

## **ESSENTIALLY BUILT OUT AGREEMENT**

**THIS ESSENTIALLY BUILT -OUT AGREEMENT** (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 (the "Effective Date") by and among KG Las Olas Trustee, LLC (trustee for the KG Las Olas Land Trust), a Florida limited liability company of 701 South Olive Avenue, Suite 104, West Palm Beach, FL 33401, the City of Fort Lauderdale, 100 N. Andrews Avenue, Fort Lauderdale, FL 33301, and the Florida Department of Economic Opportunity, the state land planning agency, of 107 East Madison Street, Caldwell Building, Tallahassee, FL 32399-4120 (collectively referred to as the "Parties" and individually as a "Party").

### **RECITALS**

WHEREAS, KG Las Olas Land Trust, LLC (the "Developer") is the applicant and successor developer of New River Center Florida Quality Development ("FQD"), which includes the real property described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

WHEREAS, the Developer is the applicant for this Essentially Built Out Agreement, pursuant to section 380.061, Florida Statutes.

WHEREAS, the terms and conditions for development of the Property are memorialized in the New River Center FQD Development Order dated May 5, 1989, as amended on November 17, 1993; September 19, 1996; October 16, 1997; April 18, 2006; and April 3, 2015 (collectively referred to herein as the "Development Order"). A true and accurate copy of the Development Order is attached hereto as Exhibit "B."

WHEREAS, the Development Order authorizes the development of retail, office space, and hotels on the Property.

WHEREAS, the Build Out date for the Development Order, as amended, is August 29, 2016.

WHEREAS, the development of 295,000 square feet of office; 13,000 square feet of retail; and 284 residential dwelling units has been completed as of the date of this Agreement.

WHEREAS, as of October 8, 2007, all required mitigation has been completed.

WHEREAS, the Developer, the City of Fort Lauderdale (the "City"), and the Department of Economic Opportunity (the "Department") agree that the FQD is essentially built out, as defined in section 380.06(15)(g)4., Florida Statutes, and enter this Agreement pursuant to section 380.032(3), Florida Statutes.

NOW, THEREFORE, in exchange for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. FQD Essentially Built out. Section 380.06(15)(g)(4), Florida Statutes, states that a project may be determined to be essentially built out through an agreement executed by the developer, the state land planning agency, and the local government. Such agreement can allow certain development to continue without further DRI review subject to the local government comprehensive plan and land development regulations. The parties hereto acknowledge and agree that the proper parties to this Agreement are the Developer, as the applicant and developer of the New River Center FQD, the City, as the local government where the FQD is located, and the Department, as the state land planning agency, which is the successor agency to the Florida Department of Community Affairs that adopted the original Development Order, which was also approved by the City. The Parties have determined that all mitigation requirements in the Development Order have been satisfied, and the Developer is in compliance with all applicable terms and conditions of the Development Order. The build out date of the FQD is August 29, 2016, and the Department has agreed that the amount of development to be built does not create the likelihood of any additional regional impact not previously reviewed. Therefore, the parties hereto agree that the FQD is essentially built out and the Developer, and their successors and assigns, have fully satisfied any and all obligations under the Development Order, except to the extent defined herein. The build out date for the FQD shall be the Effective Date of this Agreement. After the Effective Date, the Department agrees that no property owner within the FQD shall be required to file an annual report pursuant to the Development Order section III, paragraph J., and section 380.06(18), Florida Statutes.
2. Future Development.
  - a) Notwithstanding the fact that the FQD has been determined to be essentially Built out, the City agrees to continue to issue building permits to property owners with remaining entitled units, pursuant to section 380.06(15)(g)(4), Florida Statutes, including the following (which shall be referred to collectively herein as the “Future Development”):
    - I. Portion of Parcel A: The remaining undeveloped parcel in the FQD may be developed as a mixed use development not to exceed 10,546 sq. ft. commercial use, 121 high-rise dwelling units, and 231 hotel rooms. A survey of the undeveloped parcel is attached as Exhibit “C”.
  - b) In the event that development in excess of the Future Development is requested, such additional development shall be required to comply with the provisions of the City’s Comprehensive Plan and Land Development Code, and the requirements of chapters 163 and 380, Florida Statutes, as it exists at the time of application. Any such development shall be subject to payment of impact fees, development review fees, building permit fees, inspection fees, and other fees and costs required by the City pursuant to its Code of Ordinances.
  - c) Nothing contained herein shall affect the validity or enforceability of subdivision covenants, conditions, and restrictions that may be recorded against title to various parcels within the Property.

3. Guaranty Agreements. Because the FQD has been determined to be essentially built out and all concurrency and other mitigation requirements in the Development Order have been satisfied, the City and the Department agree the Developer is released from any and all obligations and liabilities of the Development Order.
4. Concurrency. Because the Developer has completed the requirements of the Development Order, the City and the Department hereby agree that all public facility concurrency requirements set forth in Florida law and City ordinance are satisfied.
5. Representations. The Developer asserts and warrants that, to the best of its knowledge, all of the representations and statements made as set forth in this Agreement are true, accurate and complete. Based upon such representations and statements, the Department concludes that this Agreement is in the best interest of the State, is necessary and beneficial to the Department in its role as the state agency with the responsibility for the administration and enforcement of chapters 163 and 380, Florida Statutes, and reasonably applies and effectuates the provisions and purposes of chapters 163 and 380, Florida Statutes.
6. Breach. In the event of a breach of this Agreement or failure to comply with any condition of this Agreement, or if this Agreement is based upon materially inaccurate information, the Department may terminate this Agreement or file suit to enforce this Agreement as provided in chapter 380, Florida Statutes.
7. Waiver. Nothing in this Agreement shall constitute a waiver by any Party of the right to appeal any development order related to the Property and this FQD pursuant to section 380.07, Florida Statutes, except as acknowledged herein.
8. Remedies. Each Party to this Agreement shall be entitled to seek enforcement of this Agreement against the other Party and shall have all remedies available at law or in equity, including all forms of injunctive relief.
9. Binding Effect. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Parties hereto. The Developer shall record this Agreement in the Official Records of Broward County, Florida, at the expense of the Developer within two (2) weeks of the Effective Date of this Agreement.
10. Applicable Law; Jurisdiction and Venue. This Agreement and the rights and obligations of the Parties hereto shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter of this Agreement shall be exclusively in Leon County, Florida. If any provision of this Agreement, or the application of this Agreement to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction,

then the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11. Notices. Any notices or reports required by this Agreement shall be sent to the following:

For KG Las Olas:

John Csapo, Kolter Group  
701 South Olive Avenue  
Suite 104  
West Palm Beach, FL 33401

With a copy to:

Crush Law, P.A.  
333 N New River Drive E  
Suite 1500  
Fort Lauderdale, FL 33301

For the City of Ft. Lauderdale:

Lee Feldman, City Manager  
City of Fort Lauderdale  
100 N. Andrews Avenue  
Fort Lauderdale, FL 33301

For the Regional Planning Council:

Isabel Cosio Carballo, Executive Director  
SFRC Headquarters  
3440 Hollywood Boulevard  
Suite 140  
Hollywood, FL 33021

For the Department:

Division of Community Development  
Florida Department of  
Economic Opportunity  
107 Madison Street  
Caldwell Building  
Tallahassee, FL 32399

12. Joint Preparation. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

13. Release; Costs, and Attorney's Fees. Each Party hereto releases the other from any and all claims or demands arising out of the subject matter of this Agreement. Each Party shall bear its own costs and attorney's fees incurred in connection with this matter.

14. Captions or Paragraph Headings. Captions and paragraph headings contained in this Agreement are for convenience and reference only, and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision of this Agreement.
15. Counterparts. This Agreement may be executed in counterparts, each constituting a duplicate original, but such counterparts shall constitute one and the same Agreement.
16. Amendments. This Agreement may be amended in writing by mutual consent of the Parties so long as the amendment meets the requirements of Florida Statutes, specifically chapters 163 and 380, Florida Statutes, and applicable ordinances.
17. Further Assurances. Each Party to this Agreement agrees to do, execute, acknowledge, and deliver, or cause to be done, executed, acknowledge, and delivered, all such further acts and assurances in a manner and to the degree allowed by law, as shall be reasonably requested by the other parties in order to carry out the intent of and give effect to this Agreement, including any amendments to this Agreement. Without in any manner limiting the specific rights and obligations set forth in this Agreement or illegally limiting or infringing upon the governmental authority of the Department and the City, the Parties declare their intention to cooperate with each other in effecting the purposes of this Agreement and to coordinate the performance of their respective obligations under the terms of this Agreement.

(Remainder of page intentionally left blank)

**IN WITNESS WHEREOF**, the parties hereto, through their duly authorized representatives, have executed this Agreement as set forth in the below:

Signed, sealed and delivered  
in the presence of:

KG Las Olas Trustee, LLC,  
a Florida limited liability company

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name:\_\_\_\_\_

\_\_\_\_\_

Printed Name:\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, Manager, KG Las Olas Trustee, LLC, a Florida limited liability company, on behalf of the Company.

\_\_\_\_\_  
Notary Public, State of Florida  
Printed Name:\_\_\_\_\_  
My Commission Number:\_\_\_\_\_

Signed, sealed and delivered

in the presence of:

\_\_\_\_\_

Printed Name:\_\_\_\_\_

\_\_\_\_\_

Printed Name:\_\_\_\_\_

FLORIDA DEPARTMENT OF ECONOMIC  
OPPORTUNITY,  
an agency of the State of Florida

By: Taylor Teepell, Division Director  
Florida Department of Economic  
Opportunity

Printed Name:\_\_\_\_\_

Title\_\_\_\_\_

**As to legal sufficiency:**

\_\_\_\_\_  
Christina Arzillo Shideler  
Assistant General Counsel  
Florida Department of Economic  
Opportunity

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2016, by \_\_\_\_\_, as Division Director, Division of Community  
Development of the FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, an agency of  
the State of Florida, on behalf of the Agency.

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

Printed Name:\_\_\_\_\_

My Commission Number:\_\_\_\_\_

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_

Printed Name:\_\_\_\_\_

\_\_\_\_\_

Printed Name:\_\_\_\_\_

CITY OF FORT LAUDERDALE,  
a local government,

By: \_\_\_\_\_

Printed Name:\_\_\_\_\_

Title\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2016, by \_\_\_\_\_, as \_\_\_\_\_ of the FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY, an agency of the State of Florida, on behalf  
of the Agency.

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

Printed Name:\_\_\_\_\_

My Commission Number:\_\_\_\_\_