

**SECOND AMENDMENT TO  
REAL ESTATE PURCHASE AND SALE CONTRACT**

**THIS SECOND AMENDMENT TO REAL ESTATE PURCHASE AND SALE CONTRACT** is made as of this \_\_\_\_ day of \_\_\_\_\_, 2024, and constitutes the amended agreement between FELTRIM DEVELOPMENT N.A., INC., (hereinafter referred to as “FELTRIM”) a Florida corporation located at 124 Kenny Boulevard, Haines City, Florida 33844 and the CITY OF HAINES CITY, FLORIDA, a Florida municipal corporation (“CITY”), located at 620 East Main Street, Haines City, Florida 33844.

**RECITALS:**

**WHEREAS**, for purposes of this Second Amendment, the following Parcels are designated as follows:

- (i) Parcel 1 – the Cromer Building lot (Parcel ID No. 272729783000074040) (0.0459 acres).
- (ii) Parcel 2A – the Western half of the Dance Studio lot (approximately 0.46 acres).
- (iii) City Parcel 2B – the Eastern half of the Dance Studio lot (approximately 0.46 acres).
- (iv) City Parcel 2 – which is the combined Parcels 2A and 2B (aka the entire Dance Studio lot) (Parcel ID No. 272729783000067040) (0.9181 acres).
- (v) Annex Parcel – the three lots purchased in 2020/2021 (Parcel ID Nos. 272729783000067082, 272729783000067083 and 272729783000067081).
- (vi) City 9<sup>th</sup> Street Parcel (Parcel ID No. 272729783000087030) (0.4589 acres).

**WHEREAS**, FELTRIM and CITY entered into that certain REAL ESTATE PURCHASE AND SALE CONTRACT dated August 4, 2022 (the “Agreement”);

**WHEREAS**, prior to FELTRIM and CITY entering into the Agreement, FELTRIM was the sole respondent to the CITY’s Request For Proposals in relation to development of City-owned real property (the Dance Studio lot and the Cromer Building lot). The City Commission approved FELTRIM’s Proposal (dated October 1, 2019) and the parties have proceeded with due diligence and planning with respect to the FELTRIM project and the CITY’s consideration of building a parking garage on a portion of the Dance Studio lot; and

**WHEREAS**, for purposes of clarification and understanding the progression of events since the City Commission’s approval of FELTRIM’s Proposal, the following facts are pertinent:

- (i) The Request For Proposal included both the (entire) Dance Studio lot

and the Cromer Building lot.

(ii) The City and Feltrim discussed the prospect of the City constructing a Parking Garage on the Eastern half of the Dance Studio lot (City Parcel 2B) and addressed this issue in the Memorandum of Understanding (as amended), and the Purchase and Sale Agreement(as amended). The parties contemplated that the City would retain ownership of City Parcel 2B.

(iii) The initial cost estimate for the construction of the Parking Garage was in the range of \$3.5 million to \$4 million.

(iv) Primarily due to inflation and material increases, the current cost estimate for the construction of the Parking Garage is in the range of at least \$5 million to \$6 million.

(v) City staff has considered multiple options for construction of the Parking Garage and financing such construction project. Ultimately, the City Commission must approve any decision related to the construction and financing of the Parking Garage.

**WHEREAS**, in 2020 and 2021, the CITY purchased the three properties that now comprise the Annex Parcel where the City is currently in the process of constructing an administrative office building adjacent to City Hall and the Dance Studio lot; and

**WHEREAS**, parking for the building to be located on the Annex Parcel became an issue in 2021 after the City began design plans for the Annex building; and

**WHEREAS**, due to the current cost estimate for the construction of the Parking Garage, the City's construction of the Parking Garage may be unfeasible at this time, and

**WHEREAS**, the parties have negotiated this amendment to the Purchase and Sale Agreement so that the City shall sell and Feltrim shall purchase (i) the City 9<sup>th</sup> Street lot (Parcel ID No. 272729783000087030) instead of the Dance Studio lot (Parcel ID No. 272729783000067040)), and (ii) Parcel 1 (the Cromer Building lot (Parcel ID No. 272729783000074040)); and

**WHEREAS**, the CITY intends to continue to make investments in the downtown area through the addition of high quality, context driven, planning and developments in order to enrich the community and maintain a cohesive, thriving, safe and healthy CITY; and

**WHEREAS**, the Agreement contained certain deadlines; and

**WHEREAS**, the CITY has authority pursuant to Section 1.01 of the City's Charter to "hold real estate, personal or mixed property, and dispose of the same for the benefit of the city;"

**WHEREAS**, Section 166.021(1) and (2), Florida Statutes, state as follows:

“(1) As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

(2) “Municipal purpose” means any activity or power which may be exercised by the state or its political subdivisions.”

Section 166.021(4), Florida Statutes, states, in part, as follows:

“The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited.”

**WHEREAS**, the City Commission of the City approved Resolution No. 24-1817 on August 12, 2024 which declared the 9<sup>th</sup> Street Parcel as Surplus Property; and

**WHEREAS**, the City Commission of the City approved Resolution No. 24-1818 on August 12, 2024 which authorized the substitution of the 9<sup>th</sup> Street Parcel for the Western half of the Dance Studio Parcel (City Parcel 2A) and authorized the City Manager and City Attorney to negotiate an amendment with Feltrim concerning the Purchase and Sale Agreement; and

**WHEREAS**, the parties have agreed to amend the Agreement; and

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Recitals.** The Recitals set forth above are true and correct and are incorporated herein by reference.
2. **Defined Terms.** Except as specified to the contrary in this Amendment, all defined terms in this Amendment have the same meaning set forth in the Agreement.
3. Section 4 of the Agreement is deleted in its entirety and replaced with the following:

“Closing Date. The Closing shall take place on a date mutually agreeable to Buyer and Seller but in no event less than ninety (90) days following the date of the last authorization, permit, entitlement, application approval, governmental approval, easement, easement or use agreement or the equivalent of any of the foregoing necessary from the City of Haines City or any other governmental authority exercising jurisdiction over the City Properties has been issued.

Buyer shall make all reasonable efforts to obtain all authorizations, permits, entitlements, application approvals, governmental approvals, easements, easement or use agreements or the equivalent of any of the foregoing necessary from the City of Haines City or any other governmental authority exercising jurisdiction over the City Properties in order to allow Buyer to develop and construct its intended improvements on Parcel 1 and City 9<sup>th</sup> Street Parcel on or before September 30, 2026. Buyer shall provide City, upon written request by City, with updates as to its efforts to obtain said authorizations, permits, entitlements, etc.

In the event Buyer does not close within 90 days after the last authorization, permit, entitlement, etc., has been issued to Buyer in order to allow Buyer to develop and construct its intended improvements on Parcel 1 and City 9<sup>th</sup> Street Parcel then City may terminate this Agreement by providing Buyer with written notice of termination.”

4. Section 8(a) and Section 8(c) of the Agreement are deleted in their entirety.
5. Section 8(d) of the Agreement is deleted in its entirety and replaced with the following:

The City, upon the Buyer's application and subsequent approval consistent with the City's Code of Ordinances and Land Development Regulations, will provide all authorizations, permits, entitlements, application approvals, governmental approvals, easements, easement or use agreements or the equivalent of any of the foregoing necessary from the City of Haines City, including Parcel 1 (Cromer Building lot) and the City 9<sup>th</sup> Street Parcel to allow Buyer to develop and construct its intended improvements on such parcels as depicted on Exhibit "E" attached hereto. The parties acknowledge that the Buyer may be required to apply for and seek approval for authorizations, permits, entitlements, application approvals, governmental approvals, easements, easement or use agreements or the equivalent of the foregoing from other governmental authorities (other than the City) exercising jurisdiction over the City Properties.

5. The following paragraph (h) is added to Section 8 of the Agreement:

- (h) The parties acknowledge and agree to amend the parcels that are subject to the Purchase and Sale Agreement, as amended, so that the City is selling, and that Feltrim is buying, both Parcel 1 (the Cromer Building lot; Parcel ID No. 272729783000074040)) and the City 9<sup>th</sup> Street Parcel (Parcel ID No. 272729783000087030).

The parties acknowledge and agree that the City’s sale and Feltrim’s purchase of the City 9<sup>th</sup> Street Parcel instead of City Parcel 2 is a material change from the original RFP and under the terms and conditions of the original MOU. The parties acknowledge that the City conducted formal hearings on August 12, 2024 before the City Commission to (i) declare the City 9<sup>th</sup> Street lot as surplus property (Resolution No. 24-1817), and (ii) substitute the City 9<sup>th</sup> Street Parcel for City Parcel 2A (Resolution No. 24-1818).

The parties acknowledge and agree that the substitution of the City 9<sup>th</sup> Street Parcel for City Parcel 2A in the Purchase and Sale Agreement, as amended, shall not result in a change in the Purchase Price stated in the Purchase and Sale Agreement, as amended.

For purposes of clarification, the parties acknowledge and agree that all references to “City Parcel 2A” in the Purchase and Sale Agreement, as amended, shall hereafter reflect the substitution of the City 9<sup>th</sup> Street Parcel for City Parcel 2A.

6. **Conflict.** If there is a conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall control.

7. **Ratification.** Except as herein expressly amended, each and every other term of the Agreement shall remain unchanged and in full force and effect without modification, and the parties hereby ratify and affirm the same.

8. **Counterparts.** This Amendment may be executed in several counterparts, all of which are identical and all of which counterparts together shall constitute one and the same document. This Amendment may be executed by facsimile signature.

**IN WITNESS WHEREOF**, the parties hereto have executed this Fourth Amendment to the Memorandum of Understanding this \_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF HAINES CITY, FLORIDA**

By: \_\_\_\_\_  
Omar Arroyo, Mayor

Date: \_\_\_\_\_, \_\_\_\_\_, 2024.

ATTEST:

By: \_\_\_\_\_  
Sharon Lauther, MMC, City Clerk

Date: \_\_\_\_\_, \_\_\_\_\_, 2024.

Reviewed as to form and legal sufficiency.

\_\_\_\_\_  
Fred Reilly, City Attorney

**FELTRIM DEVELOPMENT N.A., INC.,**  
a Florida corporation

By: \_\_\_\_\_

Name: Garrett J. Kenny

Title: President

Date: \_\_\_\_\_, \_\_\_\_\_, 2024