

Prepared by and return to:

Michael S. Foelster, Esq.
BACKER ABOUD POLIAKOFF & FOELSTER, LLP
400 S. Dixie Highway, Suite 420
Boca Raton, FL 33432

AGREEMENT CONCERNING RESTRICTIVE COVENANT

THIS AGREEMENT CONCERNING RESTRICTIVE COVENANT made on September ____, 2022, by VALLEY NATIONAL BANK, whose address is 1700 Palm Beach Lakes Boulevard, Suite 1000, West Palm Beach, Florida 33401 (the "Senior Lender"), Fort Lauderdale Community Redevelopment Agency, its successors or assigns, whose address is 100 North Andrews, Fort Lauderdale, FL 33301 ("Agency"), and Provident Fort Lauderdale LLC, a Delaware limited liability company, whose address is 900 Sistrunk Blvd (NW 6th Street), Fort Lauderdale, Florida, 33311 (the "Owner").

RECITALS:

- A. Owner previously received a loan (the "Loan") from Senior Lender, as evidenced by that certain Amended and Restated Mortgage, Assignment of Rents and Security Agreement executed by Owner, in favor of Senior Lender, dated September 1, 2022, in the principal amount of \$1,135,000.00, recorded under Instrument Number 118393219 (the "Senior Mortgage"). The Senior Mortgage encumbers the real property (the "Real Property") described on Exhibit "A" attached hereto and by this reference made a part hereof. All documents and instruments executed by Owner in connection with the Loan are hereinafter collectively referred to as the "Senior Loan Documents".
- B. The Owner and the Agency are entering into that certain Restrictive Covenant Agreement (the "Restrictive Covenant"), which Restrictive Covenant contains certain short-term leasing requirements for the Real Property.
- C. Agency requires Senior Lender to consent to the Restrictive Covenant and to subordinate any right Senior Lender ("Leasing Rights") may have concerning leasing at the Property to the leasing requirements of the Restrictive Covenant.

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this agreement, the parties agree as follows:

1. **Consent and Subordination.** Senior Lender and the Owner each agree that the during the three (3) year term of the Restrictive Covenant, the Senior Mortgage are and shall be subordinate to the requirements of the Restrictive Covenant concerning leasing, specifically and only as to section 2 of the Restrictive Covenant. The Senior Lender shall not seek to foreclose the Restrictive Covenant and, if Senior Lender acquires all right, title and interest to the Real Property, Senior Lender, for itself and its successors and/or assigns, agrees to abide by the terms and conditions of the Leasing Rights. Senior Lender does hereby consent to the recording of a mortgage against the Real Property in favor of the Agency in the original principal amount of \$420,000.00, provided that the mortgage-security interest of the Senior Lender remains at all times a first lien upon the Real Property.

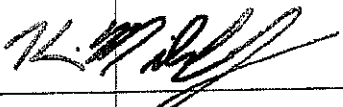
2. **Obligations Hereunder Not Affected.** All rights and interests of the Agency under this Agreement, and all agreements and obligations of Senior Lender and the Owner under this Agreement, shall remain in full force and effect irrespective of any lack of validity or enforceability of any of the Restrictive Covenant or any other agreement or instrument relating thereto;
3. **Priority.** Nothing in this Agreement shall be deemed to subordinate Senior Lender's lien rights under the Senior Mortgage to lien rights of Agency under its mortgage; nor shall this Agreement be deemed to modify the lien priority of the Senior Mortgage. For avoidance of doubt, except as relates to the Leasing Requirements, Senior Lender's lien priority under the Senior Mortgage shall continue to prime any lien right of Agency in the Real Property.
4. **Amendments, Etc.** No amendment or waiver of any provision of this Agreement nor consent to any departure by Senior Lender or the Owner therefrom shall in any event be effective unless the same shall be in writing and signed by the Agency, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of the Agency to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
5. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party. All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth in the first paragraph of this Agreement.
6. **Continuing Agreement; Transfer of Note.** This Agreement is a continuing agreement and shall remain in full force and effect until the Restrictive Covenant's three (3) year term expires.
7. **Governing Law; Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida without regard to conflicts-of-laws principles, and the parties agree that the exclusive venue for any and all such suits in connection with this Agreement shall lie in any state or federal court lying in Broward County, Florida.
8. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument. Delivery of an executed counterpart hereto by email or facsimile transmission shall be as effective as delivery of a manually executed counterpart hereof.
10. **No Partnership.** The execution of this Agreement shall not create or be construed as creating a partnership, joint venture or other joint enterprise between the Agency and Senior Lender.
11. **No Release.** Nothing herein contained shall operate to release the Owner from its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Senior Loan Documents or any liability under the Senior Loan Documents.

[CONTINUES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

SENIOR LENDER:

VALLEY NATIONAL BANK

By: 
Name: Kevin Miliffe
Title: SVP

OWNER:

PROVIDENT FORT LAUDERDALE, LLC, a Delaware limited liability company, acting by and through its Manager, to wit:

By: FUSE 9, LLC, a Delaware limited liability company,
acting by and through its Manager, to wit:

By: FLORIDA PRIME ACQUISITIONS, LLC, a Florida limited liability company,
acting by and through its authorized Manager, to wit:

By: R.E.L. PARTNERS, LLC, a Florida limited liability company

By: Eyal Peretz, Manager

[CONTINUES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

SENIOR LENDER:

VALLEY NATIONAL BANK

By: _____

Name: _____

Title: _____

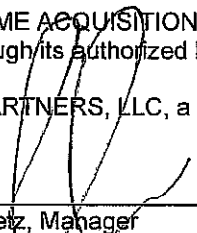
OWNER:

PROVIDENT FORT LAUDERDALE, LLC, a Delaware limited liability company, acting by and through its Manager, to wit:

By: FUSE 9, LLC, a Delaware limited liability company,
acting by and through its Manager, to wit:

By: FLORIDA PRIME ACQUISITIONS, LLC, a Florida limited liability company,
acting by and through its authorized Manager, to wit:


By: R.E.L. PARTNERS, LLC, a Florida limited liability company

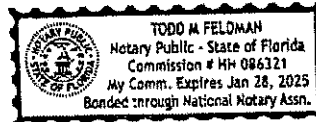
By:  _____
Eyal Peretz, Manager

[CONTINUES ON FOLLOWING PAGE]

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☒ online notarization, this 14 day of September, 2022, by Kevin Milute, as SVP of VALLEY NATIONAL BANK, on behalf of and as an act of the bank.


Notary Public, State of Florida
Todd Pelaman
Name of Notary Typed, Printed or Stamped



Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of September, 2022, by Eyal Peretz, as Manager of R.E.L. PARTNERS LLC, a Florida limited liability company, the Manager of FLORIDA PRIME ACQUISITIONS, LLC, a Florida limited liability company, the Manager of FUSE 9, LLC, a Delaware limited liability company, the Manager of PROVIDENT FORT LAUDERDALE, LLC, on behalf of and as an act of the company.

Notary Public	State of Florida
Name of Notary Typed, Printed or Stamped	

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

AGENCY:

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

By: _____

Greg Chavarria, Executive Director

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online, this 23 day of September, 2022, by GREG CHAVARRIA, 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.

Notary Public, State of Florida

Aimee Lauro
Name of Notary Typed, Printed or Stamped



Personally Known ☒ OR Produced
Identification _____

Type of Identification Produced _____

APPROVED AS TO FORM:

Alain E. Boileau, CRA General Counsel

Lynn Solomon, Assistant General Counsel

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 29 and 30, Block 328, PROGRESSO, according to the Plat thereof as recorded in Plat Book 2, Page 18, Public Records of Dade County, Florida. said land situate lying and being in Broward County, Florida.

AND

Lot 31 through 34 inclusive, Block 328, PROGRESSO, according to the Plat thereof recorded in Plat Book 2, Page 18, Public Records of Dade County, Florida said land situate, lying and being in Broward County, Florida.

Parcel ID Nos. 49-42-34-07-8450, and 49-42-34-07-8460, located at 610-618 NW 9th Avenue, Fort Lauderdale, Florida 33311.



COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

Today's Date: 9-16-22

1L

DOCUMENT TITLE: Agreement Concerning Restrictive Covenant

COMM. MTG. DATE: 08/20/2019 CAM #: 19-0659 ITEM #: M-2 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: 9-16-22

Lynn Solomon
Attorney's Name

LS
Initials

JS

3) City Clerk's Office: # of originals: 1 Routed to: Donna V./Aimee L./CMO Date: 09/16/22

4) City Manager's Office: CMO LOG #: _____ Document received from: _____

Assigned to: GREG CHAVARRIA ☐
ANTHONY FAJARDO ☐

TARLESHA SMITH ☐
SUSAN GRANT ☐

GREG CHAVARRIA as CRA Executive Director ☐

☐ APPROVED FOR G. CHAVARRIA'S SIGNATURE

☐ N/A FOR G. CHAVARRIA TO SIGN

PER ACM: T. Smith _____ (Initial/Date)
S. Grant _____ (Initial/Date)

PER ACM: A. Fajardo _____ (Initial/Date)

☐ PENDING APPROVAL (See comments below)

Comments/Questions: _____

Forward 1 originals to ☐ Mayor ☒ CCO Date: 9-23-22

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

6) City Clerk: Scan original and forwards 2 originals to: Erica K./ xt. 6088

Attach _____ certified Reso # _____ ☐ YES ☐ NO

Original Route form to Erica K./ 6088