

**DEVELOPMENT AGREEMENT
FOR
DEVELOPMENT INCENTIVE PROGRAM
(COMFORT SUITES HOTEL)**

between

**FORT LAUDERDALE
COMMUNITY REDEVELOPMENT AGENCY**

And

**AVENUE D'ARTS FLL, LLC
a Florida Limited Liability Company**

**DEVELOPMENT AGREEMENT
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(COMFORT SUITES HOTEL)**

This DEVELOPMENT AGREEMENT FOR DEVELOPMENT INCENTIVE PROGRAM (the "Agreement") is by and between the **FORT LAUDERDALE COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163, Florida Statutes (the "Agency") and **AVENUE D' ARTS FLL, LLC**, a Florida Limited Liability Company ("Developer") with the joinder and consent of Franchise Holder, Sameet A. Patel, individually and Impact Investments, 1, LLC (as the owner of the Developer Parcels (defined below).

WITNESSETH:

WHEREAS, the Agency was created to eliminate "slum and blight" and to stimulate community redevelopment;

WHEREAS, the Northwest-Progresso-Flagler Heights Plan ("Redevelopment Plan") was adopted on November 7, 1995, and subsequently amended in 2001, 2002, 2013, 2016 , 2018 and as subsequently amended and provides for redevelopment of the Northwest-Progresso-Flagler Heights Area (the "Redevelopment Area");

WHEREAS, the Agency, pursuant to the Redevelopment Plan, has created certain business incentive programs to stimulate redevelopment within the Redevelopment Area including the Development Incentive Program (the "Programs");

WHEREAS, the Developer, pursuant to the terms of the Programs, has applied for funding in the amount of \$3,000,000 to support construction of a five story, 100 room hotel within the Redevelopment Area under the Comfort Suites trademark and trade name with supporting amenities and parking located at 713, 717 and 723 NW 3rd Street and 301 NW 7th Avenue, Fort Lauderdale, FL (the "Project");

WHEREAS, on August 2, 2018, the Agency issued a Request for Proposal to develop the real property located at 713, 717 and 723 NW 3rd Street, Fort Lauderdale, Florida ("Agency Parcel");

WHEREAS, the only the Developer responded to the request and offered to pay \$355,000.00 for the Agency Parcel with the intent to construct the Project on the Agency Parcel together with contiguous parcels owned by the Developer;

WHEREAS, on February 21, 2019, the Agency's Northwest-Progresso-Flagler Heights Advisory Board (the "Advisory Board") approved the Developer's funding request for the Project and sale of the Agency Parcel;

WHEREAS, on May 21, 2019, under Resolution No. 19-07 (CRA), after review of the

Developer's Proposal (as hereinafter defined), the Agency accepted Developer's Proposal as being in the public interest and in furtherance of the goals, objectives and provisions of the Redevelopment Plan, approved an award of \$3,000,000 for the Project and authorized negotiation of a development agreement between the Agency and Developer setting forth the terms and conditions for the funding and development of the Project and authorized sale of the Agency Parcel subject to the terms and conditions of the Commercial Contract and Addendum;

WHEREAS, as of May 29, 2019, the Agency and Developer entered into the Development Program Loan Letter of Intent and Commercial Contract and Addendum;

WHEREAS, the parties desire to amend the terms and condition of the award and Commercial Contract and Addendum in accordance with Resolution No. 22-_____ and Resolution 19-07(CRA), as amended and move forward with execution of this Development Agreement and Commercial Contract as amended by that Second Addendum to Commercial Contract;

WHEREAS, the Agency and Developer have entered into and concluded negotiations for the Project pursuant to the Development Incentive Program, which negotiations have resulted in this Agreement;

WHEREAS, the Principals (defined below) of Developer have approved this Agreement and have authorized and directed certain individuals to execute this Agreement on behalf of Developer.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

ARTICLE 1. DEFINITIONS

1.01 Definitions. The terms defined in this Article 1 shall have the following meanings in this Agreement, except as herein otherwise expressly provided:

"Act" means the Constitution of the State of Florida; Section 163.01, Florida Statutes, Part III, Chapter 163, Florida Statutes, et. seq.; and other applicable provisions of law, and ordinances and resolutions of Broward County, the City of Fort Lauderdale and the Agency pertaining to the redevelopment of the Redevelopment Area (as herein defined).

"Affiliate (s)" means any trust, firm, partnership, corporation, joint venture, association, company, or other legal or business entity or investment enterprise that is controlled, by, whether directly or indirectly, by Developer where control means control over the management and voting of the Affiliate.

"Agency" means the Fort Lauderdale Community Redevelopment Agency, its agents, employees and officers, and any successors or assigns thereto, provided that such successors and assigns shall be limited to governmental entities.

“Agency Parcel” means the real property located at 713, 717 and 723 NW 3rd Street, Fort Lauderdale, Florida and legally described in Exhibit “A”.

“Agreement” means this Development Agreement for the Development Incentive Program, including any Exhibits, and any amendments hereto or thereto.

“Arbitrable Event” shall mean a dispute or disagreement between the parties concerning the occurrence or non-occurrence of any event or whether a set of facts meets criteria set forth in this Agreement, which such dispute or disagreement shall be resolvable by resort to arbitration under Article 13 hereof.

“Authorized Representative” means the Executive Director or his designee, as to the Agency and its _____, _____, or his designee, as to the Developer, and person or persons designated and appointed from time to time as such by the Agency or the Developer pursuant to Section 2.04.

“Building Code” means the code which governs building and construction standards, review of plans for construction, issuance of building permits, inspections for compliance with construction standards, issuance of Certificate of Occupancy, issuance of Certificate of Completion and other matters pertaining to construction of structures in the City.

“Building Permit” means, for each part of the Project to be constructed on the Project Site, any building permit issued by the appropriate department, office or official of the City (or other governmental authority having jurisdiction over the Project Site) charged with reviewing the plans, specifications, drawings, details and other construction documents for compliance with the Building Code and other similar codes applicable to that part of the Project being constructed thereon, and having the authority to issue building permits for construction of buildings, structures or other improvements in accordance with construction documents therefor reviewed and approved by such department, office or official.

“Certificate of Completion” means a certificate of completion or certificate of occupancy issued by the City or other appropriate governmental authority for the Project.

“City” means the City of Fort Lauderdale, Florida, a Florida Municipal Corporation, and any successors or assigns thereto.

“City Codes” or “Codes” means the ordinances and codes of the City that regulate the development and construction of projects and buildings, including the Building Code and zoning regulations.

“City Commission” means the elected governing body of the City, by whatever name known or however constituted from time to time.

“Closing Date” means the date, on which the Grant Documents have been executed and delivered by the Developer, an agreement in recordable form has been received from the

first mortgage holder consenting to a second mortgage and security agreement in favor of the Agency. Closing Date on the Agency Parcel shall occur simultaneously with execution of a Unity of Title, (in form and format as required by the Department of Services Development of the City) for the Agency Parcel and Developer Parcel in favor of the City or closing on the Developer's construction loan at the latest. The instrument of conveyance shall provide in the event the Developer fails to develop the Project and sells, conveys or transfer the Agency Parcel or if _____ sells or conveys or transfer its interest in the Developer, then the Agency shall receive fifty percent (50%) of the gross profit (Total consideration paid) from the sale or transfer of the Agency Parcel without credit, setoff or deduction for closing costs associated with the transfer but less the net consideration paid to the Agency under the Commercial Contract for the Agency Parcel. Further, Closing Date for the Grant award shall occur no later than twelve (12) months from the date (June 7, 2022) the Agency approves the revised terms and conditions to the Grant award;

“Commencement Date” means the date on which the Developer commences construction of the Project as evidenced by issuance of a Permit but in any event no later than one (1) month after the Closing Date.

“Completion Date” means the date on which a Certificate of Completion is issued by the appropriate governmental authority for the Project, the Project is substantially open for business as a Comfort Suites Hotel or comparable hotel with the same industry standard rating or better and renting rooms to the public, and the Developer is eligible for the commencement of the Development Incentive Program as set forth in Section 5.02. The Completion Date shall be no later than eighteen (18) months after the Commencement Date, unless otherwise extended by the Executive Director, in his sole discretion, due to Unavoidable Delays.

“Contractor” means one or more Persons constituting a general contractor or Major Subcontractor properly licensed by the State of Florida or other appropriate jurisdiction to the extent required by applicable law, authorized to perform construction contractor services in the State of Florida, registered with the City as required by applicable law, bonded and insured to the extent required by applicable law and this Agreement.

“Developer” means Avenue D’Arts FLL, LLC, a Florida limited liability company and successors and/or assigns approved by the Agency in accordance with the provisions of Article 10 hereof.

“Developer Parcel” means the real property owned by Impact Investments, 1 LLC and located on 301 NW 7th Avenue, Fort Lauderdale, Fl and legally described on Exhibit “B”.

“Development Incentive Program Loan” or “Grant” means a forgivable loan in an amount not to exceed Three Million Dollars (\$3,000,000.00), which shall accrue interest at zero percent (0%), except in the event of default, provided by the Agency pursuant to this Development Agreement and Grant Documents to reimburse the Developer for eligible hard costs associated with construction of a building and permanently attached

fixtures/systems, which loan shall be forgivable at the end of five (5) years starting from the Completion Date, subject to satisfaction of the terms and conditions set forth herein.

“Effective Date” means the date on which the last of the party executes this Agreement.

“Executive Director” means the executive director of the Agency.

“Exhibits” means those agreements, diagrams, drawings, specifications, instruments, forms of instruments, and other documents attached hereto and designated as exhibits to, and incorporated in and made a part of, this Agreement.

“Final Site Plan” shall have the meaning set forth in Section 4.01.

“Franchise Agreement” means that Choice Hotels International, Inc., Franchise Agreement dated September 29, 2017 by and between Choice Hotels International, Inc. and Sameet A. Patel, individually.

“Full Time Equivalent (FTE) Job Hours ” means each and every non-construction hour for all full or part time employees hired by the Developer, its Affiliates for the Project for which an employee is paid or entitled to be paid according to the Developer’s normal business practice including training, vacation, paid time off, holiday, illness, incapacity (including disability, layoff, jury duty, maternity leave, bereavement, military duty or leave of absence).

“Grant Documents” mean this Development Agreement for Development Incentive Program Grant, Mortgage and Security Agreement, Promissory Note, Declaration of Restrictive Covenant (the forms of the Promissory Note, Mortgage and Security Agreement and Declaration of Restrictive Covenant are attached hereto as Exhibit “C”), an agreement in recordable form from the first mortgage holder, if necessary, consenting to a second mortgage and security agreement in favor of the Agency, and such other reasonable documents or instruments contemplated by this transaction or requested by Agency.

“Grant Eligibility Period” means a term of five (5) years starting from the Completion Date.

“Hard Costs” means costs for labor and materials required to construct a permanent structure on the Project Site and for installation of site improvements such as water, sewer, electric and other utilities, grading, paving and drainage improvements to the Project Site.

“Job Creation Requirement” means non-construction workforce of the Project hired from residents within the Redevelopment Area which total 20,800 FTE Job Hours. FTE Job Hours for one employee is calculated by multiplying a forty (40) hour work week by fifty-two (52) weeks by two (2) years. On the Completion Date, the Developer shall certify in writing in form and substance acceptable to the Agency its total non-construction

workforce (i.e. employees) for the Project and shall certify such data on each anniversary date thereafter during the Grant Eligibility Period. In no event shall any construction jobs or construction related jobs which are solely related to construction or renovation of the Project be included in the calculation of Full Time Equivalent (FTE) Job Hours under this Agreement.

“Jobs Report” shall have the meaning set forth in Section 7.02.

“Major Subcontractor” means the Contractors for site development work (infrastructure), structural improvements, underground water and sewer utilities, mechanical, (HVAC), plumbing and electrical.

“NWPFH” means the Northwest-Progresso-Flagler Heights Community Redevelopment Area.

“Permits” means all zoning, variances, special exceptions, yard modifications, zoning approvals, development orders respecting land use and consents required to be granted, awarded, issued, or given by any governmental authority relative to the regulation of land use or zoning in order for construction of the Project, or any part thereof, to commence, and to be completed.

“Person” means any natural person, firm, partnership (general or limited), corporation, company, association, joint venture, joint stock association, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or association, or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee, or other person acting in a similar representative capacity.

“Principals” means _____ and Sameet A. Patel, holder of the rights to the brand mark and trade name.

“Project” shall have the meaning set forth in the fourth WHEREAS.

“Project Site” shall have the meaning set forth in Section 3.01.

“Proposal” means the proposal for development of the Project Site presented by Developer to the Agency’s Advisory Board on February 21, 2019.

“Public Property” means those portions of the Project Site consisting of: (i) streets, alleys and other public ways and (ii) land, including plazas, on which infrastructure improvements will be constructed and dedicated to the public, if any.

“Redevelopment Area” shall have the meaning set forth in the second WHEREAS clause.

“Redevelopment Plan” shall have the meaning set forth in the second WHEREAS clause.

“Regular Scheduled Meeting” means a regularly scheduled meeting of the Agency that is presently scheduled for the first and third Tuesday of each month, at which a quorum is present.

“Soft Costs” means those costs associated with the development and construction of the Project which are not Hard Costs, including, without limitation, surveying, architectural and engineering fees, provided that “Soft Costs” shall not include developer fees, general overhead charges or other similar fees payable to Developer, Affiliates of the Developer or other Persons.

“Termination Date” means the date on which any party terminates this Agreement as provided in Article 10.

“Unavoidable Delay” means any of the following events or conditions or any combination thereof: Acts of God, acts of a public enemy, riot, insurrection, war, act of terrorism, pestilence, archaeological excavations required by law, unavailability of materials after timely ordering of same, epidemics, pandemics, quarantine restrictions, freight embargoes, fire, lightning, hurricanes, earthquakes, tornadoes, floods, inclement weather (as indicated by the records of the local weather bureau for a ten (10) year period preceding the Effective Date), exercise of the power of condemnation as to a portion of the Project Site bearing a material relationship to the improvements to be constructed, strikes or labor disturbances, any of which shall be beyond the reasonable control of the party performing the obligation, adverse economic conditions, delays due to proceedings under Chapters 73 and 74, Florida Statutes, restoration in connection with any of the foregoing or any other cause beyond the reasonable control of the party performing the obligation in question, including, without limitation, such causes as may arise from the act of the other party to this Agreement, or acts of or failure to act by any governmental authority, which such event(s) or condition(s) or any combination(s) thereof substantially frustrate on a commercially reasonable basis the performance contemplated by this Agreement. Lack of funding or failure to secure funding shall not be deemed an Unavoidable Delay.

1.02 Use of Words and Phrases.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number, and the word “person” shall include corporations and associations, including public bodies, as well as natural persons. “Herein,” “hereby,” “hereunder,” “hereof,” “hereinbefore,” “hereinabove,” “hereinafter” and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

ARTICLE 2. PURPOSE PROPOSAL; PROJECT DEVELOPMENT SCHEDULE

2.01 Purpose of Agreement.

(a) The purpose of this Agreement is to set forth the agreement between the Agency and Developer for the terms and conditions of the Grant and the development of the Project and to set forth mutual roles and responsibilities of each. It is also to further the implementation of the Redevelopment Plan by providing for the development and construction of the Project on the Project Site in accordance with the conceptual site plan and the Final Site Plan, as approved by the City.

(b) Developer agrees to develop the Project by using its commercially reasonable efforts to (i) obtain approvals from governmental authorities necessary for the development of the Project, and (ii) construct various improvements on the Project Site consistent with the terms of this Agreement.

2.02 Developer's Proposal.

(a) The Proposal is hereby found by the parties hereto: (i) to be consistent with and in furtherance of the objectives of the Redevelopment Plan, (ii) to conform to the provisions of the Act, (iii) to be in the best interests of the citizens and residents of the City, (iv) to further the purposes and objectives of the Agency, and (v) to further the public purpose of eradicating conditions of "slum and blight" in the Redevelopment Area.

(b) Based upon and as a result of the findings set forth in subsection (a) above, the Proposal, including such changes and revisions as are provided for by this Agreement, is hereby affirmed by the Developer and approved and accepted by the Agency.

(c) The parties hereto agree that the terms and conditions set forth in this Agreement do not, individually or collectively, constitute a substantial deviation from the Proposal.

2.03 Cooperation of the Parties.

The parties hereto recognize that the successful development of the Project and each component thereof is dependent upon continued cooperation of the parties hereto, and each agrees that it shall act in a reasonable manner hereunder. No cooperation or assistance by the Agency shall be construed or implied to constitute any action by the City or any board, commission or committee thereof acting in its governmental capacity.

2.04 Authorized Representative.

(a) The Agency has designated the Executive Director as its Authorized Representative to act on its behalf to the extent of the grant of authority to such representative. The Developer has designated is _____ as its Authorized Representative to act on its behalf. Written notice of the designation of such an Authorized Representative (and any subsequent change in the Authorized Representative) and the authority that may be

exercised by such Authorized Representative, shall be given by the designating party to the other party in writing in accordance with the procedure set forth in Section 14.01 hereof.

(b) Except as otherwise expressly provided in this Agreement, whenever approval or action by the Developer or the Agency is required by this Agreement, such action or approval may, to the extent of authorization granted, be taken or given by the Authorized Representative thereof. Subject to any limitation of authority set forth in the written notice, a party to this Agreement may rely upon the representation of the other party's Authorized Representative that such person has the requisite authority to give the approval or take the action being done by that Authorized Representative.

ARTICLE 3. PROJECT SITE.

3.01 Conceptual Site Plan and Final Site Plan.

Agency acknowledges that Developer has prepared and completed the Conceptual Site Plan that was submitted to and approved by the Advisory Board. The Development Review Committee of the City approved the Site Plan on August 27, 2019 and the City Commission approved a heights bonus on November 5, 2020 under Resolution No. 20-225 (the "Final Site Plan").

3.02 Preparation of Conceptual and Final Site Plan.

Developer is responsible for and shall pay the cost of preparing, submitting and obtaining approval of any version of the conceptual site plan and Final Site Plan and any revisions or modifications thereto.

3.03 Approval of Final Site Plan by Executive Director.

(a) The Final Site Plan shall be approved by the Executive Director of the Agency without further review or approval of the Agency.

(b) Any denial by the Executive Director under this Section 4.03 may be appealed by Developer to the Agency.

3.04 Not a Development Order or Permit

Agency and Developer agree that this Agreement is not intended to be and should not be construed or deemed to be a "development order" or "development permit" within the meaning of those terms in Section 163.3164, Florida Statutes.

ARTICLE 4. PROJECT FUNDING.

4.01 Development Incentive Program Grant.

The Agency agrees, and the Grant Documents shall provide, as follows:

Subject to the conditions set forth herein, the Agency agrees to grant to Developer up to Three Million Dollars (\$3,000,000) in accordance with the terms of this Agreement and in accordance with the policy of the Agency's Development Incentive Program, to reimburse the Developer for Hard Costs associated with constructing the improvements to the Project Site. Developer shall use its own funds, funds obtained from construction financing, funds from other financing sources or equity contributions for the amount needed to design, develop, construct, own, operate and maintain the Project as contemplated by this Agreement. To support its request for reimbursement for eligible construction costs, Developer shall provide (i) invoices from its Contractor, Major Subcontractor, subcontractor, materialman or vendor for material or services paid for by the Developer and (ii) proof of payment of such costs in the form of cancelled checks paid by the Developer or wire transfers from accounts controlled by the Developer, copies of construction draw requests submitted by the Developer or General Contractor submitted to its construction lender or other documentation showing proof of payment. The Developer shall submit sufficient information to support its request for reimbursement of Hard Costs and to document its investment or equity match equal to or greater than the Agency Grant at the time application for funding for reimbursement of Hard Costs is submitted.

4.02 Disbursement of Grant Proceeds.

Provided the Developer provides satisfactory proof of payment for eligible Hard Costs and expenses under the Development Incentive Program related to the Project, the Grant shall be disbursed as set forth below. No disbursement shall be made until after the Completion Date and all preconditions for funding have been satisfied or waived in writing by the Agency. No disbursement shall be made if an Event of Default has been declared under this Agreement. Funding for this Project is subordinate to and subject to funding for operating and administrative costs of the Agency and the debt, hereafter existing or subsequently incurred, of the Agency and will be funded on an equal basis with other obligations of the Agency. No reimbursement shall be made for costs and expenses related to improvements in a public right of way.

Conditions for Disbursements. The Agency shall not be required to disburse the Grant until:

- (a) Executive Director of the Agency has approved the construction loan and lender and Developer has closed on its construction loan;
- (b) Developer has closed on the Agency Parcel;
- (c) Executive Director has approved the Final Site Plan;
- (d) Satisfactory evidence that Developer has invested in the Project an amount equal to the Agency's investment under this Agreement;
- (e) Lender's Title commitment and policy insuring the Agency's interest in the Project and deleting all standard exceptions, Schedule B-1 requirements and providing Florida Form 9 coverage;
- (f) Satisfactory evidence of eligible costs of the Project;
- (g) Satisfactory evidence the Franchise Agreement is in full force and effect and has not been revoked or terminated;
- (h) The Certificate of Completion has been issued;

- (i) Execution of the Grant Documents; and
- (j) Such other reasonable requirements as requested by the Executive Director.
- (k) Provided all conditions for disbursement have been met, the parties anticipate disbursement shall be made in one lump sum after issuance of the Certificate of Completion and provided the Project is open for business.

ARTICLE 5. CONSTRUCTION LOAN

5.01 Job Creation Requirements and School Enrollment Requirement.

During the Grant Eligibility Period, the Developer shall open, operate and maintain the Project and shall satisfy the Job Creation Requirement. Any employee hired or employed by the Developer or its Affiliates, subject to the approval process set forth in section 6.03 and employed at the Project Site shall be eligible for calculation of FTE Job Hours. The parties anticipate the Job Creation Requirement shall be satisfied within a five-year period starting from the Completion Date. Any disputes regarding the Job Creation Requirement is an Arbitrable Event.

5.02 Job Creation Reports.

To the extent Developer is seeking credit for FTE Job Hours, Developer shall provide to Agency an annual written report ("Job Report") certified by an independent accountant the number of FTE Job Hours created for the preceding year within sixty (60) days of the first anniversary of the Completion Date and within sixty (60) days of each annual anniversary thereafter for four (4) years thereafter for a total of five (5) years. The Job Report shall be substantially in the format attached as Exhibit "D" and shall include the following information for each employee for which FTE Job Hours credit is requested: (i) the name of the employer of the employee; (ii) the internal identification number for the employee; (iii) the employee's job title; (iv) the dates on which the employee resided in the Redevelopment Area, if any; (v) the employee's annual salary, or if paid hourly, the employee's hourly rate; (vi) the number of FTE Job Hours claimed for the employee. Upon a written request, the Developer shall provide the Agency within five (5) days of the receipt of such a request from the Agency, the name of any employee for which FTE Job Hours credit is sought. Failure to provide the requested information for any employee shall eliminate the FTE Job Hours credit for that employee.

5.03 Approval of Affiliates.

For Affiliates to be qualified Affiliates pursuant to this Agreement, Affiliates must be approved by the Agency. To facilitate such approval Affiliates, Developer shall submit the following information within sixty (60) days after a business of an Affiliate opens for business within the Project and not less than ninety (90) days before submission of the Job Report for which the Developer intends to seek FTE Job Hours credit; (i) the name of the employer; (ii) the estimated number of jobs to be created by the employer; (iii) a description of the business operations of the employer and of the Affiliate; (iv) a certified copy of the written lease, license or other occupancy agreement which governs the occupancy of the employer in the Project which instrument may

incorporate preservation of public records and audit rights in favor of the Agency, (v) evidence of controlling interest over the Affiliate by the Developer; and (vi) such other reasonable information requested by the Agency. The Agency shall have forty-five (45) days after the submission of the above referenced information to determine if the Affiliate or business will qualify for FTE Job Hours which approval shall not be unreasonably withheld, conditioned or delayed. Failure to render a decision within the forty-five (45) days shall be considered an approval. The Developer shall not be entitled to receive FTE Job Hours credit originating from prohibited business or uses as described in the Declaration of Restrictive Covenant. Notwithstanding anything set forth in this Agreement to the contrary, in no event shall any construction jobs created which are solely related to construction or renovation of the Project be included in the calculation of Full Time Equivalent (FTE) Job Hours under this Agreement. If Developer or Affiliate fails to: (a) provide the information for the Jobs Report; (b) submit to an audit as required under Section 16.19 or (c) comply with a public record request as required under Section 16.20, then the job hours for that particular Affiliate shall not count towards the Job Creation Requirement.

5.04 Job Creation Penalty.

In the event the Job Creation Requirement for Redevelopment Area residents is not met, the Developer shall pay a penalty of \$100,000 per job (i.e. _____ FTE Job Hours). Failure to pay the penalty or to failure to provide the requested information regarding payroll and employment data shall be deemed an event of default. In addition, the Agency mortgage shall not be released until the penalty has been paid to the Agency. During the disbursement period, the Agency reserves the right to withhold the penalty from a disbursement.

ARTICLE 6. INDEMNIFICATION.

6.01 Indemnification.

(a) For consideration of \$10.00 and other good and valuable consideration herein provided, the receipt of which is hereby acknowledged by Developer, Developer agrees to indemnify, defend and hold harmless, the Agency, its respective agents, officers, or employees from any and all liabilities, damages, penalties, judgments, claims, demands, costs, losses, expenses or reasonable attorneys' fees which may be imposed upon or assessed against Agency both at the trial level and through appellate proceedings, for personal injury, bodily injury, death or property damage arising out of, or by reason of any act or omission of Developer, its agents, employees or contractors arising out of, in connection with or by reason of, the performance of any and all of Developer's obligations covered by this Agreement, or which are alleged to have arisen out of, in connection with or by reason of, the performance of any and all of Developer's obligations covered by this Agreement. In the event any action or proceeding shall be brought against the Agency by reason of any such claim, Developer shall defend such claim at Developer's expense by counsel selected by Developer, which counsel shall be reasonably satisfactory to the Agency.

(b) Developer's indemnification under subsection (a) shall survive termination or expiration of this Agreement for the applicable statute of limitations period relating to the occurrences, act or omission at issue, but shall apply only to occurrences, acts, or omissions that

arise on or before the earlier of the Termination Date or the expiration of the Grant Eligibility Period.

(c) Developer's indemnity hereunder is in addition to and not limited by any insurance policy and is not and shall not be interpreted as an insuring agreement between or among the parties to this Agreement, nor as a waiver of sovereign immunity for any party entitled to assert the defense of sovereign immunity.

6.02 Limitation of Indemnification.

Notwithstanding anything to the contrary contained herein, with respect to the indemnification by Developer the following shall apply:

(a) Developer shall not be responsible for damages that could have been, but were not, mitigated by the Agency;

(b) Developer shall not be responsible for that portion of any damages caused by the gross negligent or willful acts or omissions of the Agency;

(c) there shall be no obligation to indemnify hereunder in the event that the Agency (1) shall have affected a settlement of any claim without the prior written consent of Developer, or (2) shall not have subrogated Developer to the Agency's rights against any third party by an assignment to Developer of any cause or action against such third party.

ARTICLE 7. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEVELOPER.

7.01 Representations and Warranties of Developer.

Developer represents and warrants to the Agency that each of the following statements is currently true and accurate and agrees the Agency may rely upon each of the following statements:

(a) Developer is a _____ duly organized and validly existing under the laws of the State of _____, has all requisite power and authority to carry on its business as now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party, and has consented to service of process upon a designated agent for service of process in the State of Florida.

(b) This Agreement and, to the extent such documents presently exist in form acceptable to the Agency and Developer, each document contemplated or required by this Agreement to which Developer is or will be a party 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 thereof, nor compliance with the terms and provisions thereof or hereof:

(1) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein.

- (2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on Developer, or
- (3) contravenes or results in any breach of, default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the Developer under any indenture, mortgage, deed of trust, bank loan or credit agreement, the Developer's Articles of Organization, or, any other agreement or instrument to which the Developer is a party or by which Developer may be bound.

(c) This Agreement and, to the extent such documents presently exist in form accepted by the Agency and Developer, each document contemplated or required by this Agreement to which Developer is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of Developer enforceable against Developer in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

(d) There are no pending or, to the knowledge of Developer, threatened actions or proceedings before any court or administrative agency against Developer, which question the validity of this Agreement or any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of Developer.

(e) Developer has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by Developer prior to delinquency, and has paid, or caused to be paid, all taxes shown to be due and payable on such returns or on any assessments levied against the Developer.

(f) Developer agrees that as of the Effective Date and through the expiration of the Grant Eligibility Period, it shall use its commercially reasonable efforts to maintain the financial capacity necessary to carry out its obligations and responsibilities in connection with the development of the Project as contemplated in this Agreement.

(g) The principal place of business and principal executive offices of Developer is in the _____, Broward County, Florida.

(h) At the time of submitting its Proposal, Developer had, and will continue to have and at all times through the expiration of the Grant Eligibility Period, will maintain the experience, expertise, and knowledge to develop, cause the construction, and complete the Project and oversee and manage the design, planning, construction, completion, marketing of the Project and operations of the Project.

(i) The Developer holds all right, title and interest in the Property free and clear of any liens, encumbrances and other adverse matters except as previously disclosed to the Agency.

**ARTICLE 8. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE
AGENCY.**

8.01 Representations and Warranties.

The Agency represents and warrants to the Developer that each of the following statements is currently true and accurate and agrees that the Developer may rely on each of the following statements:

(a) The Agency is a validly existing body corporate and politic of the State of Florida, is the duly created community redevelopment agency of the City under the Florida Community Redevelopment Act, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party.

(b) This Agreement and, to the extent such documents presently exist in form acceptable to the Agency and the Developer, each document contemplated or required by this Agreement to which the Agency is or will be a party, have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by the Agency, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof;

1. requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein,
2. contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Agency, or
3. contravenes or results in any breach of, or default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the Agency under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Agreement, any other agreement or instrument to which the Agency is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the Agency outstanding on the Effective Date.

(c) This Agreement and, to the extent such documents presently exist in form accepted by the Agency and the Developer, each document contemplated or required by this Agreement to which the Agency is or will be a party constitute, or when entered into will constitute, legal, valid and binding obligations of the Agency enforceable against the Agency in accordance with the terms thereof, except as such enforceability may be limited by public policy or applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

(d) As of the Effective Date there are no pending or threatened actions or proceedings before any court or administrative agency against the Agency or against any officer of the Agency

which question the validity of any document contemplated hereunder or which are likely in any individual case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of the Agency.

(e) Agency agrees that as of the Effective Date, subject to budget and appropriation of funds, it has the financial capacity to carry out its obligations and responsibilities as contemplated in this Agreement.

8.02 Covenants.

The Agency covenants with Developer that until the earlier of the Termination Date or expiration of the Grant Eligibility Period, as the case may be:

(a) The Agency shall timely perform or cause to be performed all the obligations contained herein which are the responsibility of the Agency to perform.

(b) During each year that this Agreement and the obligations of the Agency under this Agreement shall be in effect, the Agency shall cause to be executed and to continue to be in effect those instruments, documents, certificates, permits, licenses and approvals, and shall cause to occur those events contemplated by this Agreement that are applicable to and are the responsibility of the Agency.

(c) The Agency shall to the extent permitted by law assist and cooperate with the Developer to accomplish the development of the Project in accordance with this Agreement and the Final Site Plan, will carry out its duties and responsibilities contemplated by this Agreement, and will not violate any laws, ordinances, rules, regulations, orders, contracts, or agreements that are or will be applicable thereto, and, to the extent permitted by law, the Agency will not enact or adopt or urge or encourage the adoption of any ordinances, resolutions, rules, regulations or orders or approve or enter into any contracts or agreements, including issuing any bonds, notes, or other forms of indebtedness, that will result in any provision of this Agreement to be in violation thereof.

ARTICLE 9. RESTRICTIONS ON ASSIGNMENT AND TRANSFER

9.01 Representations as to Development.

Developer represents and agrees that its undertaking pursuant to this Agreement, are, and will be used, for development of the Project Site as set forth in the Agreement, operation and maintenance of the Project, creation of Jobs and not for speculation in land holding. Developer further recognizes the importance of creation of jobs and the development of the Project Site for the general welfare of the community, and the substantial financial and other public commitments that have been made available by law and through the assistance of local government for making such development possible. Developer further acknowledges that the qualifications and identity of Developer, the Principal and their respective business experience, reputation, financial capacity to carry out the obligation and responsibilities in connection with the Project and their respective development track record within the community is of particular concern to the community and the Agency because it is by such experience, financial capacity, qualifications, reputation, past performance and identity, now in effect, that the Agency is entering into this Agreement with Developer for the benefit of the community and the Plan and, in so doing, is further

willing to accept and rely on the obligations of Developer for the faithful performance of all undertakings and covenants described in this Agreement.

9.02 Restriction on Transfer of Interests Prior to the Expiration of the Grant Eligibility Period.

In reliance upon Section 9.01 above, Developer agrees that prior to the expiration of the Grant Eligibility Period, without the prior approval of the Agency, which such approval shall be governed by the criteria set forth in Section 9.04 below:

1. There shall be no sale or transfer of stock or memberships nor the entry of any voting trusts or shareholder or membership agreements or any other similar devices or arrangements within Developer which would result in the transfer of control of the Developer from the Principal to another Person; and
2. There shall be no sale or transfer of stock or membership nor the entry of any voting trust or shareholder or membership agreements or any other similar devices or arrangements within any corporate member of the Developer which would result in the transfer of control of the Developer from the Principal to another Person.
3. There shall be no transfer rights or interest of Sameet A. Patel in the Franchise Agreement to another Person.

However, a transfer of control resulting from the death or incapacity of a Principal shall not constitute an event of default under this Agreement.

9.03 Notification to Agency as to Ownership Changes.

In order to assist in the effectuation of the purposes of this Agreement, Developer agrees that during the period between the Effective Date and the Expiration of the Grant Eligibility Period that:

(a) Developer shall, at such time or times as the Agency may request, furnish Agency with a complete statement, under oath, setting forth all of the Principal of Developer, the proportion of the membership held, and in the event any other parties have a beneficial interest of 10% or more in any of an interest in Developer, their names and the extent of such interest, all as determined or indicated by the records of Developer and its corporate members; and

(b) Developer will promptly notify Agency of any material changes in the legal or beneficial ownership control over Develop.

9.04 Restrictions On Transfer, Assignment and Encumbrance of Project Site and Assignment of Agreement.

In light of Section 9.01 above, Developer represents and agrees for itself and its successors and assigns (except as so authorized by the provisions of this Agreement) that it will not, prior to the Expiration of the Grant Eligibility Period, as to a proposed sale, assignment or transfer of the Project Site, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or master or any trust or power, sale, transfer, or encumbrance other than construction and permanent financing or (hereinafter, collectively, known as "Transfer") in any other mode or form or with respect to this Agreement or the Project Site, without first obtaining the prior written approval of the Agency, which approval shall not be unreasonably withheld.

(a) The Agency shall be entitled to require, except as may otherwise be provided in this Agreement, as conditions to granting any such prior approval, that:

1. Any proposed successor Developer or proposed successor Principal therein shall have the business experience and reputation, development track record and sufficient financial capacity to carry out the obligations under this Agreement, as determined, in the reasonable discretion of the Agency.
2. Any proposed successor Developer, by instrument in writing satisfactory to the Agency, in its reasonable discretion, shall, for itself and its successors and assigns expressly assume all of the obligations of Developer under the Grant Documents and shall agree to abide by and be subject to all of the terms, conditions, obligations, reservations and restrictions ("terms and conditions") to which Developer is subject.
3. There shall be submitted to the Agency for review all instruments and other legal documents reasonably necessary to assure compliance with Section 9.04(a)(1).

(b) The provisions of this Article respecting restrictions on Transfers shall not be construed in such a manner as to preclude transfer to a construction lender and its successors in interest. The term "successors in interest" is intended to include not only successors in interest to the construction lender but also any transferee or assignee of the construction lender, including but not limited to purchasers at a foreclosure sale or acquisition by way of deed in lieu of foreclosure.

ARTICLE 10. DEFAULT; TERMINATION.

10.01 Default by the Developer.

(a) On or after the Effective Date through and including the Grant Eligibility Period, there shall be an "event of default" by Developer under this Agreement upon the occurrence of any one or more of the following:

1. Developer shall fail to perform or comply with any material provision, including the Job Creation Requirements (total) or failure to pay the penalty due to failure to satisfy the Job Creation Requirement or Grant Documents applicable to it within the time prescribed therefor; or

2. Developer shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation or shall file an answer admitting, or shall fail reasonably to contest, the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Developer of any material part of such entity's properties; or
3. Within ninety (90) days after the commencement of any proceeding by or against Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed or otherwise terminated, or, if within ninety (90) days after the appointment without the consent or acquiescence of Developer of any trustee, receiver or liquidator of any of such entities or of any material part of any of such entity's properties, then such appointment shall not have been vacated; or
4. Developer fails to continuously operate and maintain the Project as a hotel during the Grant Eligibility Period; or
5. The Developer sells, conveys or transfer a portion or all of its right, title or interest in the Project or the Property, during the Grant Eligibility Period; or
6. Developer defaults under the First Mortgage, if any and the First Mortgagee declares a default thereunder; or
7. Either Developer or Principal or both are in default under the Franchise Agreement and the franchisor has declared a default thereunder; or
8. Any material misrepresentation by the Developer which adversely affects, the rights, duties and obligations of the Agency.

(b)(1) If an event of default by Developer described in subsection (a) above shall occur, the Agency shall provide written notice thereof to Developer, and,

- i. if such event of default shall not be cured by Developer within ninety (90) days after receipt of the written notice from the Agency specifying in reasonable detail the event of default by Developer; or

- ii. if, as to non-monetary defaults, such event of default is of such nature that it cannot be completely cured within such ninety day (90) period, then if Developer shall not have commenced to cure such default within such time period and shall not continue to diligently prosecute such cure to completion within such reasonable longer period of time as may be necessary, then the Agency, for events of default described in subsection (a) above, may, pursue any and all legal remedies (excluding therefrom the right to pursue consequential punitive and incidental damages and “loss of projected tax revenue”), equitable remedies of specific performance, injunctive relief or rescission to which the Agency is entitled, including terminating any disbursements of funds by the Agency hereunder. In the event of a default which has not been cured, the Grant, shall be due and payable in full after giving credit for FTE Job Hours created and applied to the Job Creation Requirement (total).

(b)(2) In the event Developer commences to cure a default but finds that the default is of such a nature that it cannot be completely cured within time provided in subsection (b)(1) above and Developer intends to continue to diligently prosecute such cure to completion, then Developer shall be obligated to provide notice to Agency as to the time frame reasonably needed to cure such default, which such time frame shall be subject to the Agency’s approval in its commercially reasonable discretion. If Developer has failed to complete the cure by the end of the time frame designated as the reasonable additional time needed to cure, the Agency shall be permitted to pursue any and all legal or equitable remedies to which it is entitled, as limited by subsection (b)(1) above.

(c) In addition to any other rights of termination provided elsewhere in this Agreement, this Agreement may be terminated by the Agency or Developer after the occurrence of any of the following events or conditions:

1. The entire Project Site is taken by the exercise of the power of eminent domain by a governmental authority (other than the City or the Agency) or a Person entitled to exercise such power or benefiting therefrom, or such part of the Project Site is taken by the power of eminent domain so as to render the Project Site unusable for its intended uses or economically unviable as contemplated by this Agreement, it being the intent of the parties that in the event a dispute arises as to whether a “taking” renders the Project unusable for its intended uses or economically unviable as contemplated by this Agreement, that such dispute shall be an Arbitrable Event;

2. The appropriate governmental authority (including the City in exercise of its governmental and regulatory authority and responsibility), upon petition by Developer, denies or fails to:

- (i) issue building permits where the application meets all requirements of the codes and the terms of this Agreement,
- (ii) approve a rezoning of the Project Site to a zoning classification consistent with this Agreement and the Final Site Plan (if applicable), or

(iii) approve any other land use approval necessary to commence construction of the Project on the Project Site where the application meets all requirements of the law, and Developer has proceeded diligently, expeditiously and in good faith to obtain such approval, permits or other necessary actions including exhaustion of all administrative remedies applicable thereto through the second level of certiorari review.

- (c) In the event of a termination pursuant to this Subsection __.01(c) above and provided no disbursements have been made by the Agency, neither Developer nor the Agency shall be obligated or liable one to the other in any way, financially or otherwise for any claim or matter arising from or as a result of this Agreement or any actions taken by Developer and the Agency, or any of them, hereunder or contemplated hereby, and each party shall be responsible for its own costs.

10.02 Agreement Termination.

In the event of a termination of this Agreement pursuant to the terms of Section __.01(c) above prior to the Completion Date, this Agreement shall no longer be of any force and effect except for those provisions hereof which expressly survive termination, the rights, duties and obligations of the parties hereto shall have been terminated and released (subject to those surviving provisions hereof) and, if the termination is prior to the Completion Date, then the Project Site shall no longer be subject to any restrictions, limitations or encumbrances imposed by this Agreement, except for those reservations, restrictions or limitations encumbering the Agency Parcel which have not been released. Nothing in this Section shall prohibit Developer from completing any Building on which City has issued Building Permits and Developer commenced construction pursuant thereto. Notwithstanding anything contained herein to the contrary, the Agency and the Developer may agree to terminate this Agreement at any time, subject to such terms, conditions and restrictions as agreed to by the parties. In the event of termination after disbursements have been made under the Grant, the Developer shall be obligated repay any and all outstanding sums under the Grant.

Notwithstanding anything set forth in this Agreement to the contrary, nothing herein shall be deemed a pledge or the right to place a lien on the Agency's revenue. This Agreement shall not be construed as a grant or consent to encumber the Redevelopment Trust Fund of the Agency. Further, payments under this Agreement are subordinate and inferior to existing debt service and general operating and overhead payments of the Agency.

ARTICLE 11. ARBITRATION AND MEDIATION

11.01 Mediation Prior to Arbitration.

If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

11.02 Agreement to Arbitrate.

Any disagreement or dispute between the parties which has been specifically delineated in this Agreement as arbitrable may be arbitrated in the manner set forth in this Article 13, provided no judicial or administrative action or proceeding is pending with regard to the same matter. Arbitration is limited to those disagreements or disputes which have specifically been delineated as an Arbitrable Event herein or which the parties mutually agree to be an Arbitrable Event. All parties hereby agree such arbitration, once commenced, shall be the exclusive procedure for resolving such disagreement or dispute and agree to be bound by the result of any such arbitration proceeding unless all parties mutually agree to terminate such proceedings prior to decision. If any arbitration proceeding under this Article adversely affects the performance of any party hereunder, then any time periods provided herein for such performance by that party shall be tolled during the pendency of the arbitration proceeding affecting such performance.

11.03 Appointment of Arbitrators.

(a)(1) Unless accelerated arbitration as provided in Section 11.07 hereof is invoked, any party invoking arbitration herewith shall, within five (5) days after giving notice of impasse in the dispute resolution process or upon following the expiration of the time period for such dispute resolution occurrence of the event permitting arbitration to be invoked, give written notice to that effect to the other parties, and shall in such notice appoint a disinterested person who is on the list of qualified arbitrators maintained by the American Arbitration Association or a disinterested person not on such list to whom an objection is not made by any other party hereto within five (5) days of receipt of the notice of such appointment as the arbitrator or, if more than one (1) arbitrator is to be appointed, as one of the arbitrators.

(a)(2) Within ten (10) days after receipt of the notice described in Section 11.03(a)(1), the other parties shall by written notice to the original party acknowledge that arbitration has been invoked as permitted by this Agreement, and shall either accept and approve the appointment of such individual set forth in the original notice as a sole arbitrator or shall appoint one (1) disinterested person per party of recognized competence in such field as an arbitrator.

(b)(1) If two (2) arbitrators are appointed pursuant to Subsection (a) above, the arbitrators thus appointed shall appoint a third disinterested person who is on the list of qualified arbitrators maintained by the American Arbitration Association, and such three (3) arbitrators shall as promptly as possible determine such matter.

(b)(2) If the second arbitrator shall not have been appointed as provided in Subsection (a), the first arbitrator shall, after ten (10) days' notice to the parties, proceed to determine such matters.

(b)(3) If the two (2) arbitrators appointed by the parties pursuant to Subsection (a) shall be unable to agree within fifteen (15) days after the appointment of the second arbitrator upon the appointment of the third arbitrator, they shall be given written notice of such failure to agree to the parties and, if the parties then fail to agree upon the selection of such third arbitrator within fifteen (15) days thereafter, then within ten (10) days thereafter each of the parties upon written notice to the other parties hereto may request the appointment of a third arbitrator by the office in or for the State of Florida (or if more than one office, the office located closest to the City) of the American

Arbitration Association (or any successor organization thereto) or, in its absence, refusal, failure or inability to act, request such appointment of such arbitrator by the Circuit Court in and for Broward County, or as otherwise provided in Chapter 682, Florida Statutes, known and referred to as the Florida Arbitration Act, as amended.

11.04 General Procedures.

In any arbitration proceeding under this Article, those parties appointing arbitrators shall each be fully entitled to present evidence and argument to the sole arbitrator or panel of arbitrators. The arbitrator or panel of arbitrators shall only interpret and apply the terms of this Agreement and may not change any such terms or deprive any party to this Agreement of any right or remedy expressed or implied in this Agreement or award any damages or other compensation to any party hereto. The arbitration proceedings shall follow the rules and procedures of the American Arbitration Association (or any successor organization thereto) unless specifically modified by this Agreement, or as then agreed to by the parties hereto.

11.05 Decision of Arbitrators.

(a) If any decision reached by arbitration as provided in this Article requires performance by Developer, Developer covenants and agrees to comply with any decision of the arbitrator(s) promptly after the date of receipt by Developer of such decision, and to continue such performance to completion with due diligence and in good faith.

(b) If any such decision requires performance by the Agency, the Agency covenants and agrees to comply promptly with any decision reached by arbitrator(s) promptly after the date of receipt by the Agency of such decision, and to continue such performance to completion with due diligence and in good faith.

(c) Nothing in this Article, nor in any arbitration decision rendered under this part, shall be construed to require any payment by one party to the other not otherwise specifically provided herein.

(d) No arbitration decision under this Article shall be deemed to be binding upon the City, unless the City becomes the assignee of the Agency.

11.06 Expense of Arbitration.

The expenses of any arbitration proceeding pursuant to this Article shall be borne equally by the parties to such proceeding, provided, however, for the purpose of this Section 11.06 "expenses" shall include the fees and expenses of the arbitrators and the American Arbitration Association with respect to such proceedings, but shall not include attorneys' fees or expert witness fees, or any costs incurred by attorneys or expert witnesses, unless (and to the extent) agreed to by the parties to such proceeding, which in the absence of such Agreement shall be the responsibility of the party incurring such fees or costs.

11.07 Accelerated Arbitration.

(a)(1) If any of the parties to any arbitration proceeding under this Article determines the matter for arbitration should be decided on an expedited basis, then after an initial election to invoke arbitration pursuant to Section 1_.02 hereof has been made, either party to such proceeding may invoke accelerated arbitration by giving notice thereof to the other parties no later than three (3) days after arbitration has been initially invoked and the other parties do not object within three (3) days thereafter.

(a)(2) Accelerated arbitration, for purposes of this Section 1_.07, shall be accomplished by either party notifying the American Arbitration Association (or any successor organization thereto) that the parties have agreed to use a single arbitrator, qualified to decide the matter for arbitration, to be appointed by the American Arbitration Association (or any successor organization thereto) with the consent of the parties to such proceeding within three (3) days after receipt of the request and to decide such matter within five (5) days after such appointment.

(a)(3) If an arbitrator is not so appointed with consent of the parties to the proceeding within three (3) days after the notice referred to in Paragraph (2) is received by the American Arbitration Association, the accelerated proceeding under this Section 1_.07 shall terminate and the procedures otherwise set forth in this Article 1_ shall apply, unless the parties mutually agree to an extension of such time period.

(b) Developer and the Agency hereby agree to use such accelerated procedure only when reasonably necessary, to not contest the appointment of the arbitrator or his or her decision except as may be permitted by law, and that all other provisions of this Article, except as are in conflict with this Section 1_.07, remain in effect and applicable to an accelerated arbitration proceeding.

11.08 Applicable Law.

To the extent not inconsistent with this Article, any arbitration proceeding under this Article shall be governed by the provisions of Chapter 682, Florida Statutes, as amended, known and referred to as the Florida Arbitration Code.

11.09 Arbitration Proceedings and Records.

Any arbitration hearing under this Article shall be considered a meeting subject to Section 286.011, Florida Statutes, and shall be open to any member of the public. Unless otherwise rendered confidential pursuant to or by the operation of any applicable law or order (other than an order by a sole arbitrator or panel of arbitrators acting under this part), the record of such proceedings shall be a public record under Chapter 119, Florida Statutes.

ARTICLE 12. FIRE OR OTHER CASUALTY; CONDEMNATION.

12.01 Loss or Damage to Project.

Subject to the terms of the any financing documents, Developer shall diligently commence and complete the reconstruction or repair of any loss or damage caused by fire or other casualty to each and every part of the Project in substantial conformance with the Final Site Plan for such reconstruction or repairs, provided the Project or portion thereof can be restored and be

commercially feasible for its intended use as contemplated by this Agreement after the loss or damage

12.02 Partial Condemnation of Project or Project Site; Application of Proceeds.

Subject to the terms of the construction first lien financing documents, in the event that part, but not all, of the Project Site shall be taken by the exercise of the power of eminent domain at any time during the term set forth in Section __.01 above, the compensation awarded to and received by Developer shall be applied first to the restoration of the Project or portion thereof, provided the Project or portion thereof can be restored and be commercially feasible for its intended use as contemplated by this Agreement after the taking, and, if not, can be retained by Developer. The Agency reserves the right to apply the Agency Grant directly towards restoration of the Project in the event all or a part of the Project Site is taken under the exercise of the power of eminent domain.

ARTICLE 13. PROJECT INSURANCE PROCEEDS.

13.01 Project Insurance Proceeds.

(a) For the term beginning with the Effective Date until expiration of the Grant Eligibility Period (the "Term") whenever the Project, or any part thereof, shall have been damaged or destroyed, Developer shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims that may have arisen against insurers or others based upon such damage or destruction.

(b) Subject to the terms of any financing documents, Developer agrees that all proceeds of property or casualty insurance, for casualty suffered during the Term received by Developer as a result of such loss or damage shall be used for payment of the costs of the reconstruction or repair of the Project to the extent necessary to repair or reconstruct the Project. The Agency reserves the right to apply the Agency Grant directly towards restoration of the Project in the event all or a part of the Project is damaged or destroyed.

13.02 Notice of Loss or Damage to Project.

Developer shall promptly give the Agency written notice of any significant damage or destruction to the Project stating the date on which such damage or destruction occurred, the expectations of Developer as to the effect of such damage or destruction on the use of the Project, and the proposed schedule, if any, for repair, or reconstruction of the Project.

ARTICLE 14. MISCELLANEOUS

14.01 Notices.

All notices under this Agreement to be given by one party to the other shall be in writing and the same shall only be deemed given if transmitted as follows:

(a) By facsimile, certified mail, return receipt requested, by courier or overnight service or personal hand-delivery to the following addresses:

DEVELOPER:

e-mail: _____

WITH COPIES TO:

Email: _____

AGENCY:

Fort Lauderdale Community Redevelopment
Agency
Attn: Executive Director,
100 North Andrews Avenue
Fort Lauderdale, Florida 33301
e-mail:clagerbloom@fortlauderdale.gov

WITH COPIES TO:

Lynn Solomon
Fort Lauderdale CRA
914 Sistrunk Blvd., Suite 200
Fort Lauderdale, FL 33311
lsolomon@fortlauderdale.gov

Or to such other addresses as the parties may by writing designate to the other party from time to time. All notices, demands, deliveries, or other communications hereunder shall be deemed to have been given or served for all purposes hereunder on the day a facsimile is sent with confirmation of its sending, forty-eight (48) hours after the time that such communication was deposited in the United States mails (Saturdays, Sundays and legal holidays excluded), postage prepaid, in the manner aforesaid, one (1) day after delivery to a recognized overnight courier service, or upon delivery, whichever event shall first occur.

(b) Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it may be changed) shall be deemed to have been an effective delivery as provided in this Section 14.01.

14.02 Severability.

If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision and condition of this

Agreement shall be valid and enforceable to the fullest extent permitted by law.

14.03 Applicable Law and Construction.

The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. This Agreement has been negotiated by the Agency and Developer, and the Agreement, including without limitation, the Exhibits, shall not be deemed to have been prepared by the Agency or Developer, but by all equally.

14.04 Venue; Submission to Jurisdiction.

(a) For purposes of any suit, action or other proceeding arising out of or relating to this Agreement, the parties hereto do acknowledge, consent, and agree that venue thereof is Broward County, Florida.

(b) Each party to this Agreement hereby submits to the jurisdiction of the State of Florida, Broward County and the courts thereof and to the jurisdiction of the United States District Court for the Southern District of Florida, for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement and hereby agrees not to assert by way of a motion as 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.

(c) If at any time during the term of this Agreement, Developer is not a resident of the State of Florida or has no office, employee, agency or general partner thereof available for service of process as a resident of the State of Florida, or if any permitted assignee thereof shall be a foreign corporation, partnership or other entity or shall have no officer, employee, agent or general partner available for service of process in the State of Florida, Developer hereby designates the Secretary of State, State of Florida, its agent for, the service of process in any court.

14.05 Captions.

The article and section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any article, section, subsection, paragraph or provision hereof.

14.06 Holidays.

It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday observed in the City, it shall be postponed to the next following business day.

14.07 Exhibits and Attachment.

Each Exhibit and Attachment referred to and attached to this Agreement is an essential part

of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto shall be treated as if they are part of this Agreement.

14.08 No Brokers.

The Agency and Developer hereby represent, agree and acknowledge that no real estate broker or other person is entitled to claim or to be paid a commission as a result of the execution and delivery of this Agreement, including any of the Exhibits and Attachment. Developer hereby indemnifies the Agency against any loss, damage, fee, expense or cost arising as a result of a claim by any third party for a broker or finder's fee or commission.

14.09 Not an Agent of City or Agency.

During the term of this Agreement, neither Principal nor Developer hereunder shall be an agent of the City or the Agency, with respect to any and all services to be performed by Principal or Developer (and any of its agents, assigns, or successors) with respect to the Project.

14.10 No Recording. The Agency reserves the right to record this Agreement in the Public Records of Broward County, Florida, at Developer's expense.

14.11 Public Purpose.

The parties acknowledge and agree that this Agreement satisfies, fulfills and is pursuant to and for a public purpose and municipal purpose and is in the public interest, and is a proper exercise of the Agency's power and authority under the Act.

14.12 No General Obligation.

In no event shall any obligation of the Agency under this Agreement be or constitute a general obligation or indebtedness of the City or the Agency, a pledge of the ad valorem taxing power of the City or the Agency or a general obligation or indebtedness of the City or the Agency within the meaning of the Constitution of the State of Florida or any other applicable laws, but shall be payable solely from legally available revenues and funds. Neither Developer nor any other party under or beneficiary of this Agreement shall ever have the right to compel the exercise of the ad valorem taxing power of the City, the Agency or any other governmental entity or taxation in any form on any real or personal property to pay the City's or the Agency's obligations or undertaking hereunder.

14.13 Disclaimer As To Governmental Authority.

Nothing in this Agreement shall be construed, interpreted or applied in such a manner as will constitute an undelegatable contracting away or waiver of any governmental power by the Agency or the City.

14.14 Term; Expiration.

Except as may be expressly specified otherwise herein, if not earlier terminated as provided in Article ____, this Agreement shall expire upon the Expiration of the Grant Eligibility Period. Thereafter, this Agreement shall no longer be of any force and effect, except as to such provisions of the Agreement which expressly survive expiration or termination thereof and subject to such statute of limitations of Florida.

14.15 Approvals Not Unreasonably Withheld.

The parties hereto represent that it is their respective intent as of the Effective Date and do covenant and agree in the future that all approvals, consents, and reviews will be undertaken and completed as expeditiously as possible, in good faith, and will not be arbitrarily or unreasonably withheld, unless otherwise expressly authorized by the terms of this Agreement. If a matter to be consented to or approved by the Agency, requires the consideration of the Agency's Board of Commissioners (whether pursuant to this Agreement or the written opinion of the Agency's General Counsel), then, provided Agency gives Developer notice of such requirement within the time period provided for such consent or approval, such matter shall not be deemed approved or consented to unless the Agency shall fail to respond to Developer' request by the date which is fifteen (15) days after the next Regular Scheduled Meeting of the Agency's Board of Director's which occurs no later than the next Regular Scheduled Meeting following receipt of such request (but in no event not later than forty five days following such request).

14.16 Time of the Essence.

Time is of the essence in the performance of all obligations and all approvals or reviews contemplated by this Agreement.

14.17 Standing and Enforceability.

The parties stipulate and agree that for enforcement purposes during the term of this Agreement only Developer, Agency, and, if specifically permitted by this Agreement, their successors and assigns, shall have standing. No rights of enforcement of this Agreement shall accrue to or vest in any other person, entity or governmental body.

14.18 Audit Right and Retention of Records.

Agency shall have the right to audit the books, records, and accounts of Developer that are related to this Agreement. Developer shall keep, and maintain such books, records, and accounts as may be necessary to record complete and correct entries related to this Agreement. All books, records, and accounts of Developer shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Developer shall make same available at no cost to City in written form.

Developer shall preserve and make available, at reasonable times for examination and audit by Agency in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to

time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by Agency to be applicable to Developer shall comply with all requirements thereof; however, Developer shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Agency's disallowance and recovery of any payment upon such entry.

Developer shall maintain during the term of the Agreement all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

14.19 Public Records.

Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Florida Statutes, as same may be amended from time to time and any resultant award of attorney's fees for non-compliance with that law.

Developer and all contractors or subcontractors (the "**Contractor**") engaging in services in connection with construction, operation and/or maintenance of the Project shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by Agency in order to perform the services rendered.

(b) Upon request from Agency's custodian of public records, provide Agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2016), as may be amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and as to Developer for the duration of the Agreement and as to Contractor for the duration of the contract term and following completion of said contract if Contractor does not transfer the records to Agency.

(d) Upon completion of said construction or maintenance at the Project, transfer, at no cost, to Agency all public records in possession of Developer or Contractor or keep and maintain public records required by Agency to perform the service. If Contractor transfers all public records to Agency upon completion of the Project, Developer and Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Developer or Contractor keeps and maintains public records upon completion of the Project, Developer and Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Agency, upon request from Agency's

custodian of public records, in a format that is compatible with the information technology systems of Agency.

(e) If Developer or any contractor has questions regarding the application of Chapter 119, Florida Statutes, to Developer or Contractor's duty to provide public records relating to its contract, contact the Agency's custodian of public records by telephone at 954-828-5002 or by e-mail at PRRCONTRACT@FORTLAUDERDALE.GOV or by mail at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 Attention: Custodian of Public Records.

14.20 Non-Action on Failure to Observe Provisions of this Agreement.

The failure of the Agency or Developer to promptly or continually insist upon strict performance of any term, covenant, condition or provision of this Agreement, or any Exhibits or Attachments hereto, or any other agreement, instrument or document of whatever form or nature contemplated hereby shall not be deemed a waiver of any right or remedy that the Agency or Developer may have, and shall not be deemed a waiver of a subsequent default or non-performance of such term, covenant, condition or provision.

14.21 Insurance to be Carried by the Developer/Contractor.

The Developer/Contractor shall purchase and maintain at its own expense, the following types and amounts of insurance, in forms and companies reasonably satisfactory to the Agency.

(a) During the construction period, the Developer, at its expense, shall keep all of the insurable buildings, property and equipment located on the Project Site insured under a Builder's Risk Insurance policy providing for "all risk property coverage" for loss or damage including the perils of fire, wind, flood, tropical storm or hurricane, theft, vandalism and malicious mischief. Such insurance shall be in a face amount not less than one hundred percent (100%) of the cost of construction of the Project, as set forth the construction contract for the Project, and the insurer shall be obligated to pay one hundred percent (100%) of the cost of restoring the improvements constructed, from time to time, during the construction period. Each insurance policy shall include the Agency and such project lenders as request it as an additional insured, as the interest of each may appear, and shall provide for loss to be payable to Developer or, to the extent required under the project financing, or by the project lenders.

(b) Following any Completion Date and during the term of this Agreement, the Developer or its successors, at their expense, shall keep all the insurable buildings, structures, property and equipment on the Project Site insured under an All Risk property policy for loss or damage including the perils of fire, wind, flood, tropical storm or hurricane, theft, vandalism, and malicious mischief. Such insurance shall be in an amount of no less than the replacement value of said insurable real property, including structures, property and equipment. As provided in this Article for any loss or damage to the Project,

to the extent that insurance proceeds are available, and the necessary or contemplated repairs are feasible, the Developer shall repair any damage or destruction to the Project. Each insurance policy shall name the Agency and such project lenders as request it as additional insured and loss payee, as the interest of each may appear, and provide for the loss to be payable to the Developer or, to the extent provided, the project lenders.

(c) During the construction period, the Developer or Contractor shall secure and maintain or cause to be secured and maintained in full force and effect such commercial general liability insurance including coverage for operations, independent contractors, products, completed operations, broad form property damage and personal injury as will protect the Developer, the Agency, and their agents and employees from any and all claims and damages for injury to persons or death or damage to any property of the Agency, or of the public, which may arise out of or in connection with the performance of any work or operations by the Developer in, on, under, or over the Project Site during the construction of the Project, whether said work or operations shall be by the Developer, the Contractor, or by anyone directly or indirectly contracted, employed or retained by any of them. The amounts of such insurance shall not be less than limits of \$1,000,000.00 per occurrence for injury to persons or death, or for property damage or such larger amount as determined by Developer. The limit of liability for personal injury shall be no less than \$1,000,000.00 and the limit of liability for contractual liability shall be no less than \$1,000,000.00. Each policy shall name the Agency and such project lenders, as request it, as additional insured.

(d) After any Completion Date and during the term of this Agreement, the Developer shall secure and maintain, or cause to be secured and maintained, in full force and effect, commercial general liability insurance, in an amount not less than \$1,000,000 per occurrence, and including coverage for premises, completed operations, independent contractors, broad form property damage and personal injury from any and all claims for damages for injury to persons or death, or for damage to any property of the Agency or the public which may arise out of the Developer's use and occupancy of the Project Site and the operation of the project on the Project Site. Developer shall provide this insurance by adding the Agency and their agents and employees as an "additional insured" on any and all policies provided.

(e) During the construction period, the Contractor shall secure and maintain or cause to be secured and maintained in full force and effect auto liability insurance in compliance with State law.

(f) The Developer, Contractor and all subcontractors shall each secure and maintain in full force and effect Workers' Compensation insurance, if applicable, for all their respective personnel, employed at the site of the work or in any way connected with the work or Project that is the subject of this Agreement if such insurance is required by law to be provided. The insurance required by this provision shall comply fully with the Florida Worker's Compensation law shall include statutory limits on worker's compensation, as well as Employees Liability Insurance with limits of no less than \$500,000.00 per occurrence.

(g) All insurance and lesser amounts for insurance need to be approved in writing by the City's risk manager based on City's insurance requirements for similarly situated developments.

14.22 Non-Cancellation Clause.

All insurance policies or agreements required by this Article hereof shall provide that such policies or agreements cannot be substantially modified, canceled or terminated until after at least thirty (30) days' notice has been given to the Agency and the Developer, to the effect that such insurance policies or agreements are to be substantially modified (including the terms of such modification), canceled or terminated at a particular stated time thereafter.

14.23 Certificate of Insurance.

The Developer shall provide or cause to be provided to the Agency policies or certificates of insurance or other acceptable proof of compliance with the insurance provisions of this Agreement at such times as shall be reasonably required and shall file replacement certificates thirty (30) days prior to expiration or termination of the required insurance during the term of this Agreement.

14.24 Right of Parties to Obtain Insurance.

In the event the Developer at any time during the term of this Agreement refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required by this Agreement, the Agency may procure or renew such insurance and after notice to the Developer that it must obtain such insurance within thirty (30) days of such notice, all amounts of money paid by the Agency for procurement or renewal of such insurance shall be due and payable forthwith by the Developer to the Agency to the extent either paid the cost of any such insurance together with interest, at the statutory rate, to the date of payment thereof by the Developer. The Agency shall notify the Developer in writing of the date, purposes, and amounts of any such payments made by it pursuant to this Article.

14.25 Non-Waiver of Developer's Obligations.

No acceptance or approval of any insurance policy or policies by the Agency or the Developer shall relieve or release or be construed to relieve or release any other party from any liability, duty or obligation assumed by or imposed upon it by the provisions of this Agreement.

14.26 Reasonable Deductible.

Any insurance policy required by this Article may contain a reasonable deductible provision provided advanced notice of said deductible provision is given by the Developer to the Agency and approval from the Agency is given in writing, which approval shall not be unreasonably withheld or delayed. In the event that the Agency fails to approve or disapprove such deductible provision pursuant to this Article __.27, within thirty (30) days of the notice from the Developer as required by this Article __.27, such failure shall be deemed an approval of such

deductible provision by the Agency.

14.27 Sovereign Immunity.

Nothing herein shall be deemed a waiver of sovereign immunity in favor of the Agency.

14.28 Small Businesses.

The Developer shall use its best efforts to work with the Agency to notify local business firms, minority owned firms, women-owned firms or labor surplus area firms of the opportunity to submit bids for work on the Project. Bids will be selected based upon competitiveness of the bid and the qualifications and capacity of the bidder. As used in this Agreement, the terms “small business” means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and “minority and women’s business enterprise” means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For purposes of this definition, “minority group members” are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Developer may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

14.29 Maintenance. The Developer shall, at its own expense and subject to reasonable construction conditions and activities, keep the Project and Project Site in good and clean order and condition and will promptly make all necessary or appropriate repairs, replacements and renewals, thereof, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen. All repairs, replacements and renewals shall be equal in quality and class to the original work. When making such repairs, replacements and renewals, the Developer shall comply, if legally required, with all laws, ordinances, codes and regulations then applicable to the Project or Project Site.

14.30 Sunset Date. The Agency shall have no obligation to make any disbursements after the sunset date of the Agency. Developer shall use commercially reasonable efforts insure that all disbursements are made prior to the sunset date of the Agency.

14.31 Scrutinized Companies. Developer certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), as may be amended or revised, and that it is not engaged in a boycott of Israel.

14.32 Public Entity Crime.

14.32.1 Developer represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public

entity crime may not submit a bid on a contract to provide any goods or services to Agency, may not submit a bid on a contract with Agency for the construction or repair of a public building or public work, may not submit bids on leases of real property to Agency, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Agency, and may not transact any business with Agency in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for Category Two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by Agency pursuant to this Agreement and may result in debarment from Agency's competitive procurement activities.

14.32.2 In addition to the foregoing, Developer further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Developer has been placed on the convicted vendor list.

IN WITNESS WHEREOF, the parties hereto have set their hands effective as of the date set forth below.

SIGNATURE PAGES FOLLOW

WITNESSES:

[Witness print or type name]

[Witness print or type name]

ATTEST:

David R. Soloman, CRA Secretary

AGENCY:

FORT LAUDERDALE COMMUNITY REDEVELOPMENT AGENCY, a body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163

By: _____
Christopher J. Lagerbloom, ICMA-CM
Executive Director

Date: _____

APPROVED AS TO FORM:
Alain E. Boileau, CRA General Counsel

Lynn Solomon, Assistant General Counsel

WITNESSES:

AVENUE D'ARTS FLL, LLC,
a Florida limited liability company

[Witness print or type name]

Print Name: _____
Title: _____

[Witness print or type name]

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ___ physical presence
or ___ online notarization this ___ day of _____, 2022 by _____ as
_____ of AVENUE D'ARTS FLL, LLC, a Florida limited liability company
on behalf of the company. He is personally known to me or has produced
_____ as identification.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

Commission Number

JOINDER AND CONSENT

The undersigned, as the holder of all right, title and interest in the Franchise Agreement, hereby joins and consents to this Agreement and agrees to bound by the terms and conditions hereof. Further, the undersigned represents and warrants the Franchise Agreement is in full, force and effect and has not been revoked or terminated, amended or annulled.

WITNESSES:

SAMEET A. PATEL, INDIVIDUALLY

[Witness print or type name]

[Witness print or type name]

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of __ physical presence or __ online notarization this ___ day of _____, 2022 by SAMEET A. PATEL He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

JOINDER AND CONSENT

The undersigned, as the holder of all right, title and interest in the real property, hereby joins and consents to this Agreement and agrees to bound by the terms and conditions hereof and agrees to execute the Mortgage and Restrictive Covenant and pledge the real property to secure the obligations under the Agency Note and Development Agreement.

WITNESSES:

IMPACT INVESTMENTS 1 LLC, a Florida
Limited Liability Company

Print Name:
Print Title:

[Witness print or type name]

[Witness print or type name]

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization this ___ day of _____, 2022 by _____, as _____ of IMPACT INVESTMENTS 1 LLC, a Florida Limited Liability Company He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

EXHIBIT "A"
AGENCY PARCELS

Parcel 1 (713 NW 3 Street and 717 NW 3 Street)

Lot 28, Block A, of SUBDIVISION FOR FT. LAUDERDALE LAND AND DEVELOPMENT CO. BLOCK 6, according to the Plat thereof as recorded in Plat Book 1, Page 57, of the Public Records of Dade County, Florida, together with the South ½ of the vacated alley abutting to the North thereof. Said land situate, lying and being in Broward County, Florida.

Together With

Lot 29 and 30, Block A, of SUBDIVISION OF FT. LAUDERDALE LAND AND DEVELOPMENT CO. BLOCK 6, according to the Plat thereof as recorded in Plat Book 1, Page 57, of the Public Records of Dade County, Florida, together with the South ½ of the vacated alley abutting to the North thereof. Said land situate, lying and being in Broward County, Florida.

(Parcel ID 5042-10-12-0540 and 5042-10-12-0550)

Parcel 2 (723 NW 3 Street)

Lot 24 and 25, Block A, of SUBDIVISION FOR FT. LAUDERDALE LAND AND DEVELOPMENT CO. BLOCK 6, according to the Plat thereof as recorded in Plat Book 1, Page 57, of the Public Records of Dade County, Florida, together with the South ½ of the vacated alley abutting to the North thereof. Said land situate, lying and being in Broward County, Florida.

(Parcel ID 5042-10-12-0520)

EXHIBIT "B"

DEVELOPER PARCEL

Lots 31, 32, 33, 34, 35, and 36, Block A, Subdivision for Ft. Lauderdale Land and Development Co. Block 6, according to the plat thereof, recorded in Plat Book 1, Page(s) 57, of the Public Records of Miami-Dade County, Florida; said lands situate, lying and being in Broward County, Florida. Less the East 20 feet of Lot 36 for street right of way.

The South one-half (S ½) of that portion of vacated alley lying immediately north of and adjacent to Lots 31 and 32m Block A, Subdivision for Ft. Lauderdale Land and Development Co Block 6, according to the plat thereof, recorded in Plat Book 1, Page(s) 57, of the Public Records of Miami-Dade County, Florida; said lands situate, lying and being in Broward County, Florida.

And the South one-half (S ½) of the portion of said vacated alley between said Lots 1, 2, 3, 4, 33, 34, 35 and 36, Block A, Subdivision for Ft. Lauderdale Land and Development Co Block 6, according to the plat thereof, recorded in Plat Book 1, Page(s) 57, of the Public Records of Miami-Dade County, Florida; said lands situate, lying and being in Broward County, Florida.

EXHIBIT "B-1"
ENTIRE SITE

Parcel 1 (713 NW 3 Street and 717 NW 3 Street)

Lot 28, Block A, of SUBDIVISION FOR FT. LAUDERDALE LAND AND DEVELOPMENT CO. BLOCK 6, according to the Plat thereof as recorded in Plat Book 1, Page 57, of the Public Records of Dade County, Florida, together with the South ½ of the vacated alley abutting to the North thereof. Said land situate, lying and being in Broward County, Florida.

Together With

Lot 29 and 30, Block A, of SUBDIVISION OF FT. LAUDERDALE LAND AND DEVELOPMENT CO. BLOCK 6, according to the Plat thereof as recorded in Plat Book 1, Page 57, of the Public Records of Dade County, Florida, together with the South ½ of the vacated alley abutting to the North thereof. Said land situate, lying and being in Broward County, Florida.

(Parcel ID 5042-10-12-0540 and 5042-10-12-0550)

Parcel 2 (723 NW 3 Street)

Lot 24 and 25, Block A, of SUBDIVISION FOR FT. LAUDERDALE LAND AND DEVELOPMENT CO. BLOCK 6, according to the Plat thereof as recorded in Plat Book 1, Page 57, of the Public Records of Dade County, Florida, together with the South ½ of the vacated alley abutting to the North thereof. Said land situate, lying and being in Broward County, Florida.

(Parcel ID 5042-10-12-0520)

Lots 31, 32, 33, 34, 35, and 36, Block A, Subdivision for Ft. Lauderdale Land and Development Co. Block 6, according to the plat thereof, recorded in Plat Book 1, Page(s) 57, of the Public Records of Miami-Dade County, Florida; said lands situate, lying and being in Broward County, Florida. Less the East 20 feet of Lot 36 for street right of way.

The South one-half (S ½) of that portion of vacated alley lying immediately north of and adjacent to Lots 31 and 32m Block A, Subdivision for Ft. Lauderdale Land and Development Co Block 6, according to the plat thereof, recorded in Plat Book 1, Page(s) 57, of the Public Records of Miami-Dade County, Florida; said lands situate, lying and being in Broward County, Florida.

And the South one-half (S ½) of the portion of said vacated alley between said Lots 1, 2, 3, 4, 33, 34, 35 and 36, Block A, Subdivision for Ft. Lauderdale Land and Development Co Block 6, according to the plat thereof, recorded in Plat Book 1, Page(s) 57, of the Public Records of Miami-Dade County, Florida; said lands situate, lying and being in Broward County, Florida.

EXHIBIT "C"
GRANT DOCUMENTS (Note, Mortgage and Restrictive Covenant (prohibited uses))

This Instrument Was Prepared By,

Lynn Solomon, Esq.
Fort Lauderdale Community
Redevelopment Agency
914 Sistrunk Blvd (N.W. 6th Street), Suite 200
Fort Lauderdale, Florida 33311

Return to:
Lynn Solomon, Esq.
Fort Lauderdale Community
Redevelopment Agency
914 Sistrunk Blvd (N.W. 6th Street), Suite 200
Fort Lauderdale, Florida 33311

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE (herein "Instrument") is made this ___ day of _____, 20___, between _____ a _____ limited liability company, whose address is _____ (herein "Mortgagor"), and Fort Lauderdale Community Redevelopment Agency, a public body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163, Florida Statutes whose address is 914 Sistrunk Blvd. Suite 200, Fort Lauderdale, FL 33311 (herein "Mortgagee").

WHEREAS, _____ has executed and delivered to Mortgagee that certain Note dated on even date herewith in the principal amount of Three Million and No/100 Dollars (\$3,000,000.00) (herein the "Note"), the Restrictive Covenant executed on even date herewith and that certain Development Agreement For Development Incentive Program (Comfort Suites Hotel) dated _____, 20___ (collectively referred to as the "Development Agreements").

TO SECURE TO MORTGAGEE (a) the obligations evidenced by the Development Agreements, and (b) the performance of the covenants and agreements of _____ herein contained, Mortgagor does hereby mortgage grant, convey and assign to Mortgagee the real property more particularly described in Exhibit "A" attached hereto and by reference made a part hereof.

TOGETHER WITH all buildings, improvements, and tenements now or hereafter erected on such real property, and all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, and all fixtures, machinery, equipment, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection

with the property and related machinery and equipment; all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this Instrument; and all of the foregoing, together with the real property described in Exhibit "A" are herein referred to as the "Property."

Mortgagor covenants that Mortgagor is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant, convey and assign the Property, that the Property is unencumbered, and that Mortgagor will warrant and defend generally the title to the Property against all claims and demands.

Mortgagor and Mortgagee covenant and agree as follows:

1. PERFORMANCE OF DEVELOPMENT AGREEMENTS OBLIGATIONS. Mortgagor and _____ shall promptly perform the obligations evidenced by the Development Agreements.

2. CHARGES; LIENS. Mortgagor shall pay all water and sewer rates, taxes, assessments, premiums, and other impositions attributable to the Property. Mortgagor shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Mortgagee's prior written permission, Mortgagor shall not allow any lien inferior to this Instrument to be perfected against the Property.

3. HAZARD INSURANCE. Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured by carriers and in such amounts as shall be required by the Senior Mortgagee (as hereinafter defined) against casualties and liabilities.

All insurance policies and renewals thereof shall include a standard mortgage clause in favor of and in form acceptable to Mortgagee. Mortgagor shall promptly furnish to Mortgagee all renewal notices and all receipts of paid premiums. At least thirty days prior to the expiration date of a policy, Mortgagor shall deliver to Mortgagee a renewal policy in form satisfactory to Mortgagee.

In the event of loss, Mortgagor shall give immediate written notice to the insurance carrier and to Mortgagee. Subject to the rights of the Senior Mortgagee, Mortgagor hereby authorizes and empowers Mortgagee as attorney-in-fact for Mortgagor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies. Insurance proceeds shall be applied as provided in the Senior Mortgagee ((as hereinafter defined).

4. PRESERVATION AND MAINTENANCE OF PROPERTY. Mortgagor (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall, subject to normal wear and tear, keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (e) shall comply

with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property (f) and _____ shall generally construct, operate and maintain the Project consistent with the Development Agreements and satisfy the Job Creation Requirement or pay the penalty, as applicable, all as defined in the Development Agreements, and (g) shall give notice in writing to Mortgagee of and, unless otherwise directed in writing by Mortgagee, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Mortgagee. Neither Mortgagor nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

5. **USE OF PROPERTY.** Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Property without Mortgagee's prior written consent.

6. **INSPECTION.** Mortgagee may make or cause to be made reasonable entries upon and in inspections of the Property during business hours and upon not less than 48 hours advance notice.

7. **BOOKS AND RECORDS.** Mortgagor shall keep and maintain at all times at Mortgagor's address stated below, or such other place as Mortgagee may approve in writing, complete and accurate books of account and records adequate to reflect correctly the results of the development of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection by Mortgagee during business hours and upon not less than 48 hours advance notice.

8. **CONDEMNATION.** Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed by Mortgagee in writing. Subject to the rights of the Senior Mortgagee, Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, shall be applied as provided in the Senior Mortgage.

9. **FORBEARANCE BY MORTGAGEE NOT A WAIVER.** Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to exercise any of the various rights or remedies herein provided, including but

not limited to the foreclosure of the Mortgage, and cumulatively all other rights, options, and privileges provided by law or in equity.

10. **ESTOPPEL CERTIFICATE.** Mortgagor shall within ten days of a written request from Mortgagee furnish Mortgagee with a written statement, duly acknowledged, setting forth the obligations secured by this Instrument and any right of counterclaim or other defense which exists against the performance of the obligations of this Instrument.

11. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Mortgagor hereby grants Mortgagee a security interest in said items. Any reproduction of this instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Mortgagor's breach of any covenant or agreement of Mortgagor contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code and, at Mortgagee's option, may also invoke the remedies provided in paragraph 20 of this Instrument as to such items. In exercising any of said remedies, Mortgagee may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the Uniform Commercial Code or of the remedies provided in paragraph 20 of this Instrument.

12. **REMEDIES CUMULATIVE.** Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

13. **TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN MORTGAGOR; ASSUMPTION.** On sale or transfer of any beneficial interests in Mortgagor except for permitted transfers in the Development Agreements, Mortgagee may, at Mortgagee's option, invoke any remedies permitted by paragraph 20 of this Instrument.

14. **NOTICE.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Mortgagor provided for in this Instrument or in the Development Agreements shall be given by mailing such notice by certified mail addressed to Mortgagor at Mortgagor's address stated in the preamble or at such other address as Mortgagor may designate by notice to Mortgagee as provided herein, and (b) any notice to Mortgagee shall be given by certified mail, return receipt requested, to Mortgagee's address stated herein or to such other address as Mortgagee may designate by notice to Mortgagor as provided herein. Any notice provided for in this Instrument or in the Development Agreements shall be deemed to have been given to Mortgagor or Mortgagee when given in the manner designated herein.

15. **SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS.** The covenants and agreements herein contained shall bind, and the rights

hereunder shall inure to, the respective successors and assigns of Mortgagee and Mortgagor. All covenants and agreements of Mortgagor shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Mortgagee may act through its employees, agents or independent contractors as authorized by Mortgagee. The captions and headings of the paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

16. **GOVERNING LAW; SEVERABILITY.** This Instrument shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision of this Instrument or the Development Agreements conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Development Agreements which can be given effect without the conflicting provisions, and to this end the provisions of this Instrument and the Development Agreements are declared to be severable.

17. **WAIVER OF STATUTE OF LIMITATIONS.** Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Development Agreements or any other obligation secured by this Instrument.

18. **WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interests in the Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Mortgagee shall have the right to determine the order in which any or all portions of the obligations secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

19. **ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; MORTGAGEE IN POSSESSION.** Mortgagor hereby absolutely and unconditionally assigns and transfers to Mortgagee all the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Mortgagor hereby authorizes Mortgagee or Mortgagee's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Mortgagee or Mortgagee's agents; provided, however, that prior to written notice given by Mortgagee to Mortgagor of the breach by Mortgagor of any covenant or agreement of Mortgagor in this Instrument, Mortgagor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Mortgagee and Mortgagor, to apply the rents and revenues so collected to the sums secured by this Instrument, with the balance, so long as no such breach has occurred, to the account of Mortgagor, it being intended by Mortgagor and Mortgagee that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Mortgagee to Mortgagor of the breach by Mortgagor of any covenant or agreement of Mortgagor in this Instrument, and without the necessity of Mortgagee entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Mortgagee shall immediately be entitled to possession of all rents and revenues

of the Property as specified in this paragraph as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Mortgagor as trustee for the benefit of Mortgagee only; provided, however, that the written notice by Mortgagee to Mortgagor of the breach by Mortgagor shall contain a statement that Mortgagee exercises its rights to such rents. Mortgagor agrees that commencing upon delivery of such written notice of Mortgagor's breach by Mortgagee to Mortgagor, each tenant of the Property shall make such rents payable to and pay such rents to Mortgagee or Mortgagee's agents on Mortgagee's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Mortgagor.

Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, Mortgagee may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Mortgagee's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument. In the event Mortgagee elects to seek the appointment of a receiver for the Property upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, Mortgagor hereby expressly consents to the appointment of such receiver. Mortgagee or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

Any entering upon and taking and maintaining of control of the Property by Mortgagee or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Mortgagee under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Instrument ceases to secure Mortgagee's obligations under the Development Agreements.

20. **REMEDIES.** Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, Mortgagee at Mortgagee's option may foreclose this Instrument by judicial proceeding and may invoke any other remedies permitted by applicable law or provided herein.

21. **RELEASE.** Upon performance of all obligations secured by this Instrument and the Development Agreements, Mortgagee shall cancel this Instrument. Mortgagor shall pay Mortgagee's reasonable costs incurred in canceling this Instrument.

22. **ENVIRONMENTAL HAZARDS.** In addition to Mortgagor's covenants and agreements under paragraph 4 hereof, Mortgagor further covenants and agrees that Mortgagor shall not (a) cause or permit the presence, use, generation, manufacture, production, processing, installation, release, discharge, storage (including above- and under-ground storage tanks for petroleum or petroleum products, but excluding small containers of gasoline used for maintenance equipment or similar purposes), treatment, handling, or disposal of any Hazardous Materials on, under, in or about the Property, or in any way affecting the Property or which may form the basis for any present or future claim, demand or action seeking cleanup of the Property, or the transportation of any Hazardous Materials to or from the Property, or (b) cause or exacerbate any occurrence or

condition on the Property that is or may be in violation of Hazardous Materials Law. Mortgagor shall take all appropriate steps to secure compliance by all tenants and subtenants on the Property with Mortgagor's covenants and agreements in this paragraph.

Mortgagor hereby agrees to indemnify and hold Mortgagee harmless from all loss, cost, damage, claim and expense incurred by Mortgagee on account of (i) the violation of any representation, warranty or covenant set forth in this paragraph, (ii) Mortgagor's failure to perform any obligations of this paragraph, (iii) the failure of Mortgagor or the Property to fully comply with all environmental laws, rules and regulations, or with all occupational health and safety laws, rules and regulations, or (iv) any other matter related to environmental conditions on, under or affecting this transaction, the exercise of any right or remedy under the Development Agreements, and any subsequent sale or transfer of the Property. Such indemnity shall not apply to Hazardous Materials first introduced onto the Property following the satisfaction of this Instrument or the transfer of title by foreclosure or deed in lieu thereof.

Mortgagor further agrees at all times to comply fully and in a timely manner with, and to cause all employees, agents, contractors, and subcontractors of Mortgagor and any other persons occupying or present on the Property to so comply with (a) any program of operations and maintenance (O&M) relating to the Property that is required by Mortgagee with respect to one or more Hazardous Materials, and (b) all applicable federal, state, and local laws, regulations, guidelines, codes, and other legal requirements relating to the generation, use, handling, storage, treatment, transport, and disposal of any Hazardous Materials now or hereafter located or present on or under the Property.

Mortgagor shall promptly notify Mortgagee in writing of: (a) any enforcement, cleanup, removal or other governmental or regulatory action, investigation, notice or any other proceeding instituted, completed or threatened in connection with any Hazardous Materials; (b) any suit, cause of action, or any other claim made or threatened by any third party against Mortgagor or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; and (c) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause all or any portion of the Property to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under Hazardous Materials Law. The provisions of the preceding sentence shall be in addition to any and all other obligations and liabilities that Mortgagor may have to Mortgagee under applicable law.

The term "Hazardous Materials," for purposes of this paragraph, includes petroleum and petroleum products (excluding a small quantity of gasoline used in maintenance equipment on the Property), flammable explosives, radioactive materials (excluding radioactive materials in smoke detectors), polychlorinated biphenyls, asbestos in any form that is or could become friable, hazardous waste, toxic or hazardous substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise including, but not limited to, those materials defined as "hazardous substances," "extremely hazardous substances," "hazardous chemicals," "hazardous materials," "toxic substances," "toxic chemicals," "air pollutants," "toxic pollutants," "hazardous wastes," "extremely hazardous waste," or "restricted hazardous waste" by Hazardous Materials Law.

The term "Hazardous Materials Law," for the purposes of this paragraph, means any federal, state, or local law, ordinance or regulation or any court judgment applicable to Mortgagor or to the Property relating to industrial hygiene or to environmental or unsafe conditions including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Materials, those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property, and those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Property. "Hazardous Materials Law" also shall include, but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act and the Occupational Safety and Health Act, and all regulations adopted in respect to the foregoing laws.

23. **MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Mortgage:

Amendments. This Mortgage constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage and supersedes all prior understandings and correspondence, oral or written, with respect to the subject matter hereof. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bond by the alteration or amendment.

Caption Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Mortgagee in any capacity, without the written consent of Mortgagee.

Severability. If a court of competent jurisdiction finds any provision of this Mortgage to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provisions cannot be so modified, it shall be stricken and all other provision of this Mortgage in all other respects shall remain valid and enforceable.

24. **WAIVER OF TRIAL BY JURY.** MORTGAGOR AND MORTGAGEE (BY ACCEPTANCE OF THIS INSTRUMENT) HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS MORTGAGE, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE, THE GUARANTY, OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO OR TO ANY LOAN

DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGOR AND MORTGAGEE ENTERING INTO THE SUBJECT LOAN TRANSACTION.

25. **Subordinate Mortgage.** This Instrument is subject and subordinate and subject to the lien of that certain mortgage (the "Senior Mortgage") of even date herewith, made by Mortgagor in favor of _____ (the "Senior Mortgagee") to be recorded prior to this Instrument in the Public Records of Broward County, Florida, securing a Promissory Note in the principal sum of \$ _____ with respect to the Senior Mortgage:

(a) The Mortgagor covenants and agrees to comply with all of the terms and conditions of the Senior Mortgage.

(b) Nothing contained herein shall be construed to require Mortgagee to perform Mortgagor's covenants in the Senior Mortgage.

(c) Mortgagor agrees promptly to forward copies of any and all notices of default received from the Senior Mortgagee to Mortgagee.

(d) A default under the Senior Mortgage shall be deemed a default under this Instrument.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Mortgagor has executed and sealed this Instrument or has caused the same to be executed and sealed by its representatives thereunto duly authorized.

Signed, sealed and delivered in the presence of:

Print Name: _____

LLC, a
limited liability company

Print Name: _____

By: _____
Print Name:
Print Title:

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ___ day of ____, 202__, by _____, as _____ of _____, LLC, a Florida limited liability company. He is personally known to me or has produced a valid driver's license as identification.

Print or Stamp Name: _____
Notary Public, State of Florida at Large
Commission No.:
My Commission Expires:

Exhibit A

#7264041 v1
42892-0001

Legal Description

Parcel 1 (713 NW 3 Street and 717 NW 3 Street)

Lot 28, Block A, of SUBDIVISION FOR FT. LAUDERDALE LAND AND DEVELOPMENT CO. BLOCK 6, according to the Plat thereof as recorded in Plat Book 1, Page 57, of the Public Records of Dade County, Florida, together with the South ½ of the vacated alley abutting to the North thereof. Said land situate, lying and being in Broward County, Florida.

Together With

Lot 29 and 30, Block A, of SUBDIVISION OF FT. LAUDERDALE LAND AND DEVELOPMENT CO. BLOCK 6, according to the Plat thereof as recorded in Plat Book 1, Page 57, of the Public Records of Dade County, Florida, together with the South ½ of the vacated alley abutting to the North thereof. Said land situate, lying and being in Broward County, Florida.

(Parcel ID 5042-10-12-0540 and 5042-10-12-0550)

Parcel 2 (723 NW 3 Street)

Lot 24 and 25, Block A, of SUBDIVISION FOR FT. LAUDERDALE LAND AND DEVELOPMENT CO. BLOCK 6, according to the Plat thereof as recorded in Plat Book 1, Page 57, of the Public Records of Dade County, Florida, together with the South ½ of the vacated alley abutting to the North thereof. Said land situate, lying and being in Broward County, Florida.

(Parcel ID 5042-10-12-0520)

Lots 31, 32, 33, 34, 35, and 36, Block A, Subdivision for Ft. Lauderdale Land and Development Co. Block 6, according to the plat thereof, recorded in Plat Book 1, Page(s) 57, of the Public Records of Miami-Dade County, Florida; said lands situate, lying and being in Broward County, Florida. Less the East 20 feet of Lot 36 for street right of way.

The South one-half (S ½) of that portion of vacated alley lying immediately north of and adjacent to Lots 31 and 32m Block A, Subdivision for Ft. Lauderdale Land and Development Co Block 6, according to the plat thereof, recorded in Plat Book 1, Page(s) 57, of the Public Records of Miami-Dade County, Florida; said lands situate, lying and being in Broward County, Florida.

And the South one-half (S ½) of the portion of said vacated alley between said Lots 1, 2, 3, 4, 33, 34, 35 and 36, Block A, Subdivision for Ft. Lauderdale Land and Development Co Block 6, according to the plat thereof, recorded in Plat Book 1, Page(s) 57, of the Public Records of Miami-Dade County, Florida; said lands situate, lying and being in Broward County, Florida.

THIS INSTRUMENT PREPARED BY:

Lynn Solomon, Esq.
Fort Lauderdale Community
Redevelopment Agency
914 Sistrunk Blvd, Suite 200
Fort Lauderdale, FL 33311

\$3,000,000.00

Fort Lauderdale, Florida
_____ 20 _____

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, AVENUE D'ARTS FLL, LLC, a Florida limited liability company (the "Maker"), promises to pay to the order of the Fort Lauderdale Community Redevelopment Agency ("Agency") or its successors in interest, the principal amount of THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00) (the "Loan") or so much as shall be advanced.

- I. **TERM:** The term of this loan is _____ (___) years from the Effective Date as contemplated in the Development Agreement For Development Incentive Program (Comfort Suites Hotel) between Maker and Agency dated _____, 20____ (the "Agreement") such Agreement being on file with the City Clerk of the City of Fort Lauderdale, 100 North Andrews Avenue, Fort Lauderdale, Florida 33301.
- II. **INTEREST RATE:** The interest rate on the principal amount of the loan shall be zero percent (0%) per annum, except in an event of default under this Note or the Agreement in which case the maximum legal interest rate shall be applied to the principal amount due and owing commencing thirty (30) days after the date of an event of default.
- III. **PAYMENT:** Payment on the principal amount of the loan shall not be required so long as Maker constructs, operates and maintains the Project (as defined in the Agreement) in accordance with the terms and conditions of the Agreement or pays the applicable penalty as it relates to the Job Creation Requirement, and Maker otherwise complies with the terms and conditions of the Agreement.

Payment of the principal amount and all interest on this Note shall be made in lawful money of the United States paid at:

Fort Lauderdale Community Redevelopment Agency
914 NW 6th Street, Suite 200
Fort Lauderdale, FL 33311

or such other place as shall be designated by the holder of this Note in writing.

- IV. **SECURITY:** This Note is secured by a Second Mortgage on the Property.

- V. **WAIVER:** The Maker of this Note further agrees to waive demand, notice of non-payment and protest, and to the extent authorized by law, any and all exemption rights which otherwise would apply to the debt evidenced by this Note. In the event suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, the Maker agrees to pay all costs of such collection, including reasonable attorney's fees and court costs at the trial and appellate levels. Failure of the Agency to exercise any of its rights hereunder shall not constitute a waiver of the right of Agency to exercise the same.
- VI. **GOVERNING LAW:** This note is to be construed and enforced according to the laws of the State of Florida.
- VII. **DEFINITION:** Unless defined herein, all capitalized terms shall have the meaning described in the Agreement.

Maker:
**AVENUE D'ARTS FLL, LLC, a Florida
limited liability company**

By: _____
Print Name: _____
Print Title: _____

PREPARED BY AND RETURN TO:
Lynn Solomon
Assistant General Counsel
Fort Lauderdale CRA
914 Sistrunk Blvd, (NW 6th Street), Suite 200
Fort Lauderdale, Florida 33311

DECLARATION OF RESTRICTIVE COVENANTS

THIS INDENTURE is made this _____ day of _____, 20____.

WHEREAS, in furtherance of the Plan (defined herein), and pursuant to duly convened public meetings, a certain Fort Lauderdale Community Redevelopment Agency Development Agreement for Development Incentive Program (Comfort Suites Hotel) dated _____, 20____ (the "Agreement") was executed by and between Fort Lauderdale Community Redevelopment Agency, a community redevelopment agency created pursuant to Chapter 163, Part III, Florida Statutes ("Agency") and Avenue D'Arts FLL, LLC, a Florida limited liability company ("Developer") and _____ ("Owner") such Agreement being on file with the City Clerk of the City of Fort Lauderdale, Florida, 100 North Andrews Avenue, Fort Lauderdale, Florida, and such Agreement being in connection with improvements to the Property described in Exhibit "A" owned by Developer; and

WHEREAS, pursuant to the terms of the Agreement, Agency and Developer anticipated that the Property would be subject to a Declaration of Restrictive Covenants, the primary purpose of such Declaration of Restrictive Covenants being to ensure development and operation of the Property in accordance with the Plan which affects this Property and other properties in the vicinity; and

WHEREAS, pursuant to City Commission Resolution No. 95-86, adopted June 20, 1995, and by Resolution No. 01-121, adopted on July 10, 2001, the City of Fort Lauderdale established an area of economic restoration ("CRA Area") for which a Community Redevelopment Plan pursuant to Section 163.360, Florida Statutes was approved by the City Commission by Resolution No. 95-170 on November 7, 1995, as amended on May 15, 2001 by Resolution No. 01-86, and as subsequently amended (the "Plan"); and

WHEREAS, the Property is located within the CRA Area which has conditions of slum and blight as those conditions are defined in the Constitution of the State of Florida, Section 163.01, Florida Statutes, Chapter 163, Part III, Florida Statutes and other applicable provisions of law and ordinances and Resolutions of the City of Fort Lauderdale and Agency implementing the Community Redevelopment Act; and

WHEREAS, in order to effectuate the terms and conditions contained in the Agreement, and the goals and objectives of the Community Redevelopment Plan, as amended, it is necessary and proper to create this Declaration of Restrictive Covenants; and

NOW, THEREFORE, Developer hereby declares that the Property shall be, held, conveyed, encumbered, leased, rented, used, occupied and improved, subject to the following limitations, restrictions, conditions and covenants, all of which shall run with the land and are declared to be in furtherance of the Agreement and the Plan, as amended, and that such limitations, restrictions, conditions and covenants are also established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and every part thereof and to establish a development compatible with the properties under the Plan, and, in accordance therewith, Developer does hereby create and establish the following Declaration of Restrictive Covenants:

1. Construction and Intent. This Declaration shall be construed and interpreted in conjunction with the terms set forth in the Agreement, as same may be amended from time to time, provided, however, that it is the intent of the Developer that only those sections of the Agreement specifically referenced below shall be construed as covenants running with the property.

2. Restrictions On Use; Declaration of Restrictive Covenants The Developer covenants and agrees with the Agency that the Project shall be used continuously as a Comfort Suites Hotel or comparable hotel according to industry standards or other commercial uses as permitted and authorized under the ULDR except as prohibited herein, on the Property for which Agency funding was provided for a period of _____ () years commencing on the Effective Date of the Agreement. The Developer further agrees that the building shall not be used for those non-permitted uses as provided in the Uniform Land Development Regulations ("ULDR") and shall not be used for the following: (i) adult uses as such term is defined in Section 47-18.2 of the ULDR; (ii) tattoo parlors; or (iii) massage parlors (other than as an ancillary use to a health club or beauty salon or beauty space); or (iv) liquor store; or (v) convenience store or convenience kiosk as provided in the ULDR, during a term of nine (9) years commencing on the Effective Date of the Agreement.

[SIGNATURE PAGE FOLLOWS]

WITNESSES:

[Witness print or type name]

[Witness print or type name]

DEVELOPER:

AVENUE D'ARTS FLL, LLC, a Florida limited liability company

Name:

Title:

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____, 20____, _____, as _____ of Avenue D'Arts FLL, LLC, a Florida limited liability company on behalf of the company. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

Commission Number

WITNESSES:

[Witness print or type name]

[Witness print or type name]

OWNER:

IMPACT INVESTMENTS 1, a Florida limited liability company

Name:

Title:

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____, 20____, _____, as _____ of Impact Investments 1, LLC, a Florida limited liability company on behalf of the company. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

Commission Number

EXHIBIT "D"
JOB REPORT

EXHIBIT D
CITY OF FORT LAUDERDALE
Job Creation Annual Report

Agency Name: _____

Contact Person: _____

1	2	3	4	5	6	7	8	9	10			11
									a	b	c	
Employee Name or Employee Number	Employee Address	Job Title	Employment Start Date	Employment End Date (if applicable)	Annual Hours Worked (based on payroll records or system)	Hourly Wage or Annual Salary	Household Size	Annual Household Income	Very Low 30% or less	Low 31% - 50%	Medium 51% - 120%	Rate of the State of FL (1) 100% (2) 100% (3) 100%
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												

Agency Staff Approver: _____
 Date: _____

City Staff Reviewer: _____
 Date: _____

City Staff Approver: _____
 Date: _____