

**FOURTH AMENDMENT TO CONTRACT FOR PURCHASE OF REAL
PROPERTY**

This FOURTH AMENDMENT TO CONTRACT FOR PURCHASE REAL PROPERTY (this “Amendment”) is entered into this _____ day of January, 2024, by and among THE CITY OF CLEARWATER, FLORIDA, a Municipal Corporation of the State of Florida (“Seller”), and The DeNunzio Group, LLC, a Florida limited liability company (“DeNunzio”), and Gotham Property Acquisitions, LLC, a New York limited liability company (“Gotham”) (DeNunzio and Gotham shall be collectively referred to as “Purchaser”).

WHEREAS, Seller and Purchaser entered into that certain Contract for Purchase of Real Property with an effective date of August 15, 2022, as amended by that certain First Amendment to Contract for Purchase Real Property with an effective date of January 9, 2023, as amended by that certain Second Amendment to Contract for Purchase Real Property with an effective date of August 22, 2023, and as further amended by that certain Third Amendment to Contract for Purchase Real Estate with an effective date of October 16, 2023 (collectively, the “Agreement”), concerning the sale from Seller to Purchaser of the property known as the “Old City Hall Site”, as more particularly defined in the Agreement and Exhibit “A” attached hereto; and

WHEREAS, Seller and Purchaser desire to amend the Agreement as more particularly set forth herein.

NOW, THEREFORE, for and in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Purchaser and Seller hereby agree as follows:

1. Capitalized Terms. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.
2. Purchase Price. Sections 2 and 4 of the Agreement are hereby amended so that the Purchase Price shall be Three Million Four Hundred Fifty Thousand Dollars (\$3,450,000.00).
3. Conditions Precedent to Buyer’s and Seller’s Obligation to Close. Sections 39 and 40 of the Agreement shall be amended by adding a condition that the Development Agreement as defined in Section 9 of the Agreement shall have been amended to be consistent with this Amendment and shall also be amended to address the following prior to Closing:
 - a. To revise the City Hall Project (as defined in the Development Agreement) to a multifamily residential project containing 400 dwelling units in a single tower;
 - b. To revise the minimum required parking ratio to 1:1:1 for 440 parking spaces;
 - c. To revise the City Hall Project requirements to provide that 50% of the parking spaces may be above-ground but not visible from Osceola Avenue (but may be visible from Coachman Park);

d. To clarify that the rate and schedule of impact fees in effect upon the date of execution of the original Development Agreement will apply to the City Hall Project and the Harborview Project (as defined in the Development Agreement);

e. To revise the purchase price for the City Hall Site (as defined in the Development Agreement) to Three Million Four Hundred Fifty and No/100 Thousand Dollars (\$3,450,000.00);

f. To provide up to Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) in CRA funding at Substantial Completion (as defined in the Development Agreement), or, if closing under this Agreement occurs no later than March 1, 2026, upon commencement of construction instead;

g. To provide an additional One Million Dollars (\$1,000,000.00) in CRA funding as an incentive grant for early closing to be paid upon commencement of construction if closing under this Agreement occurs no later than March 1, 2026;

h. To provide for up to six (6) sixty (60) day closing extensions of this Agreement at a cost of Two Hundred Thousand and No/100 Dollars (\$200,000.00) each;

i. To establish December 31, 2028 as the date of Substantial Completion, subject to extension for Events of *Force Majeure* and Governmental Delay (as defined in the Development Agreement);

j. To provide for liquidated damages in the amount of One Million Dollars (\$1,000,000.00) if Substantial Completion is not achieved by December 31, 2028, subject to extension for Events of *Force Majeure* and Governmental Delay, which liquidated damages shall be secured, at Purchaser's option, by any of the following: cash collateral from Purchaser or a provision for payment of the same to the City from the contractor under the Construction Agreement;

k. To provide that the Seller will be an additional insured in insurance policies for the City Hall Project and the Harborview Project with the same insurance amounts as Purchaser;

l. To provide for defense, reimbursement, and indemnification of the City in an amount of up to maximum amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) for any legal challenges related to amendment of the Development Agreement; and

m. To provide for any other changes necessary to conform the Development Agreement with the terms and conditions of this Amendment.

4. Closing. Section 13 of the Agreement shall be amended by deleting Section 13 in its entirety and replacing it with the following:

"Closing Place and Date. The closing of the transaction contemplated under this Contract ("**Closing**") shall be closed in the offices of the designated Closing Agent in Pinellas

County, Florida on or before March 1, 2026, unless extended by the time allotted for the removal of title defects as provided for in Paragraph 8 above, Force Majeure Event, Governmental Delay, or as provided below in this Section 13 (“**Closing Date**”). For the avoidance of doubt, any extension or delay in closing beyond March 1, 2026, shall render the Buyers ineligible to receive the One Million Dollars (\$1,000,000.00) incentive grant described in Section 3(h) of this Amendment. The Seller shall designate the closing agent (“**Closing Agent**”).

Notwithstanding the previous paragraph, if the Closing does not occur by the Closing Date, Buyer shall have the option to extend the Closing Date for up to six (6) additional extensions of sixty (60) days each, by delivering written notice thereof to Seller prior to the expiration of the Closing Date or the date of the immediately prior exercised extension period, as applicable, and submitting payment to the Seller in the sum of Two Hundred Thousand Dollars (\$200,000.00) for each extension option (each an “**Extension Fee**”), which each Extension Fee shall be nonrefundable and not applicable towards the Purchase Price except in the case of an Event of Default on the part of the Seller.

The Buyer and Seller acknowledge and agree that time shall be of the essence with respect to the performance by the Buyer of its obligation to pay the Extension Fee. For that reason, if the Extension Fee is not paid timely, then the Buyer shall have five (5) business days to cure monetary defaults. If Buyer fails to close or otherwise cure after five (5) business days, then the Contract shall automatically terminate without penalty or any further action being required by the Seller.

5. Conditions Precedent to Seller’s Obligation to Close. Section 40(iii) of the Agreement shall be amended by deleting Section 40(iii) in its entirety and replacing it with the following:

“iii. Commensurate with Closing, Buyer shall provide the Seller with a copy of a Construction Agreement. “**Construction Agreement**” shall be defined as an executed agreement between a general contractor, licensed in the State of Florida, or construction manager and the Buyer or the Buyer’s Affiliates or lenders, whereby the Buyer or Buyer’s Affiliates or lenders provide monetary compensation in exchange for a commitment to construct or ensure the construction of the improvements described in the Development Agreement relating to the Land. Additionally, at or prior to Closing, Buyer or Buyer’s contractor under the Construction Agreement shall have bought out the following “**Major Trades**”: (1) sitework, (2) concrete, (3) structural steel, if applicable, (4) HVAC, (5) electric, (6) plumbing, (7) rough carpentry, and (8) facade. Additionally, to the extent assignable and at the sole cost of the Seller, Buyer agrees to assign to Seller, subject to Lender’s approval and subordinate to Lender’s interest in, all of Buyer’s right, title, and interest in all plans and specifications for the construction of the improvements on the Land as provided for in the Development Agreement, the Construction Agreement, any engineer’s agreement related the construction of the improvements on the Land as provided for in the Development Agreement, and any architect’s agreement related the construction of the improvements on the Land as provided for in the Development Agreement, which assignment shall be in a form mutually agreeable between Buyer and Seller.”

Additionally, Section 40(iv) shall be added to the Agreement as follows:

“iv. In addition to other remedies provided by this Agreement, Buyer agrees to provide a comparable completion guaranty as provided to Buyer’s Lender, if applicable, to Seller subject to the consent of Buyer’s Lender.”

6. Conflict in Terms. In the event of any conflict between the terms of this Amendment and the Agreement, the terms contained in this Amendment shall supersede and control.

7. Ratification; Full Force and Effect. Except as expressly modified and amended herein, the terms of the Agreement are hereby ratified and affirmed and shall remain in full force and effect.

8. Severability. If any provision of this Amendment shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Amendment and the application of such provision shall not be affected thereby, but rather shall be enforced to the maximum extent possible.

9. Headings. The captions and headings used throughout this Amendment are for convenience of reference only and shall not affect the interpretation of this Amendment.

10. Counterparts. This Amendment may be executed in two or more counterparts and/or counterpart signature pages, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. In addition, the parties may execute this Amendment by pdf of facsimile signature which shall be deemed for all purposes original signatures.

11. Binding Effect. This Amendment shall inure to the benefit of and shall be binding upon each of the parties hereto and their respective successors and assigns.

12. Entire Agreement. Collectively, the Agreement and this Amendment are the total agreement of the parties and replaces any prior negotiations, understandings or agreements among the parties, whether written or oral, pertaining to subject matter hereof. Each of the parties acknowledges representation by counsel throughout all of the negotiations which preceded execution of this Amendment, and this Amendment has been executed freely and voluntarily with the consent of and upon the advice of counsel. Each of the parties acknowledges that it has not relied on any promise, covenant, representation, or warranty, express or implied, not expressly set forth in this Amendment.

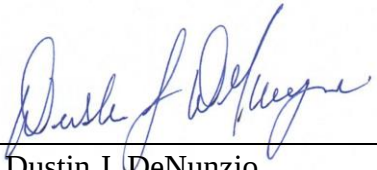
[Signature Pages Follow]

PURCHASER SIGNATURE PAGE FOR FOURTH AMENDMENT
TO CONTRACT FOR PURCHASE OF REAL PROPERTY

IN WITNESS WHEREOF, Seller and Purchaser have executed this Amendment as of
the date and year first written above.

THE DENUNZIO GROUP, LLC,
a Florida limited liability company

Date: January 22, 2024

By: 
Name: Dustin J. DeNunzio
Title: Manager

GOTHAM PROPERTY ACQUISITIONS LLC,
a New York limited liability company

Date: January_____, 2024

By: _____
Name: _____
Title: _____

PURCHASER SIGNATURE PAGE FOR FOURTH AMENDMENT
TO CONTRACT FOR PURCHASE OF REAL PROPERTY

IN WITNESS WHEREOF, Seller and Purchaser have executed this Amendment as of
the date and year first written above.

THE DENUNZIO GROUP, LLC,
a Florida limited liability company

Date: January____, 2024

By: _____
Name: Dustin J. DeNunzio
Title: Manager

GOTHAM PROPERTY ACQUISITIONS LLC,
a New York limited liability company

Date: January 23rd, 2024

By: Bryan Kelly
Name: Bryan Kelly
Title: President

SELLER SIGNATURE PAGE FOR FOURTH AMENDMENT
TO CONTRACT FOR PURCHASE OF REAL PROPERTY

Countersigned:

CITY OF CLEARWATER, FLORIDA,
A Florida municipal corporation.

By: _____
Brian J. Aungst, Sr.
Mayor

By: _____
Jennifer Poirrier
City Manager

Approved as to form:

Attest:

David Margolis
City Attorney

Rosemarie Call
City Clerk