

This document prepared by:  
Lynn Solomon, Esq.  
Assistant General Counsel  
Fort Lauderdale Community  
Redevelopment Agency  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301

Return to:

Lynn Solomon, Esq.  
Assistant General Counsel  
Fort Lauderdale Community  
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100 North Andrews Avenue  
Fort Lauderdale, Florida 33301

## **RESTRICTIVE COVENANT AGREEMENT**

**THIS RESTRICTIVE COVENANT AGREEMENT** (this "Agreement") is made and entered into as of May 3, 2022, by and among Thrive Development Group, LLC, a Florida limited liability company, as successor by merger to 744-748 NW 5 AVE LLC, a Florida limited liability company, Bayit Investments, LLC, a Florida limited liability company, 710 NW 5<sup>th</sup> AVENUE LLC, a Florida limited liability company and 413 NW 7<sup>th</sup> Street, LLC, a Florida limited liability company (collectively referred to as the "Owners" or "Owner") 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 (the "Agency").

### **RECITALS:**

A. Owners and Agency entered into that Development Agreement for Development Incentive Program (the "Development Incentive Agreement") dated October 16, 2019, as amended.

B. Owners and Agency entered into that certain Development Agreement for Streetscape Enhancement Program dated October 16, 2019, as amended.

C. This Agreement memorializes the "Restrictive Covenant" reference in the Development Incentive Agreement and the Streetscape Agreement.

D. The Development Incentive Agreement provides for a forgivable loan (the "Loan") in the amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) to be made to Owners for development of the Project as defined in the Development Incentive Agreement on real property located in Fort Lauderdale, Florida, Broward County, Florida, more fully described in Exhibit "A" attached hereto (the "Land").

E. The Streetscape Agreement provides for a forgivable loan (the "Streetscape Loan") in the amount of Four Hundred Ninety Thousand Three Hundred Seventy Four and 87/100 Dollars (\$490,374.87) to be made to Owners for Developer Streetscape Improvements associated with the Project, both as defined in the Streetscape

Agreement, on the real property located in Fort Lauderdale, Florida, Broward County, Florida, and more fully described in Exhibit "A" attached hereto (the "Land").

F. Owners have determined to enter into this Agreement to set forth certain terms and conditions relating to the operation of the Project, in consideration of the Loan and the Streetscape Loan.

**NOW THEREFORE**, in consideration of providing the Loan and the Streetscape Loan by the Agency, acknowledging that compliance with this Agreement is necessary to the accomplishment of the public purpose of the making of the Loan and the Streetscape Loan, the parties hereto agree as follows:

1. Definitions and Interpretation.

1.1 Terms not defined but capitalized herein shall have the meanings given to such terms in the Streetscape Agreement or the Development Incentive Agreement, as applicable.

1.2 Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

1.3 The titles and headings of the sections of this Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

2. Restrictive Covenant. In consideration of the Loan and the Streetscape Loan, the Owner agrees to provide a community benefit on the Land by limiting the rents charged on at least fifteen thousand square feet of the leasable area of the buildings on the Land ("Restricted Commercial Space") within the Project to \$18.00 per square foot, triple net, with a yearly increase in rent not to exceed five percent (5%) as certified by an independent accounting firm, selected by the Agency, but paid for by the Developer, for five (5) years following the date that the first tenant occupies the Property (the "Occupancy Date") after the Developer Improvements (as defined in the Developer Agreement) are completed as evidenced by final approvals from the appropriate governing authority. The Developer shall deliver a certified copy of the rent roll reflecting the rental rates, total square footage of the Project and copies of the actual signed leases, if requested by the Agency for five years. For purposes of this community benefit, lease is defined as any concession, license or other agreement, whether written or verbal, which grants a party the right to occupy, use or possess all or a portion of the Property, whether continuous or intermittent, for of period of thirty (30) days or more. Starting in year two (2) of the term of this Restrictive Covenant and provided at least 10,000 square feet of the Restricted

Commercial Space has been leased at the initial rate of \$18.00 per square feet, the Developer may charge the escalated rent (base rent for the preceeding year plus 5% increase) as appropriate for each year thereafter on the remaining Restricted Commercial Space.

3. Priority. Except for the Developer's Lender, Agency's rights hereunder shall not be encumbered by or subordinated in any way to (a) any mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting, created or suffered by Owners, or (c) any lease, sublease or any mortgages, liens or encumbrances now or hereafter placed on any interest of any tenants of subtenants. Owners shall in no event have any right or authority to create liens or encumbrances on or affecting any interest in or rights of Agency hereunder.

4. 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 by facsimile, certified mail, return receipt requested, by courier or overnight service or personal hand-delivery to the following addresses:

Owners:

Jonathan Fish  
Abraham Fish  
Thrive Development Group LLC  
746 NW 5<sup>th</sup> Avenue  
Fort Lauderdale, FL 33311

**with a copy to:**

Jamie Tarich, Esq.  
The Tarich Law Firm P.A.  
1946 Tyler Street  
Hollywood, Florida 33020

Agency:

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

With a copy to:

City of Fort Lauderdale  
City Attorney's Office  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301  
Attn: Lynn Solomon, Esq.

e-mail: 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.

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.

5. Covenants to Run with the Land. This Agreement and the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land and, during the term of this Agreement, shall pass to and be binding upon the Owners' assigns and successors and all subsequent owners of the Land or the Project or any interest therein; provided, however, that upon the termination of this Agreement in accordance with the terms hereof and the Development Incentive Agreement and Streetscape Agreement, said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Land or the Project or any portion thereof or interest therein shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Land or the Project are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Land or the Project.

6. Remedies; Enforceability. The benefits of this Agreement shall inure to, and may be enforced by the Agency and its successors. It is acknowledged that the Agency may seek the return of the Loan and Streetscape Loan from Owners in accordance with the terms of the Development Incentive Agreement and Streetscape Agreement. The obligations of Owners to return any portion of the Loan or Streetscape Loan shall expire five (5) years subsequent to the date of occupancy by the first tenant (the "Five Year Period") provided that there is not an uncured Event of Default. The return of any portion of the Loan or Streetscape Loan shall not be required except for an uncured Event of Default. The returnable balance of the Loan and the Streetscape Loan (the "Outstanding Balance") shall be reduced proportionately over the Five Year Period, with an amount equal to 20% of the Loan and 20% of the Streetscape Loan shall be reduced annually on each 1-year anniversary of the Occupancy Date, provided that there is not then an uncured Event of Default.

7. Filing. Upon execution and delivery by the parties hereto, the Owners shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in

the official public records of Broward County, Florida, and shall pay all fees and charges incurred in connection therewith.

8. Governing Law. This Agreement shall be governed by the laws of the State of Florida.

9. Amendments. This Agreement shall not be amended, revised, or terminated except by a written instrument, executed by the parties hereto (or their successors in title), and duly recorded in the official public records of Broward County, Florida.

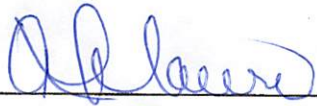
10. Severability. If any provision hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

[Remainder of page intentionally left blank]


IN WITNESS WHEREOF, the Agency and Owners have executed this Agreement by duly authorized representatives, all as of the date first set forth above.

WITNESSES:

**FORT LAUDERDALE COMMUNITY REDEVELOPMENT AGENCY**, a community redevelopment agency created pursuant to Part III, Chapter 163, Florida Statutes

  
Print Name Aimee Llauro

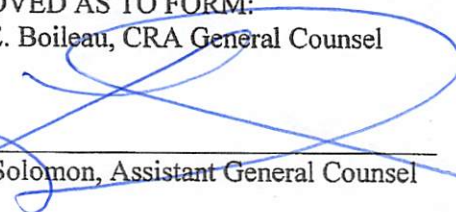
By:   
Christopher J. Lagerbloom, ICMA-CM  
Executive Director

  
Print Name Donna Davis

By:   
David R. Soloman, CRA Secretary

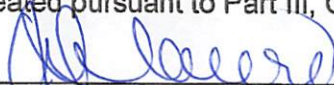


APPROVED AS TO FORM:  
Alain E. Boileau, CRA General Counsel

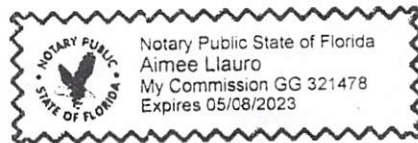
By:   
Lynn Solomon, Assistant General Counsel

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this by means of ☐ physical presence or ☐ online, this 9th day of May, 2022, by CHRISTOPHER J. LAGERBLOOM, ICMA-CM, Executive Director of the Fort Lauderdale Community Redevelopment Agency, a body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163 on behalf of the Agency.

  
Notary Public, State of Florida

Aimee Llauro  
Name of Notary Typed, Printed or Stamped



Personally Known  OR Produced

Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

WITNESSES:

(Signature)

Printed Name:

(Signature)

Printed Name:

OWNER:

Thrive Development Group LLC, a Florida  
Limited Liability Company

By:

Jonathan Fish, Authorized Member

By: ASIA

Abraham Fish, Authorized Member

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this by means of ☒ physical presence or ☐ online, this 3 day of May, 2022, by Jonathan Fish, as Authorized Member of Thrive Development Group, LLC, a Florida limited liability company on behalf of the company.

Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

Personally Known X

OR Produced Identification

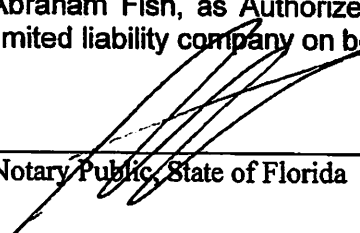
Type of Identification Produced



JAMIE TARICH  
Commission # GG 222314  
Expires June 15, 2022  
Bonded Thru Budget Notary Services

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this by means of ☒ physical presence or ☐ online, this 3 day of May, 2022, by Abraham Fish, as Authorized Member of Thrive Development Group, LLC, a Florida limited liability company on behalf of the company.

  
\_\_\_\_\_  
Notary Public, State of Florida



JAMIE TARICH  
Commission # GG 222314  
Expires June 15, 2022  
Bonded Thru Budgetary Notary Services

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

Personally Known  OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_





COMMISSION AGENDA ITEM  
DOCUMENT ROUTING FORM  
Today's Date: 5/6/2022

1L  
05/10/22

DOCUMENT TITLE: Thrive Progresso- Restrictive Covenant Agreement

COMM. MTG. DATE 2/15/2022 CAM #: 22-0124 ITEM #: R-1 CAM attached: ☒ YES ☐ NO

Routing Origin: CAO Router Name/Ext: Erica K./ 6088 Action Summary attached: ☒ YES ☐ NO

CIP FUNDED: ☐ YES ☐ NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) Dept: \_\_\_\_\_ Router Name/Ext: \_\_\_\_\_ # of originals routed: \_\_\_\_\_ Date to CAO: \_\_\_\_\_

2) City Attorney's Office: Documents to be signed/routed? ☒ YES ☐ NO # of originals attached: 1

Is attached Granicus document Final? ☒ YES ☐ NO Approved as to Form: ☒ YES ☐ NO

Date to CCO: 05/06/2022 Lynn Solomon LS  
Attorney's Name Initials

3) City Clerk's Office: # of originals: \_\_\_\_\_ Routed to: Donna V./Aimee L./CMO Date: \_\_\_\_\_

4) City Manager's Office: CMO LOG #: May 27 Document received from: \_\_\_\_\_

Assigned to: CHRIS LAGERBLOOM ☐ TARLESHA SMITH ☐ GREG CHAVARRIA ☐  
CHRIS LAGERBLOOM as CRA Executive Director ☐

☐ APPROVED FOR C. LAGERBLOOM'S SIGNATURE ☐ N/A FOR C. LAGERBLOOM TO SIGN

PER ACM: T. Smith (Initial/Date) PER ACM: G. Chavarria (Initial/Date)

☐ PENDING APPROVAL (See comments below)

Comments/Questions: \_\_\_\_\_

Forward 1 originals to ☐ Mayor ☒ CCO Date: 5-9-22

5) Mayor/CRA Chairman: Please sign as indicated. Forward \_\_\_\_\_ originals to CCO for attestation/City seal (as applicable) Date: \_\_\_\_\_

6) City Clerk: Forward \_\_\_\_\_ originals to CAO for FINAL APPROVAL Date: \_\_\_\_\_

7) CAO forwards \_\_\_\_\_ originals to CCO Date: \_\_\_\_\_

8) City Clerk: Scan original and forwards 1 original to: Erica K./xt. 6088

Attach \_\_\_\_\_ certified Reso# \_\_\_\_\_ ☐ YES ☐ NO Original Route form to: Erica K./6088