

**DEVELOPER'S AGREEMENT FOR PUBLIC WORKS IMPROVEMENTS –
DOWNTOWN HYATT PLACE MIXED-USE DEVELOPMENT**

THIS AGREEMENT ("Agreement") made and entered into as of the last signature date affixed hereto ("Effective Date") by and between the **CITY OF GAINESVILLE**, a Florida municipal corporation, whose mailing address is Post Office Box 490, Station 58, Gainesville, Florida 32627, ("City"), and **MAGNOLIA STREET HOSPITALITY LLC**, a Florida limited liability company, whose address is 502 NW 16th Avenue, Suite 1, Gainesville, FL 32601, ("Developer"), jointly referred to as the "Parties".

WHEREAS, Developer is developing a mixed-use project east of S Main Street, south of SE 2nd Avenue, west of SE 1st Street, and north of SE 2nd Place, that will include one building with commercial, residential, and hotel uses ("Project"); and

WHEREAS, the Project is located within the Gainesville Community Redevelopment Area (GCRA) as provided for in Section 2-406 of the City's Code of Ordinances; and

WHEREAS, the Developer has received development plan approval for the Project from the City in accordance with Chapter 30, Article III, Division 9 of the City's Land Development Code, and which approval required no changes to the current conditions of the public rights-of-way surrounding the footprint of the Project; and

WHEREAS, although not required by the Developer as any condition of Project development, both Parties desire certain improvements to the public infrastructure on the public rights-of-way surrounding the footprint of the Project; and

WHEREAS, the City and its various departments have agreed to provide a not-to-exceed reimbursement to Developer for costs associated with Developer's improvements to certain public infrastructure on the public rights-of-way surrounding the footprint of the Project, provided the Developer complies with the terms of this Agreement; and

WHEREAS, the City finds that this Agreement meets the purposes and intent of Chapter 2, Article V, Division 9 of the City's Code of Ordinances and otherwise promotes the public interest and health, safety, and welfare of the City of Gainesville.

NOW THEREFORE, in consideration of the mutual covenants as set forth below, the Parties agree as follows:

1. **Recitals.** The recitals above comprise a material part of this Agreement and are hereby incorporated by reference.
2. **Term.** This Agreement will become effective on the Effective Date and will remain in effect until the earlier of: 1) Parties have fully performed their obligations as set forth in this Agreement; or 2) this Agreement is terminated as provided herein.
3. **Exhibits and Attachments.** The following Exhibits are attached to and are incorporated into and made a part of this Agreement as if fully set forth herein:

Exhibit A: Legal description of the property making up the Project.

Exhibit B: Approved Infrastructure Improvements and Reimbursable Costs.

Exhibit C: Easement.

4. Definitions. The following terms used in this Agreement shall have the following meanings:

Approved Plans: The construction plans for the Approved Infrastructure Improvements submitted by Developer and approved by the City and/or Gainesville Regional Utilities.

Approved Infrastructure Improvements: Those public infrastructure improvements for which the City is providing funding with respect to the Project, and which are more particularly described in Exhibit B, attached hereto including the Eligible Costs with respect thereto.

Adequately Documented Request for Payment: Applications for payment must be submitted in detail reasonably sufficient for an audit thereof in accordance with the City's policies on the subject in effect at the time construction commences. Application for payment must include, at a minimum, the following information with respect to the Approved Infrastructure Improvements: the amount paid for labor, materials, and equipment incorporated into the Approved Infrastructure Improvements; a description and associated costs of any applicable phases, bid packages, or parts of the work actually performed; previously invoiced amounts and credit payments made; the total amount the payment is for less any retainage; a summary of change orders to-date; and any lien waiver(s) and other documentation verifying payment to subcontractors and material suppliers.

Eligible Costs: Costs that: (i) are actual costs represented by invoice or other payment request; (ii) are customary and reasonable for the Gainesville area as evidenced by prices paid by the City over the past five (5) years; (iii) do not include more than five percent (5%) for costs associated with the general conditions of construction; and (iv) do not include more than six percent (6%) for overhead and profit.

Public Infrastructure: Improvements to real property constructed for the benefit and use of the public.

Reimbursement Date: The date by which the City must reimburse Developer for all Eligible Costs. The Reimbursement Date shall be sixty (60) calendar days from date on which Developer provides to City the following Project-related closeout information: recorded Easement(s), permit closeouts, inspection documentation, pay applications with schedule of values, invoices, and supporting documentation.

Substantial Changes: as reasonably determined by the City and/or the Developer, depending on which party requests a Substantial Change.

5. Project Construction.

- a. General. Developer shall construct, or cause to be constructed, the Project, including the Approved Infrastructure Improvements, in accordance with the Approved Plans. Developer shall engage one or more Florida licensed and qualified contractors (each, a "General Contractor") with the ability to construct the Project in a safe and professional manner and pursuant to, and in accordance with, the Approved Plans, and in accordance with all applicable laws, codes, statutes, ordinances, rules, and regulations.
 1. Developer shall require its General Contractor to utilize local subcontractors, laborers, and suppliers to the greatest extent possible.
 2. Developer asserts that Developer and Developer's General Contractor(s) are Equal Opportunity Employers.
 3. The City shall not be involved in Developer's decision to award bids. Developer shall, however, provide the City a copy of all bids awarded and the finalized schedule of values for the

City Approved Infrastructure Improvements within a reasonable amount of time after the Developer's decision to award any bids and in no case later than Developer's submission of any associated Adequately Documented Request for Payment.

b. Approved Plans and Project.

1. Developer shall cause the Project and Approved Infrastructure Improvements to be constructed according to the Approved Plans.
2. If any Substantial Changes are proposed to be made to the Approved Plans, Developer shall submit amended plans to the City for approval.
3. The City is not responsible for any error or omission in the Approved Plans or failure of the Approved Plans to comply with any building, zoning, or other regulations of other regulatory agencies.

c. Material Delays. The Developer shall immediately notify the City in writing of any actual or reasonably anticipated material delays in the construction of the Project and Approved Infrastructure Improvements.

d. Construction Schedule. Upon commencement of construction of the Project and Approved Infrastructure Improvements, Developer shall provide the City with a preliminary construction schedule showing the anticipated completion dates for the Project and Approved Infrastructure Improvements, and any updated construction schedules that show Substantial Changes to the preliminary schedule during the course of construction. All items listed in Exhibit B must be specifically noted in the Construction Schedule.

e. Access to Project. The City, its employees, and contracted agents will have reasonable access to the Project and Approved Infrastructure Improvements during construction upon reasonable prior notice to Developer.

6. City's Obligations.

a. Funding. The City acknowledges, represents, and warrants to Developer that the City has approved and budgeted funding in the amount of \$334,906.80 for reimbursement to Developer for the construction of the Project and the Approved Infrastructure Improvements, provided Developer complies with the terms and conditions of this Agreement.

b. Upon completion of the Project and Approved Infrastructure Improvements, the City shall reimburse Developer for Eligible Costs associated with the Approved Infrastructure Improvements in an amount not to exceed \$334,906.80, provided Developer is in compliance with the terms of this Agreement at the time reimbursement is due.

c. The City agrees that it will provide the funding by way of reimbursement of the actual costs for each of the Approved Infrastructure Improvements listed in Exhibit B, up to a total of \$334,906.80. Developer understands that if the actual cost for any Approved Infrastructure Improvement listed in Exhibit B is less than the applicable amount listed in Exhibit B, only the actual cost of that Approved Infrastructure Improvement will be reimbursed to Developer. In the event one (or more) Approved Infrastructure Improvements is completed below the applicable costs listed in Exhibit B ("Under Budget Improvement"), and one (or more) Approved Infrastructure Improvements is constructed above the listed costs ("Over Budget Improvement"), Developer may request, and the City shall agree, to transfer the additional available moneys from the Under Budget Improvement to the Over Budget Improvement. In no event shall the total reimbursements exceed \$334,906.80.

d. Grant of Easement. Upon completion of the Project and Approved Infrastructure Improvements,

the City shall grant an easement to Developer to construct, maintain, and use the sidewalks and associated pedestrian public rights-of-way areas surrounding the footprint of the Project for outdoor seating, landscaping, and overhang for entry way(s). The easement must be in substantially the same form attached as Exhibit C ("Easement"). During the life of the easement, the easement area must at all times be open and dedicated for public use. Transfer shall occur within sixty (60) days of Completion Date. Developer shall record the Easement within sixty (60) days of the Completion Date.

7. **Subject to Appropriations.** The City-approved funds for this Agreement are subordinate in all respects to all debt service obligations of the City under bonds or other forms of debt currently outstanding or to be issued in the future. The obligations of the City as to any funding required pursuant to this Agreement are limited by and subordinate to any obligation in any given fiscal year to budget and appropriate from legally available sums in the City's annual budget. Notwithstanding this Agreement, the City may pledge any legally available revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.
8. **Developer's Obligations.** The City funds proposed to be provided to Developer pursuant to Section 6 above is expressly contingent upon Developer's compliance at all times with the terms of this Agreement, particularly the following:
 - a. **Commencement and Completion Dates.** Developer shall commence construction of the Project and Approved Infrastructure Improvements on or before _____ (date). Developer shall complete construction of the Project and Approved Infrastructure Improvements on or before _____ ("Completion Date"). Developer shall record the Easement, and provide an Adequately Documented Request for Payment on or before _____ (date).
9. **Status Reports.** Prior to and during the period of construction of the Project and Approved Infrastructure Improvements, Developer shall submit status reports to the City every three (3) months, commencing on the Effective Date and continuing through the Completion Date. The information in the status reports should include at a minimum: the estimated Commencement Date and Completion Date of the Project, and an updated Critical Path Schedule which includes each of the Approved Infrastructure Improvements, an updated schedule of values, and any change orders.
10. **Covenants and Representations.**
 - a. Developer covenants with the City that:
 1. Developer shall timely fulfill all the conditions herein that are in the control of Developer and are the responsibility of Developer.
 2. During the period in which the obligations of Developer pursuant to this Agreement are in effect, Developer shall cause to occur and to continue to be in effect those instruments, documents, certificates, and events contemplated by this Agreement that are applicable to, and the responsibility of, Developer.
 3. Developer shall pay all taxes, monetary liens, and other obligations encumbering the property area making up the Project and Approved Infrastructure Improvements.
 - b. Developer represents and warrants to the City that the following statements are true and correct in all material respects:
 1. Developer is a validly existing legal entity, authorized to do business in the State of Florida.

Developer has all requisite power and authority to carry on its business as now conducted, to own or hold property, and to enter into and perform its obligations of this Agreement and each instrument required to be executed by Developer pursuant to this Agreement, and has consented to service of process in the State of Florida.

2. This Agreement and each document required to be executed by Developer pursuant to this Agreement has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, Developer and neither the execution and delivery nor the compliance with the terms and provisions thereof: (i) requires the approval of any other party, except as has been obtained or noted herein; (ii) contravenes any law, judgment, governmental rule, regulations, or order binding on Developer; or (iii) results in any default under or creates any lien upon any property of Developer.
 3. This Agreement and each document to be executed by Developer pursuant to this Agreement constitutes a legal, valid, and binding obligation of Developer, enforceable against Developer, in accordance with the Agreement's terms except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws which affect creditor's rights generally and subject to usual equitable principles if equitable remedies are invoked.
 4. There are no pending or, to the best knowledge of Developer, threatened actions before any court or administrative agency against Developer that: (i) question the validity of this Agreement; or (ii) are likely to materially adversely affect this Agreement or the financial condition of Developer.
 5. Developer has filed all tax returns required to be filed by Developer and has paid all taxes shown to be due on such returns.
 6. Developer is financially capable of carrying out all obligations in connection with the acquisition, construction, and equipping of the Project contemplated by this Agreement.
- c. The City represents and warrants to Developer that the following statements are true and correct in all material respects:
1. The City validly exists under the laws of the State of Florida and has all requisite power and authority to enter into and perform the obligations of this Agreement.
 2. Each document which the City is or will be a party to has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the City, and neither the execution and delivery nor the compliance with the terms and provisions: (i) require the approval of any other party, except as has been obtained or noted herein; or (ii) contravenes any law, judgment, governmental rule, regulations, or order binding on the City or to which its property is subject.
 3. This Agreement, when fully executed by the Parties, will constitute a legal, valid, and binding obligation of the City, enforceable against the City, except as such enforceability may be limited by: (i) any laws which affect creditors' rights generally and subject to usual equitable principles if equitable remedies are invoked; or (ii) changes in enabling legislation.

11. Payment and Performance of Project. Provided that any subcontractor or supplier is not in default of the construction subcontract between Developer's General Contractor and such subcontractor or supplier for the construction of the Project and Approved Infrastructure Improvements, Developer shall use commercially reasonable efforts to cause its General Contractor to timely pay the subcontractor or supplier for authorized work performed on the subcontract. Developer shall use commercially reasonable efforts to cause its General Contractor to require all subcontractors to timely

pay their subcontractors' suppliers, laborers, and materialmen for authorized work performed on the Project and Approved Infrastructure Improvements pursuant to valid invoices approved by Developer and/or its General Contractor. Developer shall bond or cause to be bonded the full amount of all liens recorded against the Property for alleged non-payment of any sums due for work performed on the Approved Infrastructure Improvements.

12. Insurance. Prior to commencement of construction and during the term of the Easement, Developer shall purchase and maintain the following types and amounts of insurance with an insurer rated A- or better by A.M. Best:

- a. Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000.00 for bodily injury (or death), and \$1,000,000.00 property damage, with an aggregate of \$2,000,000 as required by Developer's Lender.
- b. Full and complete Workers' Compensation Insurance Coverage as required by State of Florida law.
- c. Automobile Liability Insurance coverage in the minimum amount of \$1,000,000.00 per occurrence for BI/PD, including hired/non-owned vehicles regardless of number of passengers transported.
- d. The City must be named as an additional insured on all insurance policies required hereunder, except Worker's Compensation coverage. Developer shall provide, or cause its General Contractor to provide, the City with a certificate of insurance evidencing the required coverage prior to the issuance of a building permit for the Project, and shall furnish City evidence of renewals of each such policy no less than thirty (30) days prior to the expiration of the applicable policy.

13. Indemnification. Developer agrees to indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from and against any and all liability, losses, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions, and cost of actions, including reasonable attorney's fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with the design, construction, or maintenance of the Project and Approved Infrastructure Improvements by Developer or its Contractor(s), Architect, and consultants ("Claims"), other than to the extent that Claims are resulting from the negligent acts or omissions or willful misconduct of the City, its elected or appointed officials, employee, or agents. This provision will survive the termination of this Agreement.

14. Default, Remedies, and Right to Terminate.

- a. Developer's Default. Developer's failure to comply with its obligations contained in this Agreement, including but not limited to those described in Section 8 above, and the Reports in Section 9 above, will be a material breach of this Agreement ("Default"; a Default following any applicable notice of cure period is referred to herein as an "Event Default"). The City shall provide written notice of Default to Developer ("Notice of Default"). Developer will have thirty (30) calendar days from the date of Developer's receipt of the Notice of Default to cure such Default ("Initial Cure Period"). In the event the nature of the "Default" is such that it cannot reasonably be cured within such Initial Cure Period, then Developer's cure period will be extended, so long as Developer has commenced to cure such Default within said Initial Cure Period and Developer diligently undertakes and pursues such cure to completion ("Extended Cure Period"). Developer must provide the City with documentation evidencing that Developer is diligently undertaking and pursuing such cure to completion. The foregoing notwithstanding, all monetary Defaults will be deemed capable of cure within thirty (30) days. During the Initial Cure Period or any Extended Cure Period, the City may

suspend any reimbursement otherwise payable pursuant to Section 6 of this Agreement until the Default has been cured. Upon Developer's failure to cure such Default within the Initial Cure Period or any Extended Cure Period, as applicable, the City may:

1. If the Event of Default occurs prior to the Completion Date, the City may choose to terminate this Agreement. Upon termination, all obligations of the City and Developer pursuant to this Agreement, including any reimbursement for Eligible Costs will be terminated and all obligations of the City and Developer pursuant to this Agreement will then be forever discharged.
 2. If the Event of Default occurs after the Completion Date, the City may choose to terminate the Agreement and require Developer to refund any reimbursements already made to, or for the benefit of, Developer - payment must be made to the City by the Developer in the full reimbursement amount, plus interest at the statutory rate in accordance with Section 55.03, Florida Statutes, from date of reimbursement – or may require Developer's (or Developer's assignees or successors in title) specific performance under the terms and conditions of this Agreement.
- b. City's Default. The City's failure to comply with its obligations contained in this Agreement, including but not limited to those described in Sections 6.A. and 6.B. above shall be a material breach of this Agreement ("City Default"; a City Default following any applicable notice of cure period is referred to herein as a "City Event of Default"). Upon such City Default, Developer shall provide written notice of such City Default to the City ("Notice of City Default"). The City will have thirty (30) calendar days from the date of City's receipt of the Notice of City Default to cure such City Default ("Initial City Cure Period"). In the event the nature of the City Default is such that it cannot reasonably be cured within such Initial City Cure Period, then City's cure period will be extended, so long as City has commenced to cure such City Default within Initial City Cure Period and City diligently undertakes and pursues such cure to completion ("Extended City Cure Period"). City must provide Developer with documentation evidencing that City is diligently undertaking and pursuing such cure to completion. The foregoing notwithstanding, all monetary Defaults will be deemed capable of cure within thirty (30) days. Upon City's failure to cure such Default within the Initial Cure Period or any Extended Cure Period, as applicable, Developer may:
1. Require specific performance of the Agreement by the City, provided, however, the obligation of City to provide funding in any fiscal year under this Agreement is limited to an obligation in any given fiscal year to budget and appropriate from legally available sums the funding that is required for that fiscal year; or
 2. Immediately terminate this Agreement, with all obligations of the City and Developer pursuant to this Agreement terminated and all obligations of the City and Developer pursuant to this Agreement forever discharged.

15. Successors and Assigns. The Parties to this Agreement may not assign or transfer any interest in this Agreement without the prior written consent of the other Parties, which shall not be unreasonably withheld. The Parties each bind the others and their respective successors and assigns in all respects to all the terms, conditions, covenants, and provisions of this Agreement.

16. Bankruptcy. In the event: (a) an order or decree is entered appointing a receiver of Developer or its assets, which is not appealed (or if appealed is determined adverse to Developer by such appeal); or (b) a petition is filed by Developer for relief under federal bankruptcy laws or any other similar law or statute of the United States, which action is not dismissed, vacated, or discharged within ninety (90) days after the filing thereof, such event will not affect the City's rights under this Agreement and

the City shall have the right to immediately terminate this Agreement.

- 17. Foreclosure.** In the event a Final Judgment of Foreclosure is entered against Developer prior to an assignment having been effectuated as set forth in Section 15 above, then the City will have the right to immediately terminate this Agreement.
- 18. No Liability or Monetary Remedy.** The City and Developer each hereby acknowledges and agrees that it is sophisticated and prudent in business transactions and proceeds at its own risk under advice of its own counsel and advisors and without reliance on the other party. City has agreed to reimburse Developer for certain Approved Infrastructure Improvements pursuant to the terms of this Agreement. The only remedy available to Developer for any breach by City is to require City's specific performance under the terms and conditions of this Agreement. City shall not be liable to Developer for damages of any kind including direct, indirect, or consequential damages.
- 19. Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or unenforceable will be severable and may not be construed to render the remainder of this Agreement to be invalid, illegal, or unenforceable.
- 20. Relationship.** This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture among the City and Developer. Developer cannot create any obligation or responsibility on behalf of the City or bind City in any manner. The City cannot create any obligation or responsibility on behalf of Developer or bind Developer in any manner. Each party is acting for its own account and has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that none of the other parties hereto is acting as a fiduciary for or an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein. Developer further represents and acknowledges that no one was paid a fee, commission, gift, or other consideration by Developer as an inducement to entering into this Agreement.
- 21. Personal Liability.** No provision of this Agreement is intended, nor may any be construed, as a covenant of any official (either elected or appointed), officer, director, manager, employee, or agent of City or Developer in an individual capacity and neither may any such individuals be subject to personal liability by reason of any covenant or obligation of City or Developer hereunder.
- 22. Applicable Law and Venue.** This Agreement is governed by and must be construed in accordance with the laws of the State of Florida, notwithstanding any Florida conflict of law provision to the contrary. Each party submits to the jurisdiction of the State of Florida, Alachua County and the courts thereof and to the jurisdiction of the United States District Court for the Northern District of Florida, for the purposes of any suit, action, or other proceeding relating to this Agreement and agrees not to assert by way of a motion or a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.
- 23. Modification and Waiver.** This Agreement may only be modified or waived in writing signed by all the Parties. No course of dealing may be deemed a waiver of rights or a modification of this Agreement. The failure of any party to exercise any right in this Agreement may not be considered a waiver of such right. No waiver of a provision of this Agreement will apply to any other portion of this Agreement. A waiver on one occasion may not be deemed to be a waiver on other occasions.

- 24. No City Security.** In no event may City be required to provide security for repayment of any portion of any outstanding loans to Developer with respect to the property making up the Project nor may City be obligated under any mortgage or promissory note as the same relate to such property.
- 25. Permits.** Developer shall obtain all state and local permits or other governmental authorizations and approvals required by law in order to construct the Project and Approved Infrastructure Improvements.
- 26. Compliance with Laws.** Developer shall at all times be in compliance with all applicable federal, state, and local laws, statutes, rules, and regulations with respect to the Project and Approved Infrastructure Improvements, including but not limited to the Gainesville City Code and City Code sections pertaining specifically to planning, zoning, and permitting. This paragraph is not intended to preclude City from granting Developer certain waivers, exemptions, or variances under the Gainesville City Code as allowed therein, nor is it intended to preclude Developer from challenging, in the manner provided for by applicable law, the application of any of the foregoing to the Project.
- 27. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof. Any representations or statements heretofore made with respect to such subject matter, whether verbal or written, are merged herein. This Agreement, in whole or part, is not intended to be nor may be construed or interpreted to be a Development Agreement under the terms of the “Florida Local Government Development Agreement Act” in Section 163.3220 et seq., Florida Statutes, or as defined in the Land Development Code, Chapter 30 of the City of Gainesville Code of Ordinances.
- 28. No Contract Zoning; No Contracting of Police Powers.** Nothing contained in this Agreement may be interpreted or construed as an approval, waiver, or agreement to approve or waive any development order, development permit, rezoning, comprehensive plan amendment, or any other governmental requirement that the City may have jurisdiction over in its regulatory capacity. Nothing contained in this Agreement may be interpreted or construed as contracting away the exercise of the police powers of the City.
- 29. Release.** No recourse may be had for any damages or claims based upon any representation, obligations, covenant, or agreement in this Agreement against any past, present, or future officer, member, legal counsel, employee, director, or agent of the City, either directly or through the City, under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of the City and any such officers, members, legal counsels, employees, directors, or agents of the City is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. This section will survive the termination or expiration of this Agreement.
- 30. Force Majeure.** Delays in any performance due to: fire, flood, earthquake, windstorm, or sinkhole; war, declaration of hostilities, revolt, civil strife, altercation, or commotion; strike or labor dispute; epidemic; archaeological excavation; or because of an act of God are deemed to be events of Force Majeure and such delays are excused in the manner herein provided. If such party is delayed for any of the events of Force Majeure, the date required for actions required will be extended by the number of calendar days equal to the total number of calendar days, if any, that such party is actually delayed. The party seeking excuse for nonperformance on the basis of Force Majeure shall give written notice to the other Parties specifying the cause of the anticipated delay, giving its actual or anticipated duration, and weekly thereafter, if such delay is continuing, written notice stating whether the condition continues and giving

its actual or then anticipated duration. Each party seeking excuse from nonperformance on the basis of Force Majeure shall use its best efforts to rectify conditions causing a delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

- 31. Time.** Time is of the essence in this Agreement. In computing time periods of fifteen (15) days or less, Saturdays, Sundays, and state or national legal holidays are excluded. Time periods of more than fifteen (15) days will be computed based on calendar days. Whenever a notice or performance is to be done on a Saturday or Sunday or on a legal holiday observed by the City, it will be postponed to the next business day.
- 32. Sovereign Immunity.** The Parties agree that nothing in this Agreement may be interpreted as a waiver of the City's sovereign immunity, as provided in Section 768.28, Florida Statutes, or otherwise.
- 33. Captions.** The captions and headings of sections or paragraphs used in this Agreement are for convenient reference only and will not limit, define, or otherwise affect the substance or construction of provisions of this Agreement.
- 34. Construction.** This Agreement may not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the Parties. It is recognized that both Parties have substantially contributed to the preparation of this Agreement.
- 35. Notices.** Any notices pursuant to this Agreement will be effective upon receipt and sent by either certified mail, return receipt requested, overnight courier service, or delivered in person to the following addresses:

To the City:

Attention: City Manager
City of Gainesville
P.O. Box 490, MS 6
Gainesville, Florida 32627

With copies to:

To the Developer:

Attention: Mr. Michael Warren, Manager
Magnolia Street Hospitality, LLC
502 NSW 16th Avenue.
Gainesville, FL 32601

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by duly authorized officials on the dates written below.

WITNESSES:

CITY OF GAINESVILLE

Sign: _____

Print Name: _____

By: _____

Lee Feldman
City Manager

Sign: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me, by means of ___ physical presence or ___ online notarization, this ___ day of _____, _____ (year), by _____ . He/she personally appeared before me and is: (check one of the below)

___ personally known to me, or
___ produced the following type of identification: _____

Notary Public
Print Name: _____
My Commission expires: __/__/__

WITNESSES:

DEVELOPER

Sign: _____

Print Name: _____

By: _____

Print Name: Mr. Michael E. Warren

Sign: _____

Print Name: _____

Title: Manager, Magnolia Street Hospitality, LLC

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of ___ physical presence or ___ online notarization, this ___ day of _____, _____ (year), by _____.

He/she personally appeared before me and is: (check one of the below)

_____ personally known to me, or

_____ produced the following type of identification: _____

Notary Public

Print Name: _____

My Commission expires: __/__/__

DRAFT

DRAFT

EXHIBIT "B"

Approved Infrastructure Improvements and Reimbursable Costs

HYATT PLACE IMPROVEMENTS

SE 2nd PL Brick Reconstruction, S Main Street Brick Sidewalk and SE 1st Street Entrance

Assumptions:

FDOT/City historical unit prices

Prepared by B.Singleton

ITEM	DESCRIPTION	UNIT	EST. QUANTITY	UNIT PRICE	TOTAL AMOUNT
<i>SE 2nd Street Brick Reconstruction from S Main St to SE 1st St</i>					
1	MOBILIZATION (10%)	LS	1	\$ 22,401.36	\$ 22,401.36
2	MAINTENANCE OF TRAFFIC (8%)	LS	1	\$ 16,593.60	\$ 16,593.60
3	PREVENTION, CONTROL & ABATEMENT OF EROSION & WATER POLL	LS	1	\$ 2,000.00	\$ 2,000.00
4	INLET PROTECTION	EA	4	\$ 120.00	\$ 480.00
5	REMOVAL OF EXISTING BRICKS	SY	550	\$ 75.00	\$ 41,250.00
6	SUBSOIL EXCAVATION	CY	150	\$ 100.00	\$ 15,000.00
7	EDGEDRAIN DRAINCRETE, STANDARD	LF	450	\$ 100.00	\$ 45,000.00
8	BRICK PAVERS W/ 6" CONCRETE BASE	SY	550	\$ 175.00	\$ 96,250.00
9	MANHOLE, ADJUST, UTILITIES	EA	6	\$ 900.00	\$ 5,400.00
10	SIGN SINGLE POST (LESS THAN 12 SF)	AS	6	\$ 340.00	\$ 2,040.00
11	THERMO, 6" WHITE	LF	240	\$ 0.90	\$ 216.00
	PROFESSIONAL SERVICES				\$ 10,000.00
	SE 2ND PLACE SUBTOTAL				\$ 256,630.96
<i>S Main Street Brick Sidewalk from SE 2nd Ave to SE 2nd Pl - Eastside</i>					
12	MOBILIZATION (10%)	LS	1	\$ 6,661.44	\$ 6,661.44
13	MAINTENANCE OF TRAFFIC (8%)	LS	1	\$ 4,934.40	\$ 4,934.40
14	PREVENTION, CONTROL & ABATEMENT OF EROSION & WATER POLL	LS	1	\$ 1,000.00	\$ 1,000.00
15	INLET PROTECTION	EA	4	\$ 120.00	\$ 480.00
16	REMOVAL OF EXISTING CONCRETE	SY	175	\$ 25.00	\$ 4,375.00
17	EXCAVATION	CY	75	\$ 125.00	\$ 9,375.00
18	BRICK PAVERS W/ 4" CONCRETE BASE	SY	350	\$ 125.00	\$ 43,750.00
19	MANHOLE, ADJUST, UTILITIES	EA	3	\$ 900.00	\$ 2,700.00
	PROFESSIONAL SERVICES				\$ 5,000.00
	S MAIN STREET SUBTOTAL				\$ 78,275.84
<i>SE 1st Street Entrance</i>					
20	MOBILIZATION (10%)	LS	1	\$ 4,165.56	\$ 4,165.56
21	MAINTENANCE OF TRAFFIC (8%)	LS	1	\$ 3,085.60	\$ 3,085.60
22	PREVENTION, CONTROL & ABATEMENT OF EROSION & WATER POLL	LS	1	\$ 1,000.00	\$ 1,000.00
23	INLET PROTECTION	EA	2	\$ 120.00	\$ 240.00
24	REMOVAL OF EXISTING BRICKS/CONCRETE	SY	100	\$ 25.00	\$ 2,500.00
25	DEMO AND SALVAGE GRANITE HEADER CURB	LF	50	\$ 25.00	\$ 1,250.00
26	EXCAVATION	CY	20	\$ 175.00	\$ 3,500.00
27	TYPE D CURB	LF	50	\$ 35.00	\$ 1,750.00
28	BRICK PAVERS W/ 4" CONCRETE BASE	SY	100	\$ 175.00	\$ 17,500.00
29	LIGHTING RELOCATION/ADJUSTMENT	LS	1	\$ 10,000.00	\$ 10,000.00
30	THERMO, 6" WHITE	LF	100	\$ 0.90	\$ 90.00
31	THERMO, 12" WHITE	LF	30	\$ 2.00	\$ 60.00
32	SIGN SINGLE POST (LESS THAN 12 SF)	AS	2	\$ 340.00	\$ 680.00
	PROFESSIONAL SERVICES				\$ 5,000.00
	SE 1ST STREET SUBTOTAL				\$ 50,821.16
	HYATT PLACE TOTAL				\$ 385,727.96