

CITY OF OCALA, FLORIDA
and
DOWNTOWN OCALA, LLC

TWELFTH AMENDMENT TO
ACQUISITION AND REDEVELOPMENT AGREEMENT FOR MIXED USE DEVELOPMENT

THIS TWELFTH AMENDMENT TO *ACQUISITION AND REDEVELOPMENT AGREEMENT FOR MIXED USE DEVELOPMENT* is made and entered into this ____ day of June 2023 by and between the CITY OF OCALA, FLORIDA, a Florida municipal corporation, whose address is 110 S.E. Watula Avenue, Ocala, Florida 34471, hereinafter referred to as “OCALA” or “CITY,” and DOWNTOWN OCALA, LLC, a Florida limited liability company, whose address is 11980 S.E. 22nd Avenue Road, Ocala, Florida 34480, hereinafter referred to as “DEVELOPER.”

WITNESSETH:

WHEREAS, on or about November 16, 2015, the City of Ocala, Florida and Downtown Ocala, LLC entered into an *Acquisition and Redevelopment Agreement for Mixed Use Development* (hereinafter referred to as the “ORIGINAL AGREEMENT”) which was recorded on or about November 19, 2015 on Pages 1466 through 1522 of Book 6305 of the Official Records of Marion County, Florida, which is attached hereto as Exhibit A; and

WHEREAS, the *Acquisition and Redevelopment Agreement for Mixed Use Development* was developed to outline the terms and conditions of the relationship between the City of Ocala, Florida and Downtown Ocala, LLC with respect to the conveyance and development of real property owned by the City of Ocala, Florida by Downtown Ocala, LLC; and

WHEREAS, the development in downtown Ocala, Florida contemplated and provided for in said *Acquisition and Redevelopment Agreement for Mixed Use Development* included the development and construction of a hotel facility by Downtown Ocala, LLC as well as certain commercial and restaurant facilities on the lower levels of said hotel and the development and construction of an additional structure on the adjacent parcel of real property by Downtown Ocala, LLC; and

WHEREAS, on or about August 19, 2016, the City of Ocala, Florida and Downtown Ocala, LLC entered into a *First Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development*, a copy of which is attached hereto as Exhibit B and is incorporated herein by reference; and

WHEREAS, said *First Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* amended the terms and conditions of the Original Agreement, so as to (1) remove certain portions of the agreement which were no longer applicable or necessary; (2) adjust certain completion dates and deadlines contained within the original agreement; and (3) establish a revised completion date for the project of March 19, 2019; and

WHEREAS, on or about May 15, 2017, the City of Ocala, Florida and Downtown Ocala, LLC entered into a *Second Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development*, a copy of which is attached hereto as Exhibit C and is incorporated herein by reference; and

WHEREAS, said *Second Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* amended the terms and conditions of the Original Agreement, so as to (1) update the project schedule; (2) require that construction of the project begin by November 25, 2017; and (3) require completion of the project no later than forty-three (43) months after the effective date of May 15, 2017; and

WHEREAS, on or about November 7, 2017, the City of Ocala, Florida and Downtown Ocala, LLC entered into a *Third Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development*, a copy of which is attached hereto as Exhibit D and is incorporated herein by reference; and

WHEREAS, said *Third Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* amended the terms and conditions of the Original Agreement, so as to: (1) revise the definitions for terms in the agreement; (2) provide for the use of the existing property description until a revised survey was completed; (3) reduced the square footage requirement for the “back-of-house” operations; (4) removed the detailed requirements for the use of the second building and replaced those requirements with general guidelines for the same; (5) require the approval and commencement of the second building by December 16, 2018; and (6) require the completion of the second building by June 16, 2019; and

WHEREAS, on or about November 21, 2017, the City of Ocala, Florida and Downtown Ocala, LLC entered into a *Fourth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development*, a copy of which is attached hereto as Exhibit E and is incorporated herein by reference; and

WHEREAS, said *Fourth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* amended the terms and conditions of the Original Agreement, so as to: (1) provide additional staging permission on Broadway Street; (2) add an additional exhibit which provided a revised property description which corrected a scrivener’s error; and (3) require the approval and commencement of the second building by December 16, 2018; and

WHEREAS, on or about February 13, 2018, the City of Ocala, Florida and Downtown Ocala, LLC entered into a *Fifth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development*, a copy of which is attached hereto as Exhibit F and is incorporated herein by reference; and

WHEREAS, said *Fifth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* amended the terms and conditions of the Original Agreement, so as to establish a revised closing date for the real property transaction to occur on or before February 28, 2018; and

WHEREAS, on or about May 15, 2018, the City of Ocala, Florida and Downtown Ocala, LLC entered into a *Sixth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development*, a copy of which is attached hereto as Exhibit G and is incorporated herein by reference; and

WHEREAS, said *Sixth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* amended the terms and conditions of the Original Agreement, so as to: (1) add notice to lender

requirements; (2) provide for a revised schedule for the second building and hotel including the requirement that approval for the second building and the commencement of construction be obtained by August 1, 2018; and (3) require the completion of the second building and hotel by December 22, 2019; and

WHEREAS, on or about October 2, 2018 the City of Ocala, Florida and Downtown Ocala, LLC entered into a *Seventh Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development*, a copy of which is attached hereto as Exhibit H and is incorporated herein by reference; and

WHEREAS, said *Seventh Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* amended the terms and conditions of the Original Agreement, so as to: (1) grant an extension for the approval and commencement of the second building through January 15, 2019; and (2) grant Downtown Ocala, LLC additional property to be developed as a part of the project with a warranty deed required by November 1, 2018; and

WHEREAS, on or about November 18, 2019, the City of Ocala, Florida and Downtown Ocala, LLC entered into a *Eighth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development*, a copy of which is attached hereto as Exhibit I and is incorporated herein by reference; and

WHEREAS, said *Eighth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* amended the terms and conditions of the Original Agreement, so as to: (1) grant an extension of time – through August 31, 2020 – in which to complete both buildings; (2) update other project details; and (3) remove parking space location restrictions for dedicated parking spaces; and

WHEREAS, on or about July 7, 2020, the City of Ocala, Florida and Downtown Ocala, LLC entered into a *Ninth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development*, a copy of which is attached hereto as Exhibit J and is incorporated herein by reference; and

WHEREAS, said *Ninth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* amended the terms and conditions of the Original Agreement, so as to: (1) revise the definition of “completion” to mean when the hotel portion of the project receives its certificate of occupancy and the hotel is open for business; (2) extend the date of completion for the second building to August 30, 2021; and (3) acknowledge the possibility for additional delays related to the COVID-19 pandemic; and

WHEREAS, on or about December 1, 2020, the City of Ocala, Florida and Downtown Ocala, LLC entered into a *Tenth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development*, a copy of which is attached hereto as Exhibit K and is incorporated herein by reference; and

WHEREAS, said *Tenth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* amended the terms and conditions of the Original Agreement, so as to change the location of the dedicated parking spaces; and

WHEREAS, on or about April 6, 2021, the City of Ocala, Florida and Downtown Ocala, LLC entered into an *Eleventh Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development*, a copy of which is attached hereto as Exhibit L and is incorporated herein by reference; and

WHEREAS, said *Eleventh Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* amended the terms and conditions of the Original Agreement, so as to: (1) extend the deadline for completion of the second building to August 30, 2022; (2) reduce the adequate assurance required of Downtown Ocala, LLC from \$1,000,000.00 to \$100,000.00; and (3) provide that Downtown Ocala, LLC would utilize that capital to compete the buildout of the food hall on the first floor of the hotel; and

WHEREAS, in or about February 2023, the City of Ocala determined that Downtown Ocala, LLC had not complied with the terms and conditions of the Original Agreement, or the eleven subsequent amendments thereto, and was in danger of being designated in default thereunder; and

WHEREAS, in or about February 2023, the City of Ocala, Florida determined that Downtown Ocala, LLC had specifically: (1) failed to comply with the adequate assurance requirement(s); (2) failed to complete the first floor buildout in the hotel facility; and (3) failed to construct the facility on the adjacent parcel of real property; all of which represent material failures to comply with the terms and conditions of the Original Agreement, and the eleven subsequent amendments thereto; and

WHEREAS, following a series of negotiations between the City of Ocala, Florida and Downtown Ocala, LLC, the parties have agreed to a series of corrective measures which, if completed as provided for herein, will provide Downtown Ocala, LLC with an opportunity to cure the aforementioned material failures and to avoid being declared by the City of Ocala, Florida to be in default under the Original Agreement; and

WHEREAS, the City of Ocala, Florida and Downtown Ocala, LLC now desire to enter into this *Twelfth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development*, which will clearly and concisely outline the corrective measures which must be completed by Downtown Ocala, LLC to preclude the City of Ocala, Florida from declaring Downtown Ocala, LLC in default under the Original Agreement and from further pursuing all legal remedies flowing from the same; and

WHEREAS, this, *Twelfth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* is designed to fully and completely outline the terms and conditions of the relationship between the City of Ocala, Florida and Downtown Ocala, LLC with regard to the completion of the project scope and the satisfaction of all remaining Downtown Ocala, LLC obligations under the Original Agreement; and

WHEREAS, this, *Twelfth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* will also fully and completely outline the payment of tax increment funds following Downtown Ocala, LLC's final completion of the matters outlined in this amendment; and (2) continuing payments by Downtown Ocala, LLC to the City of Ocala, Florida for parking in the City of Ocala, Florida's downtown Ocala parking garage; and

WHEREAS, given the significant delay experienced by the City of Ocala, Florida in Downtown Ocala, LLC's ability to meet its obligations under the Original Agreement, and particularly in light of the eleven prior amendments – many of which extended completion deadlines time and time again – the parties specifically acknowledge that this *Twelfth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* is intended to be the final amendment to the Original Agreement; and

WHEREAS, Downtown Ocala, LLC acknowledges that the City of Ocala, Florida is not likely to approve any additional extensions or adjustments to the project schedule and that, in the event that Downtown Ocala, LLC is not able to comply with its obligations under this *Twelfth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development*, the City of Ocala, Florida will likely find Downtown Ocala, LLC in default and will pursue all legal remedies flowing from the same; and

WHEREAS, the City of Ocala, Florida finds that entry into this *Twelfth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* will align with and support the strategic goals established by the City Council of the City of Ocala, Florida and that there is an adequate public purpose for modification of the Original Agreement and entry into this amendment; and

WHEREAS, the City of Ocala, Florida finds that entry into this *Twelfth Amendment to Acquisition and Redevelopment Agreement for Mixed Use Development* with Downtown Ocala, LLC will enhance, protect and support the public health, safety and welfare of the City of Ocala, Florida and its citizens.

NOW THEREFORE, for and in consideration of the mutual promises contained herein and in exchange for the good and valuable consideration provided for herein, the receipt and sufficiency of which are hereby specifically acknowledged, the CITY OF OCALA, FLORIDA and DOWNTOWN OCALA, LLC hereby agree as follows:

Section 1. Adoption and Incorporation of Recitals.

The recitals outlined above and herein are hereby adopted by OCALA and DEVELOPER and are specifically incorporated herein as part of this amendment.

Section 2. Purpose and Authority for Amendment.

- A. This agreement is entered into for the purpose of outlining the terms and conditions of the relationship between OCALA and DEVELOPER with respect to providing – as an alternative to OCALA finding DEVELOPER in default under the Original Agreement, together with the subsequent eleven amendments, and OCALA further pursuing its legal remedies subsequent to the same – a clear and concise memorialization of the remaining obligations of DEVELOPER so as to satisfy its obligations under and the intent of said Original Agreement.
- B. This agreement is entered into pursuant to the authority granted by Chapter 166, *Florida Statutes*, and other relevant provisions of Florida law.

Section 3. Incorporation of Original Agreement and Subsequent Amendments.

OCALA and DEVELOPER specifically agree that the Original Agreement, together with the subsequent eleven amendments, all of which are attached hereto as Exhibits A through L, are hereby incorporated herein by reference as if set forth herein in their entirety and shall remain in full force and effect, except for those terms and conditions which are expressly altered or amended by this amendment.

Section 4. Amendments to Original Agreement and Subsequent Amendments.

OCALA and DEVELOPER understand, acknowledge and agree that, as an alternative to OCALA finding DEVELOPER in default under the Original Agreement, together with the subsequent eleven amendments, and OCALA further pursuing its legal remedies subsequent to the same, OCALA and DEVELOPER agree to the following amendments to the original agreement and the eleven subsequent amendments thereto:

A. Definitions for Term(s).

As used herein and for purposes of interpreting this amendment, the term “adequate assurance” shall mean the adequate assurance to be provided in connection with OCALA’s conveyance of the subject property to DEVELOPER and shall consist of one, or a combination of, the following:

- i. 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.
- ii. A letter of credit issued by a financial institution licensed to transact business in the State of Florida.
- iii. Some other adequate financial assurance (other than personal guaranteed) reasonably approved by CITY.

B. Adequate Assurance Obligations of Developer.

i. Failure to Comply with Existing Adequate Assurance Obligation(s).

OCALA and DEVELOPER specifically acknowledge and agree that, as of the date of this amendment, DEVELOPER has not complied with its obligation(s) under the Original Agreement, as modified by the eleventh amendment thereto (dated April 6, 2021 and attached hereto as Exhibit L), with respect to the maintenance of adequate assurance.

ii. Satisfaction of Adequate Assurance Obligation(s).

In order to avoid being in default, DEVELOPER shall, not less than thirty (30) days following the effective date of this amendment, comply with their adequate assurance obligation(s) under the Original Agreement, as modified by the eleventh amendment thereto (dated April 6, 2021 and attached hereto as Exhibit L) amendment thereto, and shall provide OCALA with adequate assurance in the amount of ONE HUNDRED THOUSAND U.S. DOLLARS (\$100,000.00).

C. Buildout of First Floor of Hotel Facility.

i. Failure to Comply with Existing First Floor Buildout Obligation(s).

Ocala and DEVELOPER specifically acknowledge and agree that, as of the date of this amendment, DEVELOPER has not complied with its obligation(s) under the Original Agreement, as modified by the eleven subsequent amendments thereto, with respect to the completion of the build-out of the first floor of the hotel facility.

ii. Satisfaction of Existing First Floor Buildout Obligation(s).

In order to avoid being in default, and to comply with its obligation(s) under the Original Agreement, as modified by the eleven subsequent amendments thereto, with respect to the completion of the first-floor buildout obligations, DEVELOPER shall:

- a. Not less than sixty (60) days following the effective date of this amendment, submit all necessary applications, drawings, plans and other materials and documents necessary for obtaining building permits from the City of Ocala, Florida for the complete build out of the entirety of the interior of the first floor of the hotel facility;
- b. Not less than twelve (12) months following the effective date of this amendment, complete the construction of the entirety of the interior of the first floor of the hotel facility; and
- c. Not less than twenty-four (24) months following the effective date of this amendment, complete all work necessary to obtain a certificate of occupancy from the City of Ocala, Florida, Growth Management Department for entirety of the interior of the first floor of the hotel facility.

D. Development of Adjacent Parking Facilities.

i. Failure to Comply with Development Minimum Gross Square Feet and Construction of Second Building Obligation(s).

CITY and DEVELOPER specifically acknowledge and agree that, as of the date of this amendment, DEVELOPER has not complied with its obligation(s) under the Original Agreement, as modified by the eleven subsequent amendments thereto, with respect to the minimum development gross square footage (100,370) and development and construction of a second building, adjacent to the hotel facility, located upon the parcel of real property identified by Marion County Property Appraiser Parcel Identification Number 2823-065-001.

ii. Modification of Development Minimum Gross Square Feet and Construction of Second Building Obligation(s).

OCALA and DEVELOPER agree that, in lieu of the obligation(s) contained within the Original Agreement, and as modified by the eleven subsequent amendments thereto, with respect to the minimum development gross square footage (100,370) and development and construction of a second building, adjacent to the hotel facility, located upon the parcel of real property identified by Marion County Property Appraiser Parcel Identification Number 2823-065-001, DEVELOPER shall be allowed by OCALA to instead construct a parking facility on the parcel of real property identified by Marion County Property Appraiser Parcel Identification Number 2823-065-001, provided that said parking facility comply with all applicable requirements of the Land Development Regulations of the City of Ocala, Florida.

iii. Satisfaction of Development Minimum Gross Square Feet and Construction of Second Building Obligation(s).

In order to avoid being in default, to comply with its obligation(s) under the Original Agreement, as modified by the eleven subsequent amendments thereto, and in accordance with the modification contained in Section D above and herein, with respect to the completion of the second building obligations, DEVELOPER shall:

- a. Not less than four (4) months following the effective date of this amendment, complete the design and permitting process, including but not necessarily limited to site plan review and approval and the obtaining of a site and/or building permit, for the entirety of the parking facilities to be located adjacent to the hotel facility on the parcel of real property identified by Marion County Property Appraiser Parcel Identification Number 2823-065-001;
- b. Not less than eight (8) months following the effective date of this amendment, complete the construction of the entirety of the parking facilities to be located adjacent to the hotel facility on the parcel of real property identified by Marion County Property Appraiser Parcel Identification Number 2823-065-001; and
- c. Not less than eighteen (18) months following the effective date of this amendment, complete all work necessary to fully and completely construct and prepare for use and operation the entirety of the parking facilities to be located adjacent to the hotel facility on the parcel of real property identified by Marion County Property Appraiser Parcel Identification Number 2823-065-001.

E. Final Completion of Entire Project.

OCALA and DEVELOPER understand, acknowledge and agree that, based upon the obligations of DEVELOPER under the Original Agreement, and as modified by the eleven subsequent amendments thereto, as well as based upon the amended terms and conditions

contained within this amendment, the final completion of the entire development project for the hotel and adjacent parking facilities shall be completed not less than two (2) years following the effective date of this amendment.

F. Failure by Developer to Comply with Amended Terms and Conditions.

In the event that DEVELOPER fails to comply with any of its obligations under this amendment, including but not necessarily limited to (i) the provision of adequate assurance as provided for in Section B above and herein; (ii) the completion of the first floor buildout of the hotel facility as provide for in Section C above and herein; (iii) the completion of the parking facilities on the adjacent parcel as provided for in Section D above and herein; and (iv) the completion of the entire project not less than two (2) years following the effective date of this amendment as provided for in Section E above and herein, then OCALA shall be permitted to find DEVELOPER in default and to pursue all legal remedies flowing from the same.

G. No Waiver of Rights and Remedies by City of Ocala, Florida.

No provision of this amendment should be considered to be a waiver by OCALA of its rights or remedies under the Original Agreement, to enforce the terms and conditions of that agreement, as subsequently amended, or under this amendment thereto.

H. Forfeiture of Tax Increment Payments by Developer.

OCALA and DEVELOPER agree that failure by DEVELOPER to comply with any of its obligations under this amendment, including but not necessarily limited to (i) the provision of adequate assurance as provided for in Section B above and herein; (ii) the completion of the first floor buildout of the hotel facility as provide for in Section C above and herein; (iii) the completion of the parking facilities on the adjacent parcel as provided for in Section D above and herein; and (iv) the completion of the entire project not less than two (2) years following the effective date of this amendment as provided for in Section E above and herein, shall cause DEVELOPER to forfeit any interest whatsoever in those certain tax increment funds which were to be paid to developer in accordance with said Original Agreement, as modified by the eleven subsequent amendments thereto.

I. Tax Increment Payments to Developer.

i. Confirmation of Developer's Right to Tax Increment Payments upon Final Completion.

OCALA and DEVELOPER agree that, in the event that DEVELOPER complies with all terms and conditions of the Original Agreement, as modified by the eleven subsequent amendments thereto and this, instant amendment, including but not necessarily limited to (i) the provision of adequate assurance as provided for in Section B above and herein; (ii) the completion of the first floor buildout of the hotel facility as provide for in Section C above and herein; (iii) the completion of the parking facilities on the adjacent parcel as provided for in Section D above and herein; and (iv) the

completion of the entire project not less than two (2) years following the effective date of this amendment as provided for in Section E above and herein, then developer shall be entitled to those certain tax increment funds which were to be paid to developer in accordance with said Original Agreement, and as modified by the eleven subsequent amendments thereto.

ii. Commencement of Tax Increment Payments to Developer upon Final Completion.

OCALA and DEVELOPER agree that OCALA shall commence distributing those certain tax increment funds which are to be paid to developer in accordance with Section E above and herein two (2) years following DEVELOPER's compliance with all terms and conditions of the Original Agreement as modified by the eleven subsequent amendments thereto and this, instant amendment, including but not necessarily limited to (i) the provision of adequate assurance as provided for in Section B above and herein; (ii) the completion of the first floor buildout of the hotel facility as provide for in Section C above and herein; (iii) the completion of the parking facilities on the adjacent parcel as provided for in Section D above and herein; and (iv) the completion of the entire project not less than two (2) years following the effective date of this amendment as provided for in Section E above and herein.

J. Continuing Obligation(s) of Developer to Pay for Parking.

i. No Amendment to Obligation(s) of Developer to Pay for Parking.

No provision of this amendment should be considered to be an amendment, alteration or modification to the obligations of DEVELOPER under the Original Agreement, and the eleven subsequent amendments thereto, to make payments to OCALA for the use of certain spaces within the parking garage owned and operated by OCALA in downtown Ocala, Florida by DEVELOPER.

ii. Restatement of Obligation(s) of Developer to Pay for Parking.

As provided for in the Original Agreement, and the eleven subsequent amendments thereto, DEVELOPER shall continue to compensate and make payments to OCALA for the use of certain spaces within the parking garage owned and operated by OCALA in downtown Ocala, Florida by DEVELOPER.

Section 5. Acknowledgement that Time is of the Essence.

OCALA and DEVELOPER understand, acknowledge and agree that time is of the essence with respect to this amendment and to each and every provision of this amendment which requires action to be taken by either party hereto, regardless of whether said provisions provide a stated time period or specified date.

Section 6. Notice(s) to the Parties

Unless otherwise directed in writing, notices, reports, and/or other correspondence shall be delivered to OCALA and DEVELOPER at the following addresses:

A. For OCALA:

Peter Lee, City Manager
110 S.E. Watula Avenue, 3rd Floor
Ocala, Florida 34471
E-Mail: plee@ocalafl.org;

Daphne Robinson, Esq., Contracting Officer
110 S.E. Watula Avenue, 3rd Floor
Ocala, Florida 34471
E-Mail: notices@ocalafl.org;

William E. Sexton, City Attorney
110 S.E. Watula Avenue, 3rd Floor
Ocala, Florida 34471
E-Mail: wsexton@ocalafl.org; and

B. For DEVELOPER:

Downtown Ocala, LLC
Attention Digvijay Gaekwad, Manager
11980 S.E. 22nd Avenue Road
Ocala, Florida 34480
E-Mail: danny@ndsusallc.com.

Section 7. Entirety of Amendment.

This amendment, together with any and all exhibits and other attachments hereto, constitutes the entire agreement between OCALA and DEVELOPER and there are no other covenants, agreements, promises terms, provisions, conditions, undertakings or understandings, either oral or written, between them concerning this matter other than those set forth herein.

Section 8. Prior Agreements Superseded by this Reimbursement Agreement.

As stated above and herein, this amendment incorporates and includes all prior agreements, negotiations, correspondence, conversations, and understanding applicable to the matters contained herein, including but not necessarily limited to the Original Agreement, and OCALA and DEVELOPER agree that there are no other agreements or commitments between the parties that are not contained in this amendment.

Section 9. Amendments to this Amendment and Agreement of the Parties.

- A. OCALA and DEVELOPER understand, acknowledge and agree that the project(s) contemplated by the parties in the Original Agreement, and as modified by the subsequent eleven amendments have not been satisfied or completed in an efficient and timely fashion.
- B. OCALA and DEVELOPER further understand, acknowledge and agree that eleven amendments to the Original Agreement, over the course of the intervening eight years, have served to further complicate and delay the progress of the project(s) contemplated in that original agreement.
- C. Based upon the above and foregoing, OCALA and DEVELOPER do not anticipate any future amendments to the Original Agreement as modified by the subsequent eleven amendments and this instant amendment.
- D. Barring any truly unforeseen and/or bona fide extraordinary circumstances, OCALA shall not agree to any further continuances, delays, extensions or other modifications which prolong the period of time in which DEVELOPER must complete and satisfy its obligations under the Original Agreement, and as modified by the subsequent eleven amendments and as further provided for in Section 4 above and herein.
- E. OCALA and DEVELOPER specifically understand, acknowledge and agree that, in lieu of any further amendment(s) which would continue, delay, extend or otherwise modify and prolong the period of time in which DEVELOPER must complete and satisfy its obligations hereunder, OCALA will likely find DEVELOPER in default and pursue its other legal remedies in accordance with the Original Agreement.
- F. Notwithstanding the foregoing, this amendment and the Original Agreement, as modified by the subsequent eleven amendments, may not be amended, changed or otherwise modified unless such change(s), amendment(s) or modification(s) are in the form of a written amendment executed by both CITY and DEVELOPER.

Section 10. Mutuality of Negotiation.

OCALA and DEVELOPER understand, acknowledge and agree that this amendment is a result of negotiations between OCALA and DEVELOPER, and this amendment shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the amendment.

Section 11. Severability of Amendment Provisions.

- A. In the event that any part of this amendment is found invalid or unenforceable by any court, such invalidity or unenforceability, or the occurrence of any event rendering any portion or provision of this amendment void, shall not be deemed to affect the validity and enforceability of any other parts of this amendment.

- B. Wherever possible, each provision of this amendment shall be interpreted in such a manner as to be effective and valid under the applicable law.

Section 12. Titles and Headings of Amendment Sections.

The section headings herein are included for convenience only and shall not be deemed to be a part of this amendment.

Section 13. Legal Authority for Execution of Amendment.

Each person signing this amendment on behalf of either party individually warrants that he or she has full legal power to execute this agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this amendment.

Section 14. Execution of Amendment in Counterparts.

This amendment may be executed in counterparts, with each fully executed copy treated as an original, and all copies of which constituting the same instrument.

Section 15. Execution of Amendment with Electronic Signatures.

- A. OCALA and DEVELOPER, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this amendment.
- B. Further, a duplicate or copy of the amendment that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original amendment for all purposes.

Section 16. Effective Date of Amendment.

This amendment shall become effective upon execution by OCALA and DEVELOPER.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the parties hereto, CITY OF OCALA, FLORIDA and DOWNTOWN OCALA, LLC have hereunto set their hands and seals on the date first written above.

CITY OF OCALA, FLORIDA,
a Florida municipal corporation

By: JAMES P. HILTY, SR., as
City Council President

ATTEST:

By: ANGEL JACOBS, as
City Clerk

APPROVED AS TO FORM AND LEGALITY:

By: WILLIAM E. SEXTON, as
City Attorney

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IN WITNESS WHEREOF, the parties hereto, CITY OF OCALA, FLORIDA and DOWNTOWN OCALA, LLC, have further hereunto set their hands and seals on the date first written above.

DOWNTOWN OCALA, LLC,
a Florida Limited Liability Company

By: DIGVIJAY GAEKWAD, as its
Manager

SIGNED, SEALED AND DELIVERED in the presence of:

WITNESS 1 [signature]

WITNESS 1 [printed name]

WITNESS 2 [signature]

WITNESS 2 [printed name]

STATE OF FLORIDA
COUNTY OF _____

The forgoing instrument was acknowledged before me this ____ day of June 2023 by DIGVIJAY GAEKWAD, as the Manager and authorized representative of DOWNTOWN OCALA, LLC, a Florida limited liability company, who is [] personally known to me or who has [] produced _____ as identification.

By: _____
Notary Public