

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

THIS IS AN AGREEMENT made and entered into on this _____ day of _____, 2015 by and between:

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

And

1943 Tyler, LLC, a Florida limited liability company,
hereinafter referred to as "Participant".

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

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

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

WHEREAS, Participant submitted an application for Façade Program funds, Property and Business Investment/Improvement Program Funds and Streetscape Funds and has been approved to receive funds under all Programs for the improvement of property described herein; and

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

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

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

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

1. PURPOSE AND SCOPE.

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

See Exhibit "A" attached hereto and incorporated herein
and more commonly known as:

725 Progresso Drive
Fort Lauderdale, FL

(hereinafter referred to as "Property").

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

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

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

(E) Participant agrees that as a condition of this Agreement and as provided in the Façade Program, the Property shall not be sold within two (2) years of receipt of the Final Payment. In the event the Property is

sold within one (1) year of the date of receipt of the Final Payment as described in Paragraph 2 (D) of this Agreement, the Participant shall repay one hundred percent (100%) of the funds paid by CRA for the Improvements. In the event the Property is sold within two (2) years of the receipt of the Final Payment, the Participant shall pay CRA fifty percent (50%) of the funds paid by CRA for the Improvements. Participant shall notify the CRA within 5 days of the Property being sold. Payment shall be made within thirty (30) days of the date a conveyance document is recorded in the public records of Broward County and shall carry the maximum legal interest beginning on the 30th day until paid.

2. GRANT TERMS.

(A) Funds will be provided to Participant in the form of a grant of up to Fifteen Thousand Dollars (\$15,000.00) or eighty percent (80%) of the total cost of the improvements on the Property, whichever is less. The total project cost is estimated at not less than \$18,750. Grant funds shall be used in accordance with the attached Exhibit "B".

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

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

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

3. INSURANCE AND INDEMNIFICATION.

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

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

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

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

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

(C) All such coverages shall be from a company or companies of such financial responsibility as found acceptable to the CRA. In the case of an insurable event, where applicable, the proceeds shall first be applied to the Property or if the Property is not able to be reconstructed then payable to the CRA on account of the indebtedness hereby secured.

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

- (E) Participant shall protect, defend, indemnify and hold harmless the City, the CRA, and their officers, employees and agents, from and against any and all lawsuits, penalties, claims, damages, settlements, judgments, decrees, costs, charges and other expenses or liabilities of every kind, sort or description including, but not limited to, attorneys' fees at both the trial and appellate levels, in connection with or arising, directly or indirectly, out of or resulting from this Agreement or the Participant's acts or omissions in performing their obligations under this Agreement. Without limiting the foregoing, any and all such claims, relating to personal injury, death, damage to property, defects in material or workmanship, actual or alleged infringement or any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance administrative order, rule or regulation or decree of any court, are included in the indemnity. The Participant further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, at his sole expense and agrees to bear all other costs and expenses related thereto, even if the claim(s) is groundless, false or fraudulent. This provision shall survive expiration or termination of this Agreement and shall not be limited by any insurance required hereunder.
- (F) It shall be a default under this Agreement if there is any order, judgment or decree that is entered by any court of competent jurisdiction adjudicating the Participant bankrupt or insolvent, approving a petition seeking a reorganization or appointing a receiver, trustee or liquidator of the Participant or of all or a substantial part of its assets, or if there is otherwise commenced as to the Participant or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues without being dismissed after any stay thereof expires.

4. CONSTRUCTION. All construction work must be performed by licensed contractors and appropriate permits will be required. Construction shall not commence without appropriate and sufficient property and casualty insurance on the Property. All construction work must be completed within the time frames as set forth in Exhibit "C" attached hereto and incorporated herein. Should Participant fail to comply with the deadlines set forth in Exhibit "C", CRA reserves the right not to award the funds granted herein. If CRA exercises this right, Participant may reapply to CRA for grant funds at a later date.

5. TERMINATION OF AGREEMENT.

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

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

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

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

As to the CRA:

CRA Executive Director
Fort Lauderdale Community
100 N Andrews Avenue
Fort Lauderdale, FL 33301

As to the Participant:

1943 Tyler, LLC
1939 Tyler Street
Hollywood, Florida 33020
ATTN: Thomas Moody

7. RECORDS/RIGHT TO AUDIT.

CRA shall have the right to audit the books, records and accounts of Participant that are related to this Agreement. Participant shall keep, and such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement in accordance with generally accepted accounting practices and standards. All books, records, and accounts of Participant shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Participant shall make same available at no cost to CRA in written form.

Participant shall preserve and make available, at reasonable times for examination and audit by CRA in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If

any audit, litigation, or other action involving the records has been initiated and 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 CRA to be applicable, Participant shall comply with all requirements thereof. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CRA's disallowance and recovery of any payment upon such entry.

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

9. QUARTERLY REPORTS. Commencing on the Effective Date of this Agreement and continuing until two years after Final Payment by the Agency, Participant shall submit quarterly reports to the Agency confirming they are in compliance with all terms and conditions of this Agreement.

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

L:/AGMTS/CRA/2015/Tyler Façade

Facade Agreement between CRA and 1943 Tyler, LLC

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this _____ day of _____ 2015.

FORT LAUDERDALE COMMUNITY
REDEVELOPMENT AGENCY

Approved as to form:

Lee R. Feldman, Executive Director

CRA General Counsel

ATTEST:

CRA Secretary

WITNESSES:

PARTICIPANT

By: _____
Title: Manager
Print Name: Thomas Moody

[Witness print or type name]

[Witness print or type name]

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____ 2015, by Thomas Moody as Manager of 1943 Tyler, LLC, on behalf of the company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

EXHIBIT "A"
LEGAL DESCRIPTION

Lot 10, Block 287 and all of Block 287 lying South of Lot 10 and East of Alley of PROGRESSO, according to the plat thereof as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida, lying and being in Broward County Florida.

Tax ID 4942 34 07 1470 and 4942 34 07 1380

EXHIBIT "B"
PROJECT DESCRIPTION

New windows, new glass entrance, paint, architectural elements, landscaping
and exterior lighting .

\$18,750.

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|------------------------|----------|
| TOTAL FAÇADE GRANT | \$15,000 |
| TOTAL PARTICIPANT COST | \$3,750 |

EXHIBIT "C"
PERFORMANCE SCHEDULE

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