

DEVELOPMENT AGREEMENT
The Gallery at FATVillage

THIS DEVELOPMENT AGREEMENT (this "Agreement") is by and among:

**FORT LAUDERDALE COMMUNITY
REDEVELOPMENT AGENCY,**

a Community Redevelopment Agency created
pursuant to Part III of Chapter 163, Florida Statutes,
and by City of Fort Lauderdale Resolution No. 95-86
(adopted by the City Commission on June 20, 1995),
hereinafter referred to as the "Agency" or the "CRA"

and

RELATED FATVILLAGE, LLC,
a Florida limited liability company,
hereinafter referred to as the "Owner"

W I T N E S S E T H:

WHEREAS, the Fort Lauderdale Community Redevelopment Agency, an agency authorized under Part III of Chapter 163 of the Florida Statutes, known as the Community Redevelopment Act of 1969 (the "Act"), was created to eliminate "slum and blight" and to stimulate community redevelopment within the City; and

WHEREAS, the City Commission adopted Resolution No. 95-86 on June 2, 1995 (as may be amended from time to time), finding the existence of slum and blight conditions in that area of the City, known as the Northwest-Progresso-Flagler Heights Community Redevelopment Area, as more particularly described in that aforementioned resolution (collectively, the "Redevelopment Area"); and

WHEREAS, by adoption of Resolution No. 95-170, the redevelopment plan for the Redevelopment Area was approved by the City Commission on November 7, 1995, and was amended in 2001 by Resolution No. 01-86, in 2002 by Resolution No. 02-183, in 2013 by Resolution No. 13-137, in 2016 by Resolution No.16-52, and in 2018 by Resolution No. 18-226, and as subsequently amended (collectively, the "Redevelopment Plan"); and

WHEREAS, the Owner applied for funding in the amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) under the Agency's Development Incentive Program (DIP); and

WHEREAS, the principals of the Owner are experienced, skilled and creditworthy developers with experience in developing projects similar in scope and scale as and to the Project; and

WHEREAS, the land upon which the Project will developed and constructed is currently vacant land owned by Broward County, Florida (the "County"), which vacant land is located at 600 North Andrews Avenue, Fort Lauderdale, Florida 33311, with a folio number of 4942-34-07-6250 (the "Property"); and

WHEREAS, the County and the Owner entered into that certain Ground Lease Agreement dated December 12, 2017, as amended from time to time, under which the County leased the Property to the Owner (the "Ground Lease"); and

WHEREAS, the Owner shall develop, construct, operate and manage the Project on the Property utilizing various funding sources; and

WHEREAS, the Agency consents to this aforementioned arrangement provided that the Owner provides a payment, performance and completion guaranty for the Project in favor of the Agency and satisfies other terms and conditions as set forth herein; and

WHEREAS, on September 13, 2022, the CRA Advisory Board recommended approval of this Project; and

WHEREAS, the Board of Commissioners finds that development and construction of the Project will create stable communities, create affordable housing, enhance the quality of life, improve the aesthetic and useful enjoyment of the Redevelopment Area and create economic development opportunities, all in accordance with and in furtherance of the Redevelopment Plan and as authorized by and in accordance with the Act; and

WHEREAS, the CRA Advisory Board finds that the Owner has demonstrated that it has the financial capacity, legal ability, development experience, qualifications and ability best suited to develop, construct and complete the Project; and

WHEREAS, on [_____, 2022], by [Resolution No. _____ (CRA)], the Board of Commissioners (i) approved an award of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) under the Agency's Development Incentive Program (DIP) for use by the Owner, and (ii) required a payment, performance and completion guaranty for the Project from the Owner in favor of the Agency.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each and every Party, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

As used in this Agreement the following terms shall have the following meanings:

“Affiliate” means, when used with reference to a specific Person:

- (1) Any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person;
- (2) Any Person that is a director, officer, manager, partner, member, shareholder, owner or trustee of or in, or serves in a similar capacity with respect to, the specified Person, or which the specified Person is a director, officer, manager, partner, member, shareholder, owner or trustee of or in, or serves in a similar capacity with respect to, any Person;
- (3) Any Person that, directly or indirectly, is the beneficial owner of ten percent (10%) or more of any class of equity securities of, or otherwise has a substantial beneficial interest (ten percent (10%) or more) in, the specified Person, or which the specified Person is, directly or indirectly, the owner of ten percent (10%) or more of any class of equity securities of, or otherwise has a substantial beneficial interest (ten percent (10%) or more) in, any Person; or
- (4) A relative or spouse of the specified Person.

As used in this definition, the term “relative” shall include all the relationships specified in Section 732.103 of the Florida Statutes (intestate succession) as they pertain to the Person and the Person’s spouse, signifying that the term “Person” shall be used in place of “decedent”, and provided further, because the Person’s spouse is included in this definition, marriage-created relationships (such as son-in-law, daughter-in-law, brother-in-law, sister-in-law, father-in-law and mother-in-law) are included.

“Affordable Housing Requirement” shall have the meaning described in Section 3.3.1 of Article 3.

“Affordable Rents” mean the payment of rent which does not exceed thirty percent (30%) of the tenant’s / occupant’s gross monthly income, including utility charges.

“Affordable 50% Units” mean twenty percent (20%) of the residential rental units within the Project (which is the equivalent of thirty-nine (39) residential rental units within the Project) to be leased to Eligible 50% Persons.

“Affordable 120% Units” mean fifty-six and nine hundred twenty-three thousandths’ percent (56.923%) of the residential rental units within the Project (which is the equivalent of one hundred eleven (111) residential rental units within the Project) to be leased to Eligible 120% Persons.

“Affordable Units” mean, collectively, both the Affordable 50% Units and the Affordable 120% Units.

“Agency Loan” or “Agency Funds” means a zero percent interest thirty year loan that will be made by the Agency to the Owner in the amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) with a balloon payment at the end of thirty years as evidenced by a Promissory Note and other loan documents, the proceeds of which shall be used to pay hard construction costs for developing and constructing the Project, which shall be secured by a leasehold mortgage on the Entire Site. The Agency Loan shall be due and payable in full upon the sale, transfer or conveyance of the Property. In the event of a refinance of the Project, the Agency Loan shall be repaid in full, subject to the terms of the Intercreditor Agreement and only after the members of the Owner have recovered their equity contribution for construction of the Project. The Agency may assign the Agency Loan to Invest Fort Lauderdale, Inc., a Florida non-profit corporation. **Agency Funds shall not be used to fund Horizontal Improvements within a public right of way.**

“Agency Documents” means this Agreement together with the documents, agreements and instruments described in Section 3.2.2 of Article 3, and such other certifications, affidavits and other writings reasonably requested by the Agency.

“Applicant” means the Owner, which entity applied for Agency Funds under the Agency’s Development Incentive Program (DIP).

“Authorized Representative” means, (i) as to the Agency, the Executive Director (or his or her designee), and (ii) as to the Owner, Tony Del Pozzo.

“Board of Commissioners” means the Board of Commissioners of the Agency, which is the governing body and governing board of the Agency.

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

“Building Permit” means, for each part of the infrastructure and improvements to be constructed on the Property, any building permit or development approval issued by the appropriate department, office or official of the City (or other governmental authority having jurisdiction over the Property and the Project) 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, and having the authority to issue building permits or development approvals for infrastructure improvements or construction of buildings, structures or other improvements in accordance with construction documents therefor reviewed and approved by such department, office or official of the City.

“Construction Lender” means JPMorgan Chase Bank, N.A.

“Contractor” means one or more individuals, organizations or firms constituting a general contractor properly licensed by Broward County, State of Florida (or other appropriate jurisdiction), to the extent required by applicable law, to perform contracting services to construct the Improvements, bonded to the extent required by applicable law and contract specifications, and also means and includes a Contractor for site development work (infrastructure), structural improvements, underground water and sewer utilities, mechanical (HVAC), plumbing and electrical.

“Certificate of Occupancy” or “C/O” means a final certificate of occupancy issued by the City’s building official or other appropriate governing authority pursuant to the Building Code.

“City” means the City of Fort Lauderdale, Florida, a municipal corporation of the State of Florida.

“City Commission” means the elected officials and governing body of the City.

“Closing Date” or “Closing” means the date the Owner closes on its construction loan with the Construction Lender and closes on its loans with the County and the City and closes on its tax credits with its tax credit investors. The Closing Date shall occur on or before December 31, 2022; provided that the Owner may request an extension of the Closing Date from the Agency’s Authorized Representative for up to an additional sixty (60) days when the Owner has used Reasonable Efforts in meeting the lending conditions of the Construction Lender or its other lenders and has secured a loan commitment, a copy of which has been provided to the Agency but has been unable to do so.

“Completion Date” means the date on which a Certificate of Occupancy is issued for the entire Project, which date shall be no later than thirty-six (36) months from the Closing Date, subject to Force Majeure and extensions approved by the Agency’s Executive Director.

“Contract Administrator” means the Agency’s Executive Director (or his or her designee). For purposes of Article 5 and Section 6.2 of Article 6, the Contract Administrator shall be deemed the Area Manager for the Northwest-Progresso-Flagler Heights Community Redevelopment Area.

“CRA Advisory Board” means the City of Fort Lauderdale Northwest-Progresso-Flagler Heights Community Redevelopment Agency Advisory Board appointed by the City Commission to advise the City and the Board of Commissioners regarding community redevelopment matters affecting the Redevelopment Area.

“Declaration of Developer Restrictive Covenants” or “DDRC” means that instrument executed by the Owner at the Closing in favor of the Agency, which shall be recorded against the Entire Site, in form and content acceptable to the Agency, which shall

incorporate the Affordable Housing Requirement, Affordable Rents and other community benefits described in Section 3.3.1 of Article 3.

“Effective Date” means the effective date of this Agreement, which is the date on which the last Party executes this Agreement.

“Eligible 50% Persons” mean those individuals or families whose income, as adjusted for family size, is (on average) not greater than fifty percent (50%) of the Broward County Area Median Income, as established by the U.S. Department of Housing and Urban Development (or its successor agency) from time to time.

“Eligible 120% Persons” mean those individuals or families whose income, as adjusted for family size, is (on average) not greater than one hundred twenty percent (120%) of the Broward County Area Median Income, as established by the U.S. Department of Housing and Urban Development (or its successor agency) from time to time.

“Eligible Persons” mean, collectively, both the Eligible 50% Persons and the Eligible 120% Persons.

“Entire Site” means the Property as legally described in Exhibit “A” to this Agreement, which is approximately 1.178 acres of vacant land.

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

“Horizontal Improvements” means the water, sewer, electric and other utilities, grading, paving and drainage improvements to the Entire Site.

“Improvements” means collectively the Horizontal Improvements and the Vertical Improvements to be constructed on the Entire Site as shown in the Applicant’s application for the Agency Funds and the site plan for the Project approved by the appropriate governing authority.

“Investor” means Truist Community Capital LLC, or its affiliate, which is the entity that will be the tax credit equity investor member of the Owner.

“Party” or “Parties” means, collectively or individually, as the context requires or dictates, the Agency and/or the Owner.

“Person” means any individual, estate, trustee, corporation, association, joint stock company, limited liability company, partnership, trust, joint venture, unincorporated organization, real estate investment trust, business trust, non-profit organization, not-for-profit organization, tax-exempt organization, governmental authority (or any department,

agency, bureau, service, authority or political subdivision thereof, inclusive of states, counties, municipalities, cities and special districts), or any other legal or artificial entity of any type, kind or nature.

“Plans and Specifications” means the documents required for the development and construction of the Improvements, that may include predesign plans and drawings, preliminary plans and building, electrical and mechanical drawings, schematic design documents, design development documents, together with all amendments and modifications thereof, approved by the Agency and the Owner as provided in this Agreement. To the extent not included in the Plans and Specifications, the subcontractor agreements used by the Contractor shall include written instructions specifying materials, workmanship, style, color and finishes consistent with the Project Development Plan.

“Project” means the financing, marketing, design, development, construction, operation and management by the Owner of a mixed-use project on the Property consisting of 12-story tower containing one hundred ninety-five (195) residential rental units (both rent-restricted units and market-rate units), with various amenities for the residents (such as a gym, pool and parking garage), plus approximately 2,500 square feet of commercial retail space, to be known as The Gallery at FATVillage, together with all other Improvements in accordance with the Project Development Plan, the Project Schedule and the Project Budget. This Project shall provide Affordable Rents for Eligible Persons through the rental of Affordable Units for a minimum time period of thirty (30) years, as set forth in Section 3.3.1 of Article 3.

“Project Budget” means the preliminary budget prepared by the Owner as described in Exhibit “D” to this Agreement, which shows the anticipated line items and the estimated costs for all the items that the Owner expects to incur in connection with development and construction of the Project.

“Project Development Plan” means the plan prepared by the Owner as described in Exhibit “B” to this Agreement, which includes the approved site plan for the Project, as well as the floor plans and elevations for the Vertical Improvements and the minimum features of the Project.

“Project Schedule” means the preliminary schedule and time frame for the submittal of applications for approvals required by this Agreement, and for the commencement and completion of development and construction of the Improvements pursuant to this Agreement, attached hereto as Exhibit “C” to this Agreement.

“Reasonable Efforts” means a good faith attempt by a Person to cause a result, but not an assurance or guarantee that such result will be achieved.

“ULDR” means the Unified Land Development Regulations of the City.

“Vertical Improvements” means above grade buildings and structures for which a building permit is required.

Other capitalized terms not defined in this Article 1 shall have the meanings assigned to them elsewhere in this Agreement. Words used herein in the singular shall include the plural and words in the masculine/feminine/neuter gender shall include words in the masculine/feminine/neuter where the text of this Agreement requires.

ARTICLE 2 PURPOSE

2.1 The purpose of this Agreement is to promote implementation of the Redevelopment Plan by providing for an award of Agency Funds, subject to the terms and conditions set forth herein, for the development and construction of the Project in accordance with the Project Development Plan, the Project Schedule and the Project Budget to create a mixed-use project, to create a vibrant community, to provide for affordable housing, to create stable communities, to enhance the quality of life, to improve the aesthetic and useful enjoyment of the Redevelopment Area through the elimination of slum and blight, all in accordance with and in furtherance of the Redevelopment Plan and as authorized by and in accordance with the Act.

2.2 After review of the application for funding by the Owner, the Agency approved the Project as being in the public interest and in furtherance of the goals, objectives and provisions of the Redevelopment Plan and authorized execution of this Agreement to set forth the respective duties and responsibilities of the Parties pertaining to the terms and conditions for development and construction of the Project.

2.3 The Owner's application to the Agency for Agency Funds is incorporated in this Agreement as if fully set forth herein. In the event of a conflict between this Agreement and the Owner's application to the Agency for Agency Funds, the terms of this Agreement shall govern and control.

ARTICLE 3 PROJECT

3.1 Agency. The Agency is providing funding under its Development Incentive Program (DIP) with the understanding that the Owner shall develop, construct, manage, finance and operate the Project in accordance with the Project Development Plan, the Project Schedule and the Project Budget.

3.2 Conditions. The closing on the Agency Loan is subject to compliance with the following conditions:

3.2.1 The Closing on the Owner's construction financing with its Construction Lender, closing on its financing from the City, closing on its financing from Broward County Housing Finance Authority , the closing on its tax credit investment with the Investor and all sources of funding related to construction of the Improvements, together with satisfactory evidence that it has sufficient funding to

complete the Improvements in accordance with the Project Development Plan, the Project Schedule and the Project Budget. The Agency agrees to subordinate the lien of its leasehold mortgage to a first leasehold mortgage in favor of the Construction Lender and to any other lender consented to by the Agency. However, the Agency Loan and mortgage shall be of equal dignity and parity with the Two Million Five Hundred Thousand and No/100 Dollar (\$2,500,000) loan and leasehold mortgage in favor of Broward County and both parties shall enter into an Intercreditor Agreement which shall address such issues as coordination of disbursement of loan proceeds, allocation of proceeds upon sale, refinance or foreclosure and other issues related to funding this Project.

- 3.2.2 Execution and delivery of the following documents, agreements and instruments in connection with the Agency Loan: Promissory Note; Mortgage and Security Agreement; UCC-1 Financing Statement; Loan Agreement; Declaration of Developer Restrictive Covenants; Negative Pledge Agreement; Environmental Indemnity Agreement; ; Guaranty of Payment, Performance and Completion from the guarantor in form and substance similar to the guaranty in favor of the Construction Lender; and such other agreements and instruments as reasonably required by the Agency in connection with the Agency Funding.
- 3.2.3 Survey certified to the Agency meeting the minimum technical standards under the Florida Administrative Code and otherwise in form and substance acceptable to the Agency using commercially reasonable standards.
- 3.2.4 Issuance of a title commitment and subsequent lender's title policy in the amount no less than \$1,500,000, at the Owner's expense, to insure the Agency's security interest in the Entire Site with the Owner bearing responsibility to pay the owner's and lender's title premium and title search fees. Such title commitment shall be bound to delete all standard exceptions, including the gap, delete all schedule B-1 requirements and to issue Florida Form 9 and environmental lien coverage. The title policy shall be subject to such special exceptions as approved by the Agency.
- 3.2.5 Compliance with the terms and conditions of the Loan Agreement in connection with the Agency Funds and Intercreditor Agreement with the County.
- 3.2.6 A payment and performance bond in accordance with the requirements of the Construction Lender and listing the CRA as a dual obligee.

- 3.2.7 Recordation of the Declaration of Developer Restrictive Covenants in the public records of Broward County, Florida, which shall be prior in dignity to the lien and encumbrance of the Construction Lender, and recordation of the Mortgage and Security Agreement and the UCC-1 Financing Statement in favor of the Agency in connection with the Agency Funding.
- 3.2.8 The Agency's reasonable approval of the final Plans and Specifications for the Improvements.
- 3.2.9 Proof of recording of a Notice of Commencement, after the Agency's leasehold mortgage, listing the Agency as a party to receive notice when any notice is sent to the Owner.
- 3.2.10 Proof of Insurance as required under Article 9.
- 3.2.11 Review and acceptance of the environmental assessment on the Property.
- 3.2.12 Satisfactory evidence that the Owner has sufficient equity to complete construction of the Project.
- 3.2.13 Receipt and review of a draw schedule, construction schedule and budget, sources and uses, project schedule, survey and schedule of values for the Project.
- 3.2.14 Receipt and review of a construction contract between the Owner and the applicable Contractor, along with copy of the applicable Contractor's general contractor's license.
- 3.2.15 Certificate of Good Standing and corporate authorization of the Owner, and its controlling entities (if applicable).
- 3.2.16 All development approvals, from the appropriate governing authority, have been issued for the Project.
- 3.2.17 Receipt and review of all owners who hold a direct or beneficial interest in the Owner, and its controlling entities (if applicable), along with copies of the applicable organizational documents.
- 3.2.18 Such other documents, instruments, studies, analysis and evaluation as required by the CRA in the exercise of its reasonable discretion, including consent to a leasehold mortgage from the Ground Lessor, Broward County.

3.3 Conditions for the Agency Loan. During the term of the Agency Loan, the Owner shall comply with the following:

- 3.3.1 The Agency and the Owner agree that the Entire Site shall be owned, held, used, transferred, sold, conveyed, demised, leased, occupied, possessed and otherwise utilized subject to the DDRC, as well as all other reservations, regulations and burdens set forth in this Agreement. The Owner shall execute the DDRC, which shall be binding upon the Owner and its successors and/or assigns. The DDRC shall be recorded in the Public Records of Broward County, Florida at the Owner's expense simultaneous with the leasehold mortgage connected with the Agency Loan. The DDRC shall require the following two (2) items, which shall be maintained and performed for a minimum time period of thirty (30) years starting from the date of occupancy by the first residential rental tenant in an Affordable Unit (collectively, the "Affordable Housing Requirement"): (i) the Affordable 50% Units are to be leased to Eligible 50% Persons; and (ii) the Affordable 120% Units are to be leased to Eligible 120% Persons. All of the Affordable Units, as adjusted for size of unit, shall be leased at Affordable Rents to Eligible Persons.
- 3.3.2 The Owner shall provide such reports and supporting documents as evidence of the income of each Eligible Person as required by the Agency. The Owner, at the Owner's expense, shall provide to the Agency an annual written report ("Rental Report") certifying that all residential rental tenants of the Affordable Units meet the initial Eligible Person requirements at the time of such residential rental tenant's initial lease commencement. The first Rental Report shall be submitted on the Completion Date and each subsequent annual Rental Report on its anniversary for the preceding calendar year. Each Rental Report shall be certified by a third-party State of Florida registered certified public accountant or consultant, chosen by the Agency, verifying the complete and accurate nature of the Rental Report. Notwithstanding any language contained herein to the contrary, the Agency shall accept as the Rental Report the rental reports submitted to the Florida Housing Finance Corporation. Each Rental Report subsequent to the "sunset" of the Agency shall be submitted to the City. On the Closing Date, the Owner and the Agency shall agree to the form of the Rental Report to be submitted by the Owner and the then-current form acceptable to the Florida Housing Finance Corporation shall be acceptable to the Agency.
- 3.3.3 Notwithstanding any other provision of this Agreement, the Agency's right in or rights under the DDRC, as the same may be modified, amended or renewed in accordance with the provisions of this Agreement, shall not be encumbered by or subordinated in any way

to (a) any mortgage now or hereafter existing on the Property, (b) any other liens or encumbrances hereafter affecting, created or suffered by the Owner on its interest in the Property, or (c) any lease, sublease or any mortgages, liens or encumbrances now or hereafter placed on the Property or any interest of any tenants or subtenants. In no event shall the Owner have any right or authority to create liens or encumbrances on or affecting any interest or rights of the Agency in the DDRC. The provisions of this Article 3 shall survive termination or expiration of this Agreement until the expiration or termination of the DDRC.

3.4 Prohibited Uses. The Owner agrees that the commercial or residential space shall not be used for those non-permitted uses as provided in Section 47-12 of the ULDR, during a thirty (30) year term commencing on Completion Date 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) liquor store or bar as provided in the ULDR or tattoo parlors; or (iii) convenience kiosk as provided in the ULDR. The Owner shall execute, at the Closing, a restrictive covenant to be recorded in the public records of Broward County, Florida evidencing these prohibited use restrictions.

3.5 [Reserved; Intentionally Omitted.]

3.6 Right to Enforce.

3.6.1 The Parties stipulate and agree that, for enforcement purposes, the DDRC shall run in favor of the Agency. The Agency shall have the right, in the event of any uncured breach of the DDRC, to exercise all the rights and remedies available to the Agency as provided therein, including maintenance of any actions at law for damages, for declaratory relief, or actions in equity for the enforcement of the terms thereof.

3.6.2 The Agency may enforce the DDRC in any judicial proceeding in any court of competent jurisdiction seeking any remedy cognizable at law or in equity, including injunctive relief, specific performance or any other form of relief against any Person violating or attempting to violate any term or condition of the DDRC. The failure of the Agency to enforce any provision contained in the DDRC shall not be deemed a waiver of such provision or of the right of the Agency to thereafter enforce such provision. The prevailing party in any such litigation shall be entitled to the award of court costs and reasonable attorneys' fees at both the trial and appellate levels, including mediation relating thereto.

3.6.3 It is intended, and the Parties do hereby stipulate and agree, that the DDRC shall so expressly provide that the covenants and restrictions

provided for therein shall be covenants and restrictions running with the land and that they shall, in any event and without regard to technical classification or designation, legal or otherwise, and except only as specifically provided for therein, be binding on the Property and the Project, to the fullest extent permitted by law and equity, for the benefit and in favor of the Agency, and shall be enforceable by the Agency against the Owner. The DDRC shall remain in full force and effect until the conditions for release have been satisfied. For the purposes of enforcement of the DDRC, the Parties stipulate and agree that an uncured violation thereof constitutes an irreparable injury for which there is no adequate remedy at law.

ARTICLE 4 DISBURSEMENT OF AGENCY FUNDS

4.1 Disbursements. The Agency Loan shall only be used for Hard Costs, and it is anticipated that no more than three (3) disbursements shall be made during the construction period. The Agency Loan shall be disbursed after eighty percent (80%) of the Developer's equity has been disbursed for Project costs but before disbursements are made by the Construction Lender. It is anticipated that the Agency's share of each disbursement shall be made in accordance with the terms and conditions of the Intercreditor Agreement or as subsequently agreed to by the parties. The obligation to fund the Agency Loan is subordinate to overhead and administrative costs related to operating and managing the Agency and current and future Agency debt and previously approved Agency projects. Neither this Agreement nor the obligations imposed upon the Agency hereunder shall be or constitute an indebtedness or general obligation of the Agency or other governmental authority within the meaning of any constitutional, statutory or charter provisions requiring the Agency or other governmental authority to levy ad valorem taxes nor a lien upon any properties or funds of the Agency or other governmental authority. The Parties agree that this Agreement is not intended to create debt of the Agency nor does this Agreement constitute an unconditional obligation to fund or pay the Agency Loan. The obligations hereunder shall not constitute a lien, either legal or equitable, on any of the Agency's tax increment revenue or other revenue, nor shall it preclude the Agency from pledging its tax increment revenue in the future and nor shall it give the Owner a prior claim to the revenue of the Agency.

ARTICLE 5 PROJECT DEVELOPMENT PLAN

5.1 Project Development Plan; Plans and Specifications.

5.1.1 The Agency acknowledges that the Owner has prepared and completed a Project Development Plan for development of the Project on the Entire Site. The Agency hereby approves the Project

Development Plan, which is conceptual in nature, subject to the Vertical Improvements meeting the requirements of the ULDR for the City and such other laws, rules and regulations applicable to the Project and as otherwise provided for in this Agreement.

- 5.1.2 The Owner shall submit the final Plans and Specifications for the Vertical Improvements to the Contract Administrator for the Redevelopment Area for a determination that the Plans and Specifications are consistent with the Project Development Plan in effect at the time of such submission. Any initial request in connection with the Plans and Specifications shall be acted upon by the Contract Administrator within fourteen (14) days of the submission of such initial request, or the Plans and Specifications will be deemed, by the Agency, to be consistent with the Project Development Plan. If the Contract Administrator, in his reasonable discretion, determines that the Plans and Specifications are not consistent with the Project Development Plan, then the Owner will have thirty (30) days to resolve any objections of the Contract Administrator and to modify the Plans and Specifications as required by the Contract Administrator. If the Owner submits modifications to the Plans and Specifications as required by the Contract Administrator, then the Contract Administrator shall have ten (10) days therefrom to determine if such modifications sufficiently resolve the Contract Administrator's objections to the Plans and Specifications. If the Contract Administrator does not act on the modifications to the Plans and Specifications submitted to the Contract Administrator within the aforementioned ten (10) day period, then the submitted modifications to the Plans and Specifications will be deemed, by the Agency, to be consistent with the Project Development Plan. If the Owner and the Contract Administrator cannot reach an agreement upon any objections to the Plans and Specifications raised by the Contract Administrator, or as to any modifications to the Plans and Specifications submitted by the Owner to the Contract Administrator, then the Owner has the right to appeal to the Executive Director of the Agency in connection therewith (whose decision must not be unreasonably withheld, conditioned or delayed).

5.2 Modifications.

- 5.2.1 Any proposed modifications to the Project Development Plan shall be submitted to the Contract Administrator for approval, which approval will not be unreasonably withheld, conditioned or delayed. However, all such modifications must relate to impediments of the sites or other construction obstacles, and not relate to constructing less expensive or reducing the density of the Vertical Improvements,

unless otherwise approved by the Agency in its sole discretion. Any request for approval of a modification to the Project Development Plan shall be acted upon by the Contract Administrator within fourteen (14) days of submission of such request, or such request shall be deemed approved by the Agency. The Contract Administrator may approve or deny the proposed modifications or otherwise approve the proposed modifications subject to additional conditions. If the proposed modifications are denied or approved with additional conditions, the Owner will have thirty (30) days to include the changes or conditions in the Project Development Plan. If the Owner includes the changes or conditions, the revised modifications to the Project Development Plan will be resubmitted to the Contract Administrator, and if it is determined that the revised Project Development Plan conforms with the changes or conditions requested, the Contract Administrator shall approve such modifications to the Project Development Plan. If the Contract Administrator does not act on the resubmitted modifications to the Project Development Plan within a ten (10) day period, then the submitted modifications to the Project Development Plan will be deemed, by the Agency, to be approved and consistent with the Project Development Plan. If the Owner and the Contract Administrator cannot reach an agreement upon any objections raised by the Contract Administrator regarding any modifications to the Project Development Plan, then the Owner has the right to appeal to the Executive Director of the Agency in connection therewith (whose decision must not be unreasonably withheld, conditioned or delayed).

- 5.2.2 Any proposed modifications to the final Plans and Specifications shall be submitted to the Contract Administrator for approval, which approval will not be unreasonably withheld, conditioned or delayed. However, all such modifications must substantially conform to the Project Development Plan and must relate to impediments of the sites or other construction obstacles, and not relate to constructing less expensive or reducing the density of the Vertical Improvements, unless otherwise approved by the Agency in its sole discretion. Any request for approval of a modification to the final Plans and Specifications shall be acted upon by the Contract Administrator within fourteen (14) days of submission of such request, or such request shall be deemed approved by the Agency. The Contract Administrator may approve or deny the proposed modifications or otherwise approve the proposed modifications subject to additional conditions. If the proposed modifications are denied or approved with additional conditions, the Owner will have thirty (30) days to include the changes or conditions in the final Plans and Specifications. If the Owner includes the changes or conditions, the

revised modifications to the final Plans and Specifications will be resubmitted to the Contract Administrator, and if it is determined that the revised final Plans and Specifications conform with the changes or conditions requested, the Contract Administrator shall approve such modifications to the final Plans and Specifications. If the Contract Administrator does not act on the resubmitted modifications to the final Plans and Specifications within a ten (10) day period, then the submitted modifications to the final Plans and Specifications will be deemed, by the Agency, to be approved and consistent with the Project Development Plan and the final Plans and Specifications. If the Owner and the Contract Administrator cannot reach an agreement upon any objections raised by the Contract Administrator regarding any modifications to the final Plans and Specifications, then the Owner has the right to appeal to the Executive Director of the Agency in connection therewith (whose decision must not be unreasonably withheld, conditioned or delayed).

5.3 Zoning, Vacation of Streets, other Government Approvals. The Owner acknowledges and agrees to obtain, or cause to be obtained, at its own expense, all appropriate approvals, permits, subdivisions variances, rezonings, street vacations or waivers necessary under applicable law, rules and regulations (including building permits for construction of the Project as contemplated by this Agreement and as required by the applicable governmental authority). The Owner shall comply with all applicable zoning, subdivision, land use and/or environmental laws; provided that the foregoing shall not relieve the Owner of the obligation to pay water charges, pollution control charges and electrical service charges with respect to the Vertical Improvements, at their normal rates or levels. Nothing in this Agreement shall waive the City's police powers and obligations with respect to the review of development approval applications acting in its governmental and regulatory capacity.

5.4 Permits. All Improvements shall be constructed by the Owner pursuant to a building or engineering permit or permits, as applicable, issued by the City covering each such Improvement. The Owner shall obtain all required permits for Improvements and/or connections, as applicable, and required from any and all jurisdictional authorities.

5.5 Approval by Other Governmental Agencies. The Plans and Specifications must be approved by such other governmental agencies, whether state, local or federal, that have jurisdiction and require approval of them. The Plans and Specifications shall be prepared, construction of all Improvements shall be carried out and all obligations of the Owner, as provided in this Agreement, shall be carried out and use of the Project shall be in accordance with all applicable rules, laws, ordinances and governmental regulations of all governmental agencies having jurisdiction over such matters. The Owner is responsible for obtaining all required approvals as applicable and required from any and all jurisdictional authorities.

5.6 Changes to Project Schedule. If required, due to changes in the Project

Development Plan and/or the Plans and Specifications, the Project Schedule shall be revised by the Owner to reflect such changes to the Project Development Plan and/or the Plans and Specifications.

5.7 Submission of Applications for Development Permit Approval. It shall be the responsibility of the Owner to obtain approval of the zoning, site plan, and the Plans and Specifications for the Improvements from the applicable departments within the City. In the event the City requires changes to the Project Development Plan and/or the Plans and Specifications so as to ensure the Project complies with applicable zoning, land use and/or building code requirements, which required changes are in conflict with any required changes or modifications required by the Agency through the review process set forth in Sections 5.1 and 5.2 above, the requirements of the City shall govern and control, and the Owner shall be deemed to be in compliance with this Agreement notwithstanding any disagreement between the Agency and the City concerning such matters or conflicts. The Owner and the Agency expressly agree that the requirements of the City for obtaining all permits for the Project shall govern and control any changes or modifications to the Project Development Plan and/or the Plans and Specifications.

5.8 Submission of Project Documents. During the course of constructing all Improvements, the Owner will, upon request, submit to the Agency copies of the following (collectively, the "Project Documents"):

- 5.8.1 All soil tests, engineering studies, feasibility studies, plans, specifications and related documents, studies, tests, plans and drawings concerning any item comprising the Improvements;
- 5.8.2 Preliminary plans and specifications for the Vertical Improvements, including but not limited to all civil, architectural, structural, mechanical, electrical and landscaping plans and specifications, soil borings and foundation plans;
- 5.8.3 Final Plans and Specifications, permits and related documents concerning the Improvements; and
- 5.8.4 Any revisions, corrections, amendments or supplements to any of the foregoing.

ARTICLE 6 THE DEVELOPMENT

6.1 Scope of Development. The Owner shall be responsible for arranging, managing, overseeing, coordinating and administering the development and construction of the Project, subject to the terms and conditions provided in this Agreement. The Owner shall construct and develop, or cause to be constructed and developed, all Improvements which the Owner is obligated to construct and develop in accordance with the Project Schedule and the site plan approved by the appropriate governmental authority, and

subject to the conditions established in this Agreement. The Owner shall assume responsibility for securing the necessary financing for completing the Project, including carrying costs, management fees, financing costs, marketing and promotional expenses.

6.2 Authority of Agency to Monitor Compliance. During all periods of design and construction, the Contract Administrator shall have the authority (at no cost to the Owner) to monitor compliance by the Owner with the provisions of this Agreement and the Project Development Plan. To that end, during the period of construction and without prior notice to the Owner, or any Contractor, representatives of the Agency shall have the right of access to the Project and the Entire Site and to every structure within the Project and on the Entire Site during normal construction hours. The Agency monitoring of compliance shall not be in lieu of normal engineering or building inspections for any element or sub-element of the Improvements or connections as required by other jurisdictional authorities.

ARTICLE 7 PROJECT SCHEDULE

7.1 Project Schedule. The Owner and the Agency have jointly prepared a Project Schedule setting forth specific dates for the performance of each Party's respective obligations under this Agreement. The Project Schedule is hereby approved by the Agency and the Owner. Subject to the terms of this Agreement, the Owner hereby agrees to undertake and complete the construction and development of the Project in accordance with this Agreement and the Project Schedule, and to use all Reasonable Efforts to comply with all of the obligations and abide by all the dates set forth therein. The Agency hereby agrees to complete those acts to be performed by the Agency within the dates set forth in the Project Schedule, and to use all Reasonable Efforts to cause those acts to be performed by the Agency within the dates established by the Project Schedule, and to otherwise comply with all of the obligations of the Agency and abide by all the dates set forth therein. The Project Schedule may be modified by the Owner upon providing advance notice of such modification to the Agency for good cause, subject to approval by the Contract Administrator (which approval will not be unreasonably withheld, conditioned or delayed). Any request for approval of a Project Schedule modification shall be acted upon by the Contract Administrator within fourteen (14) days of submission, or such request shall be deemed approved by the Agency. In any event, construction and development of the Project shall be completed no later than thirty-six (36) months from the Closing Date; provided, however, the Agency may approve up to one (1) consecutive six (6) month extension for such completion upon the written request of the Owner for good cause, which approval will not be unreasonably withheld, conditioned or delayed by the Agency. The Project Schedule will be extended for events constituting Force Majeure (as provided in Section 15.5 hereof); including delays caused by the Agency, the City and/or the County.

7.2 Timing of Completion. Each part of the Project, and the Project as a whole, shall be completed by the dates set forth in the Project Schedule, unless amended, changed or supplemented by the Parties in writing.

ARTICLE 8
ADDITIONAL CONDITIONS FOR PARTICIPATION

8.1 Other Documents. The Agency shall have received, on or before the date of any disbursement hereunder, such other documents or items as the Agency may reasonably request.

8.2 Compliance with Consultant's Competitive Negotiation Act. The Agency did not make the initial decision for construction of this Project, nor does the Agency control the timing, sequence, methodology or techniques used to construct the Vertical Improvements or the Horizontal Improvements, and the Agency will not use, occupy or manage the Project. Further, the architect or engineer will not be responsible to the Agency for administration of the construction documents. Also, none of the proceeds of the Agency Loan shall be used to fund or pay for improvements (including Horizontal Improvements) in a public right of way. If Agency funds are used to pay for improvements within a public right of way or public facility, then Owner shall comply with F.S. Section 255.20.

8.3 Taxes and Other Charges. Upon acquiring the leasehold interest to the Entire Site pursuant to the Ground Lease, the Owner shall pay all ad valorem and non-ad valorem taxes and other governmental fees, charges or assessments that are related to the Entire Site or personally situated thereon or operations conducted thereon (if, and only if, the Ground Lease requires such payments by the Owner). The Agency shall not be required to pay such taxes or other charges and the Owner shall provide such assurances and protection, including without limitation, bonds or letters of credit, to the Agency to protect its lien rights in the Entire Site and in the Project. The Owner shall pay all such taxes and other charges when due and before any fine, penalty, interest or other cost is added, becomes due, or is imposed by operation of law for nonpayment (if, and only if, the Ground Lease requires such payments by the Owner). These taxes and other charges include, but are not necessarily limited to the following:

- 8.3.1 All taxes, assessments, water fees, sewer fees, connection fees, garbage rates and charges, public utility charges, excise levies, licenses and permit and impact fees; and
- 8.3.2 All such charges whether they are general or special, ordinary or extraordinary, foreseen or unforeseen, assessed, levied, confirmed or imposed upon the Entire Site or use thereof or improvements hereto or personally situated thereon.

8.4 Contest. Nothing in this Article 8 shall require the payment of any such sum if the Owner (i) promptly notifies the Agency and the City and (ii) by appropriate proceedings contests the same in good faith. The Owner may contest the validity of any tax, claim, charge or assessment, described herein, without being in default for nonpayment of taxes, claims, charges or assessments under this Agreement, provided

that the Owner complies with terms and conditions of this Section 8.3. The Owner must give the Agency written notice of the Owner's intention to contest, and the Owner must also furnish the Agency with a bond with surety, by a surety company qualified to do business in the State of Florida, or cash paid into escrow and held by the Agency. The bond or cash must be in an amount equal to the amount of the tax, claim, charge or assessment, together with estimated penalties and interest, being contested and must be conditioned upon payment of the tax, claim, charge or assessment once the validity has been determined. The Owner must give the written notice accompanied by evidence of the bond or cash escrow to the Agency not later than sixty (60) days before the contested tax, claim, charge or assessment would otherwise become delinquent.

ARTICLE 9 INSURANCE

9.1 Insurance. The Owner agrees to provide the following insurances or include the following insurance requirements in any agreement the Owner enters into with any Contractor performing construction work on the Property, and the Owner further agrees to provide to the Agency, prior to commencement of construction of the Improvements with respect to such contract, certificates of insurance evidencing the Contractor's compliance with the requirements of this Section 9.1.

Providing proof of and maintaining adequate insurance coverage are material obligations of the Owner. The Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better.

The coverages, limits, and/or endorsements required herein protect the interests of the Agency, and these coverages, limits, and/or endorsements shall in no way be relied upon by the Contractor for assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposures. The requirements contained herein are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor.

The following insurance policies and coverages are required:

Professional Liability

Coverage must be afforded for Wrongful Acts in an amount not less than \$2,000,000 each claim and \$2,000,000 aggregate.

The Project's design professionals, including the architect and engineer, must keep the professional liability insurance in force until the third (3rd) anniversary of acceptance of work by the Owner.

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$1,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury;
- \$1,000,000 each occurrence and \$1,000,000 aggregate for Products and Completed Operations; and
- \$5,000,000 Umbrella Liability Insurance

The Agency, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the Agency, its officials, employees, and volunteers.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

Crane and Rigging Liability

Coverage must be afforded for any crane operations under the Commercial General or Business Automobile Liability policy as necessary, in line with the limits of the associated policy.

If the Contractor does not own vehicles, the Contractor shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Pollution and Remediation Legal Liability (Hazardous Materials)

For the purpose of this section, the term “hazardous materials” includes all materials and substances that are designated or defined as hazardous by Florida or federal law or by the rules or regulations of Florida or any federal agency. If work being performed involves hazardous materials, the Contractor shall procure and maintain the following coverage:

Contractor’s Pollution Liability Coverage

For sudden and gradual occurrences and in an amount not less than \$5,000,000 per claim including but not limited to, all hazardous materials.

Property Coverage (Builder’s Risk)

Coverage must be afforded in an amount not less than 100% of the total project cost, including soft costs, with a deductible of no more than \$25,000 each claim. Coverage form shall include, but not be limited to:

- All Risk Coverage including Flood and Windstorm with no coinsurance clause;
- Guaranteed policy extension provision; and

- Storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the Project.

This policy shall insure the interests of the owner, contractor, and subcontractors in the property against all risk of physical loss and damage. This insurance shall remain in effect until the work is completed.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes and be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Insurance Certificate Requirements

- a. The Owner shall provide the Agency with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work.
- b. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior thereto.
- c. The Agency shall be named as an Additional Insured on all liability policies, with the exception of Professional Liability, Business Auto Liability, and Workers' Compensation.
- d. The Agency shall be granted a Waiver of Subrogation on the Contractor's Workers' Compensation insurance policy.
- e. The title of the Project or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

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

If the Contractor's primary insurance policy/policies do not meet the minimum requirements, then the Contractor may provide evidence of an Umbrella/Excess insurance policy to comply with these requirements.

The Contractor's insurance coverage shall be primary insurance as respects to the Agency, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the Agency, its officials, employees, or volunteers shall be non-contributory.

It is the Owner's responsibility to ensure that any and all of the Owner's Contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Owner.

Operation and Management of the Project

During the term of the Affordable Housing Requirement and after the Certificate of Occupancy is issued and during any renewal or extension term of this Agreement, the Owner, at its sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Owner. The Owner shall provide the Agency a certificate of insurance evidencing such coverage. The Owner's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Owner shall not be interpreted as limiting the Owner's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the Agency's Risk Manager.

The following insurance policies and coverages are required:

Property Coverage

Coverage must be afforded in an amount not less than 100% of the replacement value of the Project with a deductible of no more than \$25,000 each claim. Coverage form shall include, but not be limited to:

- All Risk Coverage including Flood and Windstorm with no coinsurance clause; and
- Any separate Flood and/or Windstorm deductibles are subject to approval by the Agency.

This policy shall insure the interests of the Owner in the Property against all risk of physical loss and damage and name the Agency as a loss payee.

The Owner shall, at its own expense, take all reasonable precautions to protect the Property and the Project from damage or destruction.

Collection of Insurance

Subject to the Investor's requirements and any lender requirements, in the event of destruction of or damage to over fifty percent (50%) of any of the Property or the buildings, other structures and Improvements covered by insurance, the funds payable pursuant to such insurance policies shall be payable to, and deposited in, a commercial national bank as trustee, located in Fort Lauderdale, Florida, selected by the Owner, as a trust fund, and the funds shall be used for the purpose of reconstruction or repair, as the case may be, of any of the buildings, other structures or Improvements so damaged or destroyed. Such reconstruction and repair work shall be done in a good and workmanlike manner. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then in such event, such funds shall be used as far as the same will permit in paying the cost of the reconstruction or repair. If the cost of such reconstruction or repair work shall be less than the proceeds derived from such insurance policies, the surplus shall be payable to the Owner.

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$5,000,000 each occurrence and \$5,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury; and
- \$5,000,000 each occurrence and \$5,000,000 aggregate for Products and Completed Operations.

Policy must include coverage for contractual liability and independent contractors.

The Agency, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the Agency, its officials, employees, and volunteers.

Insurance Certificate Requirements

- f. The Owner shall provide the Agency with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work contemplated in this Agreement.
- g. The Owner shall provide to the Agency a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- h. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Owner to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- i. In the event the Agreement term or any surviving obligation of the Owner following expiration or early termination of the Agreement goes beyond the expiration date of the insurance policy, the Owner shall provide the Agency with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect.
- j. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- k. The Agency shall be named as an Additional Insured on the general liability policy.
- l. The title of the Agreement, the Contract number, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

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

The Owner has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-

insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the Agency as an Additional Insured shall be at the Owner's expense, as applicable.

If the Owner's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Owner may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Owner's insurance coverage shall be primary insurance as respects to the Agency, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the Agency, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by the Owner that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the Agency, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, the Owner must provide to the Agency confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The Agency reserves the right to review, at any time, coverage forms and limits of the Owner's insurance policies.

The Owner shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to the Owner's insurance company or companies and the Agency's Risk Management office, as soon as practical.

It is the Owner's responsibility to ensure that any and all of the Owner's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Owner.

9.2 Maintenance Costs. It is understood and agreed that the Owner shall be responsible for all matters pertaining to the Project and all costs, fees, taxes, conditions or any other matter associated with the Project. The Owner shall maintain the Entire Site in a clean, sanitary and safe condition. No portion of the Entire Site shall be allowed to become or remain overgrown or unsightly nor be used or maintained as a dumping ground for rubbish. The Owner shall, at its own expense and subject to reasonable construction conditions and activities, keep the Entire 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 Owner shall comply, if legally required, with all laws, ordinances, codes and regulations then applicable to the Project or the Property.

9.3 Waste. The Owner shall not permit, commit or suffer waste or impairment of the Project or the Entire Site, except as may be due to construction activity on the Entire Site.

ARTICLE 10 REPRESENTATIONS AND WARRANTIES

10.1 Approval of Agreement. By the execution hereof:

10.1.1 Agency. The Agency represents that the execution and delivery of this Agreement has been approved at a duly convened, properly noticed, meeting of the Agency and the same is binding upon and enforceable against the Agency in accordance with its terms.

10.1.2 Owner.

10.1.2.1 The Owner represents that: (i) the execution and delivery of this Agreement has been approved by all Persons whose approval is required; (ii) this Agreement is binding upon the Owner and enforceable against it in accordance with its terms; (iii) the Persons executing this Agreement on behalf of the Owner are duly authorized and are empowered to execute the same for and on behalf the Owner; and (iv) each entity composing the Owner is duly authorized to transact business in this state and has received all necessary permits and authorizations required by appropriate governmental agencies as a condition to doing business in the State of Florida.

10.1.2.2 The Owner is a limited liability company duly organized and validly existing under the laws of the State of Florida, 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.

10.1.2.3 This Agreement and, to the extent such documents presently exist in form acceptable to the Agency and the Owner, each document contemplated or required by this Agreement to which the Owner 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 the Owner, 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; or
- (2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Owner; 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 Owner under any indenture, mortgage, deed of trust, bank loan or credit agreement, the Owner's Articles of Organization, or, any other agreement or instrument to which the Owner is a party or by which the Owner may be bound.

10.1.2.4 This Agreement and, to the extent such documents presently exist in form accepted by the Agency and the Owner, each document contemplated or required by this Agreement to which the Owner is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of the Owner enforceable against the Owner 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.

10.1.2.5 There are no pending or, to the knowledge of the Owner, threatened actions or proceedings before any court or administrative agency against the Owner, 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 the Owner.

10.1.2.6 The Owner has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by the Owner 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 Owner.

10.1.2.7 The Owner agrees that as of the Effective Date, and through the expiration of the term of the Affordable Housing Requirement, 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, operation and management of the Project as contemplated in this Agreement.

10.1.2.8 The principal place of business and principal executive offices of the Owner is in Miami, Miami-Dade County, Florida.

10.1.2.9 At the time of the Applicant submitting its application / proposal to the Agency, the Owner had, and will continue to have and at all times through the expiration of the term of the Affordable Housing Requirement, will maintain the experience, expertise, and knowledge to oversee, govern and manage the marketing of the Project and operations of the Project.

10.1.2.10 As of the Closing Date, the Owner shall hold all leasehold right, title and interest in the Entire Site free and clear of any liens, encumbrances and other adverse matters, except for the Ground Lease and except for other matters as previously disclosed to the Agency and except as contemplated in this Agreement.

ARTICLE 11
DEFAULTS, REMEDIES, TERMINATION
AND FURTHER RIGHTS

11.1 Event of Default. The occurrence of any one or more of the following shall constitute an “event of default” hereunder by the Owner:

- 11.1.1 If the Owner defaults in the performance of any obligation imposed under this Agreement or the Agency Documents, subject to Force Majeure (as provided in Section 15.5 hereof), and the Owner does not commence a cure for such default within thirty (30) days after delivery of notice of such default from the Agency and does not diligently pursue such cure to completion within seventy-five (75) days after delivery of such notice of default by the Agency; or
- 11.1.2 If the Owner fails to complete any item required to be completed under the Project Schedule, subject to Force Majeure (as provided in Section 15.5 hereof), and the Owner does not commence a cure for such failure within thirty (30) days after delivery of notice of such failure from the Agency and does not diligently pursue such cure to completion within seventy-five (75) days after delivery of such notice of failure by the Agency; or
- 11.1.3 If any statement, representation or warranty made by the Owner or the Applicant herein, or in any writing now or hereafter furnished in connection herewith, as of the Closing Date, shall be false or misleading in any material respect; or

- 11.1.4 If, (a) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating the Owner as bankrupt or insolvent, approving a petition seeking a reorganization, appointing a receiver, trustee or liquidator for the Owner, or appointing a receiver, trustee or liquidator over all or a substantial part of the Owner's assets, and if such order, judgment, decree or proceeding continues unstayed for more than ninety (90) days after any stay thereof expires, or (b) there is otherwise commenced as to the Owner, or against either 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 unstayed for more than ninety (90) days after any stay thereof expires; or
- 11.1.5 The Owner fails to honor the terms, conditions and covenants of the Declaration of Developer Restrictive Covenants; or
- 11.1.6 The Owner shall commit a default under the construction loan with the Construction Lender, its permanent loan or under the Owner's Operating Agreement, which remains uncured after the applicable cure period has expired; or
- 11.1.7 Owner commits a default under its Ground Lease with the County.

11.2 Remedies. Upon the occurrence of any uncured "event of default" under this Article 11 by the Owner, the Agency shall have the following non-exclusive rights: (i) to terminate this Agreement; (ii) to immediately enforce all of its rights under this Agreement; (iii) to avail itself of any right or remedy it may have at law or in equity, including the right of specific performance or injunctive relief, but excluding the right to pursue indirect, special, consequential, exemplary or punitive damages; and/or (iv) to withhold any and all disbursements of the Agency Loan.

ARTICLE 12 AGENCY DEFAULTS, REMEDIES, TERMINATION

12.1 Event of Default. The occurrence of any one or more of the following shall constitute an "event of default" hereunder by the Agency:

- 12.1.1 If the Agency defaults in the performance of any obligation imposed under this Agreement or the Agency Documents, subject to Force Majeure (as provided in Section 15.5 hereof), and the Agency does not commence a cure for such default within thirty (30) days after delivery of notice of such default from the Owner and does not diligently pursue such cure to completion within seventy-five (75) days after delivery of such notice of default by the Owner; or

- 12.1.2 If the Agency fails to complete any item required to be completed under the Project Schedule, subject to Force Majeure (as provided in Section 15.5 hereof), and the Agency does not commence a cure for such failure within thirty (30) days after delivery of notice of such failure from the Owner and does not diligently pursue such cure to completion within seventy-five (75) days after delivery of such notice of failure by the Owner; or
- 12.1.3 If any statement, representation or warranty made by the Agency herein, or in any writing now or hereafter furnished in connection herewith, as of the Closing Date, shall be false or misleading in any material respect.

12.2 Remedies. Upon the occurrence of any uncured “event of default” under this Article 12 by the Agency, the Owner shall have the following non-exclusive rights: (i) to terminate this Agreement and return any of the Agency Loan previously disbursed; (ii) to immediately enforce all of their rights under this Agreement; and/or (iii) to avail themselves of any right or remedy they may have at law or in equity, including the right of specific performance or injunctive relief, but excluding the right to pursue indirect, special, consequential, exemplary or punitive damages.

ARTICLE 13
RESERVED; INTENTIONALLY OMITTED

ARTICLE 14
ANTI-SPECULATION AND NON-TRANSFER PROVISIONS

14.1 Purpose. The Owner represents and agrees that its undertakings pursuant to this Agreement are for the purpose of developing the Project pursuant to this Agreement, and not for speculation or land holding. The Owner further recognizes, in view of the importance of the development of the Project to the general health and welfare of the City and redevelopment of the Redevelopment Area, that the qualifications, financial strength and identity of the members of the Owner are of particular concern to the Agency.

14.2 Assignment of Agreement; Limitation on Conveyance. Except as provided in this Agreement, and without the prior written consent of the Agency, the Owner agrees that it shall not assign, transfer or convey this Agreement or any provision hereof to another party, unless such assignment is made to: (a) an Affiliate of the Owner; (b) any entity, firm or corporation which the Owner controls, is controlled by, or is under common control with the principals of the Owner, or (c) any entity or partnership in which the principals of the Owner, jointly and collectively, directly or indirectly, hold a majority interest (collectively, a “Related Company”), but only after approval by the Agency; . Notwithstanding any language to the contrary contained in this Agreement, the Owner

may admit the Investor as a member of the Owner.

14.3 Assignment of Sites; Limitation on Conveyance. Except as provided in this Agreement, and without the prior written consent of the Agency, the Owner agrees that it shall not assign, transfer or convey the Entire Site (or any portion thereof) to another party, or cause the Owner to assign, transfer or convey the Entire Site (or any portion thereof) to another party, unless such assignment is made to: (a) an Affiliate of the Owner; (b) any entity, firm or corporation which the Owner controls, is controlled by, or is under common control with the principals of the Owner,; (c) any entity or partnership which is a Related Company, but only after approval by the Agency.

14.4 Composition of Owner.

14.4.1 As of the Closing Date, the Owner is owned by (or will be owned by) the following Persons and each such Person has control and ownership of the Owner as follows: see the attached Exhibit "E".

14.4.2 Except as otherwise permitted under Sections 14.2 and 14.3, no Person listed in Section 14.4.1 may transfer its interest (whether in-part or in-whole) in the Owner without the prior written consent of the Contract Administrator. Any such transfer in violation of this provision shall be null and void. A transfer as a result of a merger of the Owner that results in the principals of the Owner, jointly and collectively, directly or indirectly, controlling the resulting entity after such merger shall not be prohibited by any provision of this Agreement. This Section 14.4.2 restriction is not intended to apply to passive investors who (i) are merely seeking a return on their investment and (ii) are not engaged in the day-to-day management and decision making regarding operation and management of the Project, including compliance with the Affordable Housing Requirement (for example, this Section 14.4.2 restriction is not intended to apply to the passive investors within the Investor and/or the Owner).

14.5 Approval of Assignment. The Agency shall either approve such an assignment of the Entire Site or this Agreement or specify, in reasonable detail, the basis for its disapproval within thirty (30) days after request for such assignment approval. Such assignment shall not be valid until the Agency has consented, in writing, to such assignment and there shall have been delivered to the Agency a true copy of the proposed instruments effectuating such assignment, and an original counterpart of an agreement in which each such assignee / transferee assumes and agrees to perform all the terms, covenants and conditions under this Agreement and the Agency Documents on such applicable entity's part to be performed, including those matters that arose or became due prior to the effective date of the assignment, and proof that such assignee /

transferee has been approved as the successor under all third-party agreements affecting the Project and the Entire Site. After the aforesaid instruments have been delivered to the Agency and the Agency has consented, in writing, to such assignment, then from and after the effective date of assignment, the assigning / transferring party shall be released of all obligations under this Agreement and the Agency Documents for matters arising after the effective date of the assignment, but shall remain liable to the Agency for all obligations under this Agreement and the Agency Documents relating to matters that arose or became due prior to the effective date of the assignment. The factors upon which Agency may base its decision, on whether to grant consent to an assignment, will be limited to whether (i) the proposed assignee / transferee, or any of the direct or indirect principals of such proposed assignee / transferee (as may be set forth in a certification to the Agency by a certified public accountant), meets standards of creditworthiness and have sufficient financial resources to acquire, operate, manage and maintain the Project; (ii) the proposed assignee / transferee has the reasonable ability to perform the obligations of the Owner under this Agreement or Agency Documents or other parties related to the Project; (iii) the proposed assignee / transferee has prior business experience related to operating properties with uses similar to the Project; (iv) the reputation of the proposed assignee / transferee; (v) the form of the documents evidencing the assignment and the assumption; and (vi) other reasonable factors. Notwithstanding this process for assignment, unless consented to by the Agency, the Owner shall retain managerial and decision making control over the Project during the term of this Agreement and the Agency Documents.

ARTICLE 15 GENERAL PROVISIONS

15.1 Non-Liability of Agency Officials. No member, official or employee of the Agency shall be personally liable to the Owner, any Contractor or to any Person with whom the Owner or any Contractor shall have entered into any contract, or to any other Person in the event of a default or breach by the Agency or for any amount which may become due to the Owner or any other Person under the terms of this Agreement.

15.2 Inspection of Books and Records. The Agency shall have the right, at all reasonable times, to inspect the books and records of the Owner pertaining to the performance of its obligations under this Agreement. The Agency shall have the right to audit the books, records, and accounts of the Owner that are related to this Agreement. The Owner shall keep 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 the Owner 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, the Owner shall make same available at no cost to the Agency in written form.

The Owner shall preserve and make available, at reasonable times for examination and audit by the 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 of the 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 has been initiated and has 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 the Agency to be applicable, the Owner shall comply with all requirements thereof.

15.3 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, if any. Each Party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119 of the 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.

To the extent applicable, the Owner and all Contractors or subcontractors engaging in services in connection with construction and/or maintenance of the Project shall:

- 15.3.1 Keep and maintain public records that ordinarily and necessarily would be required by the Agency in order to perform the services rendered hereunder.
- 15.3.2 Upon request from the Agency's custodian of public records, provide the 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 of the Florida Statutes, as may be amended or revised, or as otherwise provided by law.
- 15.3.3 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 the Owner for the duration of the Agreement and as to any Contractor for the duration of the contract term and following completion of said contract if such Contractor does not transfer the records to the Agency.
- 15.3.4 To the extent applicable, upon completion of said construction or maintenance at the Project, transfer, at no cost, to the Agency all public records in possession of the Owner or any Contractor or keep and maintain public records required by the Agency to perform the services rendered hereunder. If any Contractor transfers all public records to the Agency upon completion of the Project, the Owner and any such Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Owner or any Contractor keeps and maintains public records upon completion of the Project, the Owner and any such Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to

the Agency, upon request from the Agency's custodian of public records, in a format that is compatible with the information technology systems of the Agency.

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

15.4 Approval. Unless a different standard is expressly stated, whenever this Agreement requires the Agency, the Owner to approve or consent to any contract, document, plan, specification, drawing or other matter, such approval or consent shall not be unreasonably withheld, delayed or conditioned. The Agency, the Owner shall perform all obligations imposed upon them under this Agreement in a reasonable and timely fashion.

15.5 Force Majeure. Subject to providing written notice of such an event and the Party's intention to exercise the applicability of this provision, no Party shall be deemed in default, and the time for performance of any required act hereunder shall be extended for such period, where such a default is based on a delay in performance as a result of any of the following ("Force Majeure"): (i) civil disturbances, acts of public enemy, wars, invasions, insurrections, riots, mob violence, terrorism, acts of terrorism, or criminal actions; (ii) strikes, lockouts, or other labor disturbances; (iii) fires, floods, earthquakes, hurricanes and other named storms, tornadoes, extreme weather, unusual weather, natural disasters, or other casualty events; (iv) acts of God; (v) epidemics, pandemics, or disease outbreaks; (vi) quarantines or similar restrictions, or any law, order, regulation or ordinance which is imposed by a governmental authority in connection with or in response to COVID-19 or other disease outbreaks; (vii) sabotage, boycotts, sanctions, embargos, or tariffs; (viii) inability to procure, or a general shortage with regard to, transportation, labor, equipment, facilities, materials, or supplies necessary or required for the Property or the Project; (ix) adverse market conditions or adverse economic conditions which cause deficiencies, shortages, delays, stoppages, inflationary prices, supply chain disruptions, or other adverse financial results or consequences; (x) interruption of utility services; (xi) site and construction circumstances which could not reasonably be controlled, foreseen or circumvented; (xii) the default by any lender under any loan documents related to any financing for the Owner or the Project; (xiii) arbitrary or capricious government actions, restrictions or moratoria with respect to the Property or the Project ; (xiv) requisition orders of governmental authorities (whether civil or military) or a court imposed injunctions or similar actions; (xv) government restrictions of priority; (xvi) changes in applicable laws, regulations or other governmental requirements of general application relevant to the Property or the Project ; (xvii) any governmentally declared state of emergency; (xviii) any litigation commenced or initiated by any third party with respect to the Property or the Project ; (xix) any action or any omission (inaction) of the Agency, the City or the County or any of their officers, employees or agents; and/or (xx) other events, occurrences, circumstances, actions, causes, matters,

changes, or conditions which could not reasonably be controlled, foreseen, or circumvented by the Party claiming that an event of force majeure has occurred; provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay, and in no event shall any of the foregoing excuse any financial inability of a Party unless such inability is caused by the closure of the Owner's lender by a regulatory authority due to insolvency.

15.6 Notices. All notices, demands, requests or other communications required or permitted to be given, provided or sent under or pursuant to this Agreement shall be in writing and shall be delivered or sent, as the case may be, by any of the following methods: (i) personal delivery; (ii) nationally recognized overnight commercial carrier or delivery service (with delivery charges prepaid and a receipt of delivery); or (iii) registered or certified U.S. mail (with postage prepaid and return receipt requested). All such notices, demands, requests or other communications given, provided or sent to the Parties shall be at the addresses set forth in this Section 15.6 (or to such other or further addresses as any Party may designate by like notice similarly given, provided or sent), and such notices, demands, requests or other communications shall be deemed given, provided or sent, and thereafter received, for all purposes under this Agreement as follows: (a) if personally delivered, the date of delivery to the address of the applicable Party; (b) if delivered by overnight commercial carrier or delivery service, one (1) business day following the receipt of such communication by such carrier or servicer from the sender, as shown on the sender's delivery invoice from such carrier or servicer, as the case may be; or (c) if mailed via U.S. mail, three (3) business days after the date of posting as shown on the sender's registry or certification receipt; provided, however, in all cases, notice of a change in address shall be effective only upon receipt; provided, further, rejection or other refusal to accept, or the inability to deliver, because of a changed address for which no notice was given pursuant to this Section 15.6, shall be deemed to constitute receipt of the notice, demand, request or other communication so sent.

If to the Agency:	Attention: Executive Director Fort Lauderdale Community Redevelopment Agency 914 Sistrunk Blvd., Suite 200 Fort Lauderdale, FL 33311
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With a copy to:	General Counsel Fort Lauderdale Community Redevelopment Agency 100 North Andrews Avenue Fort Lauderdale, FL 33301
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If to the Owner:	Attention: Tony Del Pozzo Related FATVillage, LLC 2850 Tigertail Ave., Suite 800 Miami, FL 33133
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With a copy to:	Attention: Brian J. McDonough, Esq. Stearns Weaver Miller, et al.
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150 West Flagler Street, 22nd Floor
Miami, FL 33130

With a copy to:

Attention: Terry M. Lovell, Esq.
Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Ave., 23rd Floor
Miami, FL 33131

15.7 Time. Time is of the essence in the performance by any Party of its obligations hereunder.

15.8 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties, and this Agreement supersedes and supplants all prior negotiations and agreements between the Parties with respect to all or any of the matters contained herein.

15.9 Amendment. This Agreement may be amended, modified, changed, updated or supplemented by the Parties only upon the execution of a written instrument signed by all of the Parties.

15.10 Waivers. All waivers, releases, amendments or modifications of this Agreement must be in writing and signed by all the Parties. Any failures or delays by any Party in asserting any of its rights and remedies as to any default shall not constitute a waiver or release of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and not exclusive, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, or any other rights or remedies for the same default or other default by any other Party.

15.11 Assignment. Except as provided in Section 14.2, this Agreement and the rights, benefits, privileges, duties, obligations, responsibilities and liabilities of the Parties herein are non-assignable and any purported assignment shall be void and of no force or effect and shall constitute a default of this Agreement. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

15.12 Indemnification. The Owner agrees to protect, defend, indemnify and hold harmless the Agency, and its 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 Owner's acts or omissions in performing its obligations under this Agreement or the Agency Documents or arising out of or in connection with any negligent act or omissions of the Owner, its agents, employees or assigns while performing the duties and obligations required by this Agreement or the Agency Documents. Without limiting the foregoing, any and all such

claims, relating to personal injury, bodily 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 Owner further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, at its sole expense, and agree to bear all other costs and expenses related thereto, even if the claim(s) is groundless, false or fraudulent. However, the Agency reserves the right to select counsel of its own choosing. Notwithstanding anything set forth in this Agreement to the contrary, in no event shall the Owner be obligated to protect, defend, indemnify or hold harmless the Agency, or its officers, employees and agents, from and against any 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 the gross negligence of the Agency, its officers, employees or agents, acting during the course and scope of their employment. This Section 15.12 shall survive the expiration or termination of this Agreement and is not limited by the amount of insurance coverage. It is understood and agreed that no Party waives any immunity it may have as provided by law.

15.13 Severability. The invalidity, illegality or unenforceability of any one or more of the terms or provisions of this Agreement shall not affect any other term or provision of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable term or provision had never been contained herein.

15.14 Contingent Fee. The Owner represents and warrants that it has not employed or retained any Person to solicit or secure this Agreement and that it has not paid, or agreed or promised to pay, any Person any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the execution of this Agreement.

15.15 Independent Contractor. In the performance of this Agreement, the Owner will be acting in the capacity of an independent contractor and not as an agent, employee, partner, developer or association of the Agency. The Owner and any Contractor, if any, and their employees or agents, shall be solely responsible for the means, method, technique, sequences and procedures utilized by the Owner in the construction of the Vertical Improvements and the Horizontal Improvements and in their performance under this Agreement.

15.16 Non-Merger. None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Property.

15.17 Not a General Obligation. Neither this Agreement nor the obligations imposed upon the Agency hereunder shall be or constitute an indebtedness or general obligation of the City, within the meaning of any constitutional, statutory or charter provisions requiring the City to levy ad valorem taxes nor a lien upon any properties of

the City. Nothing herein shall be deemed a pledge of tax increment revenue of the Agency or a grant of the right of the Owner, or its successors and/or assigns, to encumber the Agency's trust fund. Further, the obligations of the Agency are subordinate to use of funds for the overhead and administrative cost to operate the Agency and any payments for existing or future debt of the Agency.

15.18 Agreement Not a Development Agreement or Order. This Agreement is not, and shall not be construed to be, a development agreement as that term is defined by Section 163.3220 of the Florida Statutes, *et seq.*, and none of the provisions of Florida law applicable to development agreements pursuant to that statute or related statutes shall apply to this Agreement. No permit or order issued pursuant to, or affected by, this Agreement shall be deemed to be a development permit or development order as those terms are defined in Chapter 380 of the Florida Statutes, or Part II of Chapter 163 of the Florida Statutes.

15.19 Parties to Agreement. This is an agreement solely between the Agency and the Owner. The execution and delivery of this Agreement shall not be deemed to confer any rights or privileges on any Person who is not a Party, other than the approved successors or assigns of the Agency or the Owner.

15.20 Venue: Applicable Law. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Broward County, Florida, or United States District Court for the Southern District of Florida. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement.

15.21 Timing of Approvals. Unless specifically provided otherwise, the Agency shall have a period of not more than twenty (20) days from the date of submission of any item under this Agreement (not including development permit or building permit approvals or requests to approve an assignment) to take any action or give its approval or denial or make a request for additional information. The failure of the Agency to take any such action or give such approval or denial or request additional information, within such period of time shall be deemed approval, subject, however, to applicable law.

15.22 Authorized Representative. The individual or individuals designated and appointed, from time to time, as an Authorized Representative by the Agency, in writing, is authorized to represent the Agency in administrative matters as opposed to policy matters.

15.23 "As-Is" Status of Property. The Owner acknowledges that, prior to the Effective Date, it has performed sufficient inspections of the Entire Site in order to fully assess and make itself aware of the condition of the Entire Site. The Owner acknowledges that the Agency has made no representations or warranties as to the condition or status of the Entire Site and that the Owner is not relying on any representations or warranties of the Agency (or any brokers or agents of the Agency) in entering into the Ground Lease and acquiring the Entire Site. Accordingly, the physical condition of the Entire Site and compliance with all applicable laws, statutes, ordinances

or regulations with respect to the physical condition of the Entire Site shall be the sole responsibility and obligation of the Owner.

15.24 Discrimination. The Owner shall not discriminate against any individual, or group of individuals, on account of race, color, creed, sex, age, religion, national origin, marital status, handicap, having children or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of all or any part of the Vertical Improvements or in the design and construction of any infrastructure improvements.

15.25 Scrutinized Companies. The Owner certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725 of the Florida Statutes, as may be amended or revised from time to time, and that it is not engaged in a boycott of Israel.

15.26 Public Entity Crime.

15.26.1 The Owner represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133 of the Florida Statutes, as may be amended from time to time, which essentially provides that a Person (or Affiliate thereof) 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 the Agency, may not submit a bid on a contract with the Agency for the construction or repair of a public building or public work, may not submit bids on leases of real property to the Agency, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the Agency, and may not transact any business with the Agency in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, as may be amended from time to time, for Category Two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this Section 15.26.1 shall result in termination of this Agreement and recovery of all monies paid by the Agency pursuant to this Agreement and may result in debarment from the Agency's competitive procurement activities.

15.26.2 In addition to the foregoing, the Owner further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133 of the 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 the Owner has been placed on the convicted vendor list.

15.27 Sunset of the Agency. Notwithstanding anything herein to the contrary, the Agency shall have no obligation to provide the Agency Loan after its “sunset” date of November 7, 2025.

15.28 Best Efforts. The Owner will 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 construction work on the Project, with the [goal of achieving a minimum thirty (30%) participation in construction work for minorities]. Further, the Owner shall use their best efforts to hire local business firms, minority-owned firms, women-owned firms for the operation and management of the residential and commercial uses within the Project and shall provide annual reports, in form, substance and content, acceptable to the Agency and its successors and/or assigns.

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IN WITNESS WHEREOF, this Agreement is executed by the Parties the day and year set forth below to be effective as of the Effective Date.

AGENCY:

WITNESSES:

**FORT LAUDERDALE COMMUNITY
REDEVELOPMENT AGENCY**, a special
district created pursuant to Part III of Chapter
163 of the Florida Statutes

Print Name

By: _____
Greg Chavarria, Executive Director

Print Name

Date: _____, 2022

ATTEST:

Approved as to form:
Alain E. Boileau, General Counsel

David R. Soloman, CRA Secretary

Lynn Solomon, Assistant General Counsel

OWNER:

WITNESSES:

RELATED FATVILLAGE, LLC, a Florida
limited liability company

By: **RELATED FATVILLAGE
MANAGER, LLC**, a Florida limited
liability company

Print Name

Print Name

By: _____

Name: Tony Del Pozzo

Title: Vice President

STATE OF FLORIDA:
MIAMI-DADE COUNTY:

The foregoing instrument was acknowledged before me by means of ☐ physical
presence or ☐ online, this _____ day of _____, 2022, by Tony
Del Pozzo, as Vice President of Related FATVillage Manager, LLC, a Florida limited
liability company, the manager of Related FATVillage, 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 _____ OR Produced Identification _____

Type of Identification Produced _____

EXHIBIT "A"

Legal Description of Property

Lots 17 through 30, Block 319, PROGRESSO, according to the plat thereof, as recorded in Plat Book 2, Page 18 of the Public Records of Miami-Dade County, Florida, said lands being in Broward County, Florida; and Lots 31 and 32, Block 319, SUPPLEMENTAL PLAT OF BLK-319 TOWN OF PROGRESSO, according to the plat thereof, as recorded in Plat Book 1, Page 125 of the Public Records of Miami-Dade County, Florida, said lands being in Broward County, Florida.

EXHIBIT "B"

Project Development Plan

EXHIBIT "C"

Project Schedule

EXHIBIT "D"

Project Budget

EXHIBIT "E"

Ownership Chart of the Owner