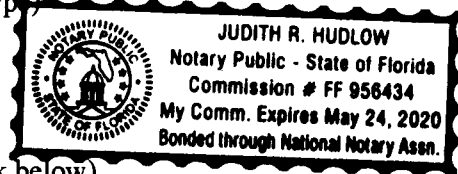
The foregoing instrument was acknowledged before me this Nov. 21, 2017, by Digvijay Gaekwad, as Manager of Downtown Ocala, LLC, a Florida limited liability company, on behalf of the company.


Notary Public
Name: Judith R. Hudlow
(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**

LEGAL DESCRIPTION:

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; 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.

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