

Exhibit 5

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
City of Fort Lauderdale)
City Attorney's Office)
100 North Andrew Ave.)
Fort Lauderdale, FL 33301-1016)
Attn: D'Wayne Spence)

APN:

AFFORDABLE HOUSING AGREEMENT

This Affordable Housing Agreement (the "Agreement"), pursuant to Section 47-13.52 of the Fort Lauderdale Unified Land Development Regulations ("ULDR") is entered into this 26th day of August, 2022, by and between the CITY OF FORT LAUDERDALE, a Florida municipality ("City"), and Sunshine Shipyard, LLC, a Delaware Limited Liability Company authorized to transact business in the State of Florida (referred to in this Agreement sometimes as "Developer" and sometimes as "Owner"), as follows:

RECITALS

A. Developer/Owner is the owner of certain real property located in the City of Fort Lauderdale, in Broward County, Florida, more particularly described on Exhibit "A" attached and incorporated into this Agreement by this reference (the "Property") on which Developer obtained approval from the City Commission of the City of Fort Lauderdale to develop up to a 542,089 square foot high mixed-use building, consisting of 480 residential units (48 of the 480 housing units are to be set-aside as affordable, in perpetuity, per Section 4 of this Agreement) 15,235 square feet of commercial use and 587 space parking garage, serving residents, commercial users and public (the "Project") via Resolution No. 22-151 adopted on July 5, 2022. The Property will be owned by Owner and the Project improvements will be owned by Owner.

B. The Northwest Regional Activity Center-Mixed Use ("NWRAC-MU") Special Regulations codified in Section 47-13.52 of the Fort Lauderdale Unified Land Development Regulation ("Special Regulations") set forth performance standards and criteria for additional

height bonus for projects in the NWRAC-MU east zoning district ("NWRAC-MUe") of up to one-hundred ten (110) feet.

C. The purpose of Affordable Housing height incentive is to maintain a balanced community that provides housing for people of all income levels and to ensure the opportunity of affordable housing for employees of businesses that are located or will be located in the community.

D. The Property and the Project are located within the NWRAC-MUe zoning district.

E. Pursuant to the Special Regulations at Section 47-13.52.B.2, any development requesting additional height pursuant to Section 47-13.52.B shall include at least ten percent (10%) of all units in a development as affordable housing, as defined in the Special Regulations.

F. Developer has created an affordable housing development plan for the Project, in accordance with the requirements of Section 47-13.52.B.3.b. of the Special Regulations (the "Plan") which Plan is attached and incorporated into this Agreement as Exhibit "B", also in accordance with Section 47-13.52.B.3.b. of the Special Regulations.

G. Developer and City desire to enter this Agreement to further set forth Developer's responsibilities in connection with the Property and the Project, consistent with the provisions of the Special Regulations.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained in this Agreement, the parties hereby agree as follows:

AGREEMENT

1. Recitals. The Recitals set forth above are true and accurate, and incorporated into this Agreement by reference.

2. Definitions. All defined terms, as indicated by initial capitalization, shall have the meanings set forth in the Special Regulations, except as expressly indicated otherwise. For purposes of this Agreement, the terms listed below shall have the meanings specified.

(a) "Affordable Housing" as set forth in the Special Regulations, means Housing with a sales price or rental amount within the means of a household that may occupy moderate and low-income housing. In the case of dwelling units for sale, affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than thirty percent (30%) of such gross annual household income for a household of the size that may occupy the unit in question. In the case of dwelling units for rent, affordable means housing for which the rent and utilities constitute no more than thirty percent (30%) of a household's applicable gross household income for a household of the size that may occupy the unit in question.

(b) "Affordable Housing Development Plan" means the Plan attached and incorporated into this Agreement as Exhibit "B", which Plan was prepared by Developer for this Affordable Housing Development Project pursuant to Section 47-13.52 of the ULDR (2022) and

which Plan outlines and specifies the Project's compliance with the applicable requirements in the Special Regulations.

(c) "Affordable Housing Dwelling Unit" means a dwelling unit subject to covenants or restrictions requiring those dwelling units to be sold or rented at prices or rates preserving them as Affordable Housing by deed restriction in perpetuity.

(d) "Affordable Housing Unit" means a dwelling unit subsidized by the federal or state government or an Affordable Housing Dwelling Unit.

(e) Conversion: A change of a residential rental development or a mixed-use development that includes rental dwelling units to a development that contains only owner occupied individual dwelling units, or a change of a development that contains owner-occupied individual units to a residential rental development or mixed-use development.

(f) "Developer" means the person or entity defined as such in the introductory paragraph of this Agreement and includes all successors and assigns of that person or entity.

(g) "Director" means the director of the City' Development Services Department or his or her designee.

(h) "Eligible Household" shall mean a Low-Income Household or Moderate-Income Household as the terms are defined in Section 47-13.52, ULDR (2022).

(i) "Household" consists of all the people who occupy a housing unit and includes related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household.

(j) "Household Size" means for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of two-bedroom unit, four persons in the case of a three-bedroom unit and five persons in the case of a four-bedroom unit.

(k) "Low Income Housing" means, according to the U.S. Department of Housing and Urban Development, housing that is affordable, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that does not exceed fifty percent (50%) of the Median Gross Household Income for households of the same size within an area in Broward County in which the housing is located.

(l) "Median Gross Household Income" means the applicable area median gross income level for the Broward County, as established and defined in the annual schedule published by the secretary of the U.S. Department of Housing and Urban Development, adjusted for household size.

(m) "Moderate Income Housing" means, according to the U.S. Department of Housing and Urban Development, housing that is affordable, for either home ownership or rental,

and that is occupied, reserved, or marketed for occupancy by households ("Moderate Income Households") with a gross household income that is greater than fifty percent (50%) of Median Gross Household Income and that does not exceed one-hundred percent (100%) of the Median Gross Household Income for households of the same size within an area in Broward County in which the housing is located.

(n) "Owner" means the person or entity defined as such in the introductory paragraph of this Agreement and includes all successors and assigns of Owner.

3. Notices. All notices required in this Agreement shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt and shall be deemed to be effective as date received or the date delivery was refused as indicated on the return receipt, as follows:

To Owner:

Sunshine Shipyard, LLC

900 NW 6th Street, Suite 201

Fort Lauderdale Florida 33311

Attn: Eyal Peretz

With copies to:

Sunshine Shipyard, LLC

900 NW 6th Street, Suite 201

Fort Lauderdale Florida 33311

Attn: Stylianos Vayanos

To City:

City Manager

City of Fort Lauderdale

100 North Andrews Avenue

Fort Lauderdale, Florida 33301

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section 3.

4. Incorporation of Affordable Housing Dwelling Units in the Project. Owner/Developer shall designate and set-aside at least ten percent (10%) of all dwelling units in the final Project as Affordable Housing Dwelling Units constituting Moderate Income Housing. 48 of the 480 housing units are to be set-aside as affordable, in perpetuity, to be rented to households with a gross household income that is up to one hundred percent (100%) of the median

gross household income within Broward County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development (HUD) on an annual basis.

5. Criteria for Location, Integration, Character of Affordable Housing Units. The Project shall comply with the following criteria:

(a) The Affordable Housing Units shall be mixed with, and not clustered together or segregated or separated in any way from market-rate units.

(b) The Affordable Housing Units shall be developed concurrently with the market-rate units. No phasing plan shall provide that the affordable housing units built are the last units in an affordable housing development.

(c) The exterior appearance of the Affordable Housing Units in the Project shall be similar to the market-rate units in the Project by the provision of exterior building materials and finishes substantially the same in type and quality.

6. Declaration of Restrictive Covenants Running with the Land

(a) The City and the Developer agree that the Property shall be held, maintained, transferred, sold, conveyed, used, demised, occupied, possessed and owned subject to the covenants, restrictions, regulations and burdens set forth in this Agreement and Developer shall execute a declaration of restrictive covenants that bind the Developer, its successors and assigns, and every successor in interest to the Property or any part thereof, and such Declaration of the Restrictive Covenants shall include the provisions of this agreement and shall make reference to the whole agreement.

(b) In exchange for the height bonus (up to 110 feet in height) granted Owner shall ensure that the units referenced in Section 4 above shall be rented to persons meeting the applicable income limitations set forth herein.

(c) The Applicant shall execute any and all documents deemed necessary by the City in a form to be established by the City Attorney's Office, including, without limitation, restrictive covenants, deed restrictions, and related instruments (including requirements for income qualification for tenants of for-rent units) to ensure the continued affordability of the Affordable Housing Units in accordance with this Agreement.

(d) Restrictive covenants or deed restrictions required for affordable units shall specify that the title to the subject property shall be transferred only with prior written approval by the City.

7. Annual Reports. Developer or its agent shall manage and operate affordable units and shall submit an annual report to the City identifying the following: (i) which units are affordable units in an affordable housing development; (ii) the monthly rent for each unit; (iii) vacancy information for each year for the prior year; (iv) annual income for tenants of each affordable unit; and (v) other information as required by the City, while ensuring the privacy of the applicable tenants. The annual report shall contain information sufficient to determine whether

tenants of the Affordable Housing Units referenced in Section 4 qualified, at the time of initial lease, as Eligible Households.

8. Miscellaneous Provisions Pursuant to the Special Regulations.

(a) The Affordable Housing Units shall be occupied by eligible households in perpetuity by deed restriction from the date of the initial certificate of occupancy for the Project.

(b) The affordable housing units shall be rented to eligible households in perpetuity by deed restriction from the date of the initial certificate of occupancy for the Project. The Project shall be leased subject to restrictions that shall maintain the affordability of the Affordable Housing Units referenced in Section 4 hereof as Moderate-Income Households.

(c) Subleasing of the affordable housing units referenced in Section 4 shall not be permitted without the express written consent of the City's Director of Department of Sustainable Development or the Director's designee.

9. Maintenance of Units. Owner shall provide the Affordable Housing Units referenced in Section 4 with the same levels of services and maintenance as is provided to the other dwelling units on the Property.

10. Federal and State Laws. Notwithstanding the above provisions, nothing contained in this Agreement shall require Owner or City to do anything contrary to or refrain from doing anything required by Federal and State laws and regulations promulgated thereunder applicable to the construction, and management of Affordable Housing Dwelling Units in the City of Fort Lauderdale.

11. Prohibition Against Discrimination. Owner shall not discriminate against any potential tenant on the basis of sex, color, race, religion, ancestry, national origin, age, pregnancy, marital status, family composition, sexual orientation, or the potential or actual occupancy of minor children. Owner further agrees to take affirmative action to ensure that no such person is discriminated against for any of the above-mentioned reasons.

12. Indemnification. Owner shall defend, indemnify and hold harmless the City and its officers, agents, employees, representatives, and volunteers (collectively, "Indemnitees") from and against any actual out of pocket loss, liability, claim or judgment relating in any manner to the Project or this Agreement. Owner shall not be required to indemnify and hold harmless Indemnitees for liability attributable to the active negligence or willful misconduct of Indemnitees.

13. City's Right to Inspect Units and Documents. The City may inspect the Affordable Housing Units and any documents or records relating to those units to determine Owner's compliance with this Agreement. All inspections contemplated in this Section 13 may be conducted only with reasonable notice to both Owner and any tenant whose unit is being inspected, in compliance with all lease documents governing the units so inspected, and in compliance with applicable state and federal laws and regulations, including but not limited to Part II, Chapter 83, Florida Statutes governing residential tenancies.

14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of City and Owner, and their respective successors, owners and assigns. City reserves the right to designate another public agency to perform City obligations or to exercise City rights and options under this Agreement.

15. Burden to Run with Property. The covenants and conditions contained in this Agreement shall run with and burden the Property for so long as either: (i) the rights to develop the Project remain in effect; or (ii) the Project authorized by the Permit or any successor development constructed pursuant to the Permit remains in existence; or both. Owner shall expressly make the conditions and covenants in this Agreement a part of any deed or other instrument conveying an interest in the Property.

16. Default. Failure or delay by either party to perform any term or provision of this Agreement which is not cured within thirty (30) days after receipt of notice from the other party constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not initiate proceedings against the party in default until thirty (30) days after giving its notice. Failure or delay in giving the notice shall not constitute a waiver of any default, nor shall it change the time of default. For purposes hereof, the City shall accept a timely cure by the Owner's Investor of a default hereunder.

17. Remedies.

(a) If the Owner rents (including subleasing) or sells an Affordable Housing Unit referenced in Section 4 in violation of the provisions of section 47-13.52.B of the ULDR or the provisions of this Agreement, Owner shall be required to forfeit to City all monetary amounts so obtained .

(b) City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Agreement, including but not limited to actions for injunctive relief or damages.

18. Governing Law. The laws of the State of Florida shall govern this Agreement. Any legal action brought under this Agreement must be instituted in the Circuit Court for Broward County, State of Florida.

19. Attorneys' Fees. In any action brought to declare the rights granted in this Agreement or to enforce or to interpret any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney(s) fees in an amount determined by the court.

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties and integrates all the terms and conditions mentioned in this Agreement or incidental to this Agreement and supersedes all negotiations or previous agreements between the parties regarding all or any part of the subject matter thereof. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied in this Agreement,

and that any other agreement, statement or promise not contained in this Agreement shall not be valid or binding. This Agreement may be amended only by written instrument signed by both City and Owner.

21. Non-Waiver. Failure to exercise any right City may have or be entitled to, in the event of default hereunder shall not constitute a waiver of such right or any other right in the event of a subsequent default.

22. Further Assurances and Recordation. Owner shall execute any further documents consistent with the terms of this Agreement, including documents in recordable form and do such further acts as may be necessary, desirable or proper as City shall from time to time find necessary or appropriate to effectuate its purpose in entering this Agreement.


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement on or as of the date first written above.

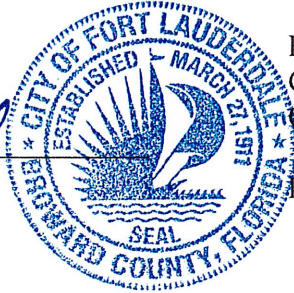
"CITY"

**CITY OF FORT LAUDERDALE, a
municipal corporation of the State of
Florida**

ATTEST:



DAVID R. SOLOMAN
City Clerk



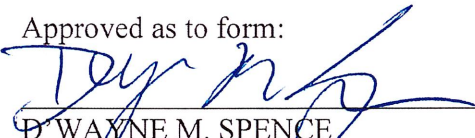
By: 

GREG CHAVARRIA
City Manager

Date: August 26, 2022

(SEAL)

Approved as to form:



D'WAYNE M. SPENCE
Assistant City Attorney

"OWNER"

By: 

Print Name: Eyal Peretz as manager

Date: August 19, 2022

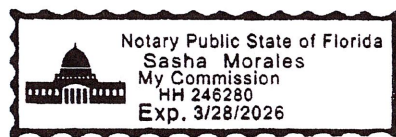
FLORIDA NOTARY ACKNOWLEDGMENT

STATE OF FLORIDA

COUNTY OF Broward

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 19th (numeric date) day of August (month), 2022 (year), by Eyal Peretz (name of person acknowledging).

(Seal)



S. Morales

Signature of Notary Public

Print, Type/Stamp Name of Notary

Personally known: yes

OR Produced Identification: _____

Type of Identification Produced: _____

EXHIBIT "A"

LEGAL DESCRIPTION

LEGAL DESCRIPTION:

PARCEL 1

LOTS 2 THROUGH 24, BLOCK 325, "PROGRESSO", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 18, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, SAID LANDS SITUATE, LYING AND BEING IN BROWARD COUNTY, FLORIDA.

LESS AND EXCEPT FROM PARCEL 1, THE FOLLOWING PROPERTY CONVEYED BY C. W. HENDRIX ET. AL. TO THE CITY OF FORT LAUDERDALE, A MUNICIPAL CORPORATION BY DEED RECORDED IN OFFICIAL RECORDS BOOK 3411, PAGE 994:

THAT PART OF LOTS 23 AND 24 IN BLOCK 325 OF "PROGRESSO," AS RECORDED IN PLAT BOOK 2, PAGE 18 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF SAID LOT 24; THENCE GO EASTERLY 135.0 FEET ALONG THE SOUTH LINE THEREOF TO THE SOUTHEAST CORNER OF SAID LOT 24; THENCE NORTHERLY ALONG THE EAST LINE THEREOF 37.36 FEET TO THE TANGENT POINT OF A CIRCULAR ARC HAVING A RADIUS OF 25 FEET AND BEING CONCAVE TO THE NORTHWEST; THENCE SOUTHERLY TO WESTERLY ALONG SAID ARC, 39.27 FEET THROUGH A CENTRAL ANGLE OF 90°00' TO THE END OF SAID ARC; THENCE WESTERLY AND TANGENT TO SAID ARC ALONG A LINE BEING 35 FEET NORTH OF AND PARALLEL TO THE SOUTH BOUNDARY OF THE N1/2 OF SECTION 3, TOWNSHIP 50 SOUTH, RANGE 42 EAST, 110.0 FEET TO THE WEST LINE OF SAID LOT 24; THENCE SOUTHERLY 12.32 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

PARCEL 2

LOTS 25 THROUGH 48, LESS THE WEST 15 FEET FOR RIGHT OF WAY OF SAID LOTS, IN BLOCK 325, "PROGRESSO", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 18, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, SAID LANDS SITUATE, LYING AND BEING IN BROWARD COUNTY, FLORIDA.

LESS AND EXCEPT FROM PARCEL 2, THE FOLLOWING PROPERTY CONVEYED BY C. W. HENDRIX ET. AL. TO THE CITY OF FORT LAUDERDALE, A MUNICIPAL CORPORATION BY DEED RECORDED IN OFFICIAL RECORDS BOOK 3411, PAGE 995:

THAT PART OF LOTS 25 AND 26 IN BLOCK 325 OF "PROGRESSO," AS RECORDED IN PLAT BOOK 2, PAGE 18 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE EAST LINE OF THE WEST 15 FEET AND THE NORTH LINE OF THE SOUTH 17 FEET OF SAID LOT 25; THENCE GO NORTHERLY ALONG SAID EAST LINE AND ALONG THE EAST LINE OF THE WEST 15 FEET OF LOT 26, 20.27 FEET TO THE TANGENT POINT OF A CIRCULAR ARC CONCAVE TO THE NORTHEAST; THENCE SOUTHEASTERLY ALONG SAID ARC, HAVING A RADIUS OF 25 FEET AND ARC DISTANCE OF 23.64 FEET THROUGH A CENTRAL ANGLE OF 54°10'43" TO THE NORTH LINE OF THE SOUTH 17 FEET OF LOT 25; THENCE WESTERLY ALONG SAID NORTH LINE 10.37 FEET TO THE POINT OF BEGINNING.

AND LESS THE SOUTH 17 FEET OF THE AFORESAID LOT 25 FOR RIGHT OF WAY.

EXHIBIT "B"

AFFORDABLE HOUSING PLAN

- i. A general description of the development, including whether the development will contain units for rent or for sale;

- ii. The total number of affordable housing units;

The development contains 480 residential units. Ten percent (10%) of the units (48 units) will be set aside as affordable housing units, in perpetuity. The affordable housing units will be rented to households with incomes of less than or equal to one hundred percent (100%) of the median gross household income within Broward County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development (HUD) on an annual basis. Rent and utilities costs will not exceed thirty percent (30%) of the gross annual household incomes of unit's set-aside as affordable.

- iii. The number of bedrooms in each unit (all units);

- iv. The square footage of each unit (all units) measured from the interior walls of the unit and including air-conditioned and non-air-conditioned areas;

The following are approximate square footages for each unit type. The affordable housing units will be randomly distributed between the various unit sizes.

Studios (10 proposed): 478 square feet

One Bedroom / One Bath (28 proposed): 647 square feet

Two Bedroom / Two Bath (10 proposed): 915 square feet

Three bedroom / Two Bath: _____ square feet

- v. The location in the development of each affordable housing unit;

The affordable housing units within the building will be scattered between floors to avoid a concentration of affordable units in a single floor as follows:

2nd Floor: 6

3rd Floor: 8

4th Floor: 8

5th Floor: 8

6th Floor: 8

7th Floor: 6

8th Floor: 4

- vi. If construction of dwelling units is to be phased, a phasing plan stating the number of affordable housing units in each phase;

Construction will not be phased

- vii. The estimated sale price or monthly rent of each unit;

The 48 affordable housing units will be rented to households with incomes of less than or equal to one hundred percent (100%) of the median gross household income within Broward County, adjusted for household size, as determined by HUD on an annual basis. Such units will be offered for rent based on the applicable HUD Rent Limits published by the Florida Housing Finance Corporation each year.

- viii. Documentation and plans regarding the exterior appearances, materials, and finishes of the affordable housing development and each of its individual units; and

The proposed exterior appearance, materials and finishes are detailed within the architectural plans and will not vary between affordable and other units. All units will have similar interior finishes.

- ix. A proposed marketing plan to promote the sale or rental of the affordable units within the development to eligible households."

The following accommodations and policies will be followed to minimize obstacles for prospective tenants during the application and screening process:

- 1. All application and leasing materials will be made available in at least three languages (English, Spanish, and Haitian Creole).*
- 2. All application and leasing materials will be written in plain language where possible.*
- 3. All application and leasing materials will be available to prospective tenants in writing (hard copy and/or electronic form), and will be completely read to prospective tenants upon request.*
- 4. Leasing staff will make themselves available with appointments outside normal working/business hours to guide applicants through the required forms and explain the required verification documents.*
- 5. Upon request, leasing staff will assist applicants with obtaining the required verification documentation from third parties, including employers, Social Security and/or banking institutions.*

The marketing plan may change from time to time based on the good faith belief that such changes will better identify and serve the applicable households.