



DAVID R ELLSPERMANN CLERK & COMPTROLLER MARION CO

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DDS: \$0 MDS: \$0 INT: \$0

This Instrument Prepared by:
 W. James Gooding III
 Gilligan, Gooding, Franjola & Batsel, P.A.
 1531 SE 36th Avenue
 Ocala, FL 34471

Record and Return To:
 City Clerk
 City of Ocala
 110 SE Watula Avenue
 Ocala, FL 34471

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

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

- City of Ocala, a Florida municipal corporation ("City");
- Downtown Ocala, LLC, a Florida limited liability company ("Developer"); and
- Florida Credit Union, a Florida state chartered credit union ("Lender"), for the limited purposes set forth in paragraph 2 below.

WHEREAS:

A. City and Developer are parties to:

- 1). An Acquisition and Redevelopment Agreement for Mixed Use Development (the "Original Agreement") as recorded in OR Book 6305, Page 1466,¹ pursuant to which, among other things, City agreed to convey the Property² to Developer so that Developer could utilize it in connection with the development of the Project.
- 2). A First Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development (the "First Amendment") as recorded in OR Book 6445, Page 1557, and re-recorded in OR Book 6449, Page 527, pursuant to which certain terms and provisions of the Original Agreement were amended.
- 3). A Second Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development (the "Second Amendment") as recorded in OR Book 6613, Page 1542, pursuant to which certain terms and provisions of the Original Agreement, as previously amended, were further amended.
- 4). A Third Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development (the "Third Amendment") as recorded in OR Book 6676, Page 1080, pursuant to which certain terms and provisions of the Original Agreement, as previously amended, were further amended.

¹ All recording references refer to the Public Records of Marion County, Florida.

² Terms capitalized herein and not otherwise defined herein are defined in the Amended Agreement (as defined herein).

- 5). A Fourth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development (the "Fourth Amendment") as recorded in OR Book 6678, Page 819, pursuant to which certain terms and provisions of the Original Agreement, as previously amended, were further amended.
 - 6). A Fifth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development (the "Fifth Amendment") as recorded in OR Book 6715, Page 1794, pursuant to which certain terms and provisions of the Original Agreement, as previously amended, were further amended. (The Original Agreement, as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment and Fifth Amendment, is hereinafter referred to as the "Amended Agreement").
- B. City and Developer closed the sale of the Property pursuant to the Amended Agreement on February 23, 2018, as evidenced by the following documents:
- 1). Deed from City to Developer as recorded in OR Book 6722, Page 1276.
 - 2). The following documents (collectively the "Mortgage") executed and delivered by Developer to Lender:
 - i) Mortgage, Assignment of Rents/Leases and Security Agreement recorded in OR Book 6722, Page 1287.
 - ii) Assignment of Rents and Leases recorded in OR Book 6722, Page 1314.
 - iii) Financing Statement recorded in OR Book 6722, Page 1319.
- C. Further, at the closing of the sale of the Property, Developer delivered to City, as Adequate Assurance under the Amended Agreement, a letter of credit (the "Letter of Credit") issued by Lender in the amount of One Million and 00/100 Dollars (\$1,000,000.00).
- D. Lender has requested that City provide Lender with notice of any event (a "Letter of Credit Event") that would entitle City to payment under the Letter of Credit under the Amended Agreement.
- E. Pursuant to the Amended Agreement (specifically paragraph 3 of the Fourth Amendment), Developer is required, prior to June 1, 2018, to obtain Approval for the Second Building (including site plan approval and issuance of a building permit) and to commence construction of the Second Building. Developer has requested an extension of time to obtain Approval for, and to commence and complete construction of, the Second Building.
- F. Pursuant to the Amended Agreement (specifically paragraph 6.1.14. of Exhibit B to the Third Amendment), Developer is required to cause Completion of the Hotel to occur within the earlier of two dates, one of which was 19 months after commencing construction of the Hotel. Developer commenced construction of the Hotel on May 22, 2018. 19 months after such date is the later of the alternative dates set forth in such paragraph 6.1.14. Developer has requested City to acknowledge the particular date for the deadline for Completion of the Hotel.
- G. City and Developer now desire to further amend the Amended Agreement.

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

1. Notice of Letter of Credit Events.

1.1. Notices to Lender.

1.1.1. City agrees to provide notice to Lender, prior to demanding payment under the Letter of Credit, as follows:

- a. If the Letter of Credit Event arises under paragraph 5.4.5 of the Original Agreement (i.e., the Letter of Credit Event concerns the conditions referred to in paragraph 4.5.5 of the Original Agreement), City shall provide notice of such Letter of Credit Event to Lender as and when required by paragraph 11.2.3 of the Original Agreement; and
- b. If the Letter of Credit Event arises under paragraph 5.4.3 of the Original Agreement (i.e., concerns the failure of Developer to renew the Letter of Credit), City shall provide notice to Lender of such Letter of Credit Event as and when required by paragraph 5.4.3 of the Original Agreement.

1.1.2. All notices from City to Lender under this paragraph shall be delivered pursuant to paragraph 16 of the Original Agreement. The address for Lender shall be as follows (unless Lender hereafter changes such address by notice complying with the terms of paragraph 16 of the Original Agreement):

- a. For Lender: mailing: P.O. Box 5549, Gainesville, Florida 32627; delivery: Attn: Commercial Services; email: _____.

1.1.3. City will deliver, to Developer, copies of all notices from City to Lender under this paragraph, pursuant to the notice provisions of paragraph 16 of the Original Agreement.

1.2. Opportunity to Cure.

1.2.1. The purpose of notice from City to Lender under paragraph 1 is only to provide Lender with notice of a Letter of Credit Event.

1.2.2. The giving of such notice shall not extend the time for Developer or Lender to take any action concerning such Letter of Credit Event under the Amended Agreement or the date that City may demand payment under the Letter of Credit. In that regard, Lender acknowledges that certain of the Letter of Credit Events may be beyond the control of Lender during the time for Developer to take action to avoid City demanding payment under the Letter of Credit; by way of illustration, and not limitation, Lender acknowledges that Lender may be unable to cause the Hotel to remain open for business for at least six years after the date of Completion of the Project, as required by paragraph 4.5.5.3 of the Original Agreement (at least unless Lender acquires control of the Project pursuant to the rights under the Mortgage).

1.2.3. Thus, City shall be entitled to demand payment of the Letter of Credit as and when set forth in the Amended Agreement, notwithstanding that it may be impossible for Lender to take action concerning the Letter of Credit Event.

2. Joinder by Lender.

2.1. Lender joins in this Sixth Amendment solely to evidence the rights and acknowledgements of Lender under this Sixth Amendment.

2.2. Such joinder by Lender shall not require the consent of Lender for any future amendments to the Amended Agreement; rather, City and Developer alone may amend the Amended Agreement. Notwithstanding the foregoing, any amendment to the Amended Agreement that changes the rights of Lender under paragraph 1 of this Agreement (except concerning a change in address under paragraph 1.1.2), must be consented to in writing by Lender.

2.3. In the event that Lender assigns the Mortgage, it may assign its rights to notice under paragraph 1 of this Agreement by providing City and Developer with notice of such assignment as required by paragraph 16 of the Original Agreement, which notice shall include the name, address and email address of the assignee.

3. Revised Schedule for Second Building and Hotel. Paragraph 6.1.4. of Exhibit B to the Third Amendment, paragraph 6.1.5. of Exhibit B to the Third Amendment as amended by paragraph 3 of the Fourth Amendment, and paragraph 6.1.16. of Exhibit B to the Third Amendment, are amended to read as follows:

6.1.14. Prior to August 1, 2018, Developer shall obtain Approval for the Second Building (including site plan approval and issuance of a building permit) and shall thereafter commence construction of the Second Building.

6.1.15. Developer shall cause Completion of the Hotel and Second Building to occur prior to December 22, 2019.

6.1.16. [Deleted as subject is covered in paragraph 6.1.15. above].

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

THEREFORE, the parties have executed this Sixth Amendment effective as of the date referred to above.

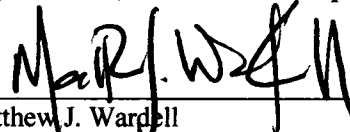
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SIGNATURES START ON NEXT PAGE**

SIGNATURE PAGE OF CITY OF OCALA
TO
SIXTH AMENDMENT

ATTEST:

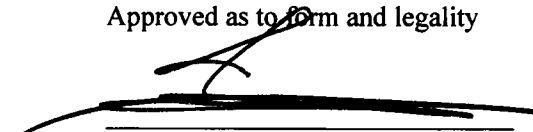

Angel B. Jacobs
City Clerk

City of Ocala, a Florida municipal corporation


Matthew J. Wardell
President, Ocala City Council


Date: 5/15/18

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 May 15, 2018, by Matthew Wardell, as City Council President of the City of Ocala, Florida, a Florida municipal corporation, on behalf of the City.


Notary Public, State of Florida

Name: Roseann J. Fusco
(Please print or type)

Commission Number:
Commission Expires:



ROSEANN J. FUSCO
MY COMMISSION # FF 298818
EXPIRES: July 30, 2018
Bonded Thru Budget Notary Services

Notary: Check one of the following:

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

Type of Identification Produced: _____

ACCEPTED BY CITY COUNCIL
May 15, 2018
DATE
OFFICE OF THE CITY CLERK

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

AS TO DEVELOPER

Downtown Ocala, LLC, a Florida limited liability company

Isabel Vierck
Witness Signature

ISABEL VIERCK
Witness Printed Name

Judith R. Hudlow
Witness Signature

Judith R. Hudlow
Witness Printed Name

By: *Dh*
Digvijay Gaekwad as Manager

Date: May 24, 2018

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this May 24, 2018, by Digvijay Gaekwad, as Manager of Downtown Ocala, LLC, a Florida limited liability company, on behalf of the company.

Judith R. Hudlow
Notary Public
Name: Judith R. Hudlow
(Please print or type)

Commission Number:

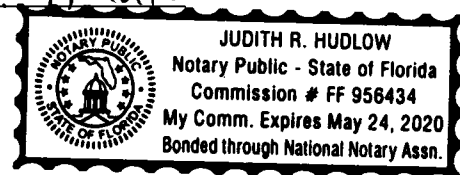
Commission Expires:

Notary: Check one of the following:

☒ Personally known OR

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

Type of Identification Produced: _____



JOINDER BY LENDER

Florida Credit Union, a Florida state chartered credit union ("Lender"), hereby joins in this Sixth Amendment for the limited purposes set forth in paragraph 2 above.

AS TO LENDER

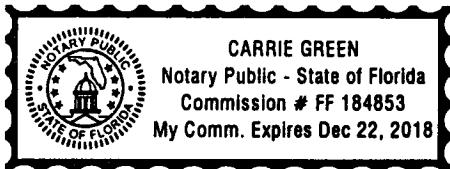
Florida Credit Union, a Florida state chartered credit union

[Signature]
Witness Signature
Kent A. Jones
Witness Printed Name
Carrie Green
Witness Signature
Carrie Green
Witness Printed Name

By: [Signature]
Evan Pitts as
SVP Commercial Services
Date: 6/7/18

STATE OF Florida
COUNTY OF Alachua

The foregoing instrument was acknowledged before me this June 7, 2018, by Evan Pitts, as SVP of Florida Credit Union, a Florida state chartered credit union, on behalf of such credit union.



Carrie Green
Notary Public
Name: Carrie Green
(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: _____