

MEMORANDUM

TO: **Real Estate & Transportation Committee**
Commissioner Bill Read, Chairman
Commissioner Justin Troller
Commissioner Phillip Walker

FROM: City Attorney's Office

DATE: August 21, 2017

RE: **Purchase and Sale Agreement Lakeland Hospitality Group
LLC – RP Funding Center**

Attached hereto, please find a proposed Purchase and Sale Agreement between the City of Lakeland and Florida Hospitality Group (Hospitality) for the sale of 3.58 acres adjacent to the RP Funding Center (Center). Hospitality proposes to construct a 5 - 6 story, 120 - 130 room full service hotel. The site is south of the Center and is generally depicted on Exhibit A. It is the intention of the parties that there will be joint marketing efforts to promote the hotel as support for Center events.

The hotel will consist of a 5 - 6 story, with 120 - 130 rooms that will be operated by a management company under the Marriott brand. The tentative brand name is Spring Hill Suites. The property will have a minimum of 4000 square feet of meeting space as support for the Center, a lounge with food service, and surface parking. It will be designed architecturally to be compatible with its location and proximity to the Center. The Parties anticipate that they will enter into some type of joint marketing agreement that will incorporate other terms related to marketing the property.

The purchase price is \$400,000, with a \$20,000 deposit. Hospitality requires a 6-month inspection period to do design feasibility involving stormwater, and other utility requirements to make them accessible to the site. Hospitality will bear those expenses. A zoning change will be necessary to accommodate the use, which will be initiated upon approval. At the close of the inspection period, there will be a brief permitting period, and construction is intended to commence in early 2018. The City pays for title insurance and doc stamps on the deed.

It is critical to the City and the Center that the property be operated as a high-quality hotel facility under the Marriott brand, or another equivalent national, well respected brand. The Parties have agreed that, in the event Hospitality loses the right to operate as a Marriott facility, and fails to replace it with a similar brand, the property reverts back to the City at a purchase price of its then value. Hospitality must commence development within 3 years of the closing, and should they fail to do so, the City may purchase the property for the purchase price.

Part of the evolution of the Center, and its marketing strategy, requires overnight accommodations and other amenities within walking distance. Center management is excited that a high-quality hotel will be operated to support Center events. It is recommended that the appropriate City officials be authorized to enter into this Purchase and Sale Agreement and to close the transaction in accordance with its terms.

TJM

attachment

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (“**Agreement**”) is made by and between LAKELAND HOSPITALITY GROUP, LLC, a Florida limited liability company (“**Purchaser**”), and CITY OF LAKELAND, a municipal corporation of the State of Florida (“**Seller**”).

In consideration of the mutual covenants and provisions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

DESCRIPTION OF PROPERTY

1.1 **Purchase and Sale of Property.** Seller hereby agrees to sell, assign, and convey to Purchaser, and Purchaser agrees to purchase from Seller, that certain parcel of real property located west of Sikes Boulevard / Harden Boulevard and south of West Lime Street in Lakeland, Polk County, Florida, depicted in the attached Exhibit “A” attached hereto and incorporated by reference herein consisting of approximately 3.58 acres (together with all improvements thereon, all appurtenances pertaining thereto including all development rights allocable to the Land, and all rights, title and interest of Seller in and to any easements, adjacent streets, roads, or rights of way pertaining to the Land to be hereinafter collectively referred to as the “**Property**”). For purposes of this Agreement, Purchaser’s Intended Use is for a hotel of approximately one hundred and forty (140) rooms, six (6) stories and approximately one hundred and sixty (160) parking spaces (“**Purchaser’s Intended Use**”).

PURCHASE PRICE

2.1 **Purchase Price.** The total purchase price for the Property which Purchaser agrees to pay to Seller shall be **FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$400,000.00)** (“Purchase Price”).

2.2 **Payment of Purchase Price.** Purchaser shall pay to Seller the Purchase Price as follows:

Earnest Money (pursuant to Section 3.1)	\$20,000.00
Balance of Purchase Price at Closing	\$380,000.00
Total Purchase Price	\$400,000.00

EARNEST MONEY

3.1 **Amount: Terms.** Purchaser shall deliver to Clark, Campbell, Lancaster & Munson, P.A., whose address is 500 South Florida Avenue, Suite 800, Lakeland, Florida 33801 (the “**Escrow Agent**”), within five (5) business days after the Effective Date of this Agreement, the sum of **TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00)** (“**Earnest Money**”). If the sale of the Property is closed, the Earnest Money shall be applied to the payment of the Purchase Price.

If Purchaser terminates this Agreement in accordance with any right to terminate granted by this Agreement, or if Seller is unable or unwilling to perform an obligation required by this Agreement within the time periods provided herein, the Earnest Money shall be returned to Purchaser, and Purchaser shall have no further obligation to close hereunder. All Earnest Money shall be applied to the Purchase Price if the parties close the transaction pursuant to this Agreement.

INSPECTION PERIOD

4.1 **Duration.** Purchaser shall have the right, subject to the terms herein, for a period of one hundred and eighty (180) days commencing on the Effective Date of this Agreement and ending at 5:00 P.M. on the last day of such period (the “**Inspection Period**”) to enter upon, inspect and investigate the Property to determine whether or not the same is satisfactory to Purchaser in Purchaser’s sole and absolute discretion.

4.2 **Entry and Inspection.** During the Inspection Period, Seller shall make the Property and all documents, permits, books, and records pertaining to the property in Seller’s possession, available for inspection by Purchaser. During the Inspection Period, Purchaser may, at Purchaser’s sole risk and expense, undertake, or cause to be undertaken on behalf of Purchaser, a complete physical inspection, review and examination of the Property as Purchaser deems appropriate, including but not limited to soil/groundwater tests and environmental assessments and audits (collectively, the “Property Inspections”), provided, however, that any Property Inspections do not cause any permanent damage to the Property. All such Property Inspections shall be undertaken at Purchaser’s sole cost and expense. Additionally, during the Inspection Period, the Purchaser shall seek written approval from its intended user and/or franchisor for the Property. Purchaser will coordinate all on-site inspections with Seller and Seller agrees to reasonably cooperate with Purchaser, including without limitation making Seller and any of Seller’s representatives that are familiar with the Property and its present and past uses available for interview by Purchaser or Purchaser’s agent. After completing any inspections, Purchaser shall restore and repair any damage caused by Purchaser’s inspections. The Purchaser shall, upon completion of Purchaser’s Inspection Period, return the Property to its existing condition, restore and repair any damage caused by any Property Inspections, and shall indemnify and hold the Seller harmless from any damages whatsoever that result in any way from the Purchaser’s Property Inspections. Additionally, during the Inspection Period, the Seller and Purchaser shall negotiate a declaration of covenants, conditions, easements and restrictions that shall run with and be binding upon the Property and that, in part, shall provide the easements reasonably determined by Purchaser to be necessary for Purchaser’s Intended Use of the Property, including, without limitation, cross parking, ingress and egress, utilities and/or stormwater management (the “**Declaration**”). The Declaration shall include a provision that Purchaser shall submit all proposed architectural designs and plans to Seller for review and approval, which approval may not be unreasonably withheld, conditioned or delayed, prior to the submittal of any such plans to the City of Lakeland or other permitting or review agency (the “**Plan Review Requirement**”). The purpose of the Plan Review Requirement is to assure that the orientation and design of the proposed building, site design, and landscape plan are all compatible with the adjacent City of Lakeland RP Funding Center. The Declaration shall be signed at Closing and recorded by the Title Company with the other closing documents.

4.3 **Land Use and Zoning Approvals.** The Seller shall confirm, in writing, that the appropriate land use and zoning approvals are in place for Purchaser’s Intended Use of the Property during the Inspection Period, at Seller’s expense. In the event that the necessary land use and zoning approvals are not presently in place to allow Purchaser’s Intended Use of the Property, the Seller

will process a City initiated request, at the Seller's expense, to achieve such land use and zoning approvals to allow Purchaser's Intended Use of the Property.

The Purchaser shall cooperate with Seller and provide Seller, at Purchaser's expense, with the information, including, but not limited to, a zoning site plan, building plans and architectural renderings, a landscaping plan, and other information or documents that may be reasonably requested by Seller, necessary to file and process the land use and zoning applications for the Property. The Seller shall provide written notice to the Purchaser when (a) the Seller has confirmed existing land use and zoning approvals or obtained final land use and zoning approvals from the City of Lakeland for Purchaser's Intended Use of the Property ("**Notice of Land Use and Zoning Approval**").

4.4 Termination of Inspection Period. The Purchaser or Purchaser's agent shall have the right at any time during the Inspection Period to notify Seller and Escrow Agent in writing that it has elected to terminate this Agreement if Purchaser for any reason determines that the Property is not satisfactory to Purchaser. Upon receipt of said notice, the Escrow Agent shall return to Purchaser the Earnest Money. If Purchaser does not terminate the Agreement prior to the expiration of the Inspection Period, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this paragraph.

APPROVAL OF PURCHASER'S INTENDED USE

5.1 Approval of Purchaser's Intended Use. Purchaser's Intended Use of the Property has been approved by Seller.

PERMITTING PERIOD

6.1 Permitting. The Purchaser shall seek the Permitting Approvals (defined below) within sixty (60) days following the Inspection Period (the "**Permitting Period**"). The Purchaser will diligently pursue obtaining all necessary final site plan approval, environmental, building, clearing, grading, and other required governmental approvals for the development of the property for Purchaser's Intended Use (the "**Permitting Approvals**") within the Permitting Period.

6.2 Termination of Permitting Period. The Purchaser shall have the right at any time during the Permitting Period to notify Seller and Escrow Agent in writing that it has elected to terminate this Agreement if Purchaser for any reason determines Purchaser will be unable to obtain all Permitting Approvals acceptable to Purchaser to construct designated improvements necessary for Purchaser's Intended Use of the Property. Upon receipt of said written notice by Seller and the Escrow Agent, the Escrow Agent shall return to Purchaser the Earnest Money. If Purchaser does not terminate the Agreement prior to the expiration of the Permitting Period, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this paragraph.

TITLE POLICY, SURVEY

7.1 Title. Purchaser shall, by not later than sixty (60) days after the Effective Date, order and obtain a commitment, together with legible copies of all title documents listed as exceptions, from a nationally recognized title insurance company of Purchaser's choice, to be issued through Clark, Campbell, Lancaster & Munson, P.A. (the "**Title Company**") agreeing to issue to Purchaser an Owner's ALTA Form B title insurance policy in the total amount of the Purchase Price insuring fee simple marketable title to the Property. Purchaser shall have thirty (30) days after the receipt of

the title commitment within which to notify Seller in writing of any defects or objections to the title appearing in said commitment. Seller shall have twenty (20) days after receipt of Purchaser's notice to cure any title objections or defects so specified, or, in the event that the cure requires longer than twenty (20) days to complete, such longer period of time provided that Seller shall have commenced with such cure efforts within such twenty (20) day period and diligently pursues the completion of such cure, but in no event longer than one hundred and twenty (120) days. Seller must make a good faith effort to cure any title defects or objections and must cure liens or encumbrances evidencing monetary obligations. If Seller fails to remedy said title objections or defects within said period (other than liens or encumbrances evidencing monetary obligations which Seller is required to remove), Purchaser shall elect to: (a) terminate this Agreement and receive a return of its Earnest Money; or (b) waive such title objections or defects and consummate the Closing (defined below).

7.2 Permitted Exceptions. It is understood and agreed that the Property is being sold by Seller to Purchaser by City Deed (the "**Deed**"), delivered at Closing, free and clear of all liens, claims and encumbrances, but subject to real estate taxes and assessments for the year of Closing and subsequent years and other matters of record as reflected in the title commitment.

7.3 Survey. Purchaser shall, at Purchaser's sole cost and no later than sixty (60) days after the Effective Date, obtain a current survey of the Property (the "**Survey**") that shall include a legal description for the Property. The Purchaser shall provide the surveyed legal description ("**Legal Description**") to Seller for review and approval, which approval may not be unreasonably withheld, conditioned or delayed. The Seller shall provide its approval or comments regarding the Legal Description within ten (10) days after receipt of the Survey from Purchaser. Upon approval of the Legal Description by the parties hereto, the Legal Description shall be added to Exhibit "A" to this Agreement and shall constitute the legal description for the Property.

If the Survey shows (i) any encroachments on the Property, (ii) that improvements, if any, on the Property encroach on other lands or (iii) that the Property is not contiguous to a publicly dedicated right-of-way or other legal access; Purchaser shall notify Seller in writing within fifteen (15) days after Purchaser's receipt of the Survey specifying such defects ("**Survey Objections**"). Seller shall have fifteen (15) days after receipt of Purchaser's Survey Objections to cure such survey defects or objections so specified. Seller must make good faith efforts to cure any survey defects or objections. If Seller fails to remedy said survey defects or objections within said time period Purchaser shall elect to: (a) terminate this Agreement and receive a return of its Earnest Money; or (b) waive such title objections or defects and consummate the Closing.

REPRESENTATIONS, WARRANTIES, AND COVENANTS BY SELLER

Seller hereby represents and warrants to Purchaser which representations and warranties shall be true and shall be deemed to be restated at the Closing.

8.1 Authority. Seller has full power and authority to enter into this Agreement. Upon execution hereof, this Agreement shall be the binding and legal obligation of Seller and is enforceable against Seller under the laws of the State of Florida.

8.2 Environmental. To the best of Seller's knowledge, without inspection or an obligation to do so, the Property (or any part of the Property) has not in the past been used for handling, storage, transportation or disposal of hazardous or toxic materials; and Seller has not used, generated, manufactured, stored or disposed of on, under or about the Property or transported to or from the Property, and there is not contained on or in any improvements on or under the Property,

any flammable explosives, radioactive materials, asbestos, or any substances defined as or included in the definition of “hazardous substance”, “hazardous waste”, “hazardous materials” or “toxic substances” under any applicable federal or state laws or regulations in effect on the Effective Date or the Closing Date (collectively, the “**Hazardous Materials**”). With regard to the Property, Seller is in compliance with and maintains compliance with all the provisions of the Federal Water Pollution Control Act, Comprehensive Environmental Response, Compensation and Liability (“Superfund”) Act of 1980, and Solid Waste Disposal Act, Florida Statutes Chapter 376, and other similar federal, state and local statutory schemes imposing liability on owners of the Property. No inspection, audit or other Investigation has been conducted or requested as to the quality of the air, surface or subsurface conditions at the Property by any party, including public agencies. Furthermore, no written, oral or other type of notice has been received indicating that any third party, including governmental agencies, proposes to carry out an inspection, audit or other investigation of the Property. To the best of Seller’s knowledge, without inspection or an obligation to do so, there is no evidence of any release of hazardous materials onto or into the Property. No warning notice, notice of violation, administrative complaint, judicial complaint or other formal or informal notice has been issued by a public agency alleging that conditions on the Property are in violation of environmental laws, regulations, ordinances or rules.

Notwithstanding the foregoing to the contrary, in the event that Purchaser’s environmental audit reveals any environmental concerns or contamination, the Purchaser shall advise Seller about such environmental concerns or contamination. In the event Seller declines to pay for the remediation of any such matter, Purchaser shall have the option to (a) terminate this Agreement and receive a return of its Earnest Money; or, (b) close on the property subject to all of the other terms and conditions of this Agreement and to assume all costs and expenses associated with any such remediation.

8.3 Wetlands. The Seller does not know if the Property contains any jurisdictional wetlands.

8.4 Governmental Proceedings. Seller has no knowledge of (i) any pending or contemplated annexation or condemnation proceedings, or private purchase in lieu thereof, that affects the Property; (ii) any proposed or pending proceeding to change or redefine the zoning classification of all or any part of the property; (iii) any penalties or interest due with respect to real estate taxes assessed against the Property; and (iv) any proposed change(s) of any median cuts, driveway entrances, traffic patterns or grades which would affect ingress or egress to the Property or which would require a portion of the Property. Seller shall notify Purchaser should it hereafter become aware of any of the foregoing and furnish Purchaser a copy of any notice regarding the Property within five (5) days after receipt.

8.5 Utilities. To the best of Seller’s knowledge, all utilities, which are defined to include water, sewer, electric and telephone, are presently available in the vicinity to the Property but may require extensions to the Property boundary.

8.6 Drainage. Any water or other drainage that runs off the Property and on to a property contiguous to the Property through any drainage system on the Property does so lawfully, either by local law or in accordance with valid public easements or private easements that will inure to the benefit of Purchaser. During the Inspection Period, the Seller and Purchaser shall negotiate the Declaration to allow Purchaser to utilize the Seller’s existing stormwater management system that presently serves the Property, provided that the Purchaser shall pay the cost of any necessary changes to the stormwater management system to accommodate Purchaser’s Intended Use of the Property and a prorata share of the costs of the maintenance of stormwater management system based upon

the respective impervious surface of the Property and Seller's remaining property that is served by such stormwater management system.

8.7 Special Assessments. No special assessments have been levied against all or any part of the Property, and Seller has no knowledge of any intended assessments. If any special assessments are levied prior to the Closing, Seller shall be obligated to pay such special assessments at Closing whether or not such assessment is being paid in installments by Seller. Seller shall notify Purchaser immediately after receipt of notice of such assessment by Seller (and in any event before Closing).

8.8 Seller Assistance. Seller shall, upon the reasonable request of Purchaser, and at no expense to Seller, render such assistance and furnish such information to Purchaser in connection with matters relating to the proposed development, construction, and operation of the Property consistent with Purchaser's Intended Use of the Property.

Additionally, Seller hereby appoints Purchaser to act as its agent in connection with obtaining all approvals, authorizations, permissions, permits, designations and classifications desired by Purchaser for Purchaser's Intended Use of the Property (collectively, the "**Approvals**") and agrees to sign a letter of authorization for such in the form required by the appropriate authority, or if required by such authority, to allow Purchaser and Purchaser's legal counsel, engineer and general contractor to sign any applications for such Approvals. Purchaser shall seek and obtain Seller's approval prior to and as a condition precedent to submitting any application regarding any Approval regarding the Property to any governmental entity, department or division.

8.9 Title. Seller has good and marketable title in fee simple absolute to the Property subject only to the Permitted Exceptions.

8.10 Actions and Proceedings. Seller has no actual knowledge, nor has Seller received any written notice of, nor does Seller know of any basis for, any pending litigation by any organization, person or individual or any claim, action or proceeding, actual or threatened, by any Governmental Authorities or any other party that would materially affect the use, occupancy, leasing or value of the Property or any part thereof. Seller shall notify Purchaser within five (5) days of Seller becoming aware of or receiving notice of any such claim, action or proceeding or the existence thereof, and the action Seller proposes to take to dispose of such claim, action or proceeding. Thereafter, Seller shall commence and diligently pursue disposition of such claim, action or proceeding until completed and shall keep Purchaser notified thereof.

8.11 Governmental Compliance. To the best of the knowledge of Seller, the Property is in compliance with all laws, statutes, ordinances, regulations, orders or requirements affecting the construction, operation, management and maintenance of the Property, and no notice of any violation has been issued by any Governmental Authority. Seller has no knowledge of any notices, suits or judgments relating to any violations of any laws, ordinances or regulations affecting the Property, or any violations or conditions that may give rise thereto, and has no reason to believe that any Governmental Authority contemplates the issuance thereof. There are no federal tax liens affecting the Property.

8.12 Taxes, Assessments, Charges, Etc. All taxes, assessments, water charges, sewer charges, sidewalk improvement charges, street improvement charges and all other charges for public facilities, utilities or similar services of any nature whatsoever which affect the Property have been paid.

8.13 Construction Liens. No labor has been performed, nor materials supplied, relating to the Property for which Seller has not fully paid, or for which a construction or other lien against the Property may be claimed by any person.

8.14 Community Redevelopment Area. The Property is located within the Lakeland Community Redevelopment Area. This Agreement and the disposition of the Property is subject to the provisions of Section 163.380, Florida Statutes.

8.15 Possession. Seller is and as of the Closing Date will be in possession of the Property, free of any tenancies and rights of third parties.

The truth, accuracy and completeness of each of the representations and warranties of the Seller as set forth in this Section 7 as of the date hereof, and as of closing, shall constitute a condition precedent to the obligations of Purchaser hereunder. The representations and warranties shall survive one (1) year after the Closing.

REPRESENTATIONS, WARRANTIES AND COVENANTS BY PURCHASER

9.1 Organization. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida.

CLOSING

10.1 Closing. The Closing shall be held at the office of the Escrow Agent or, at the election of either party, by overnight mail, with payment made by wire transfer of funds on the earlier of thirty (30) days following (a) the termination of the Permitting Period; or, (b) written notification from Purchaser to Seller that Purchaser is prepared to close.

10.2 Seller's Obligations at Closing. At Closing, Seller shall deliver or cause to be delivered to Purchaser the following documents, all in a form reasonable acceptable to the Purchaser and Title Company:

- a. City Deed;
- b. Affidavit stating either that there have been no improvements made to the Property during the ninety (90) days immediately preceding the Closing pursuant to the Agreement or, if there have been any such improvements, that all lienors in connection with such improvements have been paid in full.
- c. Affidavit, in form acceptable to the Title Company, sufficient to remove standard printed exceptions to title in the title insurance policy regarding (i) unrecorded matters (except general real estate taxes not yet due and payable); (ii) parties in possessions; and (iii) mechanic's liens.
- d. FIRPTA affidavit from Seller.

- e. A Bill of Sale conveying title, free and clear of all liens to (1) any personal property located at the Property or owned and used in connection therewith; (2) all licenses and permits, or other contracts, warranties or guaranties, affecting the Property, including all wastewater and storm drainage capacity reservations and agreements; if any (3) all zoning permits or classifications, if any; and (4) all plans, permits, licenses and other authorization and agreements relating to the use or operation of the Property, if any.
- f. A Certificate, dated as of the date of the closing, and signed by the Seller stating that the representations and warranties contained herein are true, correct and complete as of such date.
- g. The Declaration.

10.3 Purchaser's Obligations at Closing. At Closing, Purchaser shall deliver to Seller the following:

- a. The Purchase Price;
- b. If applicable, a copy of Purchaser's entity documents, and all amendments thereto, certified as true and complete, as of the closing date, and all other documents deemed necessary by the Title Company so as to evidence authorization for the actions to be taken by Purchaser or Purchaser's assignee, as well as the authority of the person signing this Agreement and the closing documents; and
- c. The Declaration.

CLOSING COSTS, PRORATIONS OF RENTS TAXES AND MISCELLANEOUS EXPENSES

11.1 Closing Costs. Purchaser and Seller shall each pay their own attorney's fees, costs and expenses. At Closing, Purchaser shall pay the costs associated with financing the purchase of the Property, if any, with a mortgagee's title policy, including the cost of any endorsements required to the owner's or mortgagee's title policy by Purchaser or Purchaser's lender, and the cost of recording the Deed. At Closing, Seller shall pay all other closing costs including all documentary stamp taxes to be affixed to the Deed and the title insurance premium (not exceeding the Florida promulgated rate) for the owner's title policy based on the Purchase Price.

11.2 Real Property Taxes. Real property taxes on the Property, and any other taxes associated with the Property for the year of closing shall be prorated as of the Closing. If the tax bill for the year of closing has not been issued prior to Closing, such taxes shall be prorated based upon the tax bill issued for the previous year, with known changes, if any.

RISK OF LOSS

12.1 Casualty. Seller assumes all risk and liability, damage to or injury occurring to the Property by fire, storm, accident or any other casualty or cause until the Closing has been consummated. If the Property or any part thereof, suffers any damages prior to the Closing from fire

or other casualty, Purchaser may either (a) terminate this Agreement and the Earnest Money shall be returned to Purchaser; or (b) without repairing such damage, consummate the Closing, in which latter event the proceeds of any insurance covering such damage shall be assigned to Purchaser at Closing.

12.2 Condemnation. If, prior to Closing, action is initiated or threatened to take a material part of the Property by eminent domain proceedings or by deed in lieu under threat thereof, or if Purchaser is advised that a material part of the Property will be required to be donated as a condition to the issuance of a building permit, Purchaser may either (a) terminate this Agreement and receive a refund of the Earnest Money and any other money paid by Purchaser to Seller or for Seller's benefit under this Agreement; or (b) consummate the Closing in which latter event any award received or to be received by Seller from the condemning authority related to the Property shall be assigned to Purchaser at the Closing. For purposes of this Section 11.2, a "material part" shall be deemed to mean a taking which impairs the ability of the Purchaser to develop the Property or to construct the improvements necessary for Purchaser's Intended Use of the Property.

DEFAULT

13.1 Default by Seller. If Seller breaches this Agreement, Purchaser may either terminate this Agreement and be entitled to the immediate return of the Earnest Money.

13.2 Breach by Purchaser. If Purchaser breaches this Agreement, Seller shall be entitled to retain the Earnest Money as agreed upon as liquidated damages (not as a penalty, the parties hereby acknowledging that the Seller's damages in the premises are uncertain) as it's sole and exclusive remedy.

MISCELLANEOUS

14.1 Notices. All notices shall be in writing unless provided for elsewhere in this Agreement and shall be deemed delivered and received (a.) on the date when personally delivered, (b.) on the date sent by facsimile transmission with electronic verification of transmission or by email transmission sent to the party to receive such notice, (c.) on the date when actually received when delivered by a commercial express delivery service who obtains a receipt, or (d.) three (3) days after deposit in any post office or mail receptacle maintained or authorized by the United States Postal Service, certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

As to Purchaser:

Lakeland Hospitality Group, LLC
a Florida limited liability company
500 South Florida Avenue, Suite 800
Lakeland, Florida 33801
Attention: Wesley Barnett
Phone: (863) 698-0643
Email: wesbenterprise@gmail.com

With a copy to:

Timothy F. Campbell, Esquire
Clark, Campbell, Lancaster & Munson, P.A.
500 South Florida Avenue, Suite 800
Lakeland, Florida 33801
Phone: (863) 647-5337
Fax: (863) 647-5012

Email: tcampbell@cclmlaw.com

As to Seller: Timothy J. McCausland, City Attorney
City of Lakeland
228 South Massachusetts Avenue
Lakeland, Florida 33801
Phone: (863) 834-6010
Email: timothy.mccausland@lakelandgov.net

As to Escrow Agent: Timothy F. Campbell, Esquire
Clark, Campbell, Lancaster & Munson, P.A.
500 South Florida Avenue, Suite 800
Lakeland, Florida 33801
Phone: (863) 647-5337
Fax: (863) 647-5012
Email: tcampbell@cclmlaw.com

14.2 Broker. Seller and Purchaser represent and warrant to each other that no brokers have been involved in connection with the transaction contemplated by this Agreement. Each party agrees to defend, indemnify and hold the other harmless from and against any and all expense, cost, damage or liability resulting from the claims of any brokers or those claiming to have performed services in the nature of brokerage services for either one of the parties.

14.3 Escrow Agent. Clark, Campbell, Lancaster & Munson, P.A., Escrow Agent, agrees to hold any funds entrusted to it on the following terms and conditions:

Escrow Agent shall deposit all escrowed funds into an escrow account at a bank licensed to conduct business in the State of Florida.

The Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and this paragraph. The Escrow Agent shall not be deemed to have any implied duties or obligations under or related to this Agreement and this paragraph.

The Escrow Agent may (a) act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine; (b) assume the validity and accuracy of any statement or assertion contained in such a writing or instrument; and (c) assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions of this Agreement and this paragraph has been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in escrow, nor as to the identity, authority, or right of any person executing any instrument; the Escrow Agent's duties under this Agreement and this paragraph are and shall be limited to those duties specifically provided in this Agreement and this paragraph.

Escrow Agent shall not be liable for any loss or damage resulting from:

- The financial status or insolvency of any other party, or any misrepresentation made by any other party.
- The legal effect, insufficiency, or undesirability of any instrument deposited with or delivered by or to the escrow agent or exchanged by the parties hereunder, whether or not the escrow agent prepared such instrument.

- The default, error, action or omission of any other party to the escrow.
- Any loss or impairment of funds that have been deposited in escrow while those funds are in the course of collection or while those funds are on deposit in a financial institution if such loss or impairment results from the failure, insolvency or suspension of a financial institution, or any loss or impairment of funds due to the invalidity of any draft, check, document or other negotiable instrument delivered to the escrow agent.
- The expiration of any time limit or other consequence of delay, unless a properly executed settlement instruction accepted by the escrow agent has instructed the escrow agent to comply with said time limit.
- The escrow agent's compliance with any legal process, subpoena, writ, order, judgment or decree of any court, whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.
- Any shortfall in the sufficiency of the amount held in escrow to accomplish the purpose of the escrow.
- Any obligation to collect additional funds, unless such obligation is in writing and signed by the escrow agent.

The parties to this Agreement do and shall indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or other expenses, fees, or charges of any character or nature, including attorneys' fees and costs, which it may incur or with which it may be threatened by reason of its action as the Escrow Agent under this Agreement, except for such matters which are the result of the Escrow Agent's gross negligence or willful malfeasance. The Escrow Agent shall be vested with a lien on all property deposited under this Agreement for the purpose of such indemnification, and for any other expense, fees or charges of any character or nature, which may be incurred by the Escrow Agent in its capacity as escrow agent. The Escrow Agent has and shall have the right, regardless of any instructions, to hold the property deposited in escrow until and unless said additional expenses, fees and charges shall be fully paid.

If the parties (including the Escrow Agent) shall be in disagreement about the interpretation of this Agreement, or about their respective rights and obligations, or about the propriety of any action contemplated by the Escrow Agent, the Escrow Agent may, but shall not be required to, file an action in interpleader to resolve the disagreement; upon filing such action, the Escrow Agent shall be released from all obligations under this Agreement. The Escrow Agent shall be indemnified for all costs and reasonable attorneys' fees, including those for appellate matters and for paralegals and similar persons, incurred in its capacity as escrow agent in connection with any such interpleader action. The Escrow Agent shall be fully protected in suspending all or part of its activities under this Agreement until a final judgment in the interpleader action is received.

The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection in accordance with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its gross negligence or willful misconduct. The Escrow Agent may resign upon five (5) days' written notice to Seller and Purchaser. If a successor escrow agent is not appointed jointly by Seller and Purchaser within the five (5) day period, the Escrow Agent may petition a court of competent jurisdiction to name a successor.

The Escrow Agent represents Seller in connection with this transaction. In the event of any disputes as to which a party is entitled to the Deposit, or in the event any disagreement shall arise as a result of this Agreement or the transaction contemplated hereby, the Escrow Agent shall not be excluded from representing Seller by virtue of its serving as Escrow Agent pursuant to this Agreement. The Purchaser hereby acknowledges and consents to the representation of the Seller by Clark, Campbell & Lancaster, P.A.

As used herein, the term "**Escrow Agent**" includes the employees and attorneys of Escrow Agent. The provisions of this Section 14.3 shall survive Closing.

14.4 Entire Agreement. This Agreement and the Exhibits hereto embody the entire agreement between the parties relative to the subject matter, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter, which are not expressly set forth herein.

14.5 Amendment. This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.

14.6 Headings. The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

14.7 Time of the Essence. Time is of the essence of this Agreement. However, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the law of the United States or the State of Florida, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

14.8 Governing Law; Venue. This agreement shall be construed in accordance with and governed by the laws of the State of Florida and the laws of the United States pertaining to transactions in Florida. Venue for any action arising hereunder shall lie in the court having jurisdiction in Polk County, Florida.

14.9 Successors and Assigns. This Agreement shall bind and inure to the benefit of Seller, Purchaser and their respective heirs, executors, administrators, personal legal representatives, successors and assigns. Purchaser may assign Purchaser's rights under this Agreement to any entity controlled by Purchaser with Seller's prior written consent which may not be unreasonably withheld.

14.10 Attorneys' Fees. In the event it becomes necessary for either party hereto to file suit to enforce this Agreement or any provision contained herein, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages as herein provided, reasonable attorneys', paralegals', or expert witnesses' fees and costs incurred in such suit at trial or on appeal or in connection with any bankruptcy or similar proceedings.

14.11 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.

14.12 Effective Date. The Effective Date means the date of execution of this Agreement by the last of Seller and Purchaser to execute same.

14.13 Section 1031 Exchange. Either Seller or Purchaser shall have the right to treat this Property as part of a tax-deferred like-kind exchange under Section 1031 of the Internal Revenue Code and, to that end, shall have the right to assign or otherwise alter this Agreement in order to accomplish that objective, provided the net economic effect (including exposure to liability) shall be essentially the same as under this original Agreement.

14.14 Reverter Provision. Seller shall have the right to elect to purchase the Property back from Purchaser (the “**Re-Purchase**”) if Purchaser refuses or fails to commence with construction of a hotel on the Property within three (3) years after the Closing (the “**Construction Commencement Deadline**”), by providing written notice of such election within twenty (20) days after the Construction Commencement Deadline and closing on the Re-Purchase of the Property from Purchaser within thirty (30) days of such written notice. In the event of such Re-Purchase, the Seller shall pay the Purchase Price to Purchaser and shall be responsible for all costs associated with such Re-Purchase. This provision shall survive the Closing and shall be incorporated into the Declaration.

14.15 High Quality Development; Ongoing Business Concern. Purchaser shall be obligated to develop and maintain a high quality hotel associated with a high quality hotel chain (for example, a Marriott, Hilton or Hyatt brand hotel)(a “**Quality Brand**”) on the Property and shall continue to maintain and operate such Quality Brand hotel without ceasing to conduct business for any period in excess of five (5) business days (a “**Cessation of Business**”). Any temporary closure related to a matter beyond the reasonable control of Purchaser, such as an act of God (natural disaster, hurricane, flood, earthquake, and weather disturbance), war, terrorism or threat of terrorism, civil disorder, labor strike or disruption, fire, disease or medical epidemic or outbreak, or other matter beyond Purchaser’s reasonable control that prevents Purchaser from conducting the hotel business shall not constitute a Cessation of Business. Furthermore, a temporary closure of not more than thirty (30) business days for renovations, substantial repairs or remodeling that requires such temporary closure shall not constitute a Cessation of Business. In the event of Purchaser’s failure to maintain a Quality Brand or a Cessation of Business that, in either event, Purchaser has failed to cure within thirty (30) days after receipt of written notice from Seller (in either instance, a “**Cure Period**”), the Seller shall have the option, but is not required, to purchase the Property from Purchaser (a “**Purchase Option**”) by providing written notice of such election to Purchaser within sixty (60) days after the expiration of any such Cure Period (“**Option Notice**”). The Seller shall provide a signed purchase contract (an “as-is” contract with no financing contingency in a form reasonably acceptable to the parties providing that the Seller is responsible for the payment of documentary stamp taxes and the premium for the issuance of an owner’s title policy in the amount of the Option Purchase Price [defined below])(“**Contract**”) and an appraisal (“**Initial Appraisal**”) from a MAI designated appraiser reflecting the appraiser’s professional opinion of the value of the Property and improvements (“**Property Value**,” which value shall be inserted into the purchase contract as the proposed purchase price) with the Option Notice. Within thirty (30) days after the receipt of the Option Notice and required documents, the Purchaser shall either approve, in writing, the Property Value as the purchase price or deliver an appraisal (“**Second Appraisal**”) to Seller from a MAI designated appraiser reflecting that appraiser’s professional opinion of the value of the Property and improvements. The Seller and Purchaser shall, within fifteen (15) days after the delivery of the Second Appraisal by Purchaser to Seller, attempt to agree to a purchase price that is acceptable to each party. If the parties cannot agree to a purchase price within such fifteen (15) day period, the parties shall instruct the two appraisers to select a third MAI designated appraiser to provide an appraisal (“**Third Appraisal**”) reflecting that appraisers professional opinion of the value of the Property and improvements. The Seller shall be responsible for the cost of the Initial Appraisal. The Purchaser shall be responsible for the cost of the Second Appraisal. The parties shall each be responsible for one-half of the cost of the third appraisal. The final purchase price (“**Option Purchase Price**”) for the Contract shall be (i) the Property Value if approved by Purchaser in writing

or, if the Purchaser does not approve the Property Value, either the (ii) amount approved by the parties in writing after the delivery of the Second Appraisal to Seller, or, if the parties cannot agree to a purchase price within fifteen (15) days after receipt of the Second Appraisal, the average of the Initial Appraisal, Second Appraisal and Third Appraisal. The Purchaser shall insert the final Option Purchase Price into and sign and return the fully-executed Contract to Seller within three (3) business days after the Option Purchase Price is determined and the Seller shall initial any agreed upon changes to the initial version of the Contract. The closing of the Contract shall occur within thirty (30) days after the effective date of the Contract, which shall be the date upon which the last of the parties signs the final version of the Contract. This provision shall survive the Closing and shall be incorporated into the Declaration.

[SIGNATURE BLOCKS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written below.

SELLER:

CITY OF LAKELAND, a municipal corporation of the State of Florida

ATTEST:

Kelly Koos,
Clerk of the Lakeland City Commission

City Commission for the City of
Lakeland, Florida

By: _____
Signature

By: _____
R. Howard Wiggs, Mayor

Date: _____

Date:

APPROVED AS TO FORM AND LEGALITY:

Timothy J. McCausland, City Attorney
City of Lakeland

By: _____
Timothy J. McCausland, City Attorney

Date: _____

PURCHASER:

LAKELAND HOSPITALITY GROUP, LLC.,
a Florida limited liability company

By: _____
Wesley Barnett, Manager

Dated: _____

ESCROW AGENT

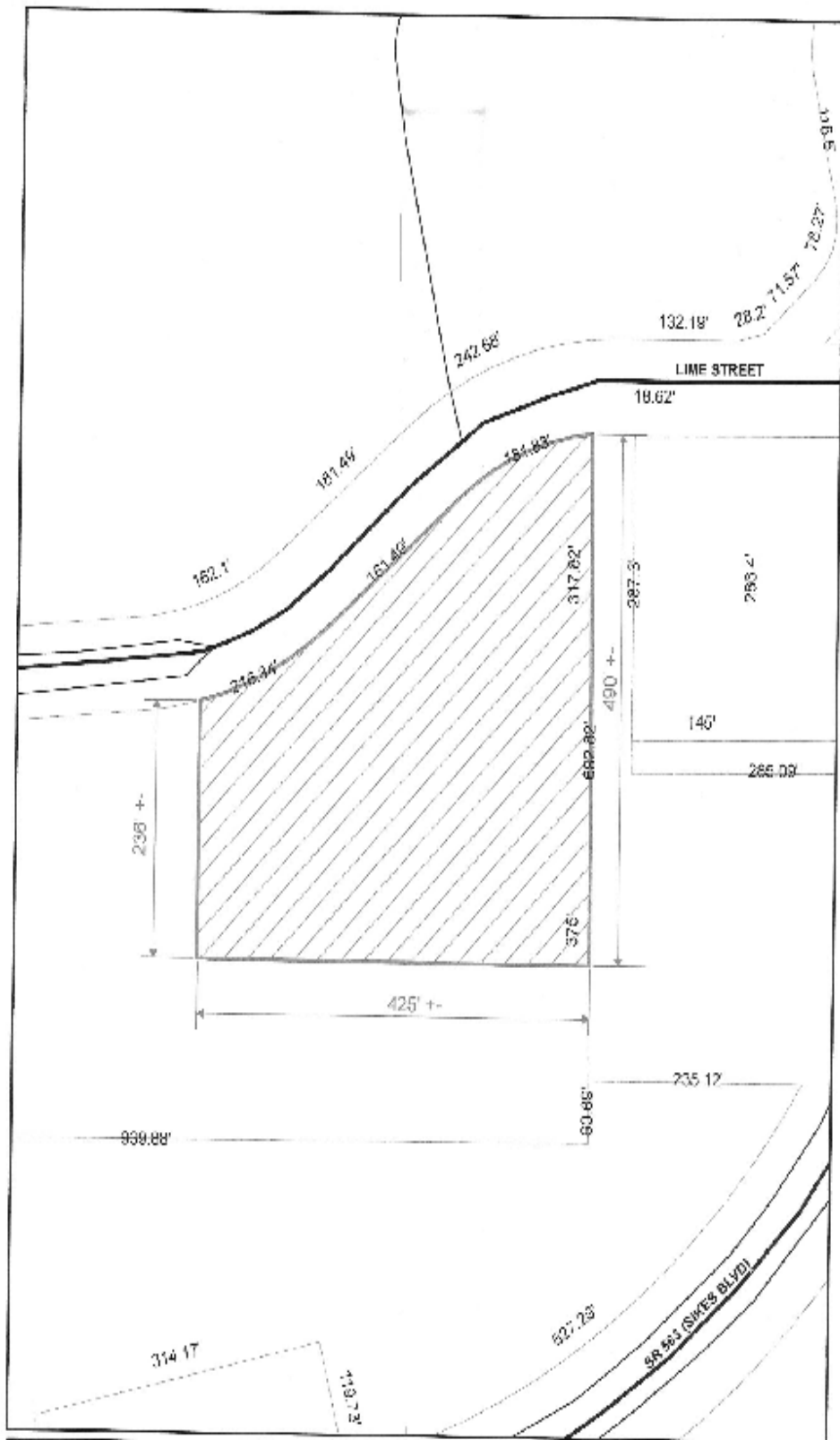
CLARK, CAMPBELL, LANCASTER & MUNSON, P.A.

By: _____
Timothy F. Campbell, its President



Dated: _____

EXHIBIT "A"

DEPICTION OF PROPERTY



Legend

-  Parcel 3.88 Acres
-  Roads

