

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

THIS FIRST AMENDMENT TO ACQUISITION AND REDEVELOPMENT AGREEMENT FOR MIXED USE DEVELOPMENT (the "First 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 now desire to amend the Original Agreement as set forth herein.

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. Property Description.

- 1.1. Pursuant to paragraph 3.5.4 of the Original Agreement, Developer is obligated to obtain a survey of the Property to be used to determine the legal description for the Property.
- 1.2. Even though Developer has not yet obtained a survey of the Property, City and Developer have agreed upon the legal description of the Property.
- 1.3. The legal description of the Property is set forth in the attached **Exhibit A**. Such **Exhibit A** replaces **Exhibit A** to the Original Agreement.

2. Easements.

- 2.1. City has determined that it needs to reserve certain easements (the "Reserved Easements") on the Property in connection with Developer's development of the Property and for other public purposes, as follows:
- 2.1.1. An electric easement along the portion of the Property described in the attached **Exhibit B**.
- 2.1.2. Two traffic signal easements (i.e., easements for the location of traffic signal poles and support structures) at the location of the existing traffic signal facilities (in the northwestern and southwestern portions of the Property).

¹ Terms capitalized herein and not otherwise defined herein have the same meaning herein as in the Original Agreement.



DAVID R ELLSPERMANN CLERK & COMPTROLLER MARION CO
DATE: 09/02/2016 10:43:22 AM
FILE #: 2016082071 OR BK 6449 PGS 527-537
REC FEES: \$95.00 INDEX FEES: \$0.00
DDS: \$0 MDS: \$0 INT: \$0

- 2.1.3. Any additional electric easements needed for the Project and other properties, at locations that will not interfere with the Project and otherwise as determined by City and Developer in good faith and in their reasonable discretion prior to the date that Developer obtains Approval for the Project.
- 2.1.4. Easements for existing electric facilities on the Property. Such easement shall be terminated pursuant to paragraph 2.2.1 of this Amendment unless they otherwise constitute Reserved Easements under other paragraphs of this paragraph 2.1.
- 2.2. City shall reserve the Reserved Easements in its deed to Developer to be delivered by City pursuant to paragraph 5.2.2 of the Original Agreement, or pursuant to a separate instrument.
 - 2.2.1. In connection therewith, the reservation ("Reservation") for the electric easements for existing electric facilities may reserve such easements at the existing location of the facilities on the Property but provide that: (a) City shall relocate any facilities at current locations that interfere with the development of the Project, to new locations that will not so interfere with such development (including, if necessary, to locations off of the Property); and (b) upon their relocation, the portion of the Property encumbered by such Reserved Easements shall be released therefrom and, if the new locations are on the Property, replaced with new Reserved Easements in the new location of the relocated facilities.
 - 2.2.2. The form of such reservation shall be acceptable to the City and Developer in their reasonable discretion. City and Developer shall agree upon the form of the reservation prior to the date that Developer obtains Approval for the Project.
- 2.3. The provisions of this paragraph 2 shall prevail over any conflicting provisions in the Original Agreement concerning easements including paragraphs 3.6.1 and 9.9.
- 3. **Accessibility and Traffic Improvements.**
 - 3.1. Pursuant to paragraph 4.6.2.1 of the Original Agreement, City is obligated to construct certain accessibility and traffic improvements to service the Project.
 - 3.2. City and Developer have determined that the improvement described in paragraph 4.6.2.1.g. of the Original Agreement has already been constructed.
 - 3.3. Therefore, the Original Agreement is amended to delete paragraph 4.6.2.1.g of the Original Agreement.
- 4. **Relocation of Railroad Boxes.**
 - 4.1. Pursuant to paragraph 4.6.1.2 of the Original Agreement, City is required to remove Railroad boxes or other Railroad control equipment on the Property that interferes with Developer's construction or use of the Project, and, pursuant to paragraph 7.1.1.2 of the Original Agreement, City was obligated to enter into an agreement with Railroad approving City's relocation of such Railroad boxes or other equipment pursuant to paragraph 4.6.1.2 of the Original Agreement.

- 4.2. Developer has determined that no Railroad boxes or other Railroad control equipment need to be so relocated.
- 4.3. Therefore:
 - 4.3.1. Paragraph 4.6.1.2 of the Original Agreement is amended to delete all references to “Railroad boxes or other Railroad control equipment.” (Such amendment does not amend the other items that City has agreed to relocate.)
 - 4.3.2. The Original Agreement is amended to delete paragraph 7.1.1.2 of the Original Agreement.
- 5. **Inspection Period.**
 - 5.1. At the request of City, Developer extended the Contingency Period.
 - 5.2. Developer and City acknowledge that the Contingencies set forth in paragraph 7.1.1 of the Original Agreement (as amended by this Amendment) have occurred, and that City has provided the Initial Contingency Completion Notice.
 - 5.3. City and Developer acknowledge and agree that the Inspection Period commenced on July 25, 2016, and will expire on October 25, 2016.
- 6. **First Financial Review.**
 - 6.1. Under paragraph 6.1.2.2 of the Original Agreement, Developer was obligated to complete the First Financial Review, and obtain a report from the Financial Review Committee as further described therein, within six months from the Effective Date.
 - 6.2. The Original Agreement is hereby amended to provide that, prior to the end of the Inspection Period, Developer shall perform the obligations set forth in paragraph 6.1.2.2 of the Original Agreement.
- 7. **Revised Paragraph 7.3 of the Original Agreement.**
 - 7.1. The parties have noted that paragraph 7.3 of the Original Agreement contains scrivener’s errors containing references to the paragraphs of the Original Agreement concerning the time period for City to cure any title exceptions or matters.
 - 7.2. Paragraph 7.3 of the Original Agreement is amended to read as follows:
 - 7.3. In the event City, after the exercise of due diligence, fails to cure any title exceptions or matters within the time periods specified in paragraphs 3.6.1.4 and 3.6.3, and City provides notice to Developer that City is continuing actions to cure such exceptions or matters, the Inspection Period, and the Deadline set forth in paragraph 6.1.11.2, shall be automatically extended by the number of days that elapse between the expiration of the time periods set forth in paragraphs 3.6.1.4 and 3.6.3 and the date City provides notice to Developer that City has cured the title exceptions or matters. City and Developer will enter into an

amendment to this Agreement or similar document acknowledging the extension of such time frames.

8. Revised Schedule.

8.1. The parties desire to amend the Schedule set forth in paragraph 6.1 to acknowledge matters that have already occurred, include therein the Deadline for the First Commitment and Second Commitment to be obtained by Developer pursuant to paragraph 3.6 of the Original Agreement, to include the Deadline for the Reservation set forth in paragraph 2.2 of this Amendment, and to reflect the revised Deadline for Developer to complete the matters set forth in paragraph 6 of this Amendment.

8.2. The Original Agreement is amended as follows:

8.2.1. Paragraph 6.1 of the Original Agreement is amended to read as set forth on the attached **Exhibit C**. Matters designated as “Already Occurred” have already been performed or occurred.

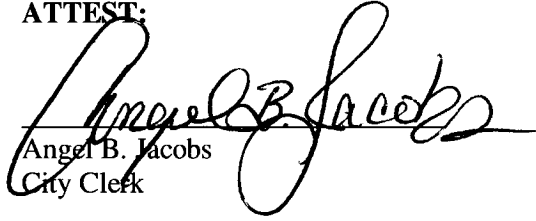
8.2.2. The Original Agreement is amended to replace **Exhibit E** attached to the Original Agreement with **Exhibit C** attached to this First Amendment.

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

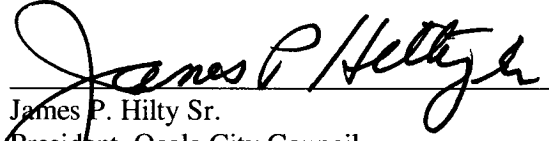
IN WITNESS WHEREOF, the parties have executed this First Amendment effective as of the date referred to above.

**THIS PART OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURES START ON NEXT PAGE**

ATTEST:


Angel B. Jacobs
City Clerk

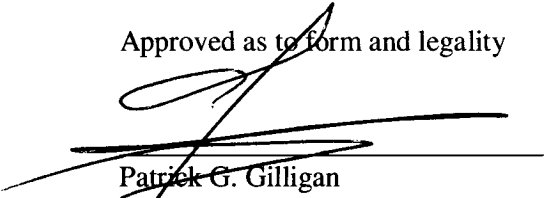
City of Ocala, a Florida municipal corporation


James P. Hilty Sr.
President, Ocala City Council

Date: 8/19/16

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 August 19, 2016, by James P. Hilty Sr., 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:

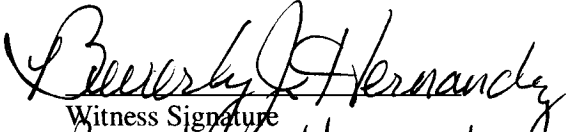
☒ Personally known OR
☐ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

ACCEPTED BY CITY COUNCIL
August 16, 2016
DATE
OFFICE OF THE CITY CLERK

AS TO DEVELOPER

Downtown Ocala, LLC, a Florida limited liability company


Witness Signature
Beverly J. Hernandez

Witness Printed Name

Witness Signature

STEVEN H. GRAY

Witness Printed Name

By: 

Digvijay Gaekwad as Manager

Date: 8/15/16

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this this August 16, 2016, by Digvijay Gaekwad, as Manager of Downtown Ocala, LLC, a Florida limited liability company, on behalf of the company.

BEVERLY J. HERNANDEZ

Notary Public, State of Florida

My comm. expires June 22, 2020

Comm. No. FF 987914

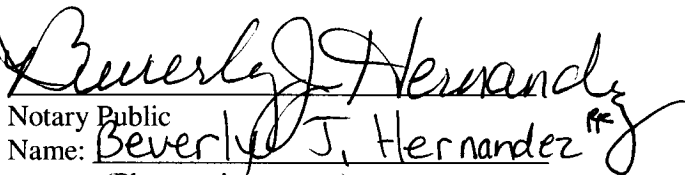
Notary: Check one of the following:

☒ Personally known OR

☐ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

Notary Public

Name:  Beverly J. Hernandez

(Please print or type)

Commission Number:

Commission Expires:

EXHIBIT A PROPERTY

That portion of Marion County Tax Parcel Identification Number 2823-065-00 described as follows

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 26, OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA (WHICH 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; THE FOREGOING ALSO DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE, COMMENCE AT THE SOUTHWEST CORNER OF BLOCK 65, AS ORIGINALLY PLATTED (I.E. BEFORE THE RESIZING PURSUANT TO THE AFOREMENTIONED RESOLUTION) THENCE RUN S 00° 15' 12" 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° 45' 13" 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° 15' 12" E, ALONG THE WEST LINE OF BLOCK 65, ALSO BEING THE EAST RIGHT-OF-WAY LINE OF S.E. 1ST AVENUE A DISTANCE OF 205.85 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° 37' 29" E, A DISTANCE OF 206.00 FEET; THENCE S 44° 41' 08" E, A DISTANCE OF 18.40 FEET; THENCE S 89° 37' 29" E, A DISTANCE OF 7.00 FEET TO A POINT ON A LINE THAT IS 5.00 FEET WEST OF, BY PERPENDICULAR MEASURE, THE EAST LINE OF BLOCK 65; SAID EAST LINE ALSO BEING THE WEST RIGHT-OF-WAY LINE OF S.E. OSCEOLA AVENUE; THENCE DEPARTING SAID SOUTHERLY RIGHT-OF-WAY LINE OF STATE ROAD NUMBER 40, RUN S 00° 15' 12" W, PARALLEL WITH THE EAST LINE OF BLOCK 65, A DISTANCE OF 132.35 FEET TO THE AFOREMENTIONED NORTH RIGHT-OF-WAY LINE OF N.E. BROADWAY STREET AND THE SOUTH LINE OF BLOCK 65; THENCE RUN N 89° 45' 13" W, ALONG SAID LINE A DISTANCE OF 226.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1.06 ACRES.

EXHIBIT B **ELECTRIC EASEMENT**

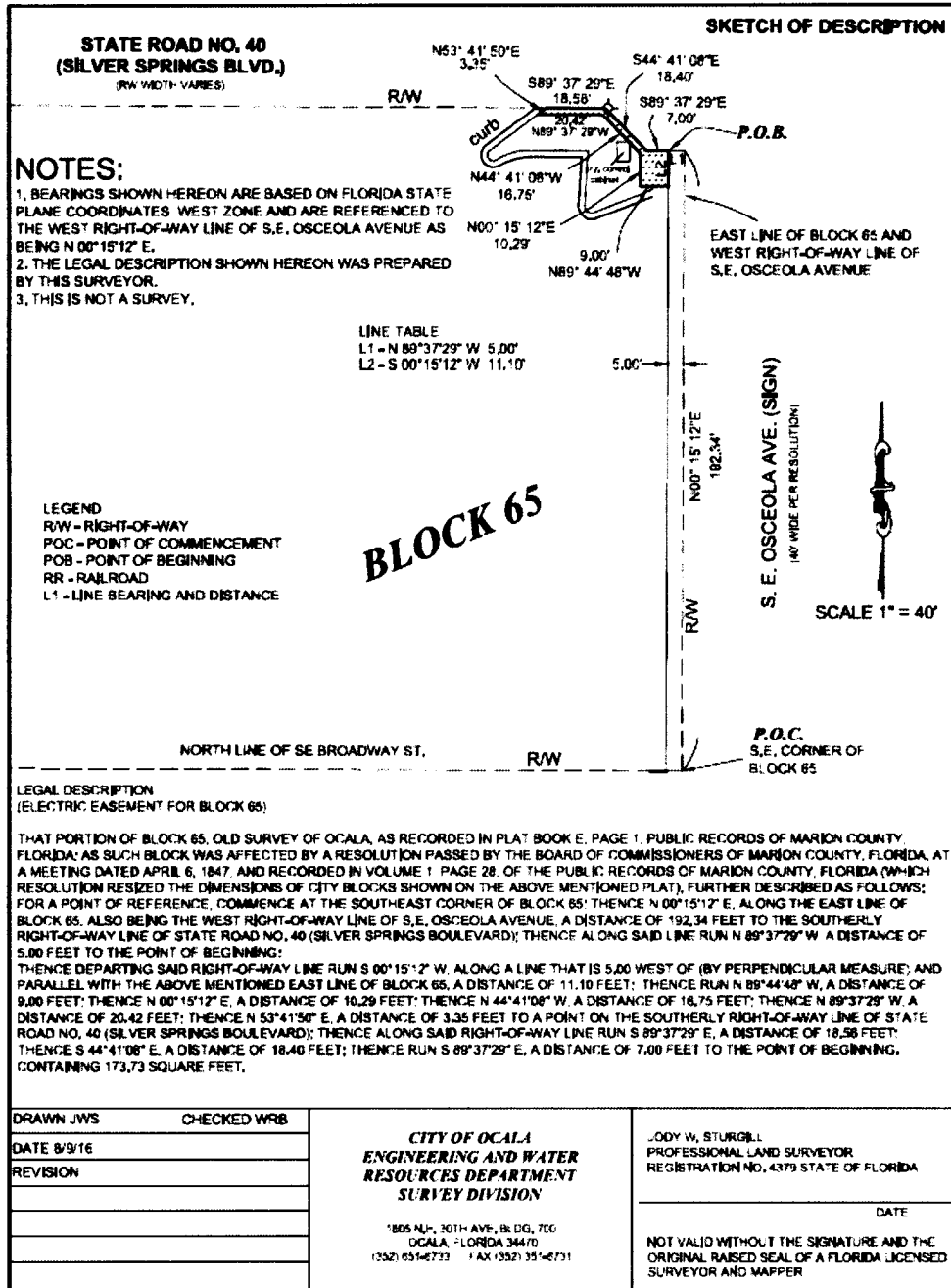


EXHIBIT C
REVISED SCHEDULE

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. By August 25, 2016, Developer shall obtain the First Commitment pursuant to paragraph 3.6.1 of the Original Agreement.
 - 6.1.4. Developer’s Inspection Period shall terminate on October 25, 2016 (subject to extension as set forth in this Agreement (e.g., in paragraph 7.3 of the Original Agreement as amended by this First Amendment)).
 - 6.1.5. Prior to the expiration of the Inspection Period, Developer shall complete the First Financial Review, and obtain a report from the Financial Review Committee, under paragraph 3.14.3.2 of the Original Agreement, including that Developer Principals have the financial ability to develop the Project.
 - 6.1.6. Within one (1) month after the end of the Inspection Period (if Developer has not earlier terminated this Agreement during the Inspection Period), Developer shall provide to City a proposed CDP for the Project for approval by City in its reasonable discretion.
 - 6.1.7. Within three (3) months after the end of the Inspection Period, Developer shall obtain City approval of the CDP for the Project, and the survey provided in connection therewith.
 - 6.1.8. Within six (6) months after the end of the Inspection Period:
 - 6.1.8.1. The Contingency referred to in paragraph 7.1.2 of the Original Agreement shall have occurred or have been waived by the parties.
 - 6.1.8.2. 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.
 - 6.1.8.3. Developer shall obtain Approval for the Project.
 - 6.1.8.4. Developer and City shall enter into any agreement concerning staging pursuant to paragraph 4.7 of the Original Agreement.
 - 6.1.9. Within one month after obtaining Approval of the Project under paragraph 6.1.8.3 of **Exhibit D** to the First Amendment, Original Agreement, Developer

shall complete the Second Financial Review pursuant to paragraph 3.14.1.2 of the Original Agreement.

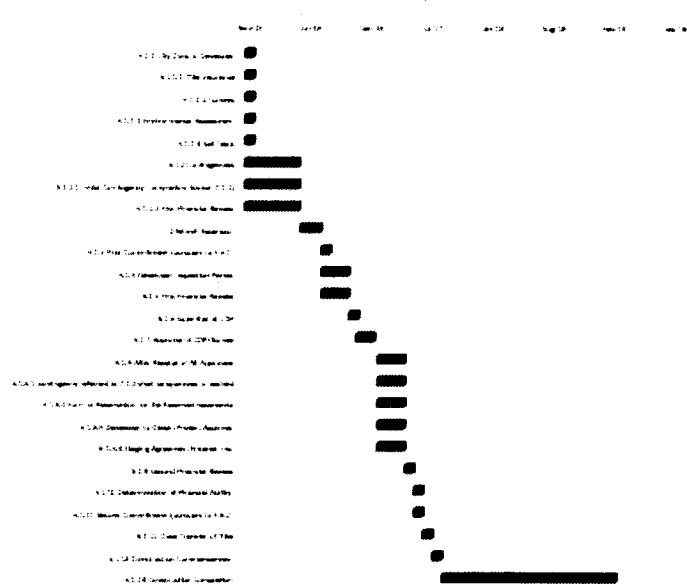
- 6.1.10. Within one (1) month after completion of the Second Financial Review, City Council shall make the determination of financial ability pursuant to paragraph 3.14.4 of the Original Agreement.
- 6.1.11. At least thirty (30) days before Closing, Developer shall obtain the Subsequent Commitment pursuant to paragraph 3.6.2 of the Original Agreement.
- 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 Project 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 as amended by the First Amendment)).
- 6.1.14. Developer shall cause Completion of the Project to occur within the earlier of the following:
 - 6.1.14.1. Nineteen (19) months after commencing construction of the Project;
or
 - 6.1.14.2. Forty (40) months after the Effective Date.

[Remainder of paragraph 6 of the Original Agreement unchanged]

EXHIBIT D REVISED TIMELINE

Downtown Hotel and Mixed Use Development Project

Task	Start	Duration	End
6.1.1 City Docs to Developer	Nov-15	30	Dec-15
6.1.1.1 Title Insurance	Nov-15	30	Dec-15
6.1.1.2 Survey	Nov-15	30	Dec-15
6.1.1.3 Environmental Assessment	Nov-15	30	Dec-15
6.1.1.4 Soil Tests	Nov-15	30	Dec-15
6.1.2 Contingencies	Nov-15	180	May-16
6.1.2.1 Initial Contingency Completion Notice (7.1.1)	Nov-15	180	May-16
6.1.2.2 First Financial Review	Nov-15	180	May-16
6.1.2.3 Second Financial Review	May-16	90	Jul-16
6.1.3 Floor Commitment (pursuant to 3.A.1)	Jul-16	30	Aug-16
6.1.4 Developer Insurance Policy	Jul-16	30	Oct-16
6.1.5 First Financial Review	Jul-16	90	Oct-16
6.1.6 Submittal of CDP	Oct-16	30	Nov-16
6.1.7 Approval of CDP/Review	Nov-16	90	Jan-17
6.1.8 After Receipt of All Approvals	Jan-17	90	Apr-17
6.1.8.1 contingency referred to 7.1.2 shall be approved or waived	Jan-17	90	Apr-17
6.1.8.2 Form of Reservation for the Reserved Elements	Jan-17	90	Apr-17
6.1.8.3 Developer to Obtain Project Approval	Jan-17	90	Apr-17
6.1.8.4 Staging Agreement Entered into	Jan-17	90	Apr-17
6.1.9 Second Financial Review	Apr-17	30	May-17
6.1.10 Determination of Financial Ability	May-17	30	Jun-17
6.1.11 Second Commitment (pursuant to 3.A.2)	May-17	30	Jun-17
6.1.12 Close Transfer of Title	Jun-17	30	Jul-17
6.1.13 Construction Commencement	Jul-17	30	Aug-17
6.1.14 Construction Completion	Aug-17	370	Mar-19



E:\CITY\Revitalization Strategies\Downtown 2015\Contract\DO\Amendment\Amendment JG 8-8-16.docx