

PROMISSORY NOTE

\$17,000,000.00

Clearwater, Florida

Effective as of _____

This Promissory Note (“**Note**”) is entered into this ___ day of ___, 202___, by and between CLEARWATER BLUFFS LLC, a Delaware limited liability company (the “**Borrower**”) whose mailing address is 111 Fifth Ave., 9th Floor, New York, New York 10003 and THE CITY OF CLEARWATER, FLORIDA, a Florida municipal corporation (the “**Lender**”) whose mailing address is P.O. Box 4748, Clearwater, FL 33758.

WITNESSTH

WHEREAS, pursuant to the terms and conditions of that certain Contract for Purchase of Real Property dated August 15, 2022, made by and between the Lender, Gotham Property Acquisitions, LLC (“**Gotham**”), and The DeNunzio Group, LLC (“**DeNunzio**”), as amended and assigned (the “**Contract**”), Borrower has purchased from the City that certain real estate as more particularly described in the Contract (“**Property**”);

WHEREAS, the Property is subject to that certain Development Agreement dated August 4, 2022, by and between the City, Gotham and DeNunzio, and recorded as Instrument No. 2022252437 of the Public Records of Pinellas County, Florida, as amended by that certain First Amendment to Development Agreement dated June 6, 2024, and recorded as Instrument No. 2024151027, of the Public Records of Pinellas County, Florida (collectively, the “**Development Agreement**”);

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the Borrower and Lender agree and covenant with each other as follows:

1. GENERALLY

The foregoing recitals are true and correct and are incorporated in and form a part of this Note. Unless otherwise defined, all capitalized terms used in this Note shall have the meaning ascribed in the Development Agreement.

2. BORROWER’S PROMISE TO PAY

For value received, Borrower promises to pay to the order of the Lender the principal amount of Seventeen Million and 00/100 Cents (\$17,000,000.00) in U.S. dollars (this amount is called “**Principal**”), or so much thereof as is advanced from time to time by Lender to Borrower under the terms of the Development Agreement and Contract. The Lender or anyone who takes this Note by transfer and who is entitled to receive the value as evidenced by this Note is called the “**Note Holder**”, provided, however, that in no event shall Lender be permitted to transfer this Note without the prior written consent of Borrower, which may be granted or denied in Borrower’s sole discretion. This Note evidences the Parking Contribution

DOCUMENTARY STAMP TAXES IN THE AMOUNT OF \$2,450.00 HAVE BEEN PAID IN CONNECTION WITH THE EXECUTION OF THIS NOTE AND HAVE BEEN REMITTED DIRECTLY TO THE FLORIDA DEPARTMENT OF REVENUE.

extended by Lender to Borrower pursuant to the terms of the Development Agreement and Contract.

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the following indebtedness: (i) that certain promissory note secured by a mortgage dated _____, in the original principal amount of _____, made payable to the order of Wells Fargo Bank, its successors and/or assigns (the "**Bank**"), executed and delivered by the Borrower to the Bank, as the same may be modified, amended, restated from time to time, increased as to the principal amount or refinanced (herein referred to as the "**Construction Loan Note**"); (ii) that certain promissory note secured by a pledge of interest of the Borrower dated _____, in the original principal amount of _____, made payable to the order of Lionheart Capital, its successors and/or assigns (the "**Mezz Bank**"), executed and delivered by the Borrower to the Mezz Bank, as the same may be modified, amended, restated from time to time, increased as to the principal amount or refinanced (herein referred to as the "**Mezz Loan Note**"); and (iii) any subsequent first position mortgage financing. While the Property is subject to mortgage financing, in no event shall the Lender take any action to enforce the terms of this note against the Borrower without the express written consent of the Bank, Mezz Bank, and any other applicable lenders.

The indebtedness evidenced by this Note is subject to that certain: (i) Subordination Agreement dated _____ among Bank, Note Holder, as subordinate lender, and Borrower, as borrower (the "**Subordination Agreement**") and (ii) Subordination Agreement dated _____ among Mezz Bank, Note Holder, as subordinate lender, and Borrower, as borrower (the "**Mezz Subordination Agreement**") and shall be subordinate in right of payment to the extent and in the manner provided in the Subordination Agreement and Mezz Subordination Agreement to the prior payment in full of the indebtedness evidenced by the Construction Loan Note and Mezz Loan Note, as applicable. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by "Subordinate Lender" under the Subordination Agreement and Mezz Subordination Agreement.

3. **INTEREST**

Interest on the principal amount outstanding under this Note shall compound annually and shall accrue at the rate (the "**Contract Rate**") equal to the Mid-Term AFR (as defined below) for _____ as set forth by Internal Revenue Service ("**IRS**") Revenue Ruling 2019-25. "**Mid-Term AFR**" means the mid-term monthly applicable federal rate announced by the IRS pursuant to sections 7872 and 1274(d) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto.

4. **PAYMENTS**

The loan evidenced by this Note is a thirty (30) year deferred payment loan with no payment required of principal or interest until the 30th anniversary date of this Note, _____ (the "**Maturity Date**").

The Borrower will not be required to make monthly payments. The loan is a deferred payment loan. On the Maturity Date, the Borrower will forward the deferred lump sum payment of principal (and any interest thereon) to the City of Clearwater at P.O Box 4748, Clearwater, FL 33758, or at a different place if required by the Note Holder. The Lender may, in its sole and absolute discretion, choose to forgive the loan (including principal and any interest accrued thereon) on the Maturity Date. Notwithstanding the foregoing, upon Borrower's request, Lender shall be required to forgive the loan or convert the loan to a Development Incentive Grant, which request may be made with respect to all or a portion of the amounts due under this

Note plus any accrued interest due at such date, if the following condition has been met: the City Hall Project is Substantially Completed.

The indebtedness evidenced by this Note, and any other financial obligations which may hereafter be imposed on Borrower by the Lender, is subordinate to the indebtedness specified in Section 1 and all other indebtedness incurred by the Borrower without the need for a separate subordination instrument.

5. BORROWER'S RIGHT TO PREPAY

The Borrower has the right to prepay the balance due on this Note, in whole or in part, at any time without premium or penalty (any such prepayment known as a "prepayment"). When a prepayment is made, the Borrower must notify the Note Holder, in writing, that it is doing so. The Note Holder will use all prepayments to reduce the amount of principal that is owed under this Note. If a partial prepayment is made, there will be no change in the Maturity Date, unless the Note Holder agrees, in writing, to such change.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected in connection with this loan exceed the permitted limit, then any sum already collected which exceeded permitted limits shall be credited as a payment of principal, unless the undersigned shall notify the Note Holder, in writing, that the undersigned elects to have such excess sum returned to it forthwith.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Default

Except as otherwise provided in Section 4 above, if the full amount is not paid or forgiven by the Maturity Date, the undersigned will be in default.

(B) Notice of Default

If the undersigned is in default, then after failure of the Borrower to cure a default within thirty (30) days of written notice of a default under this Note, the Note Holder may send a written notice which advises that the full principal amount, including any interest that may accrue (as defined in Sections 2 and 3 above), is due and payable by a certain date. That date must be at least thirty (30) days after the date on which the notice is delivered or mailed.

(C) No Waiver By Note Holder

The remedies of the Note Holder, as provided herein shall be cumulative and concurrent and may be pursued regularly, successively, or together, at the sole discretion of the Note Holder, and may be exercised as often as occasion therefore shall arise. No act or omission or commission of the Note Holder, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same, such waiver or release to be affected only through a written document executed by the Note Holder, and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing as a waiver or release of any subsequent right, remedy, or recourse as to a subsequent event. Even if, at a time when the undersigned is in default, the Note Holder

does not require payment in full, as described above, the Note Holder will still have the right to do so if a default occurs at a later time.

(D) Payment of Note Holder's Costs and Expenses

In the event the Note is collected through enforcement by law or through an attorney at law, or under advice therefrom, the Note Holder will have the right to be paid back for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorney's fees, which are defined to include, without limitation, all fees incurred in all matters of collection and enforcement, construction and interpretations, before, during and after trial, proceedings and appeals, as well as appearances in reorganization or similar proceedings, and the cost of paraprofessional personnel working under supervision of an attorney.

8. GIVING OF NOTICES

All notices provided for herein shall be sent by certified or registered return receipt requested mail, or by a nationally recognized overnight courier, addressed to the appropriate party at the address designated for such party in the preamble to this Note, or such other address as the party who is to receive such notice may designate in writing. Notice by mail shall be completed by depositing the same in a letterbox or other means provided for the posting of mail addressed to the party with the proper amount of postage affixed thereto. Actual receipt of notice shall not be required to effect notice hereunder. Notices sent by a nationally recognized overnight courier service shall be deemed delivered the next business day after deposit with such courier unless the records of such courier indicate a later delivery in which case the notice shall be deemed received on the date of delivery. Copies of all notices sent to Borrower under this Note shall be provided to c/o Bryan Kelly, 432 Park Avenue South, Second Floor, New York, NY 10016.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of the persons signing this Note may be required to pay all of the amounts owned under this Note.

10. WAIVERS

All persons now or at any time liable, whether primarily or secondarily, for the payment of the indebtedness hereby evidenced, for themselves, their heirs, legal representatives, successors and assigns respectively, hereby (a) expressly waive the rights of presentment, demand for payment, notice of dishonor, protest, notice of nonpayment or protest, and diligence in collection. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give Notice to other persons that amounts due have not been paid. (b) consent that the time of all payments or any part thereof may be extended, rearranged, renewed or postponed by the Note Holder hereof and further consent that the collateral security or any part thereof may be released, exchanged, added to or substituted for by the Holder hereof, without in anyway modifying, altering, releasing, affecting or limiting their respective liability or the lien of any security instrument; (c) agreed that the Note Holder, in order to enforce payment of this Note, shall not be required first to institute any suit or to exhaust any of its

remedies against the undersigned or any other person or party to become liable hereunder. This Note and the instruments securing it have been executed and delivered in, and their terms and provisions are to be governed and construed by the laws of the State of Florida.

11. If more than one party shall execute this Note, the term “undersigned”, as used herein, shall mean all parties signing this Note and each of them, who shall be jointly and severally obligated hereunder. In this Note, whenever the context so requires, the neuter gender includes the feminine and/or masculine, as the case may be, and the singular number includes the plural.

12. COPY RECEIVED

Borrower hereby acknowledges receipt of a copy of this instrument.

13. NONRECOURSE OBLIGATION

The obligations and liability of Borrower for payment of principal, interest and any charges under this Note shall be enforced solely against the Borrower. Notwithstanding anything to the contrary, Borrower, its members, partners, officers, and/or directors, shall not be personally liable for the payment or satisfaction of such sums.

Notice to Borrower

Do not sign this Note if it contains blank spaces. All spaces should be completed before you sign.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO PROMISSORY NOTE]

IN WITNESS WHEREOF, this Note has been duly signed by the Borrower on this ____ day
of _____, 202__.

BORROWER:

CLEARWATER BLUFFS LLC, a Delaware
limited liability company.

By: _____

Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐
online notarization this ____ day of _____, 202__, by _____ as _____ of
Clearwater Bluffs LLC, a Delaware limited liability company, on behalf of the limited liability company.

(NOTARY SEAL)

Name:

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____