

**FORT LAUDERDALE COMMUNITY REDEVELOPMENT AGENCY
FAÇADE PROGRAM PARTICIPATION AGREEMENT**

THIS IS AN AGREEMENT made and entered into on this _____ day of _____, 2017 by and between:

FORT LAUDERDALE COMMUNITY REDEVELOPMENT AGENCY, a community redevelopment agency created pursuant to Part III, Chapter 163, Florida Statutes, hereinafter referred to as “CRA”,

And

INVASIVE SPECIES BREWING, LLC, a Florida limited liability company, hereinafter referred to as “Participant”.

WHEREAS, at its meeting of September 12, 2000 the CRA accepted the administration of the Façade Program (“Program”), which provides grant funds to local property owners and business owners who are lessees of property that are interested in improving the exterior appearance of their commercial structures as applicable to the Northwest Progresso-Flagler Heights Community Redevelopment Area (“NPF CRA”); and

WHEREAS, applications for funding through the Program shall be evaluated based upon the effect of the improvements upon the neighborhood including; neighborhood compatibility, the creation of additional jobs, increase in the improved property’s value, and the overall visual impact of the improvement; and

WHEREAS, Participant is not eligible to apply for additional funds under Program after funds awarded herein are spent by Participant; and

WHEREAS, Participant submitted an application for the Façade Program which application has been approved by CRA to receive funds under the Façade Program for the improvement of property described herein; and

WHEREAS, pursuant to motion approved by the CRA at its meeting of July 19, 2005, the CRA authorized the Executive Director of the CRA or his designee to execute Façade Agreements; and

WHEREAS, pursuant to motion approved by the CRA Board at its October 15, 2013 Meeting, the CRA approved the NPF CRA Five Year Strategic Program which included modifications to the Façade Program; and

WHEREAS, pursuant to motion approved by the CRA at its meeting of June 7, 2016, the CRA amended the Façade Program and authorized the Executive Director of

the CRA or his designee to execute Facade Agreements providing funding for less than \$50,000.00.

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

The foregoing recitals are true and correct and are incorporated herein by reference.

1. PURPOSE AND SCOPE.

(A) The purpose of this Agreement is to provide the terms and conditions for the CRA to provide grant funds to Participant for the exterior renovation of the structure on real property legally described as:

See Exhibit "A" attached hereto and incorporated herein

and more commonly known as:

726 NE 2nd Avenue, Fort Lauderdale, FL 33304
(hereinafter referred to as "Property").

(B) Funds provided herein by CRA may be used to pay for the cost of labor and materials necessary to construct, rehabilitate, or make improvements to the Property. Eligible items include, costs of permits, architectural design, landscaping, and other approved aesthetic enhancements. A specific description of eligible improvements is attached hereto as Exhibit "B" (hereinafter referred to as "Improvements"). Business equipment, furnishings or other interior improvements are not eligible. No improvements being funded under any other CRA program is eligible for reimbursement.

(C) Funds will be provided to Participant in the form of a forgivable loan.

(D) Façade improvements to be made in conjunction with this Agreement must commence no later than ninety days after the Effective Date of this Agreement as set forth in Exhibit "C" attached hereto and incorporated herein. Should Participant fail to commence work on the Property within the ninety day time period, CRA reserves the right not to award the funds granted herein. If CRA exercises this right, Participant may reapply to CRA for grant funds at a later date.

(E) Participant agrees that as a condition of this Agreement and as provided in the Facade Program, the Property shall not be sold within two (2) years of receipt of the Final Payment. In the event the Property is sold within one (1) year of the date of receipt of the Final Payment as described in Paragraph 2 (D) of this Agreement, the Participant shall

repay one hundred percent (100%) of the funds paid by CRA for the Improvements. In the event the Property is sold within two (2) years of the receipt of the Final Payment, the Participant shall pay CRA fifty percent (50%) of the funds paid by CRA for the Improvements. Participant shall notify the CRA within 5 days of the Property being sold. Payment shall be made within thirty (30) days of the date a conveyance document is recorded in the public records of Broward County and shall carry the maximum legal interest beginning on the 30th day until paid.

2. FORGIVABLE LOAN.

(A) Funds will be provided to Participant in the form of a forgivable loan of up to Twenty Four Thousand Seven Hundred Ninety Six and No/100 (\$24,796) or sixty percent (60%) of the total cost of the improvements on the Property, whichever is less. The total project cost is estimated at not less than Forty One Thousand Three Hundred Twenty Eight and No/100 (\$41,328). Funds shall be used in accordance with the attached Exhibit "B".

(B) Participant must demonstrate to CRA that any funds required to complete the improvements on the Property, over and above what has been provided herein have been obtained.

(C) The funds provided herein may be disbursed by the CRA for hard and soft costs related to the improvements on the Property.

(D) Funds provided herein shall be given to Participant on a reimbursement basis with a maximum of two requests from Participant. Agency shall reimburse Participant within 45 days of receipt of proper invoices for eligible materials or services, proof Participant paid such invoices, releases of lien for all such work and any other reasonable documentation required by the CRA from Participant. Final payment of CRA funds ("Final Payment") shall be made after the permitted work has been inspected and approved by the CRA Executive Director or his or her designee and the Participant provides proof that the Project building permit has been inspected and passed by the City's Building Official and within 45 days of receipt of proper invoices for eligible materials or services, proof the Participant paid such invoices and any other reasonable documentation required by the CRA.

e) Prior to any disbursement under this Agreement, the Participant and the owner of the underlying real property, 726 Ave LLC, shall execute the following documents, in form and substance acceptable to the CRA in its sole discretion, as a condition to receipt of the first payment:

1. Promissory Note;
2. Restrictive Covenant;
3. Mortgage (executed by 726 LLC and Participant);
4. Participant Corporate Resolution; and
5. Such other documents and instruments as reasonably required by the CRA.

3. INSURANCE AND INDEMNIFICATION.

(A) Participant agrees to keep in force during the improvement construction period and during the term of this Agreement the following insurance policies:

(i) Commercial General Liability Insurance for the benefit of the Participant, the contractor and the CRA with combined single limit bodily injury/property damage of Five Hundred Thousand Dollars (\$500,000.00).

(ii) Employer's Liability Insurance for the benefit of the Participant and contractor with minimum coverage of Five Hundred Thousand Dollars (\$500,000.00) and Workers Compensation coverage with the statutory coverage limits set forth by Florida Statutes.

(iii) Subcontractor Insurance is recommended. Participant is encouraged to advise the contractor that all of its subcontractors provide the aforementioned coverage as well as any other coverages that the Participant may consider necessary, and any deficiency in the coverages or policy limits of any subcontractors will be the sole responsibility of the contractor.

(B) Prior to the commencement of any construction activities pursuant to this Agreement, Participant shall furnish to the CRA a certificate of insurance for the above described Property, for the required insurance coverages as specified above, which shall name both the CRA and City as an additional insured, contain the name of insurance carrier(s), the effective and expiration dates of policies, and a provision for at least ten days prior notice to the CRA of any cancellation or material change in any policy.

(C) All such coverages shall be from a company or companies of such financial responsibility as found acceptable to the CRA. In the case of an insurable event, where applicable, the proceeds shall first be applied to the

Property or if the Property is not able to be reconstructed then payable to the CRA on account of the indebtedness hereby secured.

(D) Should the Participant fail to keep the Property so insured or should the Participant fail to pay any premium becoming due on any such policy or policies on or before the due date thereof, the CRA may place and pay for such insurance or any part thereof without waiving or affecting any rights hereunder.

(E) Participant shall protect, defend, indemnify and hold harmless the City, the CRA, and their officers, employees and agents, from and against any and all lawsuits, penalties, claims, damages, settlements, judgments, decrees, costs, charges and other expenses or liabilities of every kind, sort or description including, but not limited to, attorneys' fees at both the trial and appellate levels, in connection with or arising, directly or indirectly, out of or resulting from this Agreement or the Participant's acts or omissions in performing their obligations under this Agreement. Without limiting the foregoing, any and all such claims, relating to personal injury, death, damage to property, defects in material or workmanship, actual or alleged infringement or any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance administrative order, rule or regulation or decree of any court, are included in the indemnity. The Participant further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, at his sole expense and agrees to bear all other costs and expenses related thereto, even if the claim(s) is groundless, false or fraudulent. This provision shall survive expiration or termination of this Agreement and shall not be limited by any insurance required hereunder.

(F) It shall be a default under this Agreement if there is any order, judgment or decree that is entered by any court of competent jurisdiction adjudicating the Participant bankrupt or insolvent, approving a petition seeking a reorganization or appointing a receiver, trustee or liquidator of the Participant or of all or a substantial part of its assets, or if there is otherwise commenced as to the Participant or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues without being dismissed after any stay thereof expires.

4. CONSTRUCTION. All construction work must be performed by licensed contractors and appropriate permits will be required. Construction shall not commence without appropriate and sufficient property and casualty insurance on the Property. All construction work must be completed within the time frames as set forth in Exhibit "C" attached hereto and incorporated

herein. Should Participant fail to comply with the deadlines set forth in Exhibit "C", CRA reserves the right not to award the funds provided herein. If CRA exercises this right, Participant may reapply to CRA for CRA funds at a later date.

5. TERMINATION OF AGREEMENT.

(A) This Agreement, in whole or in part, may be terminated by CRA, for failure of Participant to comply with any of the provisions of this Agreement and upon thirty days prior written notice to Participant or in the event of a default under the Agreement. In the event CRA funds have been disbursed prior to termination, CRA shall be entitled to recover such funds from Participant.

(B) In the event funds to finance improvements made in connection with this Agreement become unavailable, the obligations of each party hereunder may be terminated upon no less than twenty-four hours written notice to the other party.

(C) No waiver by the CRA of any breach of any provision of this Agreement shall be deemed to be a waiver of any other provision or be construed to be a modification of the terms of this Agreement.

6. NOTICE. Any notice by either party under this Agreement should be deemed sufficient if given in writing and hand delivered and or sent by registered or certified mail, postage prepaid and return receipt requested, to the appropriate parties indicated below:

As to the CRA:
NPFCRA Director
Fort Lauderdale Community
Redevelopment Agency
914 NW 6th Street, Suite 200
Fort Lauderdale, FL 33311

As to the Participant:
Christopher Bellus, Manager
INVASIVE SPECIES BREWING, LLC
901 Progresso Drive, Suite 101
Fort Lauderdale, FL 33304

7. RECORDS/RIGHT TO AUDIT.

CRA shall have the right to audit the books, records and accounts of Participant that are related to this Agreement. Participant shall keep and maintain such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement in accordance with generally accepted accounting practices and standards. All books, records, and accounts of Participant 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, Participant shall make same available at no cost to CRA in written form.

Participant shall preserve and make available, at reasonable times for examination and audit by CRA 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, litigation, or other action involving the records has been initiated and 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, litigation or other action. If the Florida public records law is determined by CRA to be applicable, Participant shall comply with all requirements thereof. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CRA's disallowance and recovery of any payment upon such entry.

8. PUBLIC RECORDS.

8.1 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.

8.2 Participant and all contractors or subcontractors (the "**Contractor**") engaging in services in connection with construction and/or maintenance of the façade improvements shall:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by CRA in order to perform the services rendered.
- (b) Upon request from CRA's custodian of public records, provide CRA 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 Participant for the duration of this 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 CRA.
- (d) Upon completion of said construction or maintenance, transfer, at no cost, to CRA all public records in possession of

Participant or Contractor or keep and maintain public records required by CRA to perform the service. If Contractor transfers all public records to CRA upon completion of the façade improvements, Contractor shall destroy any duplicate public records in its possession that are exempt or confidential and exempt from public records disclosure requirements. If Participant or Contractor keeps and maintains public records upon completion of the façade improvements, Participant and Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CRA, upon request from CRA's custodian of public records, in a format that is compatible with the information technology systems of CRA or the City of Fort Lauderdale.

8.3 If Participant or any Contractor has questions regarding the application of Chapter 119, Florida Statutes, to Participant or Contractor's duty to provide public records relating to its contract, contact the CRA'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.

9. APPLICABLE LAW. The Participant shall comply with the provisions of the CRA's Façade Program and all applicable local, state and federal laws, regulations, rules and ordinances in connection with the façade improvements contemplated by this Agreement. This Agreement shall be governed by the laws of the State of Florida. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Broward County, Florida, or the United States District Court for the Southern District of Florida.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this _____ day of _____ 2017.

AGENCY:

WITNESSES:

**FORT LAUDERDALE COMMUNITY
REDEVELOPMENT AGENCY**

Lee Feldman, Executive Director

[Witness print or type name]

Approved as to form:
Cynthia A. Everett, CRA General Counsel

Lynn Solomon,
CRA Assistant General Counsel

ATTEST:

Jeffrey A. Modarelli, CRA Secretary

WITNESSES:

[Witness print or type name]

[Witness print or type name]

[Witness print or type name]

[Witness print or type name]

PARTICIPANT:

INVASIVE SPECIES BREWING, LLC.,
Florida limited liability company

By: _____
Christopher Bellus, Manager

By: _____
Jordan Bellus, Manager

By: _____
Philip Gillis, Manager

By: _____
Joshua Levitt, Manager

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____ 2017, by Christopher Bellus, Jordan Bellus, Philip Gillis and Joshua Levitt as manager's on behalf of INVASIVE SPECIES BREWING, 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:
Commission Number

EXHIBIT "A"
LEGAL DESCRIPTION

Lots 37 and 38, Block 289, PROGRESSO, according to the map or plat thereof as recorded in Plat Book 2, Page 18, Public Records of Miami-Dade County, Florida, said lands situate, lying and being in Broward County, Florida.

Tax ID 4942 34 07 1800

EXHIBIT "B"
PROJECT DESCRIPTION

Two new front doors and windows, rear glass garage door, paint, sidewalk, curbing, landscaping and irrigation for entry front parking area.	\$41,328
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TOTAL FAÇADE LOAN (60%)	\$24,796
TOTAL PARTICIPANT COST	\$16,532

EXHIBIT "C"
PERFORMANCE SCHEDULE

Effective Date	Date on which Agreement is fully executed by both parties
Participant obtains all governmental approvals and permits	Within 60 days after Effective Date
Commence facade improvements	Within 90 days after the Effective Date
Building permit has been inspected and passed by the City's Building Official	Within 180 days after commencing facade improvements
Participant submits reimbursement package to CRA for Final Payment of CRA funds	Within 90 days of final inspection by City's Building Official