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ACQUISITION AND REDEVELOPMENT AGREEMENT FOR MIXED USE DEVELOPMENT

BETWEEN

CITY OF OCALA,
a Florida municipal corporation,

and

DOWNTOWN OCALA, LLC,
a Florida limited liability company

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ACQUISITION AND REDEVELOPMENT AGREEMENT
FOR MIXED USE DEVELOPMENT

THIS ACQUISITION AND REDEVELOPMENT AGREEMENT ("*Agreement*"), is entered into effective as of this 16th day of November, 2015 (the "*Effective Date*," as defined below) by and between:

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

WHEREAS:

A. City is committed to the redevelopment and revitalization of downtown Ocala.

B. City, like many local governments, has focused on economic development to improve its local economy by attracting business, creating jobs, and encouraging private investment.

C. City is the owner of the Property[1] located in downtown Ocala being more particularly described on **Exhibit A** (the "Property").

D. City desires the Property be redeveloped for use consistent with the aesthetic of historic downtown Ocala, and in furtherance of City's Master Plan.

E. City has established, pursuant to Part III, Chapter 163, Florida Statutes (the "*CRA Act*") a community redevelopment area (the "*CRA*").

F. The CRA Act includes downtown Ocala, and specifically the Property.

G. After substantial due diligence and investigation, Developer has determined the Project is feasible if City is willing to make certain specific investments in the redevelopment of downtown Ocala, and to provide other specific economic incentives to Developer relating to the Project.

H. The City recognizes a certain amount of joint effort and investment by both parties is necessary to advance the type of mixed use development it desires in Downtown, however, the potential benefits derived from the Project to both City and Developer are great. If successful, the Project will likely contribute greatly to the revitalization and redevelopment of downtown Ocala.

I. City Council, finding this economic development opportunity to be in the best interest of City and the health, safety and welfare of the citizens of Ocala, has offered to facilitate the Project by providing certain economic incentives to the Developer and making certain specific investments in, and improvements to, downtown Ocala with the expectation the City's involvement will encourage and accelerate the timing of the redevelopment, thus generating additional tax revenues, benefiting the downtown economy and enhancing the potential for future development and re-occupancy of neighboring properties.

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[1] Terms capitalized in these whereas clauses and not otherwise defined are defined in paragraph 1.1 below.

J. City Council finds the City's provision of economic incentives and investments pursuant to this Agreement constitutes a public purpose.

K. The Florida Legislature has found government sponsored public-private arrangements and the promotion and support, including financial assistance, of economic development activities are in the public interest and achieve a public benefit.

L. City and Developer wish to reduce to writing their understanding of the development of the Property, the economic incentives, the City's investment, infrastructure and improvements to downtown Ocala and the respective duties and responsibilities of the parties.

NOW THEREFORE, in consideration of the foregoing matters (which are incorporated herein by reference) and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by all parties, the parties hereto agree as follows:

1. **Definitions.**

1.1. Generally. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings.

1.1.1. *Adequate Assurance* – The Adequate assurance to be provided in connection with City's conveyance of the Property and to consist of one, or a combination, of the following:

1.1.1.1. Cash in an escrow account, maintained in Marion County, Florida by an escrow agent mutually acceptable to City and Developer. The parties agree that a licensed financial institution maintaining an office in Marion County, Florida shall qualify as an approved escrow agent.

1.1.1.2. A letter of credit issued by a financial institution licensed to transact business in the State of Florida.

1.1.1.3. Some other adequate financial assurance (other than personal guarantees) reasonably approved by City.

1.1.2. *Agreement* – This agreement, including any Exhibits attached hereto, and any revisions or amendments to this agreement.

1.1.3. *Approval* – The final, unconditional approvals (i.e. site plan approval) from all applicable governmental agencies reasonably necessary to allow for the immediate issuance of building permits and commencement of construction of the Project, and the expiration of time for the filing of an appeal or other challenge, without such an appeal or challenge having been filed.

1.1.4. *Approval Date* – The date on which Project Approval is obtained for the Project.

1.1.5. *Approved CDP* – A CDP for the Project as approved by the parties pursuant to paragraph 3.4.

1.1.6. *Approved Plans* – The Plans for the Project as approved by the issuance of an Approval for the Project.

1.1.7. *Business Day* (regardless of whether the term is capitalized) – Any day other than Saturday, Sunday, any legal holiday, any day on which the government offices of City are closed, and any other day on which commercial banks in the State of Florida are required or authorized to be closed.

1.1.8. *CDP* – A conceptual development plan for the Project.

1.1.9. *City Code* – The Code of Ordinances of City of Ocala.

1.1.10. *City Improvements* – The improvements to be constructed or other work to be performed, by City pursuant to paragraph 4.6.

1.1.11. *City Incentives* – One or more of the following:

1.1.11.1. The City Improvements.

1.1.11.2. The City Payments.

1.1.11.3. The City Impact Fee Contribution.

1.1.11.4. City's provision of the Dedicated Spaces during the time period before Developer begins paying the Parking Garage Contribution.

1.1.12. *City Payments* – City's payments of the amounts set forth in paragraph 4.5.

1.1.13. *City Impact Fee Contribution* – The assignment of impact fee credits as set forth in paragraph 4.1.

1.1.14. *Closing* – The conveyance of title of the Property from City to Developer under this Agreement.

1.1.15. *Closing Date* – The date upon which City conveys the Property to Developer.

1.1.16. *Completion* (regardless of whether the term is capitalized) – When construction of the Project is substantially completed which shall be the date when City has issued certificate of occupancies for the applicable improvements and certificates of completion (or similar approval) for any other applicable improvements to be constructed.

1.1.17. *Construction Costs* (regardless of whether the phrase is capitalized) – All actual costs of construction and site development work incurred: by Developer in connection with the Project.

1.1.18. *Construction Loan* – A loan or loans from a third party to Developer to permit Developer to pay all or any portion of the Construction Costs for the Project and secured by a mortgage on the Property.

1.1.19. *Contingency* - As set forth in paragraph 7.1.

1.1.20. *Control* - The power to direct the management and policies of an entity or business by ownership, beneficial interest, contract or otherwise.

1.1.21. *Deadline* – A deadline for performance of an obligation under the Schedule as set forth in paragraph 6.

1.1.22. *Dedicated Spaces* – The parking spaces within the Parking Garage to be dedicated, paid for and reserved for Developer pursuant to paragraph 4.3.2.

1.1.23. *Develop* (regardless of whether the term is capitalized) – To perform activity associated with the development of the Project including the construction of all the improvements on a Property pursuant to this Agreement. The term is synonymous with "redevelop" under this Agreement.

1.1.24. *Developer Principal* – Digvijay Gaekwad.

1.1.25. *Development Costs* (regardless of whether the phrase is capitalized) – All Construction Costs; furniture, fixture and equipment costs; and directly related "soft costs" (i.e. design, permitting, professional fees, consulting fees, etc.) incurred in connection with or directly attributable to the Project.

1.1.26. *Development Order* (regardless of whether the term is capitalized) – Site plan approvals, issuance of building permits or similar action by City and all other government entities with jurisdiction over the Project, or any portion thereof, necessary for Developer, as may be applicable, to develop such portions of the Project pursuant to the requirements of this Agreement.

1.1.27. *Effective Date* – The date or effective date of this Agreement is the date upon which City or Developer last signs this Agreement. [The last party executing this Agreement is authorized to fill in the Effective Date in the blank therefor in the first paragraph of this Agreement.]

1.1.28. *Equity Investment* – The required equity investment of Developer described in paragraph 5.3.

1.1.29. *Financial Information* – The information to be provided by Developer pursuant to paragraph 3.14.

1.1.30. *Financial Review Committee* – A person, or group of persons, which the parties anticipate shall provide services to City as set forth in this Agreement. The relationship between City and the Financial Review Committee is as set forth in paragraph 3.16.

1.1.31. *Force Majeure* – Those conditions beyond the reasonable control of City or the Developer which will excuse any delay in the performance of their respective obligations and covenants hereunder as such conditions are set forth in paragraph 14 of this Agreement.

1.1.32. *Hotel* – The hotel to be constructed as part of the Project as further described in this Agreement.

1.1.33. *Improvements* – The primary and ancillary improvements (as set forth in greater detail in paragraph 3.3) to be constructed on the Property.

1.1.34. *Linear Trail* – That portion of the proposed Osceola Linear Trail that is located immediately to the east of the Property between Silver Springs Boulevard and SE Ft. King Street. (Although the proposed Osceola Linear Trail encompasses a larger area than such portion, this phrase refers only to the specified portion.)

1.1.35. *Master Plan* – The Downtown Ocala Master Plan adopted by City Council on January 20, 2004, as may be amended by City Council from time to time.

1.1.36. *Month* (regardless of whether the term is capitalized) – When used with reference to calculation of dates, shall refer to the monthly anniversary of the starting date or event for example, two (2) months after February 15, 2016, is April 15, 2016.

1.1.37. *Parking Garage* – The parking garage to be constructed by City on the real property described in **Exhibit B**.

1.1.38. *Person (regardless of whether the term is capitalized)* – An individual, corporation, limited liability company, partnership, or similar entity or group of individuals or persons.

1.1.39. *Plans* – The site plan and building plan for the Project, and other applications necessary to obtain a building permit and other development approvals for the Project.

1.1.40. *Project* – The Hotel and other improvements to be constructed on the Property.

1.1.41. *Property* – The real property described on the attached **Exhibit A**, upon which the Project shall be constructed.

1.1.42. *Railroad* – Florida Northern Railroad, its successors or assigns.

1.1.43. *Redevelopment Program* – The development of the Property and the construction of the Project, pursuant to this Agreement.

1.1.44. *Right of Reverter* – City's right of reverter under paragraph 5.5.

1.1.45. *Schedule* – The schedule for performance of certain requirements of the Redevelopment Program as set forth in paragraph 6.

1.1.46. *Title Company* – First American Title Insurance Company (which has been approved by the parties to issue title insurance under this Agreement because of its prior title work concerning the Property), or another title insurance company with offices or agents in Marion County, Florida, selected by Developer and approved by City in its reasonable discretion.

1.2. Additional Definitions and Rules of Construction. The definitions in paragraph 1.1 and elsewhere in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine and neuter forms. The words "include,"

"includes," and "including" shall be deemed to be followed by the phrase "without limitation." The words "herein," "hereof," "hereunder," and similar terms shall refer to this Agreement, unless the context otherwise requires.

2. **Purpose**. The purpose of this Agreement is to provide for the redevelopment of a portion of downtown Ocala in accordance with the Redevelopment Program, so as to enhance the quality of life and the aesthetic and useful enjoyment of the Ocala downtown area, promote economic development and investment in the downtown area, and further the objectives of the Master Plan.

3. **Project Generally; Planning.**

3.1. Generally. Developer's development of the Project consistent with this Agreement is a material inducement for City to enter into this Agreement. The opportunity for Developer to develop the Project pursuant to this Agreement, and the other obligations of City pursuant to this Agreement, are material inducements for Developer to enter into this Agreement.

3.2. Land Use and Zoning.

3.2.1. The parties intend that the Property be developed as mixed use project consisting of the Hotel, and other uses as set forth in paragraph 3.3 below. The parties understand and agree that the Project is consistent with the Property's B-3 zoning and High Intensity/Central Core future land use classification and that no change to such zoning or land use classifications shall be required.

3.2.2. The permitted uses for the Property shall be as provided in Sections 122–642 and 122–643 of the City Code (subject to paragraph 8.3). Open space requirements for the Project shall be primarily fulfilled with streetscaping. Streetscape improvements for the Project shall be as provided in the Approved Plans for the Project and pursuant to City Code. Signage for the Project shall be permitted as consistent with the architectural design of the Project.

3.3. Project. Developer shall develop the Property consistent with the Project's Approved CDP and Approved Plans. Developer shall cause to be designed and constructed a multi-story hotel together with a restaurant, retail floor space, conference rooms, meeting rooms, open and enclosed pre-function areas, business center, covered and uncovered patios, and a second (eastern) building located along the eastern boundary of the Property containing retail shops and townhouses (the latter of which may be owner-occupied or leased to third parties). For purposes of illustration only, a preliminary architectural rendering for the Project is attached hereto as **Exhibit C**. A specified amount of parking for the Project shall be provided in the Parking Garage pursuant to paragraph 4.3.

3.4. CDP.

3.4.1. As and when required by the Schedule, Developer shall submit to City a proposed CDP for the Project for approval by City. The CDP shall be substantially similar to the architectural rendering as referred to in paragraph 3.3, subject to the acknowledgments set forth in paragraph 3.4.2 (but applicable to the architectural rendering).

3.4.2. The parties acknowledge the CDP shall represent only conceptual development plans for the Project, based on the parties' reasonable understanding of market demands, design feasibility, and urban planning best practices. Specific layouts and design of the Project shall comply with the provisions of this Agreement and the approved CDP but otherwise may be modified: (a) if modifications are required pursuant to the Hotel franchise agreement or (b) pursuant to City's development review process.

3.4.3. The parties acknowledge and agree that the CDP shall, at a minimum, include or be accompanied by the following items or information for the Project:

3.4.3.1. A survey of the Property. The survey shall be certified to Developer and City and shall specify the square footage of the Property.

3.4.3.2. Size, shape and location of building(s) on the Property.

3.4.3.3. Architectural features of proposed building(s), including elevations of all sides thereof.

3.4.3.4. Traffic management plans, including access points, driveways, striping plan, and internal circulation.

3.4.3.5. Parking lot arrangement including fire lanes, driveways, handicap parking, and dimensions of landscape islands.

3.4.3.6. General landscape plans.

3.4.3.7. Preferred locations for electrical service.

3.4.3.8. Topography and drainage plan.

3.4.3.9. Location of dumpsters, trash compactor, or other trash or refuse service areas.

3.4.3.10. Truck loading/unloading zones or other applicable service areas.

3.5. Inspection Period and Survey.

3.5.1. Developer's Inspection of the Property. Commencing with the Effective Date of this Agreement and continuing for a time period (the "*Inspection Period*") of three (3) months following City's delivery of the Initial Contingency Completion Notice pursuant to paragraph 6.1.2.1, Developer shall have the right to inspect the Property. In connection therewith, Developer shall have the right to enter upon the Property, to make all inspections of the condition of the Property which it may deem necessary, including, but not limited to, soil borings, percolation tests, engineering, environmental and topographical studies, inspections of zoning and the availability of utilities, all of which inspections shall be undertaken at Developer's sole cost and expense. After completing its inspection of the Property, Developer shall, at its sole cost and expense, repair any damage it has caused to the Property.

3.5.2. Indemnification. Developer hereby agrees to indemnify City against, and hold City harmless from all claims, demands and liability, including, but not limited to, attorneys' fees, for nonpayment for services rendered to Developer, for construction liens, or for damage to persons or property arising out of the presence of Developer's agents, employees, surveyors, engineers, contractors, or other third parties under the control of Developer, on the Property. Notwithstanding anything to the contrary set forth in this Agreement, the indemnification and agreement to hold harmless set forth in this paragraph shall survive the Closing or the earlier termination of this Agreement as expressly provided herein.

3.5.3. Developer's Right to Terminate During the Inspection Period. In the event Developer's inspection of the Property is unsatisfactory to Developer for any reason whatsoever, Developer may deliver to Escrow Agent or City, as and when required by the schedule, written notice of its election to terminate this Agreement (the "*Termination Notice*"). Upon City's receipt of the Termination Notice, this Agreement shall be deemed terminated and thereafter neither Developer nor City shall have any further rights or obligations hereunder except as otherwise expressly provided herein as surviving termination.

3.5.4. Survey.

3.5.4.1. Developer shall, prior to the end of the Inspection Period, obtain a survey of the Property and provide such survey to City for its approval. The survey shall comply with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys (effective 2/23/11), including those set forth in paragraphs 1 through 4, 6(b), 7(a), 8, 11(b) and 21 of Table A to such requirements, and shall be certified to Developer and City.

3.5.4.2. The survey shall be subject to the parties' approval during the Inspection Period.

3.5.4.3. The legal description for the Property shall be determined by the applicable survey for the Property as approved by the parties.

3.6. Title Insurance.

3.6.1. Developer shall obtain, at Developer's expense, within one (1) month after the Initial Contingency Completion Notice, a commitment (the "*First Commitment*") for an owner's title insurance policy from Title Company, or from an agent of Title Company selected by Developer, agreeing to insure title to the Property in an amount Developer currently estimates is equal to the value of Property, and subject to: no exceptions other than those matters herein permitted; those which will be discharged prior to or at Closing; and the standard printed exceptions and exclusions from coverage customarily contained in an owner's policy from the Title Company.

3.6.1.1. Developer shall provide City a copy of the First Commitment, together with copies of the exception documents, within five (5) business days of receipt of same.

3.6.1.2. Within twenty (20) days of its receipt of the First Commitment, Developer shall notify City of any objections thereto. If Developer fails to do so, it shall be deemed to have accepted the First Commitment and title to the Property as evidenced thereby.

3.6.1.3. Developer shall take title subject to zoning, restrictions and prohibitions imposed by governmental authority which would not inhibit, restrict or prohibit redevelopment of the Property consistent with this Agreement. No other restrictions and/or easements shall affect the title.

3.6.1.4. If the First Commitment discloses unpermitted exceptions or matters that render the title non-marketable, City, at its option, shall have forty-five (45) days from the date of receiving written notice of defects from Developer within which to have the exceptions removed from the First Commitment, or the defects cured to the reasonable satisfaction of Developer. If City fails to have the First Commitment exceptions removed or the defects cured within the specified time: (a) Developer may terminate this Agreement; or (b) Developer may elect, upon notice to City within ten (10) days after the expiration of the curative period, to take title as it then is notwithstanding such exceptions or title defects. If Developer fails to provide such notice, City may provide notice to Developer of its intent to terminate this Agreement unless Developer elects, by providing notice to City within ten (10) days of City's intent-to-terminate notice, to accept title as then exists, notwithstanding such exceptions or title defects. If Developer fails to timely provide notice to City of an election to accept title notwithstanding exceptions or title defects within the specified time period after the City intent-to-terminate notice Developer shall be deemed to have elected to terminate this Agreement.

3.6.2. Thereafter, Developer may obtain, at least thirty (30) days before the Closing, a commitment (the "*Subsequent Commitment*") for an owner's title insurance policy for the Property in an amount acceptable to Developer and approved by Title Company.

3.6.2.1. In the event a Subsequent Commitment contains any unpermitted exceptions or matters that render the title non-marketable, and such exceptions or matters were not set forth in the First Commitment, the following provisions shall apply:

a. In the event that the new exceptions or matters arise by, through, under or against the City, and were not created pursuant to City's obligations under this Agreement or with Developer's written consent, City shall exercise reasonable diligence in the curing of any such exceptions or matters, including the payment and discharge of any liens or encumbrances affecting the title of the Property.

b. Otherwise, the provisions of the last two sentences of paragraph 3.6.1.4 shall apply.

3.6.3. In the event City, after the exercise of due diligence, fails to cure any title exceptions or matters within the time period specified in paragraph 6.1.2, 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 period set forth in paragraph 6.1.2 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.

3.6.4. Subsequent to or at closing, Developer, at Developer's expense, may obtain an owner's title policy showing good and marketable title in Developer through the date of recording the special warranty deed and subject only to the permitted exceptions and any matters created at closing.

3.7. Plans.

3.7.1. As and when required by the Schedule, Developer shall submit to City, for approval by City, proposed Plans for the Project consistent with the following:

3.7.1.1. The Plans shall be generally consistent with the approved CDP.

3.7.1.2. The Plans for the Project will:

a. Provide at least 100,370 gross square feet of building area;

b. Provide a six (6) story hotel (the "*Hotel*") containing at least ninety (90) guest rooms;

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 6,000 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.)

d. Provide a two (2) story second (eastern) building adjacent to the easterly boundary of the Property, containing approximately 1,750 square feet of retail space; and seven (7) townhouses [five (5) two story townhouses and two (2) single-story townhouses] containing a cumulative total of approximately 8,700 square feet.

3.8. Joinder and Applications. City, as owner of the Property during the entitlement process, shall join in any application for Development Orders associated with development of the Property consistent with this Agreement, including, but not limited to, applications for final site plan approval and stormwater permits. City shall maintain the Property in its current condition during the term of this Agreement prior to Closing.

3.9. Review and Cooperation.

3.9.1. City shall review the CDP and Plans submitted to it for approval and shall not unreasonably withhold its approval. Except in unusual circumstances, a party to whom a CDP, or Plans (in the case of City), have been submitted shall provide its approval, or comments explaining why it is not providing its approval, within one (1) month after the material has been submitted to such party. In the event a party fails to respond in a timely manner, and such failure continues for a period of fifteen (15) days after written notice of the failure from the other party (which notice shall advise the party to whom it is sent of the provisions of this sentence), the party failing to respond shall be deemed to have given its approval.

3.9.2. The parties shall cooperate in good faith concerning such approvals and otherwise during the development review process for the Project.

3.9.2.1. In resolving disputes concerning such matters, Developer and City staff shall consider the terms of this Agreement, including the CDP; urban planning best practices; requirements of the Hotel franchisor; the character and quality of the historic nature of the downtown area; and economic considerations.

3.9.2.2. In the event Developer and City staff are unable to resolve any such dispute, Developer may request the matter be referred to the City Manager for consideration under the criteria set forth above. The decision of the City Manager shall be final and binding, except in the event such decision is appealable to the City Council under the City Code, in which event, the Developer may appeal such decision to the City Council whose decision shall be final and binding.

3.9.2.3. Nothing set forth in this paragraph 3.9.2 shall apply to matters that are appealable pursuant to Division 5, Article II of Chapter 122 of the City Code.

3.10. Report to City Council. During the term of this Agreement, Developer shall appear before City Council upon the request of City Council or the City Manager to provide a report on the progress of the proposed Project and the parties' performance of their obligations under this Agreement. Developer shall not be required, however, to appear more than two (2) times per calendar year.

3.11. City Cooperation. City shall exercise its best efforts and cooperate with Developer in submitting and obtaining any state and federal licenses, permits and governmental authorizations necessary, for the Completion of the Project; provided, however, all costs associated therewith shall be the sole responsibility of Developer. City's obligations shall not affect City's right and authority to act in regulatory matters in accordance with applicable laws or ordinances.

3.12. Environmental. City has obtained, and made available to Developer, a "Phase I" environmental site assessment for the Property pursuant to ASTM E1527–05 (the "*ESA-I*"). Developer may cause the ESA-I to be certified to Developer pursuant to the provisions thereof. Developer may, at its sole cost and expense, obtain a "Phase II" environmental assessment (the "*ESA-II*") during the Inspection Period. If the ESA-II discloses any matters or condition which are unacceptable to Developer, in its reasonable discretion, the Developer may either (a) terminate this Agreement or (b) elect to proceed to Closing and take title subject to such condition.

3.13. Easements. City shall, pursuant to its usual procedures, consider requests for and, if appropriate, grant easements or similar approvals for landscaping, sidewalk cafes, and pedestrian access on public property where appropriate to allow for the Project to be pedestrian-friendly and connected to the downtown area.

3.14. Financial Reviews and Information.

3.14.1. As and when required by the Schedule:

3.14.1.1. Developer shall request the Financial Review Committee to conduct its first financial review (the "*First Financial Review*") of the Project, and shall submit to the Financial Review Committee information (the "*Financial Information*") confirming the financial ability of Developer and the Developer Principals to develop the Project.

3.14.1.2. Developer shall request the Financial Review Committee to conduct a second financial review (the "*Second Financial Review*"). Developer shall submit to the Financial Review Committee any Financial Information that has become available or changed since the date of the First Financial Review, including any changes in Financial Information concerning Developer or Developer Principals, and any additional items required by paragraph 3.14.2.7 for inclusion as Financial Information only as of the Second Financial Review.

3.14.2. Unless modified pursuant to paragraph 3.14.3.1, the Financial Information shall include the following:

3.14.2.1. Information concerning the Developer Principals, including prior development experience, current or ongoing development of Projects similar to the Project in which the Developer Principals are or have been involved, and credit bureau reports for each Developer Principal.

3.14.2.2. The last two (2) years' federal corporate income tax returns of the Developer Principals and of Developer (if Developer was required to file such tax returns).

3.14.2.3. Financial statements of Developer and each Developer Principal accurately representing their financial condition as of a date that is no less than six months prior to the date of delivery of the financial statements.

3.14.2.4. A complete pro forma and cash flow projection on the Project, including all assumptions.

3.14.2.5. Feasibility study of the Hotel.

3.14.2.6. Estimates of Construction Costs for the Project provided by a licensed general contractor to be used for the Project and copies of the construction contract with such contractor.

3.14.2.7. For the Second Financial Review only:

a. A loan commitment or other documentation establishing that Developer and the Developer Principals have sufficient financing or resources in place to develop the Project.

b. Proof that Developer has the Equity Investment required by paragraph 5.3.

c. In the event that Developer intends to close Construction Loans prior to commencing construction of the Project, the approximate amount of the Construction Loans (which may be stated as a range of numbers provided that the lowest number is not less than $1,000,000.00 below the highest number).

3.14.3. In connection with each Financial Review:

3.14.3.1. Developer or the Financial Review Committee may request City to permit the types of Financial Information described in paragraph 3.14.2 be modified based upon the following factors: whether the Financial Information is subject to the Florida Public Records Act (notwithstanding paragraph 3.16.3); and such other matters as otherwise render the provision of the Financial Information described in paragraph 3.14.2 inappropriate and unnecessary. In considering the information to be provided, City shall consider, not only the matters asserted by the requesting party, but also City's reasonable necessity to assure that Developer and the Developer Principals have the financial ability to develop the Project.

3.14.3.2. City and Developer shall request that no person serve on the Financial Review Committee who is employed by, or represents, a financial institution: (a) if a Developer Principal owns stock in such financial institution; (b) if a Developer Principal serves on the Board of Directors of such financial institution; or (c) if the financial institution has a business relationship with a Developer Principal that would create an appearance of impropriety if such person were to serve on the Financial Review Committee.

3.14.3.3. The Financial Review Committee shall review the Financial Information submitted and make a report to City Council concerning its findings as to whether Developer and the Developer Principals have the financial ability to develop the Project. Such report shall, if

requested by City or Developer, include the amount or range of the Construction Loan referred to in paragraph 3.14.2.7.c; such amount shall apply to the amount of the Construction Loan for purposes of paragraphs of 5.1.2 and 5.5.5.2 unless City Council, in its reasonable discretion, approves a lesser Construction Loan amount.

3.14.4. As of the Effective Date, City anticipates that the Financial Review Committee shall consist of at least three persons selected in writing by the Ocala/Marion County Chamber of Commerce, Inc., a Florida not for profit corporation ("CEP"), or selected by one or more persons selected by the CEP: whose primary offices are in Marion County; who are employed by banks or similar financial institutions with offices in Marion County; who are experienced in commercial lending; and who are willing to serve on the Financial Review Committee for no compensation. In the event that the CEP is unable or unwilling to select such persons, City shall select persons meeting the foregoing qualifications in its sole discretion. Although the CEP has a role in selecting the members of the Financial Review Committee, the Financial Review Committee is not a committee of, nor under the control of, the CEP and shall perform its duties hereunder without any direction from CEP.

3.15. Council Determination. Conveyance of the Property shall be subject to City Council's determination that Developer and the Developer Principals have the financial ability to develop the Project, based upon any report of the Financial Review Committee and other information available to City Council.

3.16. Relationship Between City and Financial Review Committee. The relationship between City and the Financial Review Committee is as follows:

3.16.1. The Financial Review Committee is not, and will not be, a department, division, bureau, commission or other separate unit of government created or established by, City.

3.16.2. The Financial Review Committee was not created by law or ordinance of City or any other public agency.

3.16.3. Although City anticipates that the Financial Review Committee will provide a report to City as set forth in paragraph 3.14.3.3, City has not entered into a contract with the Financial Review Committee concerning such report or other activities of the Financial Review Committee hereunder.

3.16.4. Therefore, in light of the foregoing, City and Developer believe and intend that all documents or other information provided by or on behalf of Developer to the Financial Review Committee shall be kept confidential by the Financial Review Committee and are not be subject to Florida Public Records Act. Nothing set forth herein shall preclude the disclosure of such documents or other information: (a) in any litigation involving City or Developer in which the such documents or other information is relevant, but the parties shall endeavor to protect such documents or other information from disclosure pursuant to available procedures under Florida law (including requesting that the such documents or other information be sealed, if appropriate); or (b) pursuant to a subpoena or court order. Except in connection with any such use, City shall not request the

Financial Review Committee to provide the information or documents to City. Further, City and Developer acknowledge that the Financial Review Committee may destroy information and documents provided to it by or on behalf of Developer hereunder upon Developer's request and that therefore it may be unable to obtain such information in connection with any permitted use thereof.

4. **Development and Other Obligations.**

4.1. City Impact Fee Contribution.

4.1.1. Concerning transportation impact fees due under Article XI of Chapter 10 of the Marion County Code of Ordinances (the "*County Impact Fee Ordinance*"), and corresponding concurrency reservation fees, if any, due under the City Code, for the Project:

4.1.1.1. In calculating the amount of the transportation impact fees due for the Project, the parties shall cooperate to provide information to Marion County such that the impact fees are properly calculated based upon the net increase for the Project as compared to the "existing land development activity" on the Property under Section 10-275(b) and 10-322(b) of the County Impact Fee Ordinance.

4.1.1.2. If, as a result of such calculation, no additional impact fees are owed for the Project, Developer may be entitled to the future benefit of such existing land activities in connection with future development on the Property.

4.1.1.3. If Developer applies for a building permit for the Project during any time period when transportation impact fees are payable to Marion County, City shall assign, to Developer, at the time the Developer submits all documents necessary to apply for a building permit for the Project, transportation impact fee credits, if any, that City has been issued in which may be used for the Project, up to the amount of the transportation impact fees required for the Project.

4.1.2. In lieu of paying (or waiving, to the extent permitted by applicable law) the fees and charges set forth in this paragraph 4.1, City may utilize credits held by City to the extent they are imposed or assessed by third parties (such as transportation impact fees).

4.2. Project Development Costs. Developer's total Development Costs shall be no less than $15,733,700.00.

4.2.1. For purposes of the amounts set forth in paragraph 4.2, Developer's Development Costs shall consist solely of the Development Costs paid by Developer for the Project and shall not consider the value or amount of any City Incentives.

4.2.2. Upon Completion of the Project, Developer shall provide to City documentation that Developer's actual Development Costs incurred in connection with the Project were equal to, or in excess of, the amount set forth in paragraph 4.2;

Developer shall not be required to provide any documentation concerning actual Development Costs in excess of such amount. Such proof shall consist of copies of applicable invoices and corresponding copies of cancelled checks related to development and construction of the Project.

4.3. Dedicated Spaces in Parking Garage.

4.3.1. Upon Completion of construction of the Parking Garage, City shall operate and maintain the Parking Garage as follows.

4.3.2. Subject to paragraph 4.3.4, City shall dedicate and reserve one hundred twenty (120) parking spaces (the "Dedicated Spaces") for the Hotel. The Dedicated Spaces shall be located as follows:

4.3.2.1. 32 of the Dedicated Spaces shall be located on the uncovered third floor of the Parking Garage.

4.3.2.2. 18 of the Dedicated Spaces shall be located on the uncovered fourth floor of the Parking Garage.

4.3.2.3. 70 of the Dedicated Spaces shall be located on the covered second floor of the Park Garage.

4.3.3. City may retain a third party to operate the Parking Garage on behalf of City.

4.3.4. City shall be required to dedicate and reserve the Dedicated Spaces only if Completion of the Project has occurred within two (2) years of the Deadline for Completion. The provisions of this paragraph apply only concerning the Dedicated Spaces and shall not be deemed to extend the Deadline for Completion of the Project under any other provisions of this Agreement.

4.3.5. Each Dedicated Space may be used solely by the following (collectively the "*Permitted Users*"): Hotel guests; employees of, or invitees to, the Hotel or other improvements located on the Property; or residents of any residential improvements located on the Property.

4.3.6. City will not charge any fees for use of the Dedicated Spaces to Permitted Users. In the event the City, it successors or assigns, elects to charge parking fees to other users of the Parking Garage, the City shall establish an "access card" or similar system for use by Permitted Users.

4.3.7. Developer shall not charge any fees for use of the Parking Garage except as permitted hereunder, and shall not permit use of the Dedicated Spaces by persons other than Permitted Users. Developer may:

4.3.7.1. Charge for parking for guests of the Hotel;

4.3.7.2. Calculate its Hotel room charges or related resort or amenity fees to account for the fact that "free parking" is being provided to its guests.

4.3.8. Developer may assign its rights to any of the Dedicated Spaces solely as follows:

4.3.8.1. In the event Developer leases or sells the Hotel, Developer shall assign at least one hundred and five (105) of the Dedicated Spaces to the buyer or lessee of the Hotel.

4.3.8.2. Any such assignment shall be subject to the terms hereof and the liability of payment of the Parking Garage Contribution for the assigned Dedicated Spaces shall be borne by the applicable assignee.

4.3.9. Developer shall assign at least one (1) Dedicated Space to the owner, and its successor in title, of each residential unit located on the Property (unless doing so would result in Developer no longer retaining the number of Dedicated Spaces set forth in paragraph 4.3.1). Each assigned Dedicated Space shall run with title to such residential unit.

4.4. Parking Garage Contributions.

4.4.1. As consideration for its use of reserved spaces in the Parking Garage, Developer shall pay to City, commencing on the third (3rd) anniversary of the Completion of the Project and thereafter in advance and on an annual basis, a payment (the "*Parking Garage Contribution*") equal to $54,000.00 per year for the Dedicated Spaces in the Parking Garage.

4.4.2. The amount of the Parking Garage Contribution shall be adjusted on each fifth anniversary of the Completion of the Project, commencing with the fifth anniversary of such Completion. The amount of the adjustment shall be calculated pursuant to the CPI Rider attached hereto as **Exhibit D.** City will provide to Developer the calculations of the adjustment no later than one (1) month before the adjustment is to be made; if City fails to do so, the adjustment shall be postponed until one (1) month after City provides such information to Developer.

4.4.3. On or around the third (3rd) anniversary of the Completion of the Project, City shall provide to Developer a statement of the Parking Garage Contribution due from Developer.

4.4.3.1. City shall provide to Developer subsequent statements for each year on the same day of each year thereafter or to coincide with the City fiscal year (October 1 through September 30).

4.4.3.2. Any statement based on a portion of a fiscal year shall be prorated based upon the number of months remaining in such fiscal year as of the date of the statement.

4.4.4. Developer shall pay to City its Parking Garage Contribution within one (1) month of City's delivery of the statement required under paragraph 4.4.3 (the "*Contribution Payment Deadline*"). In the event Developer does not do so, the amount unpaid shall accrue interest at the rate of 10% per annum until paid in full. Further, in the event Developer fails to make payment in full within one (1) month of receipt of written notice to Developer that payment has not been

received by the Contribution Payment Deadline, City may prevent access to the Dedicated Spaces until such time as payment is made.

4.5. City Payments. City shall pay to Developer the following amounts (the "*City Payments*") pursuant to the provisions of this paragraph.

4.5.1. As an incentive to construct the desired improvements associated with the Project, and in anticipation of the benefits to be received by downtown Ocala and the public if the Project is constructed, City shall pay, to Developer, City Payments calculated as set forth in paragraph 4.5.3 pursuant to the schedule set forth in paragraph 4.5.2.

4.5.2. The City Payments shall be paid in ten annual installments, with the first installment being paid on the March 1 of the second year after the date of Completion of the Project. Nothing set forth herein shall preclude City from paying any installment payment prior to the date it is due hereunder.

4.5.3. The amount of each installment shall be 70% of the Tax Increment. For purposes of this Agreement, "Tax Increment" shall equal (1) the amount of City and County ad valorem taxes paid on the Property during the calendar year preceding the year in which the City Payment is due (regardless of the calendar year during which such taxes were assessed) in excess of (2) the City and County ad valorem taxes that would be paid on the Property during the 2015 tax year if the Property was not exempt from taxation because it was owned by City. The Tax Increment shall not include any ad valorem taxes assessed by the Marion County School Board, the St. Johns River Water Management District or any governmental entity other than City and County.

4.5.4. Notwithstanding that installments of City Payments may be calculated based on a percentage of the Tax Increment under paragraph 4.5.3:

4.5.4.1. The Tax Increment is utilized only to calculate such installments, and the installments need not be paid from the ad valorem taxes that are utilized to calculate the Tax Increment.

4.5.4.2. The City Payments do not constitute a rebate to Developer of any taxes collected by City on the Property.

4.5.4.3. City does not pledge its full faith and credit or taxing power in connection with its obligation to pay the City Payments.

4.5.4.4. Neither Developer nor any other person or entity has a right to require City to impose any tax or establish any tax rate in order to generate funds for the City Payments.

4.5.4.5. City's obligation to pay the City Payments does not constitute a lien upon any property of City.

4.5.5. City's obligation to pay Developer, the City Payments is conditioned upon the following; if such conditions do not occur or cease to exist, City's obligation to pay the City Payments shall be deemed terminated, and therefore, City shall be

relieved from its obligation to pay Developer, any unpaid City Payments; Developer shall not, however, be required to return to City any City Payments received by Developer before the termination of City's obligation to pay City Payments:

4.5.5.1. Developer causing Completion of the Project to occur as and when required by the Deadline for Completion thereof set forth in the Schedule. City may not declare this condition has not occurred unless City first provides Developer with notice the Completion has not occurred, and the Completion does not occur within three (3) months after such notice. If someone other than Developer (i.e. mortgage lender) causes Completion of the Project to occur, this condition shall be deemed not to have occurred; City shall not be required to provide Developer with notice or an opportunity to cure in such situation.

4.5.5.2. Developer, paying all taxes and assessments (including real property and intangible personal property taxes and assessments) due on the Property (and its contents to the extent they are taxed) on or prior to the dates they are due under applicable law. City may not declare that this non-payment has not occurred unless City first provides Developer, new owner or assignee with notice that the condition has not occurred, and the condition does not occur within three (3) months after such notice.

4.5.5.3. The Hotel remaining open for business for at least six (6) years after the date of Completion of the Project. The Hotel shall not be deemed "open for business," but rather shall be deemed to be "closed for business," should it not be available for members of the public to obtain rooms in the manner that guests customarily do in a hotel. The Hotel shall be "open for business" even if the restaurant located therein is not available for members of the public to obtain meals in the manner that patrons customarily do in a restaurant. Should the Hotel close for business for more than thirty (30) consecutive days, or more than sixty (60) total days during any consecutive three hundred sixty-five (365) day period, the Hotel shall be deemed to have failed to remain open for purposes of this condition. The foregoing notwithstanding, periods of closure due to construction, remodeling or renovation or due to events qualifying as Force Majeure shall not be deemed to constitute failure to remain open for purposes of this paragraph.

4.5.5.4. The Developer failing to retain ownership of the Project until Completion of the Project. Failure to retain ownership during such time period shall be defined as the occurrence of any of the foregoing:

a. Developer assigns this Agreement in whole or in part, or an Interest Transfer occurs, other than as permitted in paragraph 16.5.

b. Conveyance of fee simple title in the Property to:

1) An individual other than a Developer Principal; or

2) An entity: (a) in which the Developer Principals, individually or collectively, retain less than 51% of the ownership and voting interests; or (b) of which no Developer Principal maintains Control.

c. Developer enters into a lease of the Property or with a third party where Developer retains no Control over Hotel operations and is compensated solely for the use of the Hotel and not based upon performance thereof. This shall specifically exclude: (a) a lease customarily entered into such as a lease of the restaurant (if it is operated by a third party) or of retail space or of office space within the Project or (b) a management agreement with a third party where Developer either retains ultimate Control over management decisions or is compensated based upon performance of the Project.

4.5.6. Developer's right to receive the City Payments shall be appurtenant to, and run with title to, the portion of the Property upon which the Hotel is constructed.

4.6. City Improvements.

4.6.1. Sidewalks, Decorative Lighting and Streetscapes; Utility Relocation. City shall construct the following improvements at its sole cost and expense:

4.6.1.1. City shall construct all sidewalks on that portion of the public right-of-way immediately contiguous to the Property, and shall install decorative street lighting and streetscapes, on First Avenue, Broadway Street, E. Silver Springs Boulevard, and Osceola Avenue as set forth in the approved CDP.

4.6.1.2. City shall relocate any electrical, mechanical, water, sewer, storm water, gas, or other applicable utility lines and, subject to the occurrence of the Contingencies set forth in paragraph 7.1.1.2, Railroad boxes or other Railroad control equipment, on the Property that, in Developer's reasonable discretion, would interfere with Developer's construction or use of the Project. Developer shall, upon request of City, consider permitting City to relocate the Railroad boxes or other Railroad control equipment within the Project.

4.6.2. Accessibility and Traffic Improvements.

4.6.2.1. City shall construct the following accessibility and traffic improvements to service the Project at its sole cost and expense:

a. Construct and/or maintain at least one way southbound access road along the east boundary of the Property within the proposed Linear Trail which provides connectivity from E. Silver Springs

Boulevard to SE Ft. King Street and shall permit ingress and egress thereto from the Property. City shall provide for left turn access from E. Silver Springs Boulevard to said access road and shall maintain stacking lane(s) to service such access.

b. Construct improvements to E. Silver Springs Boulevard to allow one separate access point to the Property from E. Silver Springs Boulevard.

c. Construct improvements to allow full access (left in, left out and right in, right out) between Property and E. Broadway Street.

d. Re-engineer traffic pattern and traffic signal to improve traffic flow at intersection of SE 1st Avenue and E. Broadway Street.

e. If necessary, to obtain such right-of-way for the construction of offsite turn lanes or other traffic improvements required for the Project or to complete the improvements set forth herein.

f. Construct improvements to SE Broadway Street to allow two-way traffic between SE Watula Avenue and SE 1st Avenue.

g. Permit with FDOT and construct westbound left turn lane from SR 40 onto SE Osceola Avenue.

4.6.2.2. On or before the Contingency Deadline date set forth in paragraph 7.1.1, and to facilitate Developer coordination of its construction schedule with City's schedule for construction of the accessibility and traffic improvements set for above, City shall provide to Developer a schedule of City's proposed completion dates for each of the improvements set forth above. As to each improvement, if City fails to complete construction of the improvement on or before the scheduled date of completion under the City's schedule, as to all Deadlines which are after the Contingency Deadline date specified in paragraph 7.1, and impose obligations on Developer for construction or Completion of the Project, by the number of days subsequent to the scheduled completion date required for City to complete construction of the subject accessibility or traffic improvement.

4.7. Developer Payment of Fees. Developer is responsible for all charges or fees for plan review, permits and inspections for the Project including without limitation: site plan review fees; building permits; plumbing, electrical, mechanical and site inspection fees; water, sewer and fire impact fees; storm water capacity fees; and solid waste fees, school impact fees and any transportation impact fees owed after City's assignment of existing transportation impact credits pursuant to paragraph 4.1.

4.8. Staging Area. The parties specifically agree that, unless an alternate location is agreed to by the parties, Developer shall be permitted to use Osceola Avenue for staging construction.

4.9. Osceola Avenue Open for Traffic. During any period during which Osceola Avenue is used for staging construction, or during construction of the Linear Trail, the parties shall maintain on Osceola Avenue at least one lane of traffic between Silver Springs Boulevard and SE Broadway Avenue for local vehicular traffic.

4.10. Periodic Construction Meetings.

4.10.1. During construction of the Parking Garage and Linear Trail, City shall use good faith efforts to advise Developer of the time, date and place of all scheduled construction meetings with City's contractors, and Developer shall be permitted to attend such meetings.

4.10.2. During construction of the Project, Developer shall, at City's request, schedule construction meetings with Developer's contractor on at least a quarterly basis, and City shall be permitted to attend such meetings.

5. **Conveyance of Property.**

5.1. Closing Date.

5.1.1. The Closing Date shall be a date selected by Developer upon at least ten (10) days written notice to City, and shall be: (a) within one (1) month after the determination by City Council pursuant to paragraph 3.14.4; and (b) after City commences construction of the Parking Garage. Such Closing Date may be extended for up to one (1) month pursuant to a written agreement executed by Developer and the City Manager without the necessity of amending this Agreement.

5.1.2. In the event Developer closes a Construction Loan for the Project, the Closing of transfer of title to the Property shall, upon Developer's election, occur simultaneously with the Closing of the Construction Loan for the Project.

5.2. Form of Conveyance and Closing Costs.

5.2.1. Developer shall pay to City $100,000.00 in immediately available funds.

5.2.2. City shall convey the Property to Developer pursuant to a special warranty deed.

5.2.3. Documentary stamps, if any, on the special warranty deed shall be the expense of Developer. The documentary stamps shall be calculated by Developer pursuant to Florida law. Developer shall indemnify and hold City harmless from and against any liability for documentary stamps incurred as a result of the special warranty deed.

5.2.4. Developer shall pay for the cost of the title insurance commitment, and the owner's title policy if issued, recording of the deed and all expenses associated with any financing.

5.2.5. City shall pay for the cost of recording curative instruments.

5.2.6. Each party shall pay its respective attorney's fees.

5.2.7. City shall execute an owner's affidavit reasonably acceptable to City as may be required by Title Company to remove the so-called "standard exceptions" from any title insurance policy to be issued to Developer following Closing.

5.3. Equity Investment. Developer shall have available owner equity in the minimum amount of $4,000,000.00 (the "*Equity Investment*").

5.3.1. The Equity Investment shall consist of: (a) Development Costs incurred by Developer, as established by documentation provided by Developer consistent with paragraph 4.2.2; and (b) amounts held by Developer in one or more bank accounts in the name of Developer, as documented by bank statements (the account numbers of which may be redacted by Developer).

5.3.2. Developer must provide proof of the Equity Investment as of the date of the Second Financial Review, and shall retain the portion of the Equity Investment maintained in a bank account under paragraph 5.3.1 until it is spent on the Project pursuant to paragraph 5.3.3.

5.3.3. Developer shall be deemed to have complied with the Equity Investment requirement of this paragraph 5.3 if the Equity Investment is established as of the dates set forth in paragraph 5.3.2, but shall be required to spend any portion of the Equity Investment maintained in a bank account under paragraph 5.3.1 on the Project except to the expense that such expenditure is unnecessary as a result of funds available under a Construction Loan.

5.4. Adequate Assurance.

5.4.1. Developer shall, simultaneously with or prior to Closing of the Property, provide an Adequate Assurance to City in the amount of $1,000,000.00.

5.4.2. The form and substance of the Adequate Assurance shall be acceptable to City in its reasonable discretion.

5.4.3. In the event the Adequate Assurance is in the form of a letter of credit, or other obligation with an expiration date, Developer shall renew the Adequate Assurance so it remains effective during the time period set forth in paragraph 5.4.4 that Developer is required to maintain the Adequate Assurance. Developer shall provide City with proof of such renewal at least thirty (30) days before the expiration of the Adequate Assurance. In the event Developer fails to renew the Adequate Assurance as and when required hereunder, City shall provide Developer with written notice of such default and, in the event Developer thereafter fails to renew the Adequate Assurance within fifteen (15) days of City's provision of such notice, City shall be entitled to demand payment under the Adequate Assurance. The provisions of this paragraph shall govern over any conflicting provision in paragraph 11.2.3.

5.4.4. The Adequate Assurance shall be maintained from the date it is provided to City until Completion of the Project.

5.4.5. City may request payment of the Adequate Assurance in the event any condition described in paragraph 4.5.5 fails to occur or be maintained during the period the Adequate Assurance is required to be maintained.

5.4.6. The purpose of the Adequate Assurance is to reimburse or compensate City for its performance of obligations under this Agreement including, without limitation, its conveyance of the Property to Developer for monetary consideration of less than the Property's fair market value, and the City Incentives. In the event the Adequate Assurance is paid to City, City shall, except as set forth in paragraph 5.5.8, be entitled to retain the full amount of such payment, and shall not be obligated to credit Developer with any portion thereof or to otherwise account to Developer for the payment.

5.5. Right of Reverter.

5.5.1. In the event Developer has failed to commence construction of the Project by the Deadline therefor set forth in paragraph 6.1.10, and the expiration of any notice and opportunity to cure under paragraph 11.2, title to the Property shall revert to City.

5.5.2. City's right of reverter (the "Right of Reverter"):

5.5.2.1. Shall be set forth in the deed for the Property from City to Developer; and

5.5.2.2. Shall be prior and superior to any encumbrances, leases, liens or mortgages placed on the Property.

5.5.3. In the event the Property reverts to City pursuant to the Right of Reverter, Developer shall execute and deliver to City:

5.5.3.1. A special warranty deed conveying the Property to City free and clear of all restrictions, agreements, prohibitions, mortgages, leases, liens or encumbrances, except those existing at the time of conveyance of the Property from City to Developer. Developer shall pay the cost of recording such deed as well as documentary excise taxes, if any, on such deed.

5.5.3.2. An environmental indemnification agreement from Developer with respect to any environmental contamination caused by Developer at, on or from the Property, and satisfactory to City in the exercise of its reasonable discretion.

5.5.4. City shall advise Developer of its election to have the Property revert to City under this paragraph 5.5. Developer shall execute and deliver to City the documents described in paragraph 5.5.3 within 30 days of such notice.

5.5.5. The Right of Reverter shall terminate upon the earlier of the following:

5.5.5.1. Developer commences construction of the Project prior to the Deadline therefor set forth in paragraph 6. For purposes of this

paragraph, construction shall be deemed to have commenced when any construction activities for the Project have occurred which, in the reasonable determination of City, indicate that construction has commenced, such as clearing of the site, removal of existing improvements, etc.;

5.5.5.2. The closing of a Construction Loan for the Project following the transfer of title of the Property to Developer. (As set forth in paragraph 5.5.2.1, there is no Right of Reverter applicable to Property if the Construction Loan for the Project closes simultaneously with the transfer of the Property to Developer.); or

5.5.5.3. City's waiver of the Right of Reverter pursuant to paragraph 5.5.7.

5.5.6. Upon the termination of the Right of Reverter under paragraph 5.5.5, City shall execute and record an instrument in the public records of Marion County sufficient, in Developer's reasonable determination and, in any event, sufficient such that the Right of Reverter will not appear as an exception to any title insurance policy issued to a lender under a Construction Loan for the Project or any subsequent title insurance policy issued following such Construction Loan, to terminate the Right of Reverter of record. In the event that the Right of Reverter terminates under paragraph 5.5.5.2, City shall escrow, shortly before the closing of the Construction Loan, the termination instrument with the closing agent for the Construction Loan and shall authorize that the termination instrument be recorded immediately prior to the recording of the mortgage for the Construction Loan.

5.5.7. City may waive the Right of Reverter in its sole discretion. If City waives the Right of Reverter, it shall provide notice of such waiver to Developer within 60 days of the occurrence of the condition giving rise to the reversion. City shall thereafter execute and record a termination of the Right of Reverter.

5.5.8. In the event the Property reverts to City under this paragraph, City may nonetheless request payment of the Adequate Assurance under paragraph 5.4 but the following provisions shall apply:

5.5.8.1. City shall not be obligated to provide Developer with an additional notice or opportunity to cure pursuant to paragraph 11.2.3.

5.5.8.2. City shall be entitled to retain, from the proceeds of the Adequate Assurance, only City's hard costs, if any, incurred or to be incurred in connection with the City Improvements under paragraph 4.6: (a) that City has performed; (b) that City has commenced performance of and, in the interest of public safety or efficiency, City reasonably determines should be completed; or (c) for which City has entered into contracts to perform that City cannot terminate without monetary penalty or if, in the interest of public safety or efficiency, City reasonably determines the improvements that are the subject of the contract should be completed.

5.5.8.3. City may not retain any proceeds of the Adequate Assurance for any City Improvements: (a) that City commences after the Property reverts to City; or (b) for which City has entered into contracts to perform following reverter of the Property to City.

5.5.8.4. The balance of the proceeds of the Adequate Assurance shall be paid to Developer (as City will have already recovered title to the Property).

5.6. AS IS. Except as otherwise expressly provided in this Agreement, City is not making and specifically disclaims any warranties or representations of any kind or character, express or implied, with respect to any Property or any portion thereof, including, but not limited to, warranties or representations as to matters of title (other than City's warranty of title set forth in the deed to be delivered at Closing), zoning, tax consequences, physical or environmental conditions, availability of access, ingress or egress, operating history or projections, valuation, governmental approvals, governmental regulations, or any other matter or thing relating to or affecting the Property including, without limitation, the value, condition, merchantability, marketability, profitability, suitability or fitness for a particular use or purpose of the Property. Developer agrees that with respect to the Property, Developer has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty of City (except as expressly set forth in this Agreement) or any agent of City. Developer represents that it is a knowledgeable purchaser of real estate and that it is relying solely on its own expertise and that of Developer's consultants, and that Developer will conduct such inspections and investigations of the Property as Developer deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same, and, upon closing, shall assume the risk that adverse matters concerning such Property, including, but not limited to, adverse physical and environmental conditions, which may not have been revealed by Developer's inspections and investigations. Developer's closing hereunder shall be deemed to constitute an express waiver by Developer or its successors and assigns of any right to sue City, and of Developer's right to cause City to be joined in an action, concerning such Property brought under any federal, state, or local law, rule, act, or regulation which prohibits or regulates the use, handling, storage, transportation, or disposal of a hazardous or toxic substance or which requires removal or remedial action with respect to such hazardous or toxic substance, specifically including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. and Part IV of the Florida Air and Water Pollution Control Act, Chapter 403, Florida Statutes. DEVELOPER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, CITY SHALL SELL AND CONVEY TO DEVELOPER, AND DEVELOPER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS," WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES, ORAL REPRESENTATIONS (EXCEPT AS SPECIFICALLY PROVIDED HEREIN OR IN THE DEED TO BE DELIVERED AT CLOSING), COLLATERAL TO OR AFFECTING THE PROPERTY BY CITY, ANY AGENT OF CITY, OR ANY THIRD PARTY ACTING FOR OR ON BEHALF OF CITY. The terms and conditions of this paragraph shall expressly survive the closing and not merge into the deeds to be executed and delivered at Closing.

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. Within one (1) month from the Effective Date, City shall provide to Developer the following documents to the extent they are in the possession of City:

6.1.1.1. Title insurance commitments or searches for the Property.

6.1.1.2. Surveys of the Property.

6.1.1.3. Any environmental assessments of the Property.

6.1.1.4. Reports of soil tests on the Property.

6.1.2. Within six (6) months from the Effective Date:

6.1.2.1. The Contingencies referred to in paragraph 7.1.1 shall have occurred or have been waived by the parties, whereupon City shall provide notice thereof (the "*Initial Contingency Completion Notice*).

6.1.2.2. The Developer shall complete the First Financial Review, and obtained a report from the Financial Review Committee, under paragraph 3.14.3.2, indicating that Developer and the Developer Principals have the financial ability to develop the Project.

6.1.3. As set forth in paragraph 3.5.1, Developer's Inspection Period shall terminate three (3) months after City provides the Initial Contingency Completion Notice.

6.1.4. Within one (1) month after the end of the Inspection Period (if Developer has not earlier terminated this Agreement during the Inspection Period):

6.1.4.1. Developer shall provide to City a proposed CDP for the Project for approval by City in its reasonable discretion.

6.1.4.2. City shall deliver to Developer a notice identifying the member(s) of the Financial Review Committee, and the address for Developer to provide the Financial Information for review by the Financial Review Committee.

6.1.5. 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.

6.1.6. Within six (6) months after the end of the Inspection Period:

6.1.6.1. The Contingency referred to in paragraph 7.1.2 shall have occurred or have been waived by the parties.

6.1.6.2. Developer shall obtain Approval for the Project.

6.1.6.3. Developer and City shall enter into any agreement concerning staging pursuant to paragraph 4.7.

6.1.7. Within one month after obtaining Approval under paragraph 6.1.6.1, Developer shall complete the Second Financial Review pursuant to paragraph 3.14.1.2.

6.1.8. 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.

6.1.9. City and Developer shall close the transfer of title to the Property on the Closing Date as set forth in paragraph 5.1.

6.1.10. Developer shall commence construction of the Project within one (1) month after the Closing Date.

6.1.11. Developer shall cause Completion of the Project to occur within the earlier of the following:

6.1.11.1. Nineteen (19) months after commencing construction of the Project; or

6.1.11.2. Thirty-eight (38) months after the Effective Date.

6.2. The schedule in paragraph 6 is subject to the following:

6.2.1. One extension, of up to six (6) months in duration, of the Deadline contained in paragraph 6.1.11 may be provided by the City Manager. Developer shall request such extension in writing not less than one (1) month prior to the expiration of the Deadline, which request shall state the good cause for the extension. The City Manager shall not unreasonably withhold approval of a request for an extension.

6.2.2. Except as provided in paragraph 6.2.1 or pursuant to other express provisions of this Agreement (e.g., in paragraph 14), there shall be no other extension of any performance obligation except through formal amendment of this Agreement.

6.3. Attached hereto as **Exhibit E** is a spreadsheet of a sample timeline (the "*Timeline*") demonstrating the Schedule set forth in paragraph 6.1.

6.3.1. The Timeline is merely an example of the calculation of dates pursuant to such schedule; because the performance of certain obligations will likely occur prior to the exact date of the Deadline therefor as set forth in the Timeline, it is very unlikely that the Timeline will reflect the actual schedule.

6.3.2. In the event of a conflict between the Timeline and paragraph 6.1, the provisions of paragraph 6.1 shall prevail.

7. **Contingencies.**

7.1. Generally. The parties' obligations under this Agreement are contingent upon each of the following (a "*Contingency*") occurring prior to the deadline ("*Contingency Deadline*") therefor as set forth below:

7.1.1. Within six (6) months from the Effective Date (said date being deemed the Contingency Deadline for each of the following Contingencies):

7.1.1.1. City obtaining approval from the Florida Department of Transportation ("*FDOT*") of any City Improvements under paragraph 4.6.2 that require FDOT approval.

7.1.1.2. City entering into an agreement with Railroad approving City's relocation of any Railroad boxes or other equipment pursuant to paragraph 4.6.1.2.

7.1.1.3. City obtaining approval from Railroad and Developer of the preliminary design of that portion of the proposed Osceola Linear Trail lying between Silver Springs Boulevard and SE Fort King Street. The Contingency Deadline for this Contingency is six (6) months after the Effective Date.

7.1.1.4. City obtaining a judgment quieting title to the portion of the Property referred to as the "Excluded Parcel" in the Complaint filed by City in the Circuit Court of Marion County, Florida, styled *City of Ocala v Dorothy Adams Victor, etc., et al.*, Case No.: 15-2228-CA, or a judgment declaring that City has title to the Excluded Parcel. Such judgment shall be sufficient for Title Company to insure title to the Property without an exception for the Excluded Parcel or rights of any parties relating thereto.

7.1.2. Within six (6) months after the end of the Inspection Period (said date being deemed the Contingency Deadline for the following Contingency), Developer obtaining a franchise agreement with Hilton, Marriott, Hyatt, Holiday Inn (IHG), Armani or a hotel chain of similar quality and standards, for a brand of such hotel chains set forth on the attached **Exhibit F** (or a brand of similar quality and standards), and City approval of such franchise agreement, which approval shall not be unreasonably withheld.

7.2. Responsibilities.

7.2.1. City shall be responsible for all costs and expenses associated with the Contingencies referred to in paragraph 7.1.1.

7.2.2. Developer shall be responsible for all costs and expenses associated with the Contingencies referred to in paragraph 7.1.2.

7.3. Effect of Contingency Failure.

7.3.1. In the event a Contingency fails to occur prior to the Contingency Deadline, the party not responsible for obtaining occurrence of the Contingency shall have the right, at its election, to extend the other party's Contingency Deadline for up to two periods of thirty (30) days each, by providing notification of the extension (or second extension) to the party responsible for obtaining the Contingency. Any such notification by City under this paragraph 7.3.1 may be made by the City Manager.

7.3.2. If a Contingency fails to occur prior to the Contingency Deadline, either party may elect to terminate this Agreement, by providing written notice of termination (which notice must be delivered prior to the occurrence of the Contingency), whereupon City and Developer shall be released from all further liability under this Agreement, except as to matters that are stated herein as expressly surviving the termination of this Agreement.

7.3.3. Each party shall exercise reasonable diligence in causing the Contingencies to occur prior to the applicable Contingency Deadlines.

8. **Miscellaneous Provisions Applicable to the Project.**

8.1. Local Professionals. Developer shall endeavor to utilize local professionals, architects, engineers, or contractors in the development of the Project. Nothing set forth herein shall, however, require Developer to take any action or select any professionals, architects, engineers, or contractors that would interfere, in Developer's sole discretion, with Developer developing the Project in a competent, professional and cost-effective manner.

8.2. Compliance with Other Provisions of Applicable Law. Developer shall construct the Project in compliance with all applicable laws, regulations and ordinances including provisions of the City Code involving platting or dividing real property pursuant to condominiums.

8.3. Restrictions on Use of Property. No portion of any Property may be used for any of the following uses without the express written consent of City, which may be withheld or conditioned in City's sole discretion: automobile cleaning/detailing service (this shall not prohibit a mobile automobile cleaning/detailing service from operating within the Dedicated Spaces provided that such operation does not interfere with the primary use of the Parking Garage for vehicular parking); auto supply store; full service station (this shall not prohibit a stand-alone convenience store to the extent permitted by the City Code); on-site laundry and dry cleaning service (this shall not prohibit a laundry and dry cleaning establishment for drop-off only or done in connection with the operation of the Hotel); minor household repair establishment; repair garage self service station/convenience store; day labor establishment; adult use establishment; or adult use bookstore.

9. **Representations and Warranties of City**. City hereby represents and warrants the following:

9.1. This Agreement and each document contemplated hereby to which City will be a party has been authorized and will be executed and delivered by City and neither their execution and delivery, nor compliance with the terms and provisions: (a) requires the

approval and consent of any other party, except as have been obtained or as are specifically noted herein, (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on City, or (c) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance on City.

9.2. This Agreement and each document contemplated to which City will be a party, will constitute a legal, valid and binding obligation of City enforceable against City in accordance with the terms thereof, except as such enforceability may be limited by public policy or applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights and subject to usual equitable principles if equitable remedies are involved.

9.3. To the knowledge of City, there is no suit, litigation or action pending or threatened against City, which questions the validity of this Agreement or any document contemplated hereunder or challenges the power or any approvals of the Council to authorize the execution and delivery of same.

9.4. City shall use its best efforts to timely fulfill all of the conditions and obligations expressed in this Agreement which are within the control of City and shall act so as not to unreasonably delay the Completion of the Project.

9.5. City shall cause to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to and the responsibility of the City.

9.6. City: shall use reasonable efforts to assist the Developer in accomplishing the development of the Project in accordance with this Agreement and the Project Plans; and will not violate any applicable laws, ordinances, rules, regulations, orders, contracts, or agreements, or, to the extent permitted by law, adopt any ordinance, regulations or order or approve or enter into any agreement, that will result in this Agreement or any part hereof, or any other instrument contemplated, to be in violation thereof.

9.7. City represents that the Property is not on any "Superfund" list under any applicable Environmental Law, nor is the Property currently subject to any lien related to any environmental matter. Except as specifically set forth herein, City makes no other representations or warranties, expressed or implied, concerning the environmental condition of the Property.

9.8. City shall promptly notify Developer in writing of any actual or reasonably anticipated delays in the construction of the Parking Garage.

9.9. City shall discharge, vacate, or release any lien, encumbrance, easement, right-of-way or other property interest City has or owns on or in the Property (other than those arising under this Agreement) on or before the Closing.

10. **Representations and Warranties of Developer**. Developer hereby represents and warrants the following:

10.1. Developer is a validly existing limited liability company under the laws of the State of Florida, has all requisite power and authority to carry on its business, to own and hold

property, to enter into and perform its obligations under this Agreement and consents to service of process on its registered agent in Florida.

10.2. This Agreement and each document to which Developer is or will be a party has been authorized and will be executed and delivered by Developer and neither their execution and delivery, nor compliance with the terms and provisions: (a) requires the approval and consent of any other party, except as have been obtained or as are specifically noted herein, (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on Developer, or (c) results in any default or result in the creation of any lien on the property or assets of Developer which will have a material adverse effect on its ability to perform its obligations hereunder.

10.3. This Agreement and each document contemplated to which Developer will be a party, will constitute a legal, valid and binding obligation of Developer enforceable against Developer in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights and subject to usual equitable principles if equitable remedies are involved.

10.4. To the knowledge of Developer, there is no suit, litigation or action pending or threatened against Developer, which questions the validity of this Agreement or which will have a material adverse effect on its ability to perform its obligations hereunder.

10.5. Developer shall use its best efforts to timely fulfill all of the conditions and obligations expressed in this Agreement which are within the control or are the responsibility of Developer.

10.6. During the period the obligations of Developer are in effect, Developer shall cause to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to and the responsibility of Developer.

10.7. Developer shall use its best efforts to accomplish the development of the Project in accordance with this Agreement, the Proposal and the Project Plans, and will not violate any applicable laws, ordinances, rules, regulations or orders in its efforts to do so.

10.8. Developer shall use its best efforts obtain all state and local permits or other governmental authorizations and approvals required by law in order to proceed with the development of the Project, subject to the City Impact Fee Contribution under paragraph 4.1.

10.9. Developer shall promptly notify City Manager in writing of any actual or reasonably anticipated delays in the construction of the Project.

11. **Default.**

11.1. Force Majeure. Neither party shall be held in default of this Agreement for any delay or failure of such party in performing its obligations pursuant to this Agreement if such delay or failure is caused by Force Majeure as set forth below.

11.2. Notice and Opportunity to Cure. Prior to declaring a default hereunder, the non-defaulting party must provide the defaulting party with written notice and at least thirty (30) days to cure such default.

11.2.1. Provided, however, if the default is of a nature that cannot be reasonably cured within such 30-day period, then the defaulting party shall be allowed a reasonable period of time to cure such default provided that it diligently commences the cure within the 30-day period and thereafter undertakes and pursues such cure.

11.2.2. Further provided, however, that no prior notice or opportunity to cure need to be provided:

11.2.2.1. In the event the defaulting party has previously breached a provision of this Agreement and thereafter breaches the same provision; or

11.2.2.2. Concerning a party's failure to close as and when required by this Agreement.

11.2.3. In addition to the foregoing provisions concerning notice and an opportunity to cure, in the event that City desires to demand payment under any Adequate Assurance, City must (except as set forth in paragraph 5.4.3 based on expiration of the Adequate Assurance), after expiration of the foregoing time periods for notice and opportunity to cure, provide Developer with an additional written notice and at least thirty (30) days to cure such default.

11.3. Remedies. If a default occurs, the non-defaulting party may terminate this Agreement, institute an action to compel specific performance or to recover damages as applicable, suspend its own performance hereunder, or pursue any other remedy available at law or equity.

11.4. Remedies Not Exclusive. The specified rights and remedies to which City and Developer are entitled under this Agreement are not exclusive and are intended to be in addition to any other means of redress which City or Developer may have under this Agreement.

11.5. No Consequential Damages. Notwithstanding paragraphs 11.3 and 11.4, under no circumstances will City or Developer be liable for consequential damages, including lost profits, the right to such damages being expressly waived.

11.6. No Waiver. The failure by City or Developer to promptly insist on strict performance of any provision of this Agreement shall not be deemed a waiver of any right or remedy that City or Developer may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such provision.

11.7. Effect of Termination. In the event that a party terminates this Agreement under this paragraph 11 or any other provision of this Agreement:

11.7.1. Prior to conveyance of the Property, this Agreement shall be deemed terminated in its entirety; or

11.7.2. After conveyance of the Property, such termination shall not affect the obligations of the parties as to the Project.

12. **Agreement to Run with Property**. This Agreement shall run with the Property and any portion thereof.

12.1. This Agreement, and any amendments hereto, shall be binding and inure to the benefit of, and be enforceable by, City and Developer, and the heirs, successors and permitted assigns of the foregoing.

12.2. In the event of a conveyance of any portion of, or of any interest in, the Property, this Agreement may be amended by the new owner without the necessity of joinder or consent of any prior owner provided that the amendment does not amend the obligations of the prior owner. This paragraph supplements paragraph 17.6.

12.3. In the event that this Agreement is terminated prior to the conveyance of the Property, City may record a notice of termination in the public records of Marion County, Florida, in which event this Agreement shall no longer run with the Property. Such notice of termination shall be conclusive proof of the termination of this Agreement.

13. **Survival**. Notwithstanding the termination of this Agreement (except a termination of the entire Agreement under paragraph 11.7.1 or 12.3) or the prior performance by the parties hereunder, the following paragraphs of this Agreement shall survive and remain effective: 12, and 16 through 37.

14. **Force Majeure**. Delays in performance due to: fire; flood; hurricane; tornado; earthquake; windstorm; sinkhole; unavailability of materials, equipment or fuel; war; declaration of hostilities; terrorist act; civil strife; strike; labor dispute; epidemic; archaeological excavation; act of God; or any other matter beyond the control of the party obligated to perform that constitutes an excuse under Florida law based upon the doctrine of "impossibility of performance," shall be deemed events of Force Majeure and such delays shall be excused in the manner herein provided. If a party is delayed in any performance required by this Agreement because of an event of Force Majeure, the date for action required or contemplated by this Agreement shall be extended by the number of days equal to the number of days such party is delayed. The party seeking to be excused based on an event of Force Majeure shall give written notice of the delay indicating its anticipated duration. Each party shall use its best efforts to rectify any conditions causing the delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses to overcome any loss of time that has resulted. Specific references in this Agreement to deadlines as to which Force Majeure shall apply shall not be interpreted as intending to exclude the application of Force Majeure from other performance.

15. **Insurance.**

15.1. Developer agrees to maintain during construction of the Project the following insurance policies:

15.1.1. Builder's Risk Insurance Policy for physical damage or loss, as a result of fire, flood, and other hazards or risks customarily insured against in Ocala.

15.1.2. Comprehensive General Liability Coverage of at least $1,000,000.00.

15.1.3. Automotive Liability Coverage of at least $1,000,000.00.

15.1.4. Workers' Compensation Coverage as required by the laws of the State of Florida.

15.2. Prior to commencement of construction of the Project, and within ten (10) days of City's request thereafter Developer shall furnish to City proof of compliance with these insurance provisions.

15.3. All insurance policies required by this Agreement shall provide such policies or agreements cannot be substantially modified or canceled until after at least one (1) month prior written notice has been given to City.

16. **Notice.**

16.1. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing (including emailed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, emailed or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by notice complying with the terms of this paragraph:

16.1.1. For City: City Manager, City of Ocala, 110 S.E. Watula Avenue, Ocala, Florida 34471; email: jzobler@ocalafl.org.

16.1.1.1. With copy to: Director of Revitalization Strategies Department, 201 SE 3rd Street, Ocala, Florida 34471; email: mgaboardi@ocalalf.org.

16.1.2. For Developer: Downtown Ocala, LLC; Attn: Digvijay Gaekwad, Manager, 11980 SE 22nd Avenue Road, Ocala, FL 34480 email: danny@ndsusallc.com.

16.1.2.1. With a copy to: Steven H. Gray, Gray, Ackerman and Haines, P.A., 125 NE 1st Avenue, Suite 1, Ocala, FL 34470; email: sgray@gahlaw.com.

16.2. Each such notice shall be deemed delivered:

16.2.1. On the date of delivered if by personal delivery;

16.2.2. On the date of email transmission if by email (subject to paragraph 16.5); and

16.2.3. If the notice is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; or (b) the date upon which delivery is refused.

16.2.4. Notwithstanding the foregoing, service by personal delivery delivered, or by email sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

16.3. If a notice is delivered by multiple means, the notice shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.

16.4. If the above provisions require notice to be delivered to more than one person (including a copy), the notice shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

16.5. Concerning Communications sent by email:

16.5.1. The Communication shall not be deemed to have been delivered if the sender receives a message from the sender's or the recipient's internet service provider or otherwise that the email was not delivered or received;

16.5.2. If the sender receives an automatic reply message indicating that the recipient is not present to receive the email (commonly referred to as an "out of the office message"), the email shall not be deemed delivered until the recipient returns;

16.5.3. Any email that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient.

16.5.4. The sender must print the email to establish that is was sent (though it need not do so at the time the email was sent); and

16.5.5. The sender shall maintain the digital copy of the email in its email system for a period of no less than one year after it was sent.

17. **Assignment; Interest Transfer.**

17.1. Developer may not, without the written consent of City which may be withheld or conditioned by City in its sole discretion, assign its rights or obligations under this Agreement, in whole or in part, until the Completion of the Project.

17.2. No membership interest in Developer may be transferred (an "Interest Transfer") until Completion of the Project except as follows:

17.2.1. An interest held by a Developer Principal may be transferred to another Developer Principal; or

17.2.2. Upon the written consent of City which may be withheld or conditioned by City in its sole discretion.

17.3. Following Completion of the Project:

17.3.1. Developer may assign this Agreement in whole or in part if the assignee executes and delivers to City an instrument, in a commercially reasonable and customary form and acceptable to City in its reasonable discretion, accepting the assignment and assuming the obligations of Developer under this Agreement, to the extent of the assignment, as if such assignee executed this Agreement as an original party hereto; and

17.3.2. Any Interest Transfer may be made.

17.4. Promptly after any assignment or Interest Transfer, Developer shall provide notice thereof to City.

17.5. A notice under paragraph 17.4 concerning an Interest Transfer under paragraph 17.2.1 shall include sufficient information for City to determine whether the assignment or Interest Transfer was permissible under this Agreement; such information could include an affidavit from a Developer Principal with personal knowledge of the matters set forth therein and need not be copies of operating agreements, partnership agreements or other documents that Developer deems confidential.

17.6. In the event of an assignment hereunder, and to the extent of the assignment:

17.6.1. The assignee will have all rights and obligations of Developer.

17.6.2. The assignee shall be entitled to amend the provisions of this Agreement without the joinder or consent of Developer.

17.6.3. The assignee shall be permitted to terminate this Agreement as otherwise provided in this Agreement without the joinder or consent of Developer or any prior assignee.

17.6.4. In the event of an assignment in connection with a sale of all of Developer's rights in a Project, the assignor shall be released from all liability under this Agreement for actions or inactions after, but not before, such assignment.

17.7. By executing this Agreement, Developer agrees, and by accepting any assignment, each assignee agrees, to the foregoing provisions of this paragraph concerning the ability of an assignee to amend or terminate this Agreement.

18. **City's Police Powers**. Nothing in this Agreement shall serve to affect or limit City's police powers in the exercise of rezoning decisions or other governmental action associated with the proposed redevelopment of the Property or any Development Order associated therewith.

19. **Sovereign Immunity**. Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of City's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on City's potential liability under state or federal law. As such, City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, City shall not be liable for any claim or judgment, or portion thereof, that exceeds the applicable limit of liability under applicable law (currently Section 768.28(5), Florida Statutes). This paragraph shall survive termination of this Agreement.

20. **Resolving any Invalidity**. City and Developer hereby agree that in the event this Agreement or the economic incentives described herein are ever challenged by any person and held to be invalid by a court of competent jurisdiction, each will cooperate with the other, in good faith, to resolve the invalidity or pursue a valid alternative means to secure a substantially similar and equitable financial arrangement which the parties acknowledge was the inducement for Developer undertaking the Project.

21. **Applicable Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

22. **Severability**. Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal or unenforceable shall be severable and shall not be construed to render the remainder to be invalid, illegal or unenforceable.

23. **Relationship**. This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture among City and Developer. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that the other party hereto is not acting as a fiduciary for nor as adviser to it in respect of this Agreement.

24. **Personal Liability**. No provision of this Agreement is intended, nor shall any be construed, as a covenant of any official (either elected or appointed), director, employee, or agent of City in an individual capacity, and nor shall any such individual be subject to personal liability by reason of any covenant or obligation of City hereunder.

25. **Exclusive Venue**. The parties agree that the exclusive venue for any litigation, suit, action, counterclaim, or proceeding, whether at law or in equity, which arises out of concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall be in Marion County, Florida.

26. **JURY WAIVER**. EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

27. **Recording**. Developer shall, at its own expense, record this Agreement, or a certified copy thereof, in the Public Records of Marion County, Florida.

28. **Counterparts; Copies**. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which shall together constitute one and the same instrument. Additionally, signed facsimiles shall have the same force and effect as a signed original, and, in lieu of an original, any party hereto may use a photocopy of this Agreement in any action or proceeding brought to enforce or interpret any of the provisions contained herein.

29. **Attorney's Fees**. If any legal action or other proceeding is brought (including, without limitation, appeals or bankruptcy proceedings) whether at law or in equity, which arises out of, concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance

hereof, or the relationship created hereby; or is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, and court costs incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

30. **Successors and Assigns**. All covenants, Agreements, warranties, representations, and conditions contained in this Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties to this Agreement.

31. **Waiver**. A failure to assert any rights or remedies available to a party under the terms of this Agreement shall not be deemed a waiver of such rights or remedies, and a waiver of the right to remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this Agreement, unless such waiver of such right or remedy is contained in a writing signed by the party alleged to have waived his other rights or remedies.

32. **Construction of Agreement**. Each party acknowledges that all parties to this Agreement participated equally in the drafting of this Agreement and that it was negotiated at arm's length. Accordingly, a court construing this Agreement shall not construe it more strongly against either party.

33. **Exhibits**.

33.1. Any Exhibits attached to this Agreement shall, by this reference, be incorporated into this Agreement.

33.1.1. The following Exhibits are attached to this Agreement:

33.1.1.1. **Exhibit A** – Property.

33.1.1.2. **Exhibit B** – Garage Parcel.

33.1.1.3. **Exhibit C** – Architectural Rendering.

33.1.1.4. **Exhibit D** – CPI Rider.

33.1.1.5. **Exhibit E** – Timeline.

33.1.1.6. **Exhibit F** – Approved Hotel Brands.

34. **Further Action**. Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the parties hereto.

35. **Time**.

35.1. Time is of the essence of all of the provisions and terms of this Agreement.

35.2. When any time period specified herein falls or ends upon a date other than a Business Day, the time period shall automatically extend to 5:00 p.m. on the next ensuing Business Day.

36. **Entire Understanding**. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations (if any) made by and between the parties.

37. **Amendments**. The provisions of this Agreement may not be amended, supplemented, waived, or changed orally but only by a writing making specific reference to this Agreement signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought.

THEREFORE, the parties have executed this Agreement on the day and year first written above.

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SIGNATURES START ON FOLLOWING PAGE

ATTEST:

City of Ocala, a Florida municipal corporation

Angel B. Jacobs
City Clerk

Jay A. Musleh
President, Ocala City Council

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 10 day of November 2015, by Jay A. Musleh, as City Council President of the City of Ocala, Florida, a Florida municipal corporation, on behalf of the City.

ANGEL B. JACOBS
MY COMMISSION # FF 131367
EXPIRES: October 10, 2018
Bonded Thru Budget Notary Services

Notary Public, State of Florida
Name: Angel B Jacobs
(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: _____

THIS IS TO CERTIFY THE FOREGOING TO BE A TRUE AND ACCURATE COPY
DEPUTY CITY CLERK

ACCEPTED BY CITY COUNCIL
November 3, 2015
DATE
OFFICE OF THE CITY CLERK

AS TO DEVELOPER

Downtown Ocala, LLC, a Florida limited liability company

By: _____
Digvijay Gaekwad as Manager

Date 11/16/15

Witness Signature
LOREY E. YOUNG
Witness Printed Name

Witness Signature
STEVEN H. GRAY
Witness Printed Name

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this this November 16, 2015, by Digvijay Gaekwad, as Manager of Downtown Ocala, LLC, a Florida limited liability company, on behalf of the company.

Roseann J Fusco
Notary Public
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: FL DL.

EXHIBIT A
PROPERTY

That portion of Marion County Tax Parcel Identification Number 2823-065-00 owned by City.

The exact legal description of the Property shall be determined pursuant to paragraph 3.5.4.

EXHIBIT B
GARAGE

BLOCK 75, OLD SURVEY OF OCALA, AS RECORDED IN PLAT BOOK E, PAGE 2, OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA.

TOGETHER WITH PARCELS OF LAND DESCRIBED IN OFFICIAL BOOK 508, PAGE 165, OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA, AND BEING DESCRIBED AS FOLLOWS:

PARCEL A

COMMENCE AT THE INTERSECTION OF THE WEST RIGHT OF WAY LINE OF S.E. WATULA AVENUE AND THE NORTH RIGHT OF WAY LINE OF FORT KING STREET; THENCE S.89°58'14"W. ALONG SAID NORTH RIGHT OF WAY LINE 63.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID NORTH RIGHT OF WAY LINE 209.68 FEET TO THE EAST BOUNDARY LINE OF BLOCK 75, OLD SURVEY OF OCALA; THENCE N.00°23'04"E. ALONG SAID EAST BOUNDARY LINE 140.17 FEET; THENCE DEPARTING SAID LINE RUN N.89°55'29"E. A DISTANCE OF 209.24 FEET; THENCE S.00°24'56"W. A DISTANCE OF 141.35 FEET TO THE POINT OF BEGINNING; RESERVING THE NORTH 15' FOR UTILITY EASEMENT.
THE ABOVE DESCRIPTION IS BASED ON MOORHEAD ENGINEERING COMPANY'S BOUNDARY SURVEY OF CITY COMPLEX, DATED JUNE 28, 1966, JOB NO. 66–170SP

PARCEL B

A PARCEL OF LAND LYING AND BEING IN SECTION 17 TOWNSHIP 15 SOUTH, RANGE 22 EAST, IN MARION COUNTY, FLORIDA MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGIN AT THE INTERSECTION OF THE WEST RIGHT OF WAY OF S.E. WATULA AVENUE AND THE NORTH RIGHT OF WAY LINE OF FORT KING STREET; THENCE N.89°33'20"W. ALONG THE NORTH LINE OF FORT KING STREET FOR 63 FEET; THENCE DEPARTING SAID LINE RUN N.00°24'56"E. FOR 141.35 FEET; THENCE N.89°52'29"W. FOR 209.24 FEET TO THE EAST LINE OF BLOCK 75, OLD SURVEY OF OCALA; THENCE N.00°35'06"E. ALONG SAID LINE FOR 90.87 FEET TO THE SOUTH RIGHT OF WAY LINE OF BROADWAY STREET; THENCE S.89°41'49"E. ALONG SAID LINE FOR 272.03 FEET TO THE AFOREMENTIONED WEST RIGHT OF WAY LINE OF S.E. WATULA AVENUE; THENCE S.00°24'56"E. ALONG SAID LINE FOR 231.72 FEET TO THE POINT OF BEGINNING.

EXCEPT: THE EAST 283.00 FEET OF THE PROPERTY DESCRIBED BY ALL OF THE FOREGOING.

EXHIBIT C
ARCHITECTURAL RENDERING

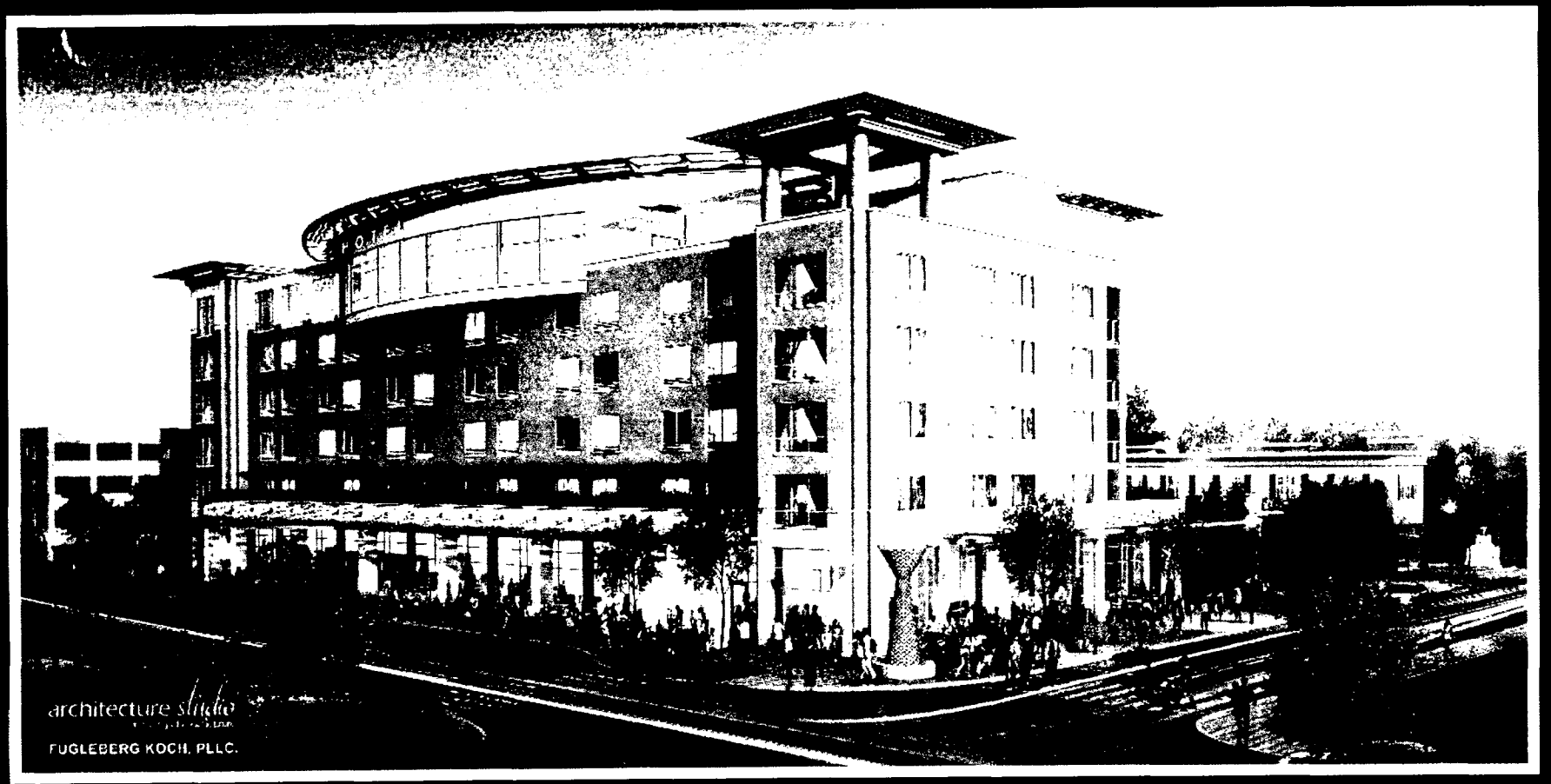
See attached.

State Road 40 and First

Osceola and State Road 40

Broadway and Osceola

First and Broadway



Broadway and Osceola Aerial

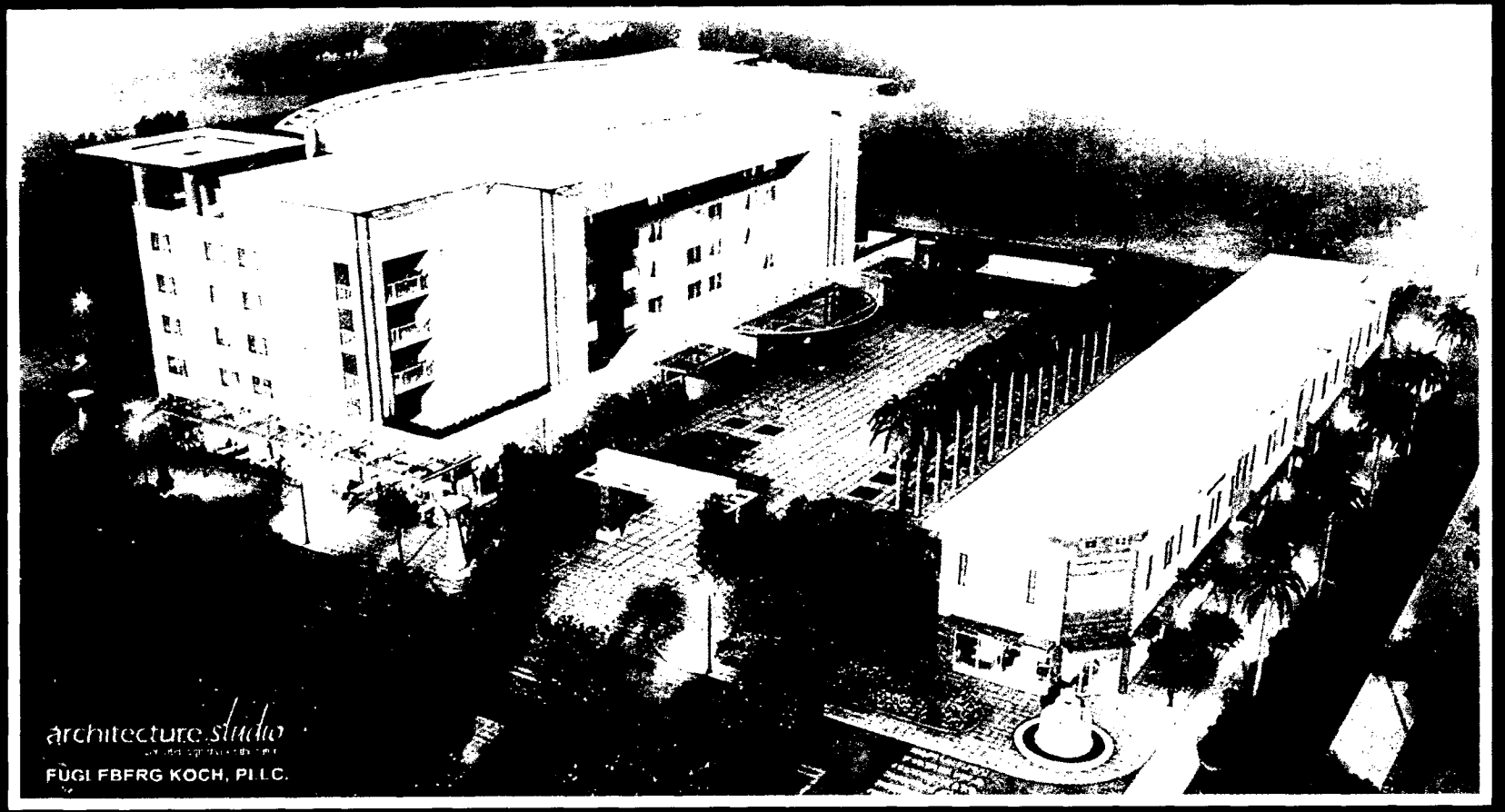


EXHIBIT D
CPI RIDER

1. As used in this Rider the following terms have the following meanings:

   a. "*CPI*" - Means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, 1982-84 = 100 reference base, published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI ceases to use 1982-84 = 100 as a reference base, or if the CPI is altered, modified, converted, or revised in any way, the CPI will be adjusted to the figure that would have resulted had the change not occurred. If the CPI ceases to be published, the remaining Adjustments called for in this Rider shall be made using the statistics of the Bureau of Labor Statistics of the United States Department of Labor that are most nearly comparable to the CPI. If the Bureau of Labor Statistics of the United States Department of Labor ceases to exist or ceases to publish statistics concerning the purchasing power of the consumer dollar during the term of this Agreement, the remaining adjustments called for in this Rider shall be made using the most nearly comparable statistics published by a recognized financial authority selected by Landlord in its sole discretion.

   b. "*Base Index*" - The CPI in effect for the calendar month of the Effective Date of this Agreement.

   c. "*Comparison Index*" - The CPI in effect on the second calendar month before each date upon which the Parking Garage Contribution is to be adjusted pursuant to this Agreement.

2. The Parking Garage Contribution will be subject to adjustment as set forth in paragraph 4.4.2 of this Agreement, for proportionate increases and decreases in CPI.

   a. The periodic adjustment of the Parking Garage Contribution will be the product of the Parking Garage Contribution multiplied by a fraction, the numerator of which is the Comparison Index and the denominator of which is the Base Index.

   b. Notwithstanding the foregoing, no adjustment shall increase or decrease the Parking Garage Contribution by more than ten percent (10%) of the Parking Garage Contribution in affect immediately prior to the adjustment.

EXHIBIT E
TIMELINE

Downtown Development Proposal

Task	Start	Duration (Months)
6.1.1 City Docs to Developer	0	1
6.1.1.1 Title Insurance	0	1
6.1.1.2 Surveys	0	1
6.1.1.3 Environmental Assessment	0	1
6.1.1.4 Soil Tests	0	1
6.1.2 Contingencies	0	6
6.1.2.1 Initial Contingency Completion Notice (7.1.1)	0	6
6.1.2.2 First Financial Review	0	6
6.1.3 Developer Inspection Period	6	3
6.1.4 Submittal of CDP	9	1
6.1.5 Approval of CDP/Survey	10	3
6.1.6 After Receipt of All Approvals	13	2
6.1.6.1 contingency referred to 7.1.2 shall be approved or waived	13	2
6.1.6.2 Developer to Obtain Project Approval	13	2
6.1.6.3 Staging Agreement Entered Into	13	2
6.1.7 Second Financial Review	15	1
6.1.8 Determination of Financial Ability	16	1
6.1.9 Close Transfer of Title	17	1
6.1.10 Phase I Construction Commencement	18	1
6.1.11 Phase I Construction Completion	19	19

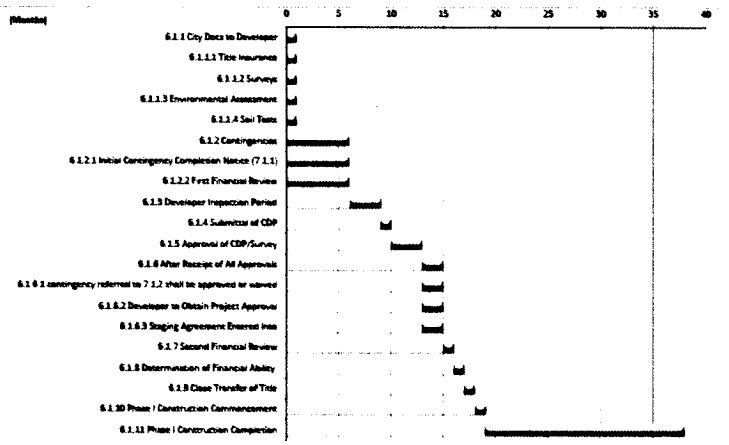


EXHIBIT F
APPROVED HOTEL BRANDS

1. Hilton:
   - 1.1. Hilton Garden Inn
   - 1.2. Hampton Suites
2. Marriott:
   - 2.1. Courtyard
   - 2.2. Autograph Collection
   - 2.3 Moxy
3. Hyatt:
   - 3.1. Hyatt Place
   - 3.2. Regency
4. Holiday Inn:
   - 4.1 Crown Plaza
5. Armani Collection