

CONTRACT FOR PURCHASE OF REAL PROPERTY

PARTIES: THE CITY OF CLEARWATER, FLORIDA, a Municipal Corporation of the State of Florida whose mailing address is P.O. Box 4748, Clearwater, Florida 33758-3683 (herein "**Seller**" or "**City**"), and The DeNunzio Group, LLC, a Florida limited liability company ("**DeNunzio**"), whose mailing address is 3060 Alternate 19 North, Palm Harbor, Florida 34683, and Gotham Property Acquisitions, LLC, a New York limited liability company ("**Gotham**"), whose mailing address is 432 Park Avenue South, Second Floor, New York, New York 10016, (DeNunzio and Gotham are collectively referred to herein as "**Buyer**") (each a "**Party**" and collectively the "**Parties**") hereby agree that the Seller shall sell, and Buyer shall buy the following real property upon the following terms and conditions contained herein ("**Contract**").

1. PROPERTY DESCRIPTION

A. A parcel of land generally described as: **Exhibit "A" (attached hereto and incorporated herein):**

- **Parcel "A"** – a portion of Pinellas County Property I.D. # 16-29-15-20358-001-0040, depicted in Exhibit "A" attached hereto and by this reference made a part hereof, not to exceed 2.7 acres in size.

Parcel "A" shall be more particularly described by a survey as provided for in Section 10 herein.

- B. All buildings and other improvements situated thereon, including, but not limited to, any fixtures, building materials or equipment located thereon (collectively, the "**Improvements**");
- C. Any and all land use, zoning, and development rights and other intangible rights and interests owned by Seller and in any way related to, benefiting, or used and/or to be used in connection with the Land, including, without limitation, any third party warranties or guaranties relating to the Land or its Improvements;
- D. All licenses, permits, consents, rights-of-way and approvals that benefit or are related to the Land, including, but not limited to, the Approvals and all riparian and littoral rights, all prepaid impact and other fees, all sewer and water rights/commitments, zoning applications and other land use and/or development rights/commitments; and
- E. Such other rights, interests and properties as may be specified in this Contract to be sold, transferred, assigned or conveyed by Seller to Buyer.

Parcel "A", together with the Improvements, rights, interests and other properties described above, are collectively called "**the Land**."

PERSONALTY: NONE

2. FULL PURCHASE PRICE..... \$15,400,000.00

Together with any credits or funds provided for herein or in that certain Development Agreement (defined herein) executed on even day herewith and memorializing the intended use of the Land. The Parties acknowledge that the Seller shall be required to contribute funds to Buyer pursuant to the Development Agreement; such funds are for the benefit of Buyer and shall be shown as a credit on the closing statement, and any excess funds shall be released directly to Buyer.

3. MANNER OF PAYMENT:

Federal funds wire in United States currency funds at time of closing as more particularly described in this Contract.

4. PURCHASE PRICE

The full Purchase Price of Fifteen Million and Four Hundred Thousand Dollars and no/100s (\$15,400,000.00) as shown herein, subject to adjustments pursuant to this Contract and the Development Agreement, has been reached in accordance with the terms of that certain Request for Development Concepts (RFP No. 28-22) for Downtown Clearwater Waterfront Development Opportunities for the old City Hall Site and the Harborview Site, as defined in the Development Agreement. Jim Millspaugh, PAI performed appraisals of the Land on behalf of the Seller pursuant to City of Clearwater Charter requirements.

5. PURPOSE

The Council of the City of Clearwater, Florida ("**Council**") determined its desire to convey the Land to Buyer pursuant to the approval of Ordinance 9597-22.

6. TIME FOR ACCEPTANCE APPROVALS

At its meeting of August 4, 2022, Council authorized execution of this Contract by the City Manager.

The Parties agree this Contract is expressly contingent on the approval of the Referendum amending the City Charter authorized to be placed on the ballot by Ordinance 9597-22 as approved by Council on August 4, 2022 (the "**Referendum**"). In the event the Referendum does not receive approval at the general election held November 8, 2022, this Contract and all responsibilities of the parties herein shall be of no further effect.

7. TITLE

Seller warrants authority to and legal capacity to and shall convey marketable title to the Land by Special Warranty Deed, subject only to matters contained in Paragraph 8 of this Contract. Otherwise, title shall be free of all liens and encumbrances of record or known to Seller, but subject only to the Permitted Exceptions; and at Closing no violation of the foregoing exists.

8. TITLE EVIDENCE

- A. Seller shall, at Seller's expense and no later than December 9, 2022, deliver to Buyer a title insurance commitment issued by a Florida licensed title insurer ("**Title Company**") agreeing to liens, encumbrances, exceptions or qualifications set forth in this Contract, and those which shall be discharged by Seller at or before Closing ("**Title Commitment**"). The Title Commitment shall agree to issue to Buyer, upon the Closing of this transaction, a title insurance policy in the full amount of the Purchase Price, without exception for any matters other than the Permitted Exceptions as hereinafter defined. In addition, Seller agrees to provide Title Company with all documentation as may be necessary or required related to the approval of the Referendum.
- B. If the Title Commitment and/or Survey (defined below) reveals any defects or any matters that are unacceptable to Buyer (a "**Defect**"), Buyer shall notify Seller in writing of such Defects within twenty (20) days after Buyer's receipt of the Title Commitment and/or the Survey, whichever is later. Notwithstanding anything to the contrary, delivery of the Title Commitment and any updates thereto to the Seller, shall be deemed Buyer's written notice of Defects. Seller shall, at its sole cost and expense, promptly undertake to eliminate all such Defects to the reasonable satisfaction of Buyer and the Title Company. Seller agrees to use its best efforts to satisfy promptly any such Defects, but in the event Seller is unable within the exercise of due diligence to satisfy said Defects within sixty (60) days after said notice, Buyer may, at its option, (a) accept title subject to the Defects raised by Buyer in which event said Defects shall be deemed to be waived for all purposes or (b) cancel this Contract upon written notice to Seller and this Contract shall be of no further force and effect. It is expressly agreed that Buyer, in its sole discretion, may elect to accept or reject any proposed affirmative title insurance as a satisfaction of a Defect. It is further specifically understood that Buyer hereby objects to and will require the deletion of all standard exceptions including, without limitation:
 - i. rights or claims of parties in possession not shown by public records;
 - ii. easements or claims of easements not shown by public records;
 - iii. discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any items in which a correct survey and

inspection of the Land would disclose and which are not shown by public records;

- iv. any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by public records; and
- v. defects and liens first appearing subsequent to the effective date of the Title Commitment but prior to the Closing Date.

Notwithstanding the foregoing, Seller shall take all steps and spend any and all sums required to satisfy and effect the removal prior to closing of any title matters other than the Permitted Exceptions if such title matters are liquidated in amount or if caused by Seller. In the event that a lien, claim, or cause of action has been or shall be asserted related to any matter arising prior to Closing, Seller shall, at its sole cost and expense, immediately discharge or bond the discharge of same and defend against any claim or cause of action related thereto.

Any licenses or easements through adjoining private land for drainage, ingress, egress, parking, vehicular and pedestrian passage and the installation, operation and maintenance of utilities shall be pursuant to recorded agreements satisfactory to Buyer in its sole discretion, and the easement areas created thereby shall be insured by the Title Company as part of the Land insured under the title policy issued at the Closing Date.

- C. The Land shall be conveyed to Buyer subject to no liens, charges, encumbrances, easements, restrictions, exceptions, reservations or other matters of any kind or character other than the following exceptions (collectively, the “**Permitted Exceptions**”):
- i. Ad valorem taxes and assessments for the year of Closing and subsequent years, provided the same are not then due and payable; and
 - ii. Zoning ordinances, provided the same permit the existing and Buyer’s contemplated utilization of the Land pursuant to those uses approved in the Development Agreement.
 - iii. All terms contained within that certain Development Agreement related to the Land, recorded in the Official Records of Pinellas County, and more particularly described in Section 9 of this Contract.
 - iv. The terms of the Deed Restriction as provided in Section 11.

9. DEVELOPMENT AGREEMENT

The Land shall be encumbered by that certain Development Agreement between the City of Clearwater dated August 4, 2022 and recorded in Book _____, Pages _____ of the Official Records of Pinellas County, Florida. ("**Development Agreement**").

Execution of the Development Agreement shall occur simultaneously with the execution of this Contract. The Parties acknowledge that the Development Agreement also includes additional real property that is not subject to this Contract ("**Harborview Site**"), which is described on **Exhibit B** hereto. In the event the Development Agreement is terminated prior to Closing as to the Land, then this Contract shall be deemed automatically terminated and all responsibilities of the parties herein shall be of no further effect. Failure to obtain approval of the Development Agreement shall not be deemed a breach of this Contract by either Party hereto.

A default under the Development Agreement with respect to the Land shall not be deemed a default with respect to the Harborview Site and a default under the Development Agreement with respect to Harborview Site shall not be deemed a default by the Buyer or Seller with respect to the Land. For the avoidance of doubt, the Parties acknowledge and agree that closing under this Contract is not conditioned upon closing on Harborview Site pursuant to the Contract of Purchase of Real Property By The City of Clearwater, Florida between Buyer and the City, dated as of the date hereof (the "**Harborview Site Contract**") and a closing under the Harborview Site Contract is not a condition to closing under this Contract. The parties further acknowledge and agree that a default under this Contract shall not be deemed a default under the Harborview Site Contract and default under the Harborview Site Contract shall not be deemed a default under this Contract.

10. SURVEY

Seller shall, prior to the expiration of the Inspection Period, deliver a survey of the Land to Buyer ("**Survey**"), as prepared by a registered Florida land surveyor ("**Surveyor**"). If the Survey shows any encroachment on the Land, or that improvements located on the Land encroach on setback lines, easements, lands of others, or violate any restrictions, contract covenants or applicable governmental regulation, or any other unacceptable matter, including any issue with Buyer's intended use of the Land, the same shall constitute a Defect. The Survey shall be performed to minimum technical standards of the Florida Administrative Code and may include a description of the Land under the Florida Coordinate System as defined in Chapter 177, Florida Statutes and certified to Seller, Buyer, Buyer's assign as provided for in this Contract, Title Company, any other title insurance company or lender as required by Buyer. Additionally, Seller agrees to assign or otherwise transfer the Survey to Buyer and otherwise provide direction to the Surveyor so that Buyer can modify the Survey and otherwise continue to utilize the Survey and Surveyor, at Buyer's risk.

In consideration for the Seller providing this Survey, the Buyer agrees to hold Seller harmless as to the content, completeness, and accuracy of the information contained in the Survey ("**Hold Harmless**"); however, the Hold Harmless shall not apply to the plat as more particularly described in the Development Agreement.

11. DEED RESTRICTION

Buyer and Seller agree that a paramount purpose of this Contract and associated Development Agreement is to stimulate economic activity. For this reason, the Deed shall include a restriction that Buyer will not deed the Land or any portion thereof to any not-for-profit entity. For the avoidance of doubt, this restriction shall survive the expiration of the Development Agreement.

12. INTENTIONALLY DELETED

13. 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 December 31, 2024, 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**"). The Seller shall designate the closing agent ("**Closing Agent**").

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 purchase the Land, pay the Purchase Price, and otherwise consummate the transactions contemplated in this Contract by the Closing Date. For that reason, if the Closing does not occur by the Closing Date except in the case of Event of Default on the part of Seller, the Seller shall have the unilateral right, in its sole discretion, to terminate the Contract without penalty if Closing does not occur on or before the Closing Date.

Notwithstanding the previous paragraph, if the Closing does not occur by the Closing Date, and provided that Buyer is using Commercially Reasonable Efforts (as defined in the Development Agreement) to obtain approval for any necessary permits or other Approvals, Buyer shall have the option to extend Closing Date for an additional ninety (90) days, by delivering written notice thereof to Seller prior to the expiration of the Closing Date, and submitting payment to the Seller in the sum of Two Hundred Thousand Dollars (\$200,000.00) ("**Extension Fee**"), which 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.

14. CLOSING DOCUMENTS

Closing Agent, on behalf of Seller, shall furnish closing statements for the respective Parties. Additionally the respective Parties shall execute, as applicable, the following closing documents at Closing:

- i. Special Warranty Deed;

- ii. Bill of Sale (if applicable);
- iii. Mechanic's Lien and Possession Affidavit;
- iv. FIRPTA affidavit;
- v. Corrective instruments that may be required for the conveyance;
- vi. Blanket conveyance and assignment;
- vii. All other documents as may be required by this Contract or by the Title Company, including any documentation required by the Title Company to verify approval of the Referendum;
- viii. Escrow Agreement; and
- ix. All other documents that may be required under the Development Agreement.

The appropriate Parties shall deliver resolutions or applicable documents authorizing the sale and delivery of the deed and certifying the resolution or documents and setting forth facts showing the conveyance conforms to the requirements of local law.

15. CLOSING EXPENSES

Pursuant to Chapter 201.24, Florida Statutes, Seller is exempt from paying documentary stamps on the deed. Buyer shall pay the cost for documentary stamps if applied to this transaction. Recordation of the deed shall be paid by Buyer. Seller shall pay the costs of recording any corrective instruments, the Survey, and title insurance as provided in this Contract. All other closing costs shall be apportioned in the manner customary for commercial real estate transactions in Pinellas County, Florida.

16. PRORATIONS; CREDITS

Taxes, assessments, rent (if any) and other revenue of the Land shall be prorated through the day before Closing. Closing Agent shall collect all ad valorem taxes uncollected but due through day prior to Closing Date and deliver same to the Pinellas County Tax Collector or other applicable party. If the amount of taxes and assessments for the current year cannot be ascertained, rates for the previous year shall be used with due allowance being made for improvements and exemptions. Assessments for any improvements that are substantially complete at time of closing shall be paid in full by Seller. Additionally, the Purchase Price shall be subject to any applicable prorations, credits, or offsets as provided for herein or in the Development Agreement.

17. OCCUPANCY

Seller warrants that there are no parties in occupancy other than the Seller, or as otherwise disclosed herein. Seller agrees to deliver occupancy of the Land at time of Closing Date unless otherwise stated herein. At Closing, Buyer agrees to accept the Property in its existing conditions unless otherwise stated herein or in separate writing. The Land shall be delivered free and clear of all occupants, licensees or other users, except as provided for in this Contract.

18. LEASES

Seller warrants there are no tenants occupying the Land and that no leases, licenses, or other occupancy agreements exist, recorded or unrecorded, authorizing such occupancy or use of the Land.

19. PROPERTY CONDITION

Subject to the representations and warranties contained in this Contract, and Seller's obligations under the Development Agreement, including, but not limited to Seller's obligation to undertake the environmental remediation and demolition of the existing improvements on the Land, Seller shall deliver the Land to Buyer at time of Closing Date in accordance with the Contract and the terms of the Development Agreement. Seller makes no warranties other than is disclosed in this Contract, in the Development Agreement, or in any of the Closing Documents.

- a. **As Is with Right of Inspection:** Buyer may as of the Effective Date, at Buyer's expense, and within 60 days following the Referendum Date hereof ("**Inspection Period**"), conduct inspections, tests, environmental and any other investigations of the Land Buyer deems necessary to determine suitability for Buyer's intended use. Upon Seller's execution hereof, Seller shall grant reasonable access to the Land to Buyer, its agents, contractors and assigns for the purposes of conducting the inspections provided, however, that any intrusive sampling of soils and groundwater on the Land shall be conducted only (i) during regular business hours, (ii) with no less than two (2) business days prior written notice to Seller, which notice shall include the proposed scope of work for any such intrusive sampling, and (iii) in a manner which will not unduly interfere with Seller's current use of the Land. Prior to entering the Land or performing any intrusive soil or groundwater sampling on the Land, Buyer shall deliver to Seller a certificate of insurance evidencing that Buyer's consultant has in place and shall maintain during the pendency of work on the Land commercial general liability insurance with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury or death and property damage insurance including coverage for contractual liability covering any accident arising in connection with the presence of Buyer's consultant, or its subcontractors, agents and representatives on the Land, which shall name Seller as additional insureds and is written by a reputable insurance company, provided, however, that in no event shall Buyer be liable for any pre-existing conditions. Any damage to the Land caused by Buyer or its consultants in conducting any such environmental

assessment, investigation or review shall be repaired by Buyer at its sole cost and expense provided, however, that in no event shall Buyer be liable for any pre-existing conditions. Seller will ensure that throughout the Inspection Period, any existing utilities services required for Buyer's inspections and investigations shall be maintained and not disconnected. Buyer shall not engage in any activity that could result in a mechanics lien being filed against the Land without Seller's prior written consent. In the alternative, at the Buyer's sole discretion, if Seller offers to repair or otherwise remedy such conditions to Buyer's satisfaction, Buyer may accept such offer. If Buyer terminates this Contract, and this transaction does not close, Buyer agrees, at Buyer's expense, to repair all damages to the Land resulting from the inspections and investigations and return the Land to its present condition.

Buyer may terminate this Contract by written notice to Seller prior to expiration of the Inspection Period for any reason whatsoever, or for no reason.

- b. **Buyer's Agreement to Indemnify:** Buyer hereby agrees to indemnify, defend and hold Seller harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including reasonable attorneys' fees) caused by Buyer's inspections or tests permitted under this Contract with respect to conditions created by the Buyer as a result of its inspections. In no event shall Buyer be liable to indemnify Seller in connection with any pre-existing conditions. Buyer's obligations under this Section shall survive the termination of this Contract and shall survive the Closing.
- c. **Document Delivery.** Seller shall provide to Buyer any and all prior surveys, environmental reports, plans, specifications and contracts associated with the Land within ten (10) days of the Effective Date.

20. WALK-THROUGH INSPECTION

At a time mutually agreeable between the Parties, but not later than the day prior to Closing, Buyer may conduct a final "walk-through" inspection of the Land to determine compliance with any Seller obligations and to ensure that all Property is in and on the premises. No new issues may be raised as a result of the walk-through.

21. RISK OF LOSS

If the Land is damaged by fire or other casualty before closing, Buyer shall have the option of either taking the Land "as is", or of canceling this Contract. Seller shall have no obligation to repair or rebuild.

22. DEFAULT

A material breach by either Party of any term of this Contract shall constitute an Event of Default. Upon an Event of Default, the aggrieved Party shall promptly notify all other

23. RADON GAS NOTIFICATION

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

The Parties acknowledge that this Contract is a public record subject to the terms of Section 119, Florida Statutes; however, neither this Contract or any notice of it shall be recorded with or by the Clerk of Court. This Contract shall bind and inure to the benefit of the Buyer, the Seller, and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all.

All notices provided for herein shall be deemed to have been duly given if and when deposited in the United States Mail, properly stamped and addressed to the respective Party to be notified or by electronic mail, including the Parties to this Contract, the Parties' attorneys.

10

Gotham Property Acquisitions LLC
Attn: Bryan Kelly
432 Park Avenue South, Second Floor
New York, NY 10016
Email: bkelly@gothamorg.com

With a copy to:

Hill, Ward & Henderson, P.A.
Attn: Katherine Cole
101 E. Kennedy Blvd., Suite 3700
Tampa, FL 33602
Email: katie.cole@hwhlaw.com

Russell A. Kivler
Hirschen Singer & Epstein LLP
902 Broadway, 13th Floor
New York, NY 10010
Email: rkivler@hseny.com

Seller:

City of Clearwater
Attn: David Margolis, City Attorney
600 Cleveland Street, 6th Floor
Clearwater, FL 33755
Email: David.Margolis@MyClearwater.com

26. ASSIGNABILITY; PERSONS BOUND

This Contract is not assignable by Buyer without the written consent of the Seller, which consent may be given or withheld in Seller's sole and absolute discretion; provided, however, Buyer may, without the consent of the Seller, (i) assign its interest in this Agreement to one or more Special Purpose Entities (defined below) and (ii) transfer membership interest in the Buyer and/or Special Purpose Entities to third party investors provided that one or more of the Key Principals (defined below) retain direct or indirect control of the Buyer and/or Special Purpose Entities, subject to major decision and removal rights of such lenders and/or investor members (each herein called a "**Break-Out Owner**"), such election and option of the Buyer being herein called the "**SPE Option**". In the event Buyer elects the SPE Option, this Contract shall be deemed automatically assigned to each Break-Out Owner and the Break-Out Owner shall have all rights of Buyer with regard to the Land. Additionally, Buyer and/or the Special Purpose Entities shall be entitled to collaterally assign its interest in the Land to institutional lenders and/or investors in connection with the construction and/or permanent financing of the Land without the consent of Seller.

"Key Principals" means David Picket, Matthew Picket and Dustin J. DeNunzio.

"**Special Purpose Entities**" means single purpose limited liability companies and/or limited partnerships formed for the purpose of directly or indirectly owning all or any portion of the Land, which entities shall be directly or indirectly controlled by one or more of the Key Principals.

27. ATTORNEY FEES; COSTS

In any litigation arising out of this Contract, each Party shall pay its own attorney's fees and costs.

28. TYPEWRITTEN OR HANDWRITTEN PROVISIONS

Typewritten or handwritten provisions shall control all printed provisions of Contract in conflict with them.

29. BROKER REPRESENTATION

If either Party chooses to be represented by a Licensed Real Estate Broker upon Seller's execution hereof, then that Party solely shall be responsible for any such Broker fee or expense due to said Broker.

30. EFFECT OF PARTIAL INVALIDITY

The invalidity of any provision of this Contract will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Contract is held to be invalid, the Parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both Parties subsequent to the expungement of the invalid provision.

31. GOVERNING LAW AND VENUE

It is agreed by and between the Parties hereto that this Contract shall be governed by, construed, and enforced in accordance with the laws of the State of Florida. Venue for any action brought in state court shall be in Pinellas County, Florida, Clearwater Division. Venue for an action brought in federal court shall be in the Middle District of Florida, Tampa Division.

32. COUNTERPARTS; FACSIMILE COPY

This Contract may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. A facsimile copy of this Contract, including any addendum, attachments and any written modifications hereof, and any initials or signature thereon shall be deemed an original.

33. ENTIRE AGREEMENT

Upon execution by Seller and Buyer, this Contract and any attached exhibits and the Development Agreement shall constitute the entire agreement between the Parties relating to the purchase of the Land, and shall supersede any and all prior and contemporaneous written and oral promises, representations or conditions in respect thereto. All prior negotiations, agreements, memoranda and writings shall be merged herein. Any changes to be made in this agreement shall only be valid when expressed in writing, acknowledged by the Parties and incorporated herein or attached hereto.

34. EFFECTIVE DATE AND REFERENDUM DATE

The “**Effective Date**” of this Contract shall be defined as date that both Parties sign the Contract.

The “**Referendum Date**” of this Contract shall be defined as the date upon which the Referendum of City of Clearwater voters approving the conveyance of the Land pursuant to the terms herein is certified by the supervisor of elections.

35. FINANCING CONTINGENCY

Buyer shall apply for, and will thereafter continue to submit all documents required to obtain, a commercially reasonable loan to purchase the Land, if required by Buyer, and an executed term sheet related to financing to construct all of the improvements under the Approvals and the Development Agreement at or prior to the Closing Date (collectively the “**Loan**”). Buyer’s obligations under this Contract are contingent upon Buyer obtaining, no later than the Closing Date, financing to be secured by a first mortgage and lien against the Land in an amount and with terms reasonably acceptable to Buyer (“**Financing Contingency**”). If, despite Buyer’s commercially reasonable efforts, Buyer is unable to obtain financing in an amount and with terms reasonably acceptable to Buyer on or prior to the Closing Date, Buyer shall have the right to terminate this Contract by delivering written notice to Seller on or prior to the Closing Date. Thereafter, neither Party to this Contract shall have any further rights or liabilities under this Contract except with respect to those provisions that specifically provide that they survive the termination of this Contract.

36. DEVELOPMENT APPROVALS PERIOD

Buyer and Seller’s obligation to consummate the transaction contemplated herein is contingent upon, including the other conditions occurring in Sections 39 and 40 of this Contract, Buyer obtaining all Approvals prior to the Closing Date. As used herein, the term “**Approvals**” shall mean all final non-appealable governmental permits described in the Development Agreement and applicable to Buyer’s development of the Land, where said permits are legally necessary prior to commencing construction on the Land as described in the Development Agreement, including, without limitation, to the extent applicable: (i) Flexible Development Approval for site plan approval including the allocation of density from the Public Amenities Incentives Pool, as provided for in the Development Agreement; (ii) all permits required from the City of Clearwater; (iii) any and

all permits required from the Southwest Florida Water Management District; and (iv) Approval of the Preliminary Plat, and, if applicable, Final Plat Approval.

As used in this Contract, the term “final” will mean that all appeal periods will have expired without an appeal taken therefrom or, in the event any appeal is taken, a judgment will have been entered sustaining the Approvals and all appeal periods from such judgment will have expired. Except as provided in the Development Agreement, all costs and expenses associated with obtaining the Approvals and complying therewith will be paid solely by Buyer, except for the Preliminary and Final Plat Approval, which shall be provided by the Seller, and, subject to the terms and conditions of the Development Agreement. Seller hereby agrees and acknowledges that Buyer may apply for and obtain all necessary Approvals and may commence the Approvals as of the execution date of this Contract. Upon request by Buyer from time to time, Seller, at no cost or expense to Seller, shall, to the extent reasonably requested by Buyer, promptly execute, join in, consent to, and support any requests, applications, proposals, petitions, consents or hearings filed, initiated, or related to the Approvals reasonably requested by Buyer.

37. FORCE MAJEURE AND GOVERNMENTAL DELAY

For purposes of this Contract, “**Force Majeure Event**” means any delay that is directly attributable to and caused by flood, fire, earthquake, hurricanes, tornadoes, wind storms, “named storms,” riots, national emergency, sabotage, strikes, labor dispute, wars, pandemics, events of similar or greater magnitude; terrorist threats or actions; or directives or orders issued by Governmental Authorities (defined below) that explicitly prohibit or prevent the Closing; the failure or refusal of Governmental Authorities to act and process applications within the time-frame allowed by law or ordinance, or otherwise hold public or private meetings due to COVID-19 or any other public health reason; unreasonable or unlawful delay by Governmental Authorities to act and process properly completed applications, permits and requested approvals with respect to the Approvals, an emergency order issued by Pinellas County, other emergency order issued by the City of Clearwater or other applicable governmental entities, agencies or authorities having jurisdiction, due to COVID-19 or any other public health reason or other causes beyond the reasonable control of Buyer.

For the avoidance of doubt, a Force Majeure Event shall not include (1) financial distress or the inability of the Buyer to make a profit or avoid a financial loss; (2) changes in market prices; or (3) Buyer’s financial inability to perform its obligations hereunder.

“**Governmental Authorities**” means any and all federal, state, county, city, town, other municipal corporation, governmental or quasi-governmental board, judge, court, agency, authority, department, or body having jurisdiction over the Land.

Furthermore, notwithstanding anything to the contrary contained in the Contract, all time periods applicable to Buyer shall be subject to day-for-day extensions in the event of any Governmental Delay (as hereinafter defined). “**Governmental Delay**” means any actual

delay in the Approvals (including delays in the granting of entitlements or execution of agreements) to the extent that such delay is actually caused by any unlawful or unreasonable act or failure to act by the City or any of its employees, public officials, officers or committees/agencies (collectively, the “**Government**”). “**City**” refers to the City of Clearwater, Florida, the Seller in this Contract.

If the Buyer reasonably determines that a Force Majeure Event or Governmental Delay is preventing the Buyer from timely closing or another deadline in the Contract, the procedure for tolling any time periods in this Contract shall follow the same procedures described in Section 9.16, Section 9.17, and Section 9.18 of the Development Agreement.

38. SELLER WARRANTIES AND REPRESENTATIONS

Seller expressly covenants, warrants and represents the following matters:

- i. As of the date of Closing, no work has been performed or is in progress upon, and no materials have been furnished to, the Land or any part thereof, which might give rise to any mechanic’s, material or other liens against the Land or any part thereof (“**Liens**”).
- ii. Seller (a) is a municipal corporation validly existing under the laws of the State of Florida, (b) has the power and authority to carry on its business as now conducted, and (c) has the power and authority to execute and deliver this Contract, the deed and all other instruments to be executed and delivered by Seller in connection herewith and therewith, and to perform all of its obligations hereunder as provided for in the authorization provided by the City Council on August 4, 2022.
- iii. The execution and delivery by Seller of this Contract and all other documents executed in connection with this Contract and the performance by Seller of its obligations hereunder and thereunder: (a) have been duly authorized by all requisite municipal action in accordance with the laws of the State of Florida, (b) will not violate or be in conflict with any of the terms, conditions or provisions of any law, order, rule, regulation, ordinance, code or decree of any court or governmental authority, (c) will not result in a breach of or constitute (with or without the giving of notice or the passage of time, or both) a default under any indenture, agreement or other instrument to which Seller is a party or by which Seller or any of its properties or assets may be bound, and (d) will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon Buyer or the Land.
- iv. Except for the Referendum, no consent, approval or authorization of or registration, declaration or filing with any person or entity, including without limitation any governmental authority is required in connection with the valid execution of this Contract or the performance of any of the transactions required or contemplated

hereby or, if required, such consent, approval, authorization or registration, declaration or filing has been or shall have been obtained prior to the Closing.

- v. This Contract is, and all the documents to be delivered by Seller pursuant to this Contract will be, when executed by Seller, binding on and enforceable against Seller in accordance with their respective terms, except as such enforcement may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors, or (b) by general equitable principles (whether enforcement is sought in law or at equity).
- vi. During its ownership of the Land, there have not been and there are not now pending or, to Seller's knowledge, threatened: (i) claims, complaints, notices, or requests for information received by Seller with respect to any alleged violation of any Environmental Law with respect to the Land; or (ii) claims, complaints, notices, or requests for information sent to Seller regarding potential or alleged liability under any Environmental Law with respect to the Land.
- vii. To Seller's knowledge, the Land and all Improvements are in compliance with all Environmental Laws, or will be in compliance on the Closing Date.

"Environmental Law" shall mean any present and future law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities applicable to the Land and relating to the environment and environmental conditions or to any Hazardous Material (including, without limitation, CERCLA, 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, the Clean Air Act, 33 U.S.C. § 7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 1101 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*, and any so-called "Super Fund" or "Super Lien" law, any law requiring the filing of reports and notices relating to Hazardous Materials, environmental laws administered by the Environmental Protection Agency, and any similar state and local laws, all amendments thereto and all regulations, orders, decisions, and decrees now or hereafter promulgated thereunder concerning the environment, industrial hygiene or public health or safety).

The representations and warranties of Seller as set forth in this Contract shall be true and correct as of the Effective Date of this Contract and as of the Closing Date and shall survive the Closing of this transaction for a period of forty-eight (48) months after Closing.

39. CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE.

The obligation of Buyer to consummate the transactions contemplated by this Contract is subject to the following conditions precedent:

- i. The execution and delivery of this Contract, and the consummation of the transactions contemplated by this Contract, shall have been approved by the Referendum. Sufficient evidence of that the Referendum has been approved shall be provided to the Title Company.
- ii. The Buyer obtaining the Loan described in Section 35 of this Contract.
- iii. No Event of Default exists under the Development Agreement with respect to the Land.
- iv. Buyer shall have received all necessary Approvals.
- v. Full payment by the Clearwater Community Redevelopment Agency ("**CRA**") on behalf of Buyer of all impact fees and utility connection fees required by the Development Agreement.
- vi. Seller has satisfied all of its monetary obligations under the Development Agreement that are specifically required as a condition precedent to occur prior to Closing, unless waived by Buyer in its sole discretion.
- vii. Seller, or Seller's designee, shall provide evidence of funding its obligations provided for in the Development Agreement, including the funding of the Pedestrian Bridge (as defined in the Development Agreement). The Parties agree to enter into a mutually agreeable separate escrow agreement prior to Closing related to the escrow of the funds for the Pedestrian Bridge ("**Escrow Agreement**").
- viii. Seller shall have caused there to be no Liens on the Land, other than Permitted Exceptions.
- ix. Seller shall deliver a clean Phase I environmental report along with, if applicable, a Phase II environmental report indicating no further recognized environmental conditions exist on the Land that have not been addressed or remediated by the Seller.
- x. Seller shall conduct all remediation and demolition associated with the Land, at its sole cost and expense.
- xi. The Seller shall have allocated and committed the funds to construct the future Public Realm improvements described in Section 10.09 of the Development Agreement.
- xii. Seller's deposit of the allocable portion of the Parking Contribution (as defined in the Development Agreement) for the Land as provided in the Development Agreement.

In the event that any of the foregoing conditions have not been fully and unconditionally satisfied for any reason on or before the Closing Date, Buyer may either, in its sole discretion, waive the condition precedent and proceed to close if the conditions set forth in Section 40 are met, or terminate this Contract by giving written notice to Seller on or before the Closing Date, in which case this Contract shall be deemed terminated without the necessity of further documentation.

40. CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE

The obligation of Seller to consummate the transactions contemplated by this Contract is subject to the following conditions precedent:

- i. The Buyer obtaining and providing proof to the Seller of the Loan described in Section 35 of this Contract. For the avoidance of doubt, proof of available construction financing may be in the form of an executed term sheet.
- ii. Buyer shall provide evidence of funding its obligations provided for in the Development Agreement, including the funding of the Pedestrian Bridge (as defined in the Development Agreement). The Parties agree to execute the Escrow Agreement at Closing.
- iii. Buyer shall provide evidence 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.

In the event that any of the foregoing conditions have not been fully and unconditionally satisfied for any reason on or before the Closing Date, Seller may either, in its sole discretion, waive the condition precedent and proceed to close if the conditions set forth in Section 39 are met, or terminate this Contract by giving written notice to Buyer on or before Closing, in which case this Contract shall be deemed terminated without the necessity of further documentation.

41. EXCULPATION.

Notwithstanding anything to the contrary, in no event shall the partners, officers, directors, employees, affiliates or subsidiaries of the Buyer have any liability whatsoever pursuant to this Contract and Seller agrees to look solely to Buyer in connection with the remedies provided for in this agreement.

EXECUTED this ____ day of _____, 2022 by BUYER.

Attest:

The DeNunzio Group, LLC, a Florida
limited liability company

Sign _____

Print: _____

By: _____

Sign: _____

Print: _____

Title: _____

Gotham Property Acquisitions LLC, a
New York limited liability company

Sign _____

Print: _____

By: _____

Sign: _____

Print: _____

Title: _____

APPROVED BY SELLER & EFFECTIVE this ____ day of
_____, 2022.

Countersigned:

CITY OF CLEARWATER, FLORIDA

Mayor

By: _____

City Manager

Approved as to form:

Attest:

City Attorney

City Clerk

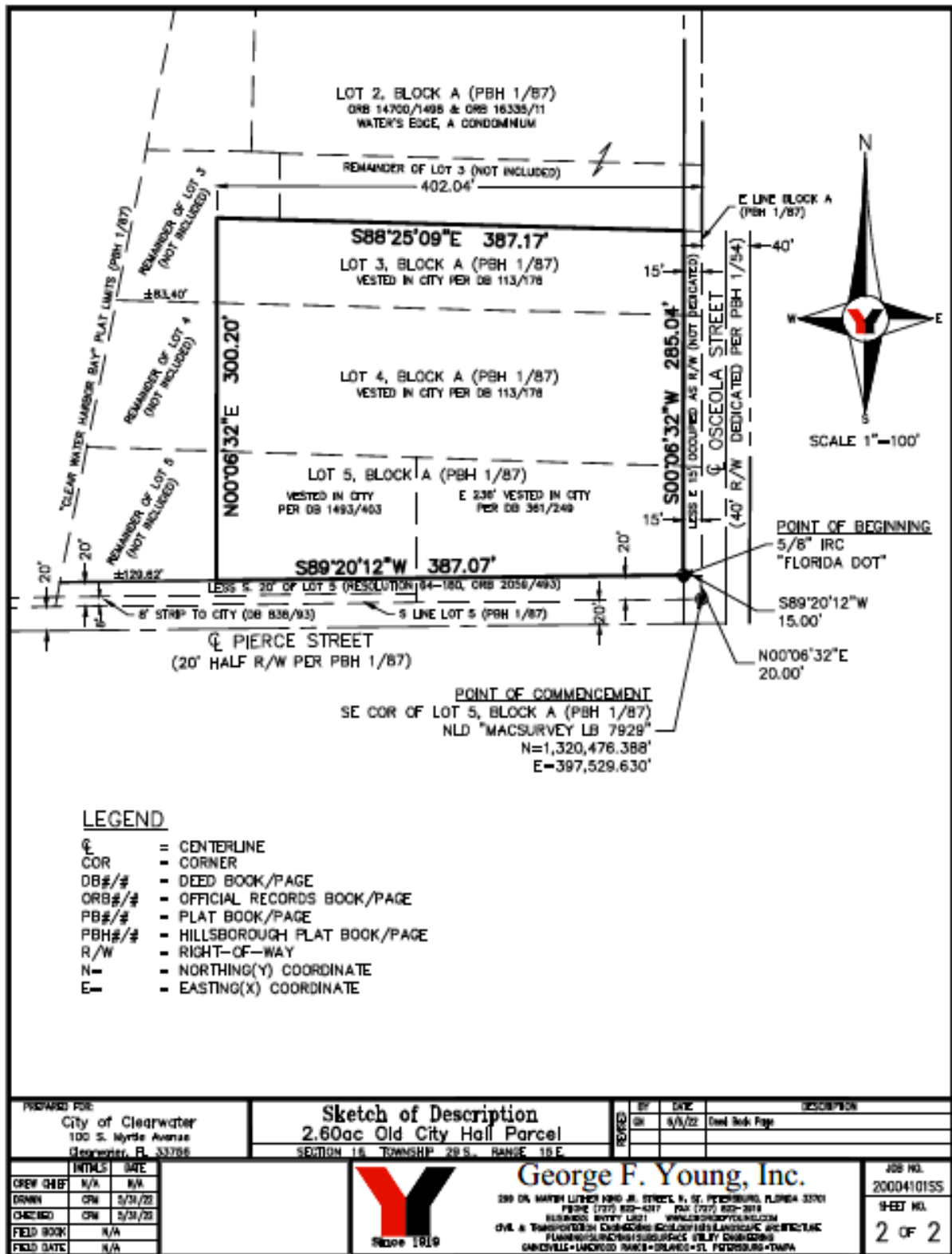


EXHIBIT “B”

Harborview Site

a portion of Pinellas County Property I.D. #16-29-15-57996-000-0030, not to exceed 1.5
acres in size

DESCRIPTION

A portion of Lot 3 of Edward Mills Subdivision, as shown on the plat recorded in Plat Book 9, page 36 of the Public Records of Pinellas County, Florida, AND a portion of Lots 1 & 5 of Rompon's & Baskin's Corrected Map of Causeway Business District, as shown on the plat recorded in Plat Book 57, page 1 of said Public Records of Pinellas County, said portions being more particularly described as follows:

Beginning at the Northeast corner of said Lot 3 of Edward Mills Subdivision; thence S 00° 06' 32" W along the East line of said Lot 3, a distance of 21.59 feet; thence N 76° 40' 00" W, a distance of 216.39 feet; thence N 00° 43' 12" E, a distance of 278.93 feet; thence S 89° 11' 37" E, a distance of 192.69 feet to the East line of said Lot 5 of Rompon's & Baskin's plat; thence S 00° 06' 32" West, a distance of 304.12 feet to the Southeasterly corner of Lot 1 of said Rompon's & Baskin's plat, said point also being a point on the North line of said Lot 3, Edward Mills Subdivision; thence S 88° 29' 57" E along the North line of said Lot 3, a distance of 15.00 feet to the Point of Beginning.

Containing 58,727 square feet, or 1.34818 acres, more or less.

NOTES

1. THIS IS A SKETCH TO ACCOMPANY A DESCRIPTION AS DEFINED IN CHAPTER 5J-17.052 OF THE FLORIDA ADMINISTRATIVE CODE AND IS NOT A FIELD SURVEY.
2. BEARINGS SHOWN HEREON ARE BASED ON GRID NORTH, AS REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE, AS ESTABLISHED BY THE NATIONAL OCEAN SERVICES' PROGRAM OFFICE NATIONAL GEODETIC SURVEY AND THE WEST LINE OF OSCEOLA STREET BEING SOUTH 00°06'32" WEST.
3. COORDINATES SHOWN HEREON ARE REFERENCED TO FLORIDA STATE PLANE COORDINATES, WEST ZONE, NORTH AMERICAN DATUM OF 1983, 2011 ADJUSTMENT AS ESTABLISHED USING THE FLORIDA DEPARTMENT OF TRANSPORTATION'S FLORIDA PERMANENT REFERENCE NETWORK OF BASE STATIONS. THE COORDINATES ARE DISPLAYED IN US SURVEY FEET.
4. THIS DESCRIPTION IS BASED ON THE DIMENSIONS PROVIDED IN A BOUNDARY SURVEY TITLED "THE CITY OF CLEARWATER'S TITLE IN COACHMAN PARK" AND OTHER CITY PROPERTIES, PREPARED BY MACSURVEY, INC., ITS PROJECT 2018-023, AND HAVING A SURVEY DATE OF 11/1/2019.
5. PROPOSED INFORMATION PER STANTEC BULLETIN 1 FILE 00C-DB01 DATED 11/12/2021.

LEGEND

CL	= CENTERLINE
COR	= CORNER
DB#/#	= DEED BOOK/PAGE
ORB#/#	= OFFICIAL RECORDS BOOK/PAGE
PB#/#	= PLAT BOOK/PAGE
PBH#/#	= HILLSBOROUGH PLAT BOOK/PAGE
R/W	= RIGHT-OF-WAY
N=	= NORTHING(Y) COORDINATE
E=	= EASTING(X) COORDINATE

PREPARED FOR: City of Clearwater 100 S. Myrtle Avenue Clearwater, FL 33755		Sketch of Description 1.35ac Commercial Parcel SECTION 16, TOWNSHIP 28 S., RANGE 18 E.		BY SK DATE 5/5/22 DESCRIPTION Adjust west line location	
INTDLS DATE	CREW CHIEF N/A DATE 5/31/22	DRAWN CFW DATE 5/31/22	FIELD BOOK N/A FIELD DATE N/A	 George F. Young, Inc. 289 DA MARSH LUTHER KING JR. STREET N. ST. PETERSBURG, FLORIDA 33701 PHONE (772) 822-4377 FAX (772) 822-2874 BUSINESS HOURS 9:00 AM - 5:00 PM CIVIL & TRANSPORTATION ENGINEERING COLLEGIATE LANDSCAPE ARCHITECTURE PLANNING SURVEYING & DESIGN GAINESVILLE • UNCORO RANCH • GAINESVILLE • ST. PETERSBURG • TAMPA	JOB NO. 2000410155 SHEET NO. 1 OF 2

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 LOGIN: Kipper, Greg

