AGREEMENT FOR SITE DEVELOPMENT
AND
DEVELOPMENT INCENTIVE PROGRAM GRANT
(SIX13 PROJECT)

between

FORT LAUDERDALE
COMMUNITY REDEVELOPMENT AGENCY

and

613 NW 3RD AVE HOLDINGS, INC.,
a Florida corporation

Dated as of October 5, 2017

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AGREEMENT FOR SITE DEVELOPMENT
AND
DEVELOPMENT INCENTIVE PROGRAM GRANT
(SIX13 PROJECT)

This AGREEMENT FOR SITE DEVELOPMENT AND DEVELOPMENT INCENTIVE PROGRAM GRANT (the "Agreement") is made as of this 5 day of ~~September~~ October 2017, by and between the FORT LAUDERDALE COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163, Florida Statutes (the "Agency"), and 613 NW 3RD AVE HOLDINGS, INC., a Florida corporation ("Holdings").

W I T N E S S E T H:

WHEREAS, the Agency was created to eliminate "slum and blight" and to stimulate community redevelopment;

WHEREAS, the Northwest-Progresso-Flagler Heights Plan ("Redevelopment Plan") was adopted on November 7, 1995 and subsequently amended in 2001, 2002, 2013 and 2016 and provides for redevelopment of the Northwest-Progresso-Flagler Heights Area (the "Redevelopment Area");

WHEREAS, the Agency, pursuant to the Redevelopment Plan, has created certain business incentives to stimulate redevelopment within the Redevelopment Area including the Development Incentive Program (the "Program");

WHEREAS, Holdings owns issued and outstanding controlling membership interests of 613 NW 3rd Ave, LLC, a Florida limited liability company (the "Developer");

WHEREAS, the Developer has executed an agreement to purchase a parcel of land, together with all improvements thereon, located at 613 NW 3rd Avenue, Fort Lauderdale, Florida, which parcel is more particularly described on Exhibit "B" hereto and is located within the Redevelopment Area (the "Project Site");

WHEREAS, the Developer, pursuant to the terms of the Program, has applied for construction funding to build a mixed use development of approximately 142 rental units, 8,300 square feet of commercial space and a parking garage at the Project Site;

WHEREAS, on April, 11, 2017, the Agency's Advisory Board approved Developer's proposal for such construction funding for the development of the Project Site (the "Proposal").

WHEREAS, after review of the Developer's Proposal, the Agency accepted Developer's Proposal as being in the public interest and in furtherance of the goals, objectives and provisions of the Redevelopment Plan and authorized negotiation of a site development and development incentive program grant agreement to set forth the respective duties and responsibilities of the parties pertaining to the terms of the construction grant for the development of the Project (as hereinafter defined);

WHEREAS, the Developer assigned its interest in the Proposal to Holdings;

WHEREAS, the Agency and Holdings have entered into and concluded negotiations for said site development and development incentive program grant agreement, which negotiations have resulted in this Agreement that incorporates in substance the terms of Developer's Proposal;

WHEREAS, the Agency authorized the City's General Counsel or outside legal counsel to prepare this Agreement under the authorization and direction of the Agency's Executive Director;

WHEREAS, the board of directors and shareholders of Holdings have approved this Agreement and have authorized and directed certain individuals to execute this Agreement on behalf of Holdings.

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

ARTICLE 1. DEFINITIONS

1.01 Definitions. The terms defined in this Article 1 shall have the following meanings in this Agreement, except as herein otherwise expressly provided:

"Act" means the Constitution of the State of Florida; Section 163.01, Florida Statutes, Part III, Chapter 163, Florida Statutes, et. seq.; and other applicable provisions of law, and ordinances and resolutions of Broward County, the City of Fort Lauderdale and the Agency pertaining to the redevelopment of the Redevelopment Area (as in after defined).

"Affiliate", "Affiliated" or "Affiliated Person" 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 an officer of, partner in, member of, or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified Person is an officer, partner, member, or trustee, or with respect to which the specified Person serves in a similar capacity;

(3) Any Person that, directly or indirectly, is the beneficial owner of 10% of more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in the specified Person, or of which the specified Person is directly or indirectly the owner of 10% of more of any class or equity securities or other form of ownership, or in which the specified Person has a substantial beneficial interest (10% or more); 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 § 732.103, Florida Statutes (intestate succession) as they pertain to the Person or the Person's spouse, instead of decedent (e.g. the term includes brother-in-law or father-in-law).

"Agency" means the Fort Lauderdale Community Redevelopment Agency, and any successors or assigns thereto, provided that such successors and assigns shall be limited to governmental entities.

"Agreement" means this Agreement for Site Development and Development Incentive Program Grant, including any Exhibits, and any amendments hereto or thereto.

"Arbitrable Event" shall mean a dispute or disagreement between the parties concerning the occurrence or nonoccurrence of any event or whether a set of facts meets criteria set forth in this Agreement, which such dispute or disagreement shall be resolvable by resort to arbitration under Article 16 hereof.

"Authorized Representative" means the Executive Director or his designee, as to the Agency and Jeff Burns or his designee, as to the Developer and Holdings, and person or persons designated and appointed from time to time as such by the Agency, Holdings or the Developer pursuant to Section 2.05.

"Building Code" means the code which governs building and construction standards, review of plans for construction, issuance of building permits, inspections for compliance with construction standards, issuance of Certificate of Occupancy, issuance of Certificate of Completion and other matters pertaining to construction of structures in the City.

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

"Certificate of Completion" means a certificate of completion or temporary certificate of completion issued by the City or other appropriate governmental authority for the commercial components of the Project.

"Certificate of Occupancy" means a certificate of occupancy or temporary certificate of occupancy issued by the City or other appropriate governmental authority for the residential components of the Project.

"City" means the City of Fort Lauderdale, Florida, a Florida Municipal Corporation, and any successors or assigns thereto.

"City Codes" or "Codes" means the ordinances and codes of the City that regulate the development and construction of projects and buildings, including the Building Code and zoning regulations.

"City Commission" means the elected governing body of the City, by whatever name known or however constituted from time to time.

"Closing Date" means the date on which the Development Incentive Construction Grant is closed.

"Commencement Date" means the date on which the Developer commences construction of the Project, as further defined in Section 7.02(a).

"Completion Date" means the later of (i) the date on which a Certificate of Occupancy is issued for the residential components of the Project and (ii) the date on which a Certificate of Completion is issued for the commercial components of the Project; which later date shall be no later than 720 days after the Commencement Date, subject to Unavoidable Delays and extensions by the Executive Director.

"Conceptual Site Plan" means, the conceptual plans for the development of the Project and attached hereto as Exhibit "A" hereto.

"Construction First Lien Financing" means, the funds provided by the Construction First Lien Lender to pay Hard Costs and Soft Costs and other related soft costs of Developer for developing the Project, and the design, construction and equipping of the Project, and which may be secured by a first priority mortgage, security interest, pledge, lien or other encumbrances and includes all modifications, renewals, extensions and replacements thereof and future advances thereunder.

"Construction First Lien Financing Documents" means any loan commitment, agreement, note, mortgage or other instrument setting forth the terms of the Construction First Lien Financing.

"Construction First Lien Lender" means any Person(s) providing the Construction First Lien Financing but not including the Developer or Holdings, which Person(s) may include a senior lender, other junior lenders and/or preferred equity investors.

"Contractor" means one or more Persons constituting a general contractor or Major Subcontractor properly licensed by the State of Florida or other appropriate jurisdiction to the extent required by applicable law, authorized to perform construction contractor services in the State of Florida, registered with the City as required by applicable law, bonded and insured to the extent required by applicable law and this Agreement.

"Developer" shall have the meaning set forth in the fourth WHEREAS clause.

"Development Incentive Construction Grant" means the funds provided by the Agency pursuant to the Development Incentive Grant Documents to pay Hard Costs and Soft Costs, and which shall be secured by a second priority mortgage, security interest, pledge, lien or other

encumbrances and includes all modifications, renewals, extensions and replacements thereof and future advances thereunder.

"Development Incentive Construction Grant Agreement" means an agreement in substantially the form of Exhibit "C" hereto between Holdings, and the Agency containing the conditions and terms of the Development Incentive Construction Grant.

"Development Incentive Grant Documents" mean the Development Incentive Construction Grant Agreement, Development Incentive Mortgage and Security Agreement, Development Incentive Guaranty Agreement, Funding Agreement, the Regulatory Agreement, and such other documents contemplated by the Development Incentive Construction Grant Agreement; all with such changes and revisions reasonably requested by the Construction First Lien Lender and the Developer or Holdings, which changes in the aggregate do not have a material adverse effect on the rights of the Agency as contemplated herein.

"Development Incentive Guaranty Agreement" means a guaranty to be executed by Developer in favor of the Agency which guaranties Holdings' obligations under this Agreement and the Development Incentive Construction Grant Agreement.

"Development Incentive Mortgage and Security Agreement" means a mortgage and security agreement to be executed by Developer in favor of the Agency, securing the Developer's obligations under the Development Incentive Guaranty Agreement and encumbering the Project Site which upon recordation shall constitute a second lien on said Project Site together with the improvements located and constructed thereon.

"Effective Date" means the date on which the last party executes this Agreement.

"Executive Director" means the designated executive director of the Agency.

"Exhibits" means those agreements, diagrams, drawings, specifications, instruments, forms of instruments, and other documents attached hereto and designated as exhibits to, and incorporated in and made a part of, this Agreement.

"Final Site Plan" shall have the meaning set forth in Section 4.01.

"Funding Agent" shall have the meaning set forth in Section 6.01(d).

"Funding Agreement" means an agreement to be executed by Construction First Lien Lender, the Developer, Holdings and the Agency setting forth the obligations of each party to disburse construction funds pursuant to the sources and uses budget and draw process agreed to by the parties.

"Hard Costs" means costs for Project Site acquisition and work, labor and materials required to demolish pre-existing structures on the Project Site and construct and complete the Project.

"Major Subcontractor" means the Contractors for site development work (infrastructure), structural improvements, underground water and sewer utilities, mechanical, (HVAC), plumbing and electrical.

"Overhead and Administrative Costs of the Agency" means administrative, overhead and operating expenses necessary and incidental to the implementation of the Redevelopment Plan, as amended or otherwise incurred in connection with the normal, day-to-day operations of the Agency.

"Permits" means all zoning, variances, special exceptions, yard modifications, zoning approvals, development orders respecting land use and consents required to be granted, awarded, issued, or given by any governmental authority relative to the regulation of land use or zoning in order for construction of the Project, or any part thereof, to commence, and to be completed.

"Person" means any natural person, firm, partnership (general or limited), corporation, company, association, joint venture, joint stock association, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or association, or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee, or other person acting in a similar representative capacity.

"Principal" means Jeffrey R. Burns.

"Project" means the acquisition of the Project Site and the development and operation of a mixed use development project on the Project Site consisting of approximately 142 dwelling units and 8,300 sq. ft. of commercial/office uses, a parking garage and supportive permitted accessory uses subject to modifications set forth in the Conceptual and/or Final Site Plan. The Project shall also include site clearance, site preparation, infrastructure construction and installation, and any necessary internal roadway construction. The Project shall also include any other development and use obligations of Holdings under this Agreement relative to the Project Site. The term shall also include the phrase "or portion thereof" as the context may require.

"Project Site" shall have the meaning set forth in the fifth WHEREAS clause.

"Proposal" shall have the meaning set forth in the seventh WHEREAS clause.

"Public Property" means those portions of the Project Site consisting of: (i) streets, alleys and other public ways and (ii) land, including plazas, on which Infrastructure Improvements will be constructed and dedicated to the public, if any.

"Redevelopment Area" shall have the meaning set forth in the second WHEREAS clause.

"Redevelopment Plan" shall have the meaning set forth in the second WHEREAS clause.

"Regulatory Agreement" means an agreement, to be recorded in the public records of Broward County, Florida, by the Developer to rent one hundred percent of the dwelling units to tenants that qualify under the Workforce Housing Requirements.

"Regular Scheduled Meeting" means a regularly scheduled meeting of the Agency which is presently scheduled for the third Tuesday of each month, at which a quorum is present.

"Satisfaction Date" means the earlier of (i) the date that the contingent obligations of Holdings to return portions of the Development Incentive Construction Grant to the Agency pursuant to this Agreement and the Development Incentive Grant Documents are extinguished or (ii) the date that a satisfaction of the Development Incentive Mortgage and Security Agreement is recorded in the public records of Broward County, Florida.

"Senior Debt" means the Fort Lauderdale Community Redevelopment Agency Tax Increment Revenue Note, Series 2015 (Northwest-Progresso-Flagler Heights Community Redevelopment Project) in the amount of $7,603,000 and any other future debt obligations issued or incurred on parity therewith.

"Soft Costs" means those costs associated with the development and construction of the Project which are not Hard Costs, including, without limitation, architectural and engineering fees, consultant fees, professional fees, real estate taxes, insurance and bonding costs, and interest and financing fees; provided that "Soft Costs" shall not include developer fees, general overhead charges or other similar fees payable to Affiliates of the Developer or Holdings.

"Sources and Uses of Funds Schedule" means the schedule attached to the Funding Agreement that memorializes the understanding of all parties as to the disbursement of Grant funds.

"Stabilization" means the date upon which the apartment units have achieved 3 consecutive months of 93% occupancy or more.

"Termination Date" means the date on which any party terminates this Agreement as provided in Section 14.01.

"Unavoidable Delay" means any of the following events or conditions or any combination thereof: acts of God, acts of a public enemy, riot, insurrection, war, act of terrorism, pestilence, archaeological excavations required by law, unavailability of materials after timely ordering of same, epidemics, quarantine restrictions, freight embargoes, fire, lightning, hurricanes, earthquakes, tornadoes, floods, inclement weather (as indicated by the records of the local weather bureau for a ten (10) year period preceding the Effective Date), exercise of the power of condemnation as to a portion of the Project Site bearing a material relationship to the improvements to be constructed, strikes or labor disturbances, any of which shall be beyond the reasonable control of the party performing the obligation, adverse economic conditions , delays due to proceedings under Chapters 73 and 74, Florida Statutes, restoration in connection with any of the foregoing, cessation of work on the Project due to disputes with the Contractor where a resolution of such dispute or the replacement of such Contractor is being actively pursued by the Developer, or any other cause beyond the reasonable control of the party performing the obligation in question, including, without limitation, such causes as may arise from the act of the other party to this Agreement, or acts of or failure to act by any governmental authority <u>(except that acts of the Agency shall not constitute an Unavoidable Delay with respect to performance by the Agency)</u>, which such event(s) or condition(s) or any combination(s)

thereof substantially frustrate on a commercially reasonable basis the performance contemplated by this Agreement.

"Workforce Housing Requirements" means tenants having a gross household income that does not exceed one hundred and sixty percent (160%) of the Broward County Area Median Income (AMI), as set forth each year by the Department of Housing and Urban Development (HUD).

1.02 Use of Words and Phrases.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number, and the word "person" shall include corporations and associations, including public bodies, as well as natural persons. "Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinabove," "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

1.03 Florida Statutes.

All references herein to Florida Statutes are to Florida Statutes, 2017, unless expressly stated otherwise.

1.04 Computation of Days.

In the computation of any period of time expressed in day(s) in this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays, including holidays for the City, shall be excluded in the computation. All days are "calendar days" unless otherwise stated as "business days".

ARTICLE 2. PURPOSE PROPOSAL; PROJECT DEVELOPMENT SCHEDULE.

2.01 Purpose of Agreement.

(a) The purpose of this Agreement is to set forth the agreement between the Agency and Holdings for the terms and conditions of the Development Incentive Construction Grant and the development of the Project and to set forth mutual roles and responsibilities of each. It is also to further the implementation of the Redevelopment Plan by providing for the development and construction of the Project on the Project Site in accordance with the Conceptual Site Plan and the Final Site Plan, as approved by the Agency.

(b) Holdings agrees to cause Developer to develop the Project by using Developer's commercially reasonable efforts to (i) obtain approvals from governmental authorities necessary

for the development of the Project, (ii) obtain the Construction First Lien Financing, and (iii) construct various improvements on the Project Site consistent with the terms of this Agreement.

2.02 Proposal.

(a) The Proposal is hereby found by the parties hereto: (i) to be consistent with and in furtherance of the objectives of the Redevelopment Plan, (ii) to conform to the provisions of the Act, (iii) to be in the best interests of the citizens and residents of the City, (iv) to further the purposes and objectives of the Agency, and (v) to further the public purpose of eradicating conditions of "slum and blight" in the Redevelopment Area.

(b) Based upon and as a result of the findings set forth in subsection (a) above, the Proposal, including such changes and revisions as are provided for by this Agreement, is hereby affirmed by Holdings and approved and accepted by the Agency.

(c) The parties hereto agree that the terms and conditions set forth in this Agreement do not, individually or collectively, constitute a substantial deviation from the substance of the Proposal.

2.03 Cooperation of the Parties.

The parties hereto recognize that the successful development of the Project and each component thereof is dependent upon continued cooperation of the parties hereto, and each agrees that it shall act in a reasonable manner hereunder. No cooperation or assistance by the Agency shall be construed or implied to constitute any action by the City or any board, commission or committee thereof acting in its governmental capacity.

2.04 Authorized Representative.

(a) The Agency has designated the Executive Director as it Authorized Representative to act on its behalf to the extent of the grant of authority to such representative. Holdings has designated Jeff Burns as the Authorized Representative to act on its behalf and on behalf of the Developer and Holdings. Written notice of the designation of such an Authorized Representative (and any subsequent change in the Authorized Representative) and the authority that may be exercised by such Authorized Representative, shall be given by the designating party to the other party in writing in accordance with the procedure set forth in Section 20.01 hereof.

(b) Except as otherwise expressly provided in this Agreement, whenever approval or action by Holdings or the Agency is required by this Agreement, such action or approval may, to the extent of authorization granted, be taken or given by the Authorized Representative thereof. Subject to any limitation of authority set forth in the written notice, a party to this Agreement may rely upon the representation of the other party's Authorized Representative that such person has the requisite authority to give the approval or take the action being done by that Authorized Representative.

ARTICLE 3. INTENTIONALLY OMITTED.

ARTICLE 4. CONCEPTUAL AND FINAL SITE PLAN.

4.01 Conceptual Site Plan and Final Site Plan.

Agency acknowledges that Developer has prepared and completed the Conceptual Site Plan. Holdings shall cause Developer to prepare and submit to the governing body of the City a proposed final site plan for the Project, which shall be similar to the Conceptual Site Plan, but shall be set forth with greater detail as to elevations, building footprint, architectural features, landscaping, parking, and internal street layout for the entire Project (the "Proposed Final Site Plan"). Upon authorization and approval by the governing body of Agency the of the Proposed Final Site Plan, the Proposed Final Site Plan shall be deemed the "Final Site Plan" and shall be attached hereto as Exhibit "A-1".

4.02 Preparation of Conceptual and Final Site Plan.

Holdings and Developer are responsible for and shall pay the cost of preparing, submitting and obtaining approval of any version of the Conceptual Site Plan and Final Site Plan and any revisions or modifications thereto.

4.03 Approval of Modifications or Revisions to Final Site Plan by Executive Director.

(a) Proposed modification(s) of or revision(s) to the Final Site Plan may be approved by the Executive Director of the Agency without further review or approval of the Agency in the following instances:

(1) Alterations of proposed building or structures, which do not result cumulatively in more than a ten (10%) percent modification to the floor area per building, or structure, as found in the Final Site Plan;

(2) Minor cosmetic alterations of the external façade of proposed structures;

(3) Minor alterations or adjustments in the location of proposed or existing structures or site improvements on the Project Site; and

(4) Building locations may be adjusted or rotated to improve open space.

(b) Any denial by the Executive Director under this Section 4.03 may be appealed by Developer to the Agency.

ARTICLE 5. REGULATORY PROCESS.

5.01 Zoning.

(a) On the Effective Date, the zoning classification for the Project Site is the City's NWRAC-MUe and RMM-25.

(b) Holdings shall cause Developer to prepare and submit to the City and other regulatory agencies, as needed, applications for rezoning of the Project Site, plat note amendments to permit development of the Project Site in accordance with the Redevelopment Plan and the Proposal.

(c) The Agency staff will cooperate with Holdings and Developer concerning any rezoning of or land use plan amendment regarding the Project Site to the extent the Agency finds such rezoning or final approval requests to be reasonably consistent with the Redevelopment Plan, the Final Site Plan and this Agreement.

5.02 Not a Development Order or Permit

Agency and Holdings agree that this Agreement is not intended to be and should not be construed or deemed to be a "development order" or "development permit" within the meaning of those terms in Section 163.3164, Florida Statutes.

ARTICLE 6. PROJECT FINANCING.

6.01 Development Incentive Program Grant

The Development Incentive Grant Documents shall provide as follows:

(a) The Agency shall grant Seven Million Dollars ($7,000,000) (the "Development Incentive Grant Amount") to Holdings in accordance with the terms of this Agreement and the Development Incentive Grant Documents. Holdings shall immediately contribute the proceeds of the Development Incentive Construction Grant to Developer. Holdings shall cause Developer to use the proceeds of the Development Incentive Construction Grant solely for the payment of Hard Costs and Soft Costs related to the construction of the Project as set forth in the Sources and Uses of Funds Schedule.

(b) The obligations of Holdings to return any portion of the Development Incentive Construction Grant shall expire five (5) years subsequent to the Completion Date (the "Development Incentive Construction Grant Term") provided that there is not an uncured event of default. The return of any portion of the Development Incentive Construction Grant shall not be required except for an uncured event of default. The returnable balance (the "Outstanding Balance") of the Development Incentive Construction Grant shall be reduced proportionately over the Development Incentive Construction Grant Term, with 20% principal reduction per year or $1,400,000, provided that there is not an uncured event of default in that year. Any amount not reduced in years 1 through 5 shall expire in year 5 provided that there is not an uncured event of default.

(c) The Development Incentive Construction Grant shall be appropriated in the Agency's Fiscal Years 2017, 2018, and 2019 in the following amounts (the "Development Incentive Grant Funds") respectively: (i) Four Million Dollars ($4,000,000); (ii) Two Million Dollars ($2,000,000); and (iii) One Million Dollars ($1,000,000). Fiscal Year 2017 shall begin

on October 1, 2016 and end on September 30, 2017, with the same date range applying for each additional specified Fiscal Year. In the event that the Agency does not disburse the required Development Incentive Grant Funds in a particular Fiscal Year, then the Agency shall disburse the shortfall in the next Fiscal Year. In the event that the Agency has not disbursed the entire Development Incentive Grant Amount by September 30, 2019, then the Agency shall disburse the shortfall as soon as the funds become available to the Agency. To the extent permitted by and in accordance with applicable law, the Agency agrees to budget and appropriate the Development Incentive Grant Funds for each fiscal year subordinate to Overhead and Administrative Costs of the Agency and Senior Debt of the Agency. 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. Holdings agrees, on its behalf and on behalf of the Developer, that the obligation of the Agency to make any payments by the Agency to Holdings or the Developer pursuant to this Agreement shall be subordinate to Overhead and Administrative Costs and the obligations of the Agency to pay debt service on Senior Debt of the Agency.. The parties agree this Agreement is not intended to create debt of the Agency nor does this Agreement constitute an unconditional obligation to pay the Development Incentive Grant Funds. This section is merely descriptive of the process by which the Development Incentive Grant Funds will be made available by the Agency.The agreement to budget and appropriate shall not constitute a lien, either legal or equitable, on the 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 Developer a prior claim on the revenue of the Agency.

(d) As soon as the Development Incentive Grant Funds become available to Agency in each Fiscal Year, in lieu of disbursing the Development Incentive Grant Funds in accordance with Section 6.01(a) above, Agency agrees to immediately disburse such funds to a disbursing agent agreeable to the Agency, Developer, Holdings and the Construction First Lien Lender (the "Funding Agent") in accordance with the terms of the Funding Agreement.

(e) The Construction First Lien Lender and the Funding Agent shall disburse the Funds on behalf of Holdings and Developer in accordance with the terms of the Funding Agreement.

(f) All terms of the Development Incentive Grant Documents shall be tailored to meet the reasonable requirements of the Construction First Lien Lender (provided that any such tailoring in the aggregate does not have a material adverse effect on the rights of the Agency as contemplated herein) and shall be subordinate to the Construction First Lien Loan Documents, including, without limitation to all renewals, modifications and extensions of Construction First Lien Financing, except for the terms of the Regulatory Agreement.

6.02 Evidence of Project Financing; Firm Financing Commitments; Financing Documents.

(a) Holdings shall cause Developer to use its own funds, funds obtained from the Construction First Lien Financing and funds from other financing sources for the balance of the amount needed to design, develop, construct, own, sell, operate and maintain the Project as contemplated by this Agreement. Holdings shall notify the Agency of the identity of the Construction First Lien Lender and shall provide evidence of a commitment for construction loan financing in an amount, which together with Developer's own funds, is sufficient to complete the Project as set forth in the Final Site Plan prior to the Closing Date.

(b) Developer, Holdings, Construction First Lien Lender and the Agency shall enter into the Funding Agreement. The Agency shall not close nor disburse the Development Incentive Construction Grant Funds until the Developer closes the Construction First Lien Financing.

6.03 Notice of Developer's Default.

(a) The Construction First Lien Financing Documents shall include provisions to the effect that if the Construction First Lien Lender declares the Developer to be in default under the Construction First Lien Financing Documents, then such Construction First Lien Lender shall promptly give written notice thereof to the Agency at the Agency's address last given to the Construction First Lien Lender by the Developer prior to such notice; provided, however, the failure of the Developer to provide the Agency's address to the Construction First Lien Lender or for the Construction First Lien Lender to receive any such notice shall not constitute a material breach or default of this Agreement, nor shall it constitute a waiver by or preclude or delay the Agency from proceeding with or enforcing any right or remedy available to it under this Agreement, nor shall it constitute a waiver by or preclude or delay the Construction First Lien Lender from enforcing any right or remedy available to the Construction First Lien Lender. The notice from the Construction First Lien Lender to the Agency shall state the basis of the default by the Developer, shall identify the particular provision thereof under which the Developer is in default and shall include, if any judicial proceeding has been commenced by Construction First Lien Lender against Developer, copies of any pleadings in any proceeding instituted by the Construction First Lien Lender incident thereto.

(b) Any notice from the Agency to Holdings declaring an event of default by Holdings under Section 14.01 hereof or under the Development Incentive Construction Grant Agreement or declaring an event of default by Developer under the Development Incentive Guaranty Agreement shall, at the same time it is provided to Holdings or Developer, be mailed to the Construction First Lien Lender by certified mail, return receipt requested, at its address last given to the Agency by Holdings prior to such notice; provided, however, the failure of the Agency to mail any such notice or the Construction First Lien Lender to receive any such notice shall not constitute a material breach or default of this Agreement by the Agency, nor shall it constitute a waiver by or preclude or delay the Construction First Lien Lender from proceeding with or enforcing any right or remedy available to it under the Construction Financing Documents, nor shall it constitute a waiver by or preclude or delay the Agency from enforcing any rights or remedies available to the Agency under this Agreement. The notice from the Agency to the Construction First Lien Lender shall state the basis of the default, the particular provision of this Agreement or the Development Incentive Construction Grant Agreement under which Holdings is in default, the particular provision of the Guaranty Agreement under which

the Developer is in default and shall include copies of any pleadings in any proceedings instituted by the Agency incident thereto.

6.04 Cure of Holding's/Developer's Default by Construction First Lien Lender.

(a)(1) Following receipt from the Agency of the notice under Subsection 6.03(b) hereof, the Construction First Lien Lender may elect to cure or remedy the default by the Developer or Holdings described in such notice. If the Construction First Lien Lender elects to cure such default, it shall promptly give notice of such election to the Agency and shall be afforded an opportunity to cure Developer's or Holdings' default within a time period which extends an additional sixty (60) days beyond that afforded Developer or Holdings to cure such default or if such default cannot be cured within such period, such longer period of time as may be reasonably required to cure such default.

(a)(2) Provided the Construction First Lien Lender proceeds with due diligence with performance and cure of such default by Holdings and/or Developer, the Agency agrees not to exercise any right or remedy available to it resulting from the Developer's or Holdings' default described in the notice and which the Construction First Lien Lender has elected to cure.

(a)(3) The Construction First Lien Lender shall not be precluded by the terms of this Agreement from curing any such default by Holdings or by the Developer, notwithstanding that an event of default by Holdings as described in Section 14.01 or in the Development Incentive Construction Grant Agreement or by Developer as set forth in the Development Incentive Guaranty Agreement shall have occurred.

(b) If a default by Holdings under this Agreement or under the Development Incentive Construction Grant Agreement or by the Developer under the Development Incentive Guaranty Agreement is timely cured or remedied by the Construction First Lien Lender pursuant to this Section 6.04, then the Agency shall have no rights or remedies against Developer or Holdings with regard to such default, except in such an event Developer or Holdings shall be obligated to pay and the Agency may recover from the Developer or Holdings any reasonable, demonstrable and directly related fees, costs or other expenses (including reasonable attorneys' fees) incurred by the Agency as a result of said default by the Developer or Holdings, excluding consequential punitive or incidental damages, plus interest on such fees, costs or other expenses from the date they were incurred until paid at an annual percentage rate of six (6%) percent. In the event there is a dispute as to the amount of reimbursement owed, such dispute shall be an Arbitrable Event.

(c) If the Construction First Lien Lender elects to cure or remedy Holdings' default hereunder or under the Development Incentive Construction Grant Agreement or by the Developer under the Development Incentive Guaranty Agreement as provided in Subsection 6.04(a) hereof, then its performance must be in accordance with the terms and conditions of this Agreement.

(d) Subsequent to a default under this Agreement or under the Development Incentive Construction Grant Agreement by Holdings or by the Developer under the Development

Incentive Guaranty Agreement, if the Construction First Lien Lender: (i) does not timely elect to cure such default as provided in Subsection 6.04(a) hereof, or (ii) makes such election, but fails to complete such construction by the Completion Date (subject to extensions for Unavoidable Delays) and such failure shall not have been cured within sixty (60) days after written demand by the Agency, then the Agency may proceed under Subsection 6.05 below, Section 14.01(b) below and pursuant to the applicable terms of the Development Incentive Construction Grant Agreement and the Development Incentive Guaranty Agreement.

6.05 Agency Cures Developer's/Holding's Default.

If prior to the Completion Date, Holdings' defaults under this Agreement or under the Development Incentive Construction Grant Agreement or Developer defaults under the Development Incentive Guaranty Agreement, and such default is not timely cured and the Construction First Lien Lender has not commenced a cure, the Agency may cure such default or breach. In such an event, the Agency shall be entitled to reimbursement from Developer or Holdings for any reasonable demonstrable and directly related costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Agency in curing such default (excluding consequential, punitive or incidental damages), together with interest thereon at a per annum rate equal to six (6%) percent, from the date they are incurred until paid, provided, however, that Agency shall not be permitted a double recovery for the same damage. In the event there is a dispute as to the amount of reimbursement owed, such dispute shall be an Arbitrable Event.

ARTICLE 7. CONSTRUCTION OF THE PROJECT.

7.01 Conditions Precedent to Construction.

Subject to the termination of this Agreement pursuant to Section 14.01, the obligation of Holdings to cause the Developer to commence construction on the Commencement Date is subject to the fulfillment of the following conditions:

(a) Approval of the Final Site Plan by the City;

(b) Developer shall have closed on the Construction First Lien Financing; and

(c) The Building Permits for the commencement of construction and all other Permits necessary for construction to commence have been issued.

7.02 Construction of the Project.

(a) Holdings shall cause the Developer to construct improvements on the Project Site substantially in accordance with the Final Site Plan. Subject to Unavoidable Delay and extensions provided by the Executive Director, Holdings shall cause the Developer to commence construction of the improvements no later than 540 days from June 6, 2017. For purposes of this Section 7.02, "commence construction" of the Project means commencement of meaningful physical development, including site work preparatory to vertical construction.

(b)(1) After the Commencement Date, Holdings shall cause Developer to continue, pursue and prosecute the construction of the Project with due diligence to completion by the Completion Date and shall not at any time actually or effectively abandon (or its Contractor actually or effectively abandon) the Project. For purposes of this Subsection (b), "abandon" means to cease any significant construction work for a period in excess of sixty (60) consecutive days, where such cessation is not attributable to Unavoidable Delay, and which cessation effectively thwarts or frustrates advances in the construction of the Project toward completion, including removing all or substantially all the construction work force from the Project Site

(b)(2) All obligations of Holdings or the Developer with respect to commencement, continuation and completion of construction of each part of the Project shall be subject to extensions from time to time for Unavoidable Delay. Holdings shall not be deemed to be in default of this Agreement to the extent construction of the Project, or any part thereof, is not commenced or completed in accordance with the terms of this Agreement by reason of Unavoidable Delay.

(c) Upon issuance of a Building Permit for construction of building, structures or other improvements and prior to the Commencement Date, Holdings shall cause the Developer to deliver to Agency an estimated construction chart showing proposed start and finish dates of the various major subdivisions of work. Holdings shall cause the Developer to provide updated construction charts to the Agency when proposed dates in the estimated construction charts have changed. The estimated construction charts are for informational purposes only.

7.03 Reporting Project Progress. Holdings shall cause the Developer to provide Agency with copies of project process reports that are provided to the Construction First Lien Lender

7.04 Monitor Progress

During all periods of design and construction, the Agency shall have the authority (at no cost to the Developer) to monitor compliance by Holdings and Developer with the provisions of this Agreement and the Final Site Plan. Insofar as practicable, the Agency shall coordinate such monitoring activity with those undertaken by the Construction First Lien Lender so as to minimize duplicate activity. To that end, during the period of construction and with reasonable prior notice to Holdings, Developer and Contractor, representatives of the Agency and the City shall have the right of access to the Project Site and to every structure on the Project during normal construction hours. Agency monitoring of compliance shall not be in lieu of normal engineering or building inspections for any element or sub-element of the Infrastructure Improvements as required by other jurisdictional authorities. Said required inspections shall be coordinated with Holdings, Developer and Contractor. Holdings, Developer and Contractor shall be given the opportunity to be present at any inspections.

7.05 Completion. Issuance of a Certificate of Occupancy with respect to any residential unit or a Certificate of Completion with respect to any commercial space, shall constitute a conclusive determination by the parties hereto of the satisfaction and termination of the obligations of Holdings to cause the Developer to construct the Project.

7.06 Agency Not in Privity with Contractors. Except to the extent provide otherwise herein, the Agency shall not be deemed to be in privity of contract with any Contractor or provider of services with respect to the construction of any part of the Project.

ARTICLE 8. RENTAL REQUIREMENTS

8.01 Workforce Housing Requirements. Holdings shall cause the Developer to rent one hundred percent (100%) of the residential units to tenants that qualify under the Workforce Housing Requirements for a period of ten (10) years from the Completion Date in accordance with the terms of the Regulatory Agreement.

8.02 Rental Reports. Holdings shall cause the Developer to provide to Agency an annual written report ("Rental Report") certifying that all of Developer's tenants meet the Workforce Housing Requirement at the time of initial lease commencement. The first Rental Report shall be submitted within 60 days of Stabilization and each subsequent annual Rental Report shall be submitted by October 31 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 Developer, verifying the complete and accurate nature of the Rental Report. Each Rental Report subsequent to the "sunset" of the Agency shall be submitted to the City. Prior to the execution of the Development Incentive Grant Documents, Agency and Holdings shall agree to the form of the Rental Report to be submitted by Developer and such form shall be attached as Exhibit "D" to this Agreement.

8.03 Default of Regulatory Agreement. Notwithstanding any other provision of this Agreement, any default of the Regulatory Agreement that occurs after the Satisfaction Date and is continuing after any applicable cure period, shall subject Holdings to a potential annual maximum penalty of One Hundred Thousand Dollars ($100,000) as the Agency's sole and absolute remedy. The penalty shall be computed by multiplying the maximum penalty by the percentage of units that are noncompliant. The penalty for noncompliance shall be payable within sixty (60) days of written notice of noncompliance from the Agency and the Regulatory Agreement shall provide that the Agency has the right to file a lien in the amount of the penalty against the Project for such noncompliance.

8.04 No Subordination of Regulatory Agreement. Notwithstanding any other provision of this Agreement, Agency's right in or rights under the Regulatory Agreement, 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, (b) any other liens or encumbrances hereafter affecting, created or suffered by Developer or Holdings on their respective interest, or (c) lease, sublease or any mortgages, liens or encumbrances now or hereafter placed on any interest of any tenants of subtenants. Holdings and Developer shall in no event have any right or authority to create liens or encumbrances on or affecting any interest in or rights of Agency in the Regulatory Agreement.

8.05 Survival . The provisions of this Article 8 shall survive termination or expiration of this Agreement until the expiration or termination of the Regulatory Agreement.

ARTICLE 9. JOB CREATION

9.01 Creation of Jobs. Upon the Completion Date, Holdings shall cause the Developer to thereafter use best efforts to create six (6) Full Time Equivalent (FTE) jobs for residents residing within the Redevelopment Area for job positions related to the administration, leasing, maintenance and operations of the dwelling units portion of the Project. "Best efforts" as used herein is defined as "a state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty of obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, and absence of intent to defraud or to seek unconscionable advantage." Holdings shall cause the Developer to also use commercially reasonable efforts to encourage the Project's commercial tenants to provide FTE job opportunities to 12 residents of the Redevelopment Area.

9.02 Jobs Report . Holdings shall cause the Developer to provide to the Agency an annual written report of the FTE hours ("Jobs Report") for the immediate previous calendar year no later than four hundred twenty five (425) days after the Completion Date and by each October 31st thereafter for a period not to exceed the earlier of (i) the life of the Agency or (ii) the expiration or termination of the Regulatory Agreement. Each Jobs Report shall be shall be certified by a third party State Florida registered certified public accountant or consultant, chosen by Developer, verifying the complete and accurate nature of the Jobs Report. Prior to the execution of the Development Incentive Grant Documents, Agency and Holdings shall agree to the form of the Jobs Report to be submitted by Developer and such form shall be attached as Exhibit "E" to this Agreement

9.03 Survival . The provisions of this Article 9 shall survive termination or expiration of this Agreement until the earlier of (i) the expiration of the life of the Agency or (ii) the expiration or termination of the Regulatory Agreement.

ARTICLE 10. INDEMNIFICATION.

10.01 Indemnification.

(a) For consideration of $10.00 and other good and valuable consideration herein provided, the receipt of which is hereby acknowledged by Holdings, Holdings agrees to indemnify, defend and hold harmless, the Agency, its respective agents, officers, or employees from any and all liabilities, damages, penalties, judgments, claims, demands, costs, losses, expenses or reasonable attorneys' fees which may be imposed upon or assessed against Agency both at the trial level and through appellate proceedings, for personal injury, bodily injury, death or property damage arising out of, or by reason of any act or omission of Holdings, its agents, employees or contractors arising out of, in connection with or by reason of, the performance of any and all of Holdings' obligations covered by this Agreement, or which are alleged to have arisen out of, in connection with or by reason of, the performance of any and all of Holdings' obligations covered by this Agreement. In the event any action or proceeding shall be brought against the Agency by reason of any such claim, Holdings shall defend such claim at Holdings' expense by counsel selected by Holdings, which counsel shall be reasonably satisfactory to the Agency.

(b) Holdings' indemnification under subsection (a) shall survive termination or expiration of this Agreement for the applicable statute of limitations period relating to the

occurrences, act or omission at issue, but shall apply only to occurrences, acts, or omissions that arise on or before the earlier of the Termination Date or the Completion Date.

(c) Holdings' indemnity hereunder is in addition to and not limited by any insurance policy and is not and shall not be interpreted as an insuring agreement between or among the parties to this Agreement, nor as a waiver of sovereign immunity for any party entitled to assert the defense of sovereign immunity.

10.02 Limitation of Indemnification.

Notwithstanding anything to the contrary contained herein, with respect to the indemnification by Holdings as set forth in Section 10.01, the following shall apply:

(a) Holdings shall not be responsible for damages that could have been, but were not, mitigated by the Agency;

(b) Holdings shall not be responsible for that portion of any damages caused by the negligent or willful acts or omissions of the Agency;

(c) there shall be no obligation to indemnify hereunder in the event that the Agency (1) shall have effected a settlement of any claim without the prior written consent of Holdings, or (2) shall not have subrogated Holdings to the Agency's rights against any third party by an assignment to Holdings of any cause or action against such third party.

ARTICLE 11. REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING DEVELOPER AND HOLDINGS .

11.01 Representations and Warranties Regarding Developer .

Holdings represents and warrants to the Agency that each of the following statements is currently true and accurate and agrees the Agency may rely upon each of the following statements:

(a) Developer is a Florida 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 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.

(b) To the extent such documents presently exist in form acceptable to the Agency and Developer, each document contemplated or required by this Agreement to which Developer 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 Developer, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof:

(1) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein.

(2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on Developer, 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 Developer under any indenture, mortgage, deed of trust, bank loan or credit agreement, the Developer's Articles of Organization, or, any other agreement or instrument to which the Developer is a party or by which Developer may be bound.

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

(d) There are no pending or, to the knowledge of Developer, threatened actions or proceedings before any court or administrative agency against Developer, which question the validity of 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 Developer.

(e) Developer has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by Developer 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 Developer.

(f) As of the Closing Date and through the Completion Date, Developer shall use its commercially reasonable efforts to maintain the financial capacity necessary to carry out its obligations and responsibilities in connection with the development of the Project as contemplated in this Agreement.

(g) The principal place of business and principal executive offices of Developer are in the City of Ft. Lauderdale, Broward County, Florida.

(h) At the time of submitting its Proposal, Developer had, and will continue to have and at all times through the Completion Date, will maintain the experience, expertise, and knowledge to develop, cause the construction, and complete the Project and oversee and manage the design, planning, construction, completion, marketing and opening for business of the Project.

11.02 Representations and Warranties Regarding Holdings .

Holdings represents and warrants to the Agency that each of the following statements is currently true and accurate and agrees the Agency may rely upon each of the following statements:

(a) Holdings is a Florida corporation duly incorporated and validly existing under the laws of the State of Florida, has all requisite corporate 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.

(b) This Agreement and, to the extent such documents presently exist in form acceptable to the Agency and Holdings, each document contemplated or required by this Agreement to which Holdings 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 Holdings, 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.

(2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on Holdings, 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 Holdings under any indenture, mortgage, deed of trust, bank loan or credit agreement, Holdings' Articles of Incorporation, or, any other agreement or instrument to which Holdings is a party or by which Holdings may be bound.

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

(d) There are no pending or, to the knowledge of Holdings, threatened actions or proceedings before any court or administrative agency against Holdings, 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 Holdings.

(e) Holdings has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by Holdings 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 Holdings.

11.03 Covenants.

Holdings covenants with the Agency that until the earlier of the Termination Date or the Satisfaction Date, as the case may be:

(a) Holdings shall timely perform or cause to be performed all of the obligations contained herein which are the responsibility of Holdings to perform and which would materially interfere with the practical realization of the benefit of this Agreement to the Agency and the community if not performed by Holdings.

(b) Holdings shall assist and cooperate with the Agency to accomplish the development of the Project by Developer in substantial accordance with the Plan, the Proposal, this Agreement, and the Final Site Plan and will not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto, the violation of which will cause a material adverse effect on the development of the Project.

(c) Holdings shall comply and shall cause Developer to comply with all material provisions of the Development Incentive Grant Documents.

(d) Subsequent to the Closing Date, Holdings and the Developer, shall use their respective commercially reasonable efforts to maintain the financial capability to develop, construct, complete and market the Project and shall promptly notify the Agency of any event, condition, occurrence, or change in its financial condition which adversely affects, or with the passage of time is likely to adversely affect, the financial capability of Holdings or Developer to successfully and completely develop, construct and complete the Project as contemplated hereby.

(e) Each of Holdings and the Developer shall promptly cause to be filed when due all federal, state, local and foreign tax returns required to be filed by it, and shall promptly pay such taxes prior to delinquency thereof.

(g) Provided all conditions precedent thereto have been satisfied or waived, Holdings shall cause the Developer to design, construct and complete the Project such that it is substantially complete as provided in this Agreement no later than the Completion Date, subject to extensions of time for Unavoidable Delay and other extensions as may be provided for in this Agreement.

(h) Holdings shall cause the Developer to maintain all insurance required under the Development Incentive Construction Grant Agreement, to the extent the Agency has an insurable interest.

ARTICLE 12. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AGENCY.

12.01 Representations and Warranties. The Agency represents and warrants to Holdings that each of the following statements is currently true and accurate and agrees that Holdings may rely on each of the following statements:

(a) The Agency is a validly existing body corporate and politic of the State of Florida, is the duly created community redevelopment agency of the City under the Florida Community Redevelopment Act, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party.

(b) This Agreement and, to the extent such documents presently exist in form acceptable to the Agency and Holdings, each document contemplated or required by this Agreement to which the Agency is or will be a party, have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by the Agency, 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,

(2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Agency, or

(3) contravenes or results in any breach of, or default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the Agency under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Agreement, any other agreement or instrument to which the Agency is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the Agency outstanding on the Effective Date.

(c) This Agreement and, to the extent such documents presently exist in form accepted by the Agency and Holdings, each document contemplated or required by this Agreement to which the Agency is or will be a party constitute, or when entered into will constitute, legal, valid and binding obligations of the Agency enforceable against the Agency in accordance with the terms thereof, except as such enforceability may be limited by public policy or 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.

(d) As of the Effective Date there are no pending or threatened actions or proceedings before any court or administrative agency against the Agency or against any officer of the Agency which question the validity of any document contemplated hereunder or which are likely

in any individual case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of the Agency.

(e) Agency agrees that as of the Effective Date, provided tax increment funds are received from the taxing authorities, it has the financial capacity to carry out its obligations and responsibilities as contemplated in this Agreement.

12.02 Covenants. The Agency covenants with Holdings that until the earlier of the Termination Date or the Satisfaction Date, as the case may be:

(a) The Agency shall timely perform or cause to be performed all of the obligations contained herein which are the responsibility of the Agency to perform.

(b) During each year that this Agreement and the obligations of the Agency under this Agreement shall be in effect, the Agency shall cause to be executed and to continue to be in effect those instruments, documents, certificates, permits, licenses and approvals, and shall cause to occur those events contemplated by this Agreement that are applicable to and are the responsibility of the Agency.

(c) The Agency shall to the extent permitted by law assist and cooperate with Holdings and the Developer to accomplish the development of the Project in accordance with this Agreement and the Final Site Plan, will carry out its duties and responsibilities contemplated by this Agreement, and will not violate any laws, ordinances, rules, regulations, orders, contracts, or agreements that are or will be applicable thereto, and, to the extent permitted by law, the Agency will not enact or adopt or urge or encourage the adoption of any ordinances, resolutions, rules, regulations or orders or approve or enter into any contracts or agreements, including issuing any bonds, notes, or other forms of indebtedness, that will result in any provision of this Agreement to be in violation thereof.

ARTICLE 13. RESTRICTIONS ON ASSIGNMENT AND TRANSFER.

13.01 Representations as to Development.

Holdings represents and agrees that its undertaking pursuant to this Agreement, are, and will be used, for the purpose of development of the Project Site as set forth in the Agreement and not for speculation in land holding. Holdings further recognizes the importance of the development of the Project Site to the general welfare of the community, and the substantial financial and other public commitments that have been made available by law and through the assistance of local government for the purpose of making such development possible. Holdings further acknowledges that the qualifications and identity of Holdings, the Developer, the Principal and their respective business experience, reputation, financial capacity to carry out the obligation and responsibilities in connection with the Project and their respective development track record within the community is of particular concern to the community and the Agency because it is by such experience, financial capacity, qualifications, reputation, past performance and identity, now in effect, that the Agency is entering into this Agreement with Holdings for the

benefit of the community and the Plan and, in so doing, is further willing to accept and rely on the obligations of Holdings for the faithful performance of all undertakings and covenants described in this Agreement.

13.02 Restriction on Transfer of Interests Prior to the Satisfaction Date.

In reliance upon Section 13.01 above, Holdings agrees that prior to the Satisfaction Date, without the prior approval of the Agency, which such approval shall be governed by the criteria set forth in Section 13.04(a) below,

(1) There shall be no sale or transfer of stock or memberships nor the entry of any voting trusts or shareholder or membership agreements or any other similar devices or arrangements within Holdings or Developer which would result in the transfer of control of Holdings or the Developer from the Principal to another Person; and

(2) There shall be no sale or transfer of stock or membership nor the entry of any voting trust or shareholder or membership agreements or any other similar devices or arrangements within any corporate member of Holdings or Developer which would result in the transfer of control of Holdings or the Developer from the Principal to another Person.

However, a transfer of control resulting from the death or incapacity of a Principal or transfers made for estate planning purposes shall not constitute an event of default under this Agreement.

13.03 Notification to Agency as to Ownership Changes.

In order to assist in the effectuation of the purposes of this Agreement, Holdings agrees that during the period between the Effective Date and the Satisfaction Date that:

(a) Holdings shall, at such time or times as the Agency may request, furnish Agency with a complete statement, under oath, setting forth all of shareholders of Holdings and the members of the Developer, the proportion of the shares or membership interests held, and in the event any other parties have a beneficial interest of 10% or more in any of the corporate members in the Developer or Holdings, their names and the extent of such interest, all as determined or indicated by the records of the Developer, Holdings and their corporate members; and

(b) Holdings will promptly notify Agency of any material changes in the legal or beneficial ownership control over Holdings and the Developer.

13.04 Restrictions On Transfer, Assignment and Encumbrance of Project Site and Assignment of Agreement.

In light of Section 13.01 above, Holdings represents and agrees for itself and its successors and assigns (except as so authorized by the provisions of this Agreement) that it will not, prior to the Satisfaction Date, as to a proposed assignment or transfer of the Project Site, permit the Developer to make or create, or suffer to be made or created, any total or partial sale,

assignment, conveyance, or master lease (which will not preclude Developer from selling or leasing individual units in the ordinary course of business without the approval of the Agency), or any trust or power, sale, transfer, or encumbrance other than Construction First Lien Financing or other financing provided or approved by the Principal (hereinafter, collectively, known as "Transfer") in any other mode or form or with respect to this Agreement or the Project Site, without first obtaining the prior written approval of the Agency, which approval shall not be unreasonably withheld.

(a) The Agency shall be entitled to require, except as may otherwise be provided in this Agreement, as conditions to granting any such prior approval, that:

(1) Any proposed successor Developer or proposed successor Principal therein shall have the business experience and reputation, development track record and sufficient financial capacity to carry out the obligations under this Agreement, as determined, in the reasonable discretion of the Agency.

(2) Any proposed successor Developer, by instrument in writing satisfactory to the Agency, in its reasonable discretion, shall, for itself and its successors and assigns expressly assume all of the obligations of Developer under this Agreement and shall agree to abide by and be subject to all of the terms, conditions, obligations, reservations and restrictions ("terms and conditions") to which Developer is subject.

(3) There shall be submitted to the Agency for review all instruments and other legal documents reasonably necessary to assure compliance with Section 13.04(a)(1).

(b) The provisions of this Article respecting restrictions on Transfers shall not be construed in such a manner as to preclude transfer to the Construction First Lien Lender and its successors in interest. The term "successors in interest" is intended to include not only successors in interest to the Construction First Lien Lender, but also any transferee or assignee of the Construction First Lien Lender, including but not limited to purchasers at a foreclosure sale or acquisition by way of deed in lieu of foreclosure.

13.05 Survival. The provisions of this Article 13 shall survive termination or expiration of this Agreement until the Satisfaction Date.

ARTICLE 14. DEFAULT; TERMINATION.

14.01 Default by the Developer.

(a) On or after the Closing Date through and including the Satisfaction Date, there shall be an "event of default" by Holdings under this Agreement upon the occurrence of any one or more of the following:

(1) Developer or Holdings shall fail to perform or comply with any material provision of this Agreement applicable to it within the time prescribed therefor and such failure is likely to have a material adverse effect on the Developer or Holdings; or

(2) Developer or Holdings shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation or shall file an answer admitting, or shall fail reasonably to contest, the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Developer or Holdings of any material part of such entity's properties; or

(3) Within ninety (90) days after the commencement of any proceeding by or against Developer or Holdings seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed or otherwise terminated, or, if within ninety (90) days after the appointment without the consent or acquiescence of Developer or Holdings of any trustee, receiver or liquidator of any of such entities or of any material part of any of such entity's properties, then such appointment shall not have been vacated; or

(4) Developer or Holdings shall fail to comply with the material terms of the Regulatory Agreement, the Developer Incentive Grant Documents or the Construction First Lien Financing Documents..

(b)(1) If an event of default by Holdings described in subsection (a) above shall occur, the Agency shall provide written notice thereof to Holdings, as applicable, and,

(i) if such event of default shall not be cured by Developer or Holdings within ninety (90) days after receipt of the written notice from the Agency specifying in reasonable detail the event of default by Holdings; or

(ii) if such event of default is of such nature that it cannot be completely cured within such time period, then if Developer Holdings shall not have commenced to cure such default within such time period and shall not continue to diligently prosecute such cure to completion within such reasonable longer period of time as may be necessary,

then the Agency, for events of default described in subsection (a) above, may, but subject to Sections 6.03 and 6.04 hereof, (A) pursue any and all legal remedies (excluding therefrom the right to pursue consequential punitive and incidental damages and "loss of projected tax revenue"), equitable remedies of specific performance, injunctive relief or rescission to which the Agency is entitled or (B) require the return of the Development Incentive Grant Funds held

by the Funding Agent and the repayment of the Outstanding Balance of the Development Incentive Construction Grant.

(2) In the event Developer or Holdings commences to cure a default but finds that the default is of such a nature that it cannot be completely cured within time provided in subsection (b)(1) above and Developer or Holdings intends to continue to diligently prosecute such cure to completion, then Holdings shall be obligated to provide notice to Agency as to the time frame reasonably needed to cure such default, which such time frame shall be subject to the Agency's approval in its reasonable discretion. If Developer or Holdings has failed to complete the cure by the end of the time frame designated as the reasonable additional time needed to cure, the Agency shall be permitted to pursue any and all legal or equitable remedies to which it is entitled, as limited by subsection (b)(1) above.

(c) In addition to any other rights of termination provided elsewhere in this Agreement, this Agreement may be terminated by the Agency or Holdings after the occurrence of any of the following events or conditions:

(1) The entire Project Site is taken by the exercise of the power of eminent domain by a governmental authority (other than the City or the Agency) or a Person entitled to exercise such power or benefiting therefrom, or such part of the Project Site is taken by the power of eminent domain so as to render the Project Site unusable for its intended uses or economically unviable as contemplated by this Agreement, it being the intent of the parties that in the event a dispute arises as to whether a "taking" renders the Project unusable for its intended uses or economically unviable as contemplated by this Agreement, that such dispute shall be an Arbitrable Event;

(2) The appropriate governmental authority (including the City in exercise of its governmental and regulatory authority and responsibility), upon petition by Developer, denies or fails to:

(i) issue Building Permits where the application meets all requirements of the Codes and the terms of this Agreement,

(ii) approve a rezoning of the Project Site to a zoning classification consistent with this Agreement and the Conceptual Site Plan (if applicable), or

(iii) approve any other land use approval necessary to commence construction of the Project on the Project Site where the application meets all requirements of the law, and Developer has proceeded diligently, expeditiously and in good faith to obtain such approval, permits or other necessary actions including exhaustion of all administrative remedies applicable thereto through the second level of certiorari review.

(d) In the event of a termination pursuant to Subsection 14.01(c) above, neither Holdings nor the Agency shall be obligated or liable one to the other in any way, financially or

otherwise for any claim or matter arising from or as a result of this Agreement or any actions taken by Holdings and the Agency, or any of them, hereunder or contemplated hereby, and each party shall be responsible for its own costs.

14.02 Agreement Termination .

(a) In the event of a termination of this Agreement pursuant to the terms of Section 14.01(c) above for any reason prior to the Satisfaction Date, this Agreement shall no longer be of any force and effect except for those provisions hereof which expressly survive termination, the rights, duties and obligations of the parties hereto shall have been terminated and released (subject to those surviving provisions hereof) and, if the termination is prior to the Closing Date, then the Project Site shall no longer be subject to any restrictions, limitations or encumbrances imposed by this Agreement. However, if the termination is after the Closing Date and the termination is as to anything less than the entire Project Site, then such termination shall only be effective as to the remaining portion of the Project Site. Nothing in this Section shall prohibit Developer from completing any Building on which City has issued Building Permits and Developer commenced construction pursuant thereto.

ARTICLE 15. INTENTIONALLY OMITTED.

ARTICLE 16. ARBITRATION

16.01 Agreement to Arbitrate. Any disagreement or dispute between the parties which has been specifically delineated in this Agreement as arbitrable may be arbitrated in the manner set forth in Article 16, provided no judicial or administrative action or proceeding is pending with regard to the same matter. Arbitration is limited to those disagreements or disputes which have specifically been delineated as an Arbitrable Event herein or which the parties mutually agree to be an Arbitrable Event. All parties hereby agree such arbitration, once commenced, shall be the exclusive procedure for resolving such disagreement or dispute and agree to be bound by the result of any such arbitration proceeding unless all parties mutually agree to terminate such proceedings prior to decision. If any arbitration proceeding under this Article adversely affects the performance of any party hereunder, then any time periods provided herein for such performance by that party shall be tolled during the pendency of the arbitration proceeding affecting such performance.

16.02 Appointment of Arbitrators.

(a)(1) Unless accelerated arbitration as provided in Section 16.06 hereof is invoked, any party invoking arbitration herewith shall, within five (5) days after giving notice of impasse in the dispute resolution process or upon following the expiration of the time period for such dispute resolution occurrence of the event permitting arbitration to be invoked, give written notice to that effect to the other parties, and shall in such notice appoint a disinterested person who is on the list of qualified arbitrators maintained by the American Arbitration Association or a disinterested person not on such list to whom an objection is not made by any other party hereto within five (5) days of receipt of the notice of such appointment as the arbitrator or, if more than one (1) arbitrator is to be appointed, as one of the arbitrators.

(a)(2) Within ten (10) days after receipt of the notice described in Section 16.02(a)(1), the other parties shall by written notice to the original party acknowledge that arbitration has been invoked as permitted by this Agreement, and shall either accept and approve the appointment of such individual set forth in the original notice as a sole arbitrator or shall appoint one (1) disinterested person per party of recognized competence in such field as an arbitrator.

(b)(1) If two (2) arbitrators are appointed pursuant to Subsection (a) above, the arbitrators thus appointed shall appoint a third disinterested person who is on the list of qualified arbitrators maintained by the American Arbitration Association, and such three (3) arbitrators shall as promptly as possible determine such matter.

(b)(2) If the second arbitrator shall not have been appointed as provided in Subsection (a), the first arbitrator shall, after ten (10) days' notice to the parties, proceed to determine such matters.

(b)(3) If the two (2) arbitrators appointed by the parties pursuant to Subsection (a) shall be unable to agree within fifteen (15) days after the appointment of the second arbitrator upon the appointment of the third arbitrator, they shall be given written notice of such failure to agree to the parties and, if the parties then fail to agree upon the selection of such third arbitrator within fifteen (15) days thereafter, then within ten (10) days thereafter each of the parties upon written notice to the other parties hereto may request the appointment of a third arbitrator by the office in or for the State of Florida (or if more than one office, the office located closest to the City) of the American Arbitration Association (or any successor organization thereto) or, in its absence, refusal, failure or inability to act, request such appointment of such arbitrator by the Circuit Court in and for Broward County, or as otherwise provided in Chapter 682, Florida Statutes, known and referred to as the Florida Arbitration Act, as amended.

16.03 General Procedures. In any arbitration proceeding under this Article, those parties appointing arbitrators shall each be fully entitled to present evidence and argument to the sole arbitrator or panel of arbitrators. The arbitrator or panel of arbitrators shall only interpret and apply the terms of this Agreement and may not change any such terms, or deprive any party to this Agreement of any right or remedy expressed or implied in this Agreement, or award any damages or other compensation to any party hereto. The arbitration proceedings shall follow the rules and procedures of the American Arbitration Association (or any successor organization thereto) unless specifically modified by this Agreement, or as then agreed to by the parties hereto.

16.04 Decision of Arbitrators.

(a) If any decision reached by arbitration as provided in this Article requires performance by Holdings, Holdings covenants and agrees to comply with any decision of the arbitrator(s) promptly after the date of receipt by Holdings of such decision, and to continue such performance to completion with due diligence and in good faith.

(b) If any such decision requires performance by the Agency, the Agency covenants and agrees to comply promptly with any decision reached by arbitrator(s) promptly after the date

of receipt by the Agency of such decision, and to continue such performance to completion with due diligence and in good faith.

(c) Nothing in this Article, nor in any arbitration decision rendered under this part, shall be construed to require any payment by one party to the other not otherwise specifically provided herein.

(d) No arbitration decision under this Article shall be deemed to be binding upon the City, unless the City becomes the assignee of the Agency.

16.05 Expense of Arbitration. The expenses of any arbitration proceeding pursuant to this Article shall be borne equally by the parties to such proceeding, provided, however, for the purpose of this Section 16.05 "expenses" shall include the fees and expenses of the arbitrators and the American Arbitration Association with respect to such proceedings, but shall not include attorneys' fees or expert witness fees, or any costs incurred by attorneys or expert witnesses, unless (and to the extent) agreed to by the parties to such proceeding, which in the absence of such Agreement shall be the responsibility of the party incurring such fees or costs.

16.06 Accelerated Arbitration.

(a)(1) If any of the parties to any arbitration proceeding under this Article determines the matter for arbitration should be decided on an expedited basis, then after an initial election to invoke arbitration pursuant to Section 16.02 hereof has been made, either party to such proceeding may invoke accelerated arbitration by giving notice thereof to the other parties no later than three (3) days after arbitration has been initially invoked and the other parties do not object within three (3) days thereafter.

(a)(2) Accelerated arbitration, for purposes of this Section 16.06, shall be accomplished by either party notifying the American Arbitration Association (or any successor organization thereto) that the parties have agreed to use a single arbitrator, qualified to decide the matter for arbitration, to be appointed by the American Arbitration Association (or any successor organization thereto) with the consent of the parties to such proceeding within three (3) days after receipt of the request and to decide such matter within five (5) days after such appointment.

(a)(3) If an arbitrator is not so appointed with consent of the parties to the proceeding within three (3) days after the notice referred to in Paragraph (2) is received by the American Arbitration Association, the accelerated proceeding under this Section 16.06 shall terminate and the procedures otherwise set forth in this Article 16 shall apply, unless the parties mutually agree to an extension of such time period.

(b) Holdings and the Agency hereby agree to use such accelerated procedure only when reasonably necessary, to not contest the appointment of the arbitrator or his or her decision except as may be permitted by law, and that all other provisions of this Article, except as are in conflict with this Section 16.06, remain in effect and applicable to an accelerated arbitration proceeding.

16.07 Applicable Law. To the extent not inconsistent with this Article, any arbitration proceeding under this Article shall be governed by the provisions of Chapter 682, Florida Statutes, as amended, known and referred to as the Florida Arbitration Code.

16.08 Arbitration Proceedings and Records. Any arbitration hearing under this Article shall be considered a meeting subject to Section 286.011, Florida Statutes, and shall be open to any member of the public. Unless otherwise rendered confidential pursuant to or by the operation of any applicable law or order (other than an order by a sole arbitrator or panel of arbitrators acting under this part), the record of such proceedings shall be a public record under Chapter 119, Florida Statutes.

ARTICLE 17. INTENTIONALLY OMITTED

ARTICLE 18. FIRE OR OTHER CASUALTY; CONDEMNATION.

18.01 Loss or Damage to Project. Subject to the terms of the Construction First Lien Financing Documents, Holdings shall cause Developer to diligently commence and complete the reconstruction or repair of any loss or damage caused by fire or other casualty to each and every part of the Project in substantial conformance with the Final Site Plan for such reconstruction or repairs, provided the Project or portion thereof can be restored and be commercially feasible for its intended use as contemplated by this Agreement after the loss or damage; and, provided further, that nothing contained herein shall obligate Holdings to cause Developer to restore any owner's or tenant's leasehold improvements.

18.02 Partial Condemnation of Project or Project Site; Application of Proceeds. Subject to the terms of the Construction First Lien Financing Documents, in the event that part, but not all, of the Project Site shall be taken by the exercise of the power of eminent domain at any time during the term set forth in Section 18.01 above, the compensation awarded to and received by Developer shall be applied first to the restoration of the Project or portion thereof, provided the Project or portion thereof can be restored and be commercially feasible for its intended use as contemplated by this Agreement after the taking, and, if not, can be retained by Developer.

ARTICLE 19. PROJECT INSURANCE PROCEEDS.

19.01 Project Insurance Proceeds.

(a) For the term beginning with the Closing Date until the Satisfaction Date (the "Term") whenever the Project, or any part thereof, shall have been damaged or destroyed, Holdings shall cause Developer to promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims that may have arisen against insurers or others based upon such damage or destruction.

(b) Subject to the terms of the Construction First Lien Financing Documents, Holdings agrees that all proceeds of property or casualty insurance, for casualty suffered during the Term received by Developer as a result of such loss or damage shall be used for payment of the costs of the reconstruction or repair of the Project to the extent necessary to repair or reconstruct the Project.

19.02 Notice of Loss or Damage to Project. Holdings shall cause Developer to promptly give the Agency written notice of any significant damage or destruction to the Project stating the date on which such damage or destruction occurred, the expectations of Developer as to the effect of such damage or destruction on the use of the Project, and the proposed schedule, if any, for repair, or reconstruction of the Project.

ARTICLE 20 MISCELLANEOUS

20.01 Notices.

All notices under this Agreement to be given by one party to the other shall be in writing and the same shall only be deemed given if transmitted as follows:

(a) By facsimile, certified mail, return receipt requested, by courier or overnight service or personal hand-delivery to the following addresses:

HOLDINGS:

613 NW 3rd Ave Holdings, Inc.
414 North Andrews Avenue
Fort Lauderdale, FL 33301
Attn: Jeff Burns
e-mail: JBurns@AffiliatedCos.com

With a copy to:

Stearns Weaver Miller Weissler Alhadeff & Sitterson
150 West Flagler Street
Miami, Florida 33130
Attn: Brian McDonough, Esq.
Email: bmcdonough@stearnsweaver.com
Fax: 305-789-2637

AGENCY:

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

With a copy to:

City of Fort Lauderdale
City Attorney's Office
100 North Andrews Avenue
Fort Lauderdale, Florida
Attn: Lynn Solomon, Esq.
e-mail: LSolomon@fortlauderdale.gov
Fax: (954) 828-5915

AND

J. Michael Haygood, Esq.
J. Michael Haygood, P.A.
701 Northpoint Parkway
Suite 209
West Palm Beach, Florida 33401
e-mail: mhaygood@haygoodlaw.com
Fax: (561) 471-8055

Or to such other addresses as the parties may be writing designate to the other party from time to time. All notices, demands, deliveries, or other communications hereunder shall be deemed to have been given or served for all purposes hereunder on the day a facsimile is sent with confirmation of its sending, forty-eight (48) hours after the time that such communication was deposited in the United States mails (Saturdays, Sundays and legal holidays excluded), postage prepaid, in the manner aforesaid, one (1) day after delivery to a recognized overnight courier service, or upon delivery, whichever event shall first occur.

(b) Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it may be changed) shall be deemed to have been an effective delivery as provided in this Section 21.01.

20.02 Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20.03 Applicable Law and Construction. The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. This Agreement has been negotiated by the Agency and Holdings, and the Agreement, including without limitation, the Exhibits, shall not be deemed to have been prepared by the Agency or Holdings, but by all equally.

20.04 Venue; Submission to Jurisdiction.

(a) For purposes of any suit, action or other proceeding arising out of or relating to this Agreement, the parties hereto do acknowledge, consent, and agree that venue thereof is Broward County, Florida.

(b) Each party to this Agreement hereby submits to the jurisdiction of the State of Florida, Broward County and the courts thereof and to the jurisdiction of the United States District Court for the Southern District of Florida, for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement and hereby agrees not to assert by way of

a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.

(c) If at any time during the term of this Agreement, Holdings is not a resident of the State of Florida or has no office, employee, agency or general partner thereof available for service of process as a resident of the State of Florida, or if any permitted assignee thereof shall be a foreign corporation, partnership or other entity or shall have no officer, employee, agent or general partner available for service of process in the State of Florida, Holdings hereby designates the Secretary of State, State of Florida, its agent for, the service of process in any court.

20.05 Captions. The article and section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any article, section, subsection, paragraph or provision hereof.

20.06 Holidays. It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday observed in the City, it shall be postponed to the next following business day.

20.07 Exhibits and Attachment. Each Exhibit and Attachment referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto shall be treated as if they are part of this Agreement.

20.08 No Brokers. The Agency and Holdings hereby represent, agree and acknowledge that no real estate broker or other person is entitled to claim or to be paid a commission as a result of the execution and delivery of this Agreement, including any of the Exhibits and Attachment.

20.09 Not an Agent of City or Agency. During the term of this Agreement, neither Developer nor Holdings hereunder shall be an agent of the City or the Agency, with respect to any and all services to be performed by Holdings or Developer (and any of its agents, assigns, or successors) with respect to the Project.

20.10 No Recording. Neither this Agreement nor a short-form Memorandum of Agreement may be recorded in the Public Records of Broward County, Florida.

20.11 Public Purpose. The parties acknowledge and agree that this Agreement satisfies, fulfills and is pursuant to and for a public purpose and municipal purpose and is in the public interest, and is a proper exercise of the Agency's power and authority under the Act.

20.12 No General Obligation. In no event shall any obligation of the Agency under this Agreement be or constitute a general obligation or indebtedness of the City or the Agency, a pledge of the ad valorem taxing power of the City or the Agency or a general obligation or indebtedness of the City or the Agency within the meaning of the Constitution of the State of Florida or any other applicable laws, but shall be payable solely from legally available revenues and funds. Neither Holdings nor any other party under or beneficiary of this Agreement shall ever have the right to compel the exercise of the ad valorem taxing power of the City, the Agency or any other governmental entity or taxation in any form on any real or personal property to pay the City's or the Agency's obligations or undertaking hereunder.

20.13 Disclaimer As To Governmental Authority. Nothing in this Agreement shall be construed, interpreted or applied in such a manner as will constitute an undelegatable contracting away or waiver of any governmental power by the Agency or the City.

20.14 Term; Expiration .Except as may be expressly specified otherwise herein, if not earlier terminated as provided in Article 14, this Agreement shall expire upon the Satisfaction Date. Thereafter, this Agreement shall no longer be of any force and effect, except as to such provisions of the Agreement which expressly survive expiration or termination thereof.

20.15 Approvals Not Unreasonably Withheld. The parties hereto represent that it is their respective intent as of the Effective Date and do covenant and agree in the future that all approvals, consents, and reviews will be undertaken and completed as expeditiously as possible, in good faith, and will not be arbitrarily or unreasonably withheld, unless otherwise expressly authorized by the terms of this Agreement. If a matter to be consented to or approved by the Agency, requires the consideration of the Agency's Board of Directors (whether pursuant to this Agreement or the written opinion of the Agency's General Counsel), then, provided Agency gives Holdings notice of such requirement within the time period provided for such consent or approval, such matter shall not be deemed approved or consented to unless the Agency shall fail to respond to Holdings' request by the date which is three (3) days after the next Regular Scheduled Meeting of the Agency's Board of Director's which occurs no later than the next Regular Scheduled Meeting following receipt of such request (but in no event not later than forty five days following such request).

20.16 Time of the Essence. Time is of the essence in the performance of all obligations and all approvals or reviews contemplated by this Agreement.

20.17 Standing and Enforceability. The parties stipulate and agree that for enforcement purposes during the term of this Agreement only Holdings, Agency, and, if specifically permitted by this Agreement, their successors and assigns, shall have standing. No rights of enforcement of this Agreement shall accrue to or vest in any other person, entity or governmental body.

20.18 Nonrecourse. In the event of any default or breach by Developer with respect to any of the terms, covenants and conditions of this Agreement, no property of the Principal shall

be subject to levy, execution or other enforcement procedures for the satisfaction of Agency's remedies.

20.19 **Audit Right and Retention of Records** Agency shall have the right to audit the books, records, and accounts of Developer that are related to this Agreement. Developer shall keep, and such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of Developer 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, Developer shall make same available at no cost to City in written form.

Developer shall preserve and make available, at reasonable times for examination and audit by 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, 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 has been initiated and audit findings have 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. If the Florida public records law is determined by City to be applicable to Developer shall comply with all requirements thereof; however, Contractor and Contractor's subcontractors shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Agency's disallowance and recovery of any payment upon such entry.

The Developer shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

20.20 **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. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, 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.

Developer and all contractors or subcontractors (the "**Contractor**") engaging in services in connection with construction and/or maintenance of the Project shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by Agency in order to perform the services rendered.

(b) Upon request from Agency's custodian of public records, provide 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, Florida Statutes (2016), as may be amended or revised, or as otherwise provided by law.

(c) 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 Developer for the duration of the Agreement and as to Contractor for the duration of the contract

term and following completion of said contract if Contractor does not transfer the records to Agency.

(d) Upon completion of said construction or maintenance at the Project, transfer, at no cost, to Agency all public records in possession of Developer or Contractor or keep and maintain public records required by Agency to perform the service. If Contractor transfers all public records to Agency upon completion of the Project, Developer and Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Developer or Contractor keeps and maintains public records upon completion of the Project, Developer and Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Agency, upon request from Agency's custodian of public records, in a format that is compatible with the information technology systems of Agency.

(e) If Developer or any contractor has questions regarding the application of Chapter 119, Florida Statutes, to Developer or Contractor's duty to provide public records relating to its contract, 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.

20.21 Non-Action on Failure to Observe Provisions of this Agreement. The failure of the Agency or Holdings to promptly or continually insist upon strict performance of any term, covenant, condition or provision of this Agreement, or any Exhibits or Attachments hereto, or any other agreement, instrument or document of whatever form or nature contemplated hereby shall not be deemed a waiver of any right or remedy that the Agency or Holdings may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such term, covenant, condition or provision.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have set their hands and their respective seals affixed as of the 13 day of October 2017.

FORT LAUDERDALE COMMUNITY
REDEVELOPMENT AGENCY

_____
Lee R. Feldman, Executive Director

FOR

ATTEST:

By:_____
Jeffrey A. Modarelli, CRA Secretary

APPROVED AS TO FORM
Cynthia A. Everett, General Counsel:

By:_____
Lynn Solomon
Assistant General Counsel

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 13 day of October 2017, by Lee R. Feldman, Executive Director of Fort Lauderdale Community Redevelopment Agency. He who is personally known to me or has produced a valid driver's license as identification.

Christopher J. Lagerbloom for

NOTARY PUBLIC STATE OF FLORIDA
GINA RIZZUTI-SMITH
MY COMMISSION # GG 083510
EXPIRES: March 15, 2021
Bonded Thru Budget Notary Services

Gina Rizzuti-Smith

Printed/Typed Name:_____
Notary Public-State of Florida
Commissioner Number:
Printed/Typed Name:_____
Notary Public-State of Florida
Commissioner Number:

613 NW 3RD AVE HOLDINGS, INC.,
a Florida corporation

By: _____
Jeffrey R. Burns, its President

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 10 day of ~~September~~ October 2017, by Jeffrey R. Burns, as President of 613 NW 3rd Ave. Holdings, Inc. a Florida corporation. He who is personally known to me or has produced a valid driver's license as identification.

Printed/Typed Name: Ana L Casals
Notary Public-State of Florida
Commissioner Number: FF 925536

ANA L CASALS
Notary Public - State of Florida
Commission # FF 925536
My Comm. Expires Oct 23, 2019
Bonded through National Notary Assn.

ANA L CASALS
Notary Public - State of Florida
Commission # EE 025535
My Comm. Expires Oct 23, 2013
Bonded through National Notary Assn.

SCHEDULE OF EXHIBITS AND ATTACHMENTS

EXHIBITS

Exhibit "A"	Conceptual Site Plan
Exhibit "A-1"	Final Site Plan
Exhibit "B"	Legal Description
Exhibit "C"	Development Incentive Construction Grant Agreement
Exhibit "D"	Form of Rental Report
Exhibit "E"	Form of Jobs Report

EXHIBIT "A"

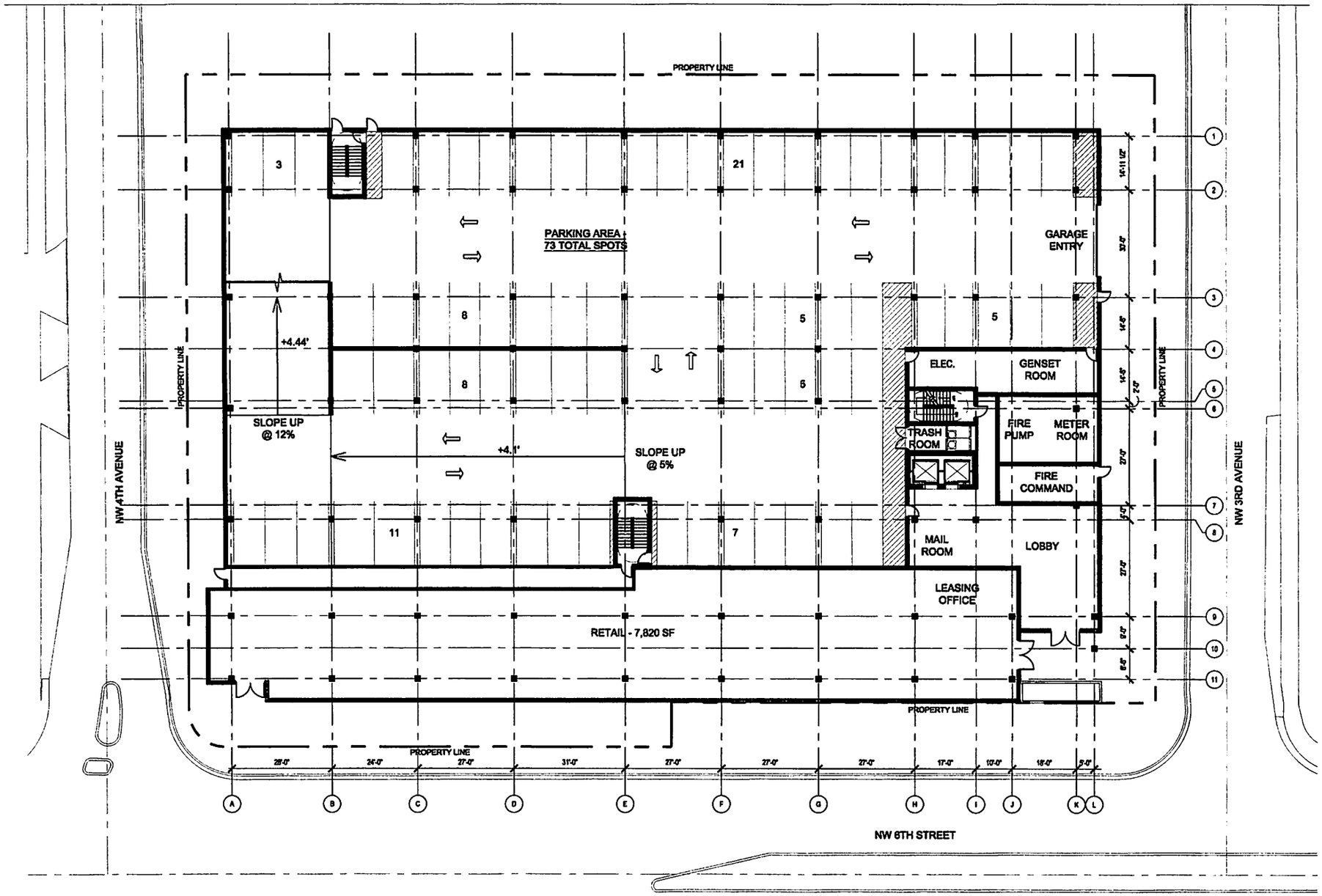
CONCEPTUAL SITE PLAN

CONCEPTUAL PERSPECTIVE

RINKA|CHUNG

PRELIMINARY DRAFT
NOT FOR CONSTRUCTION

OCTOBER 6, 2017
170210.00

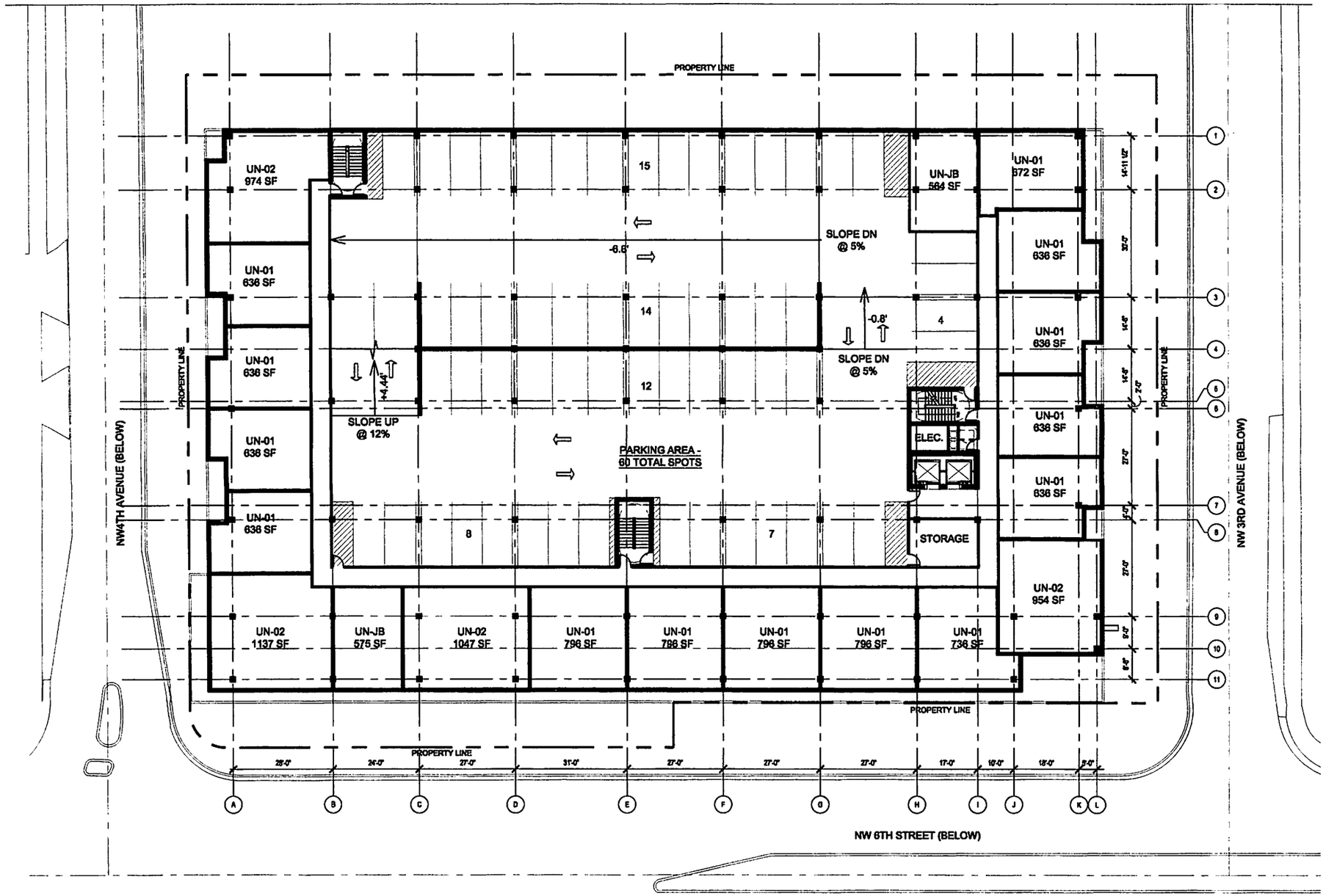


① 1ST FLOOR PLAN

RINKA|CHUNG

PRELIMINARY DRAFT
NOT FOR CONSTRUCTION

OCTOBER 6, 2017
170210.00

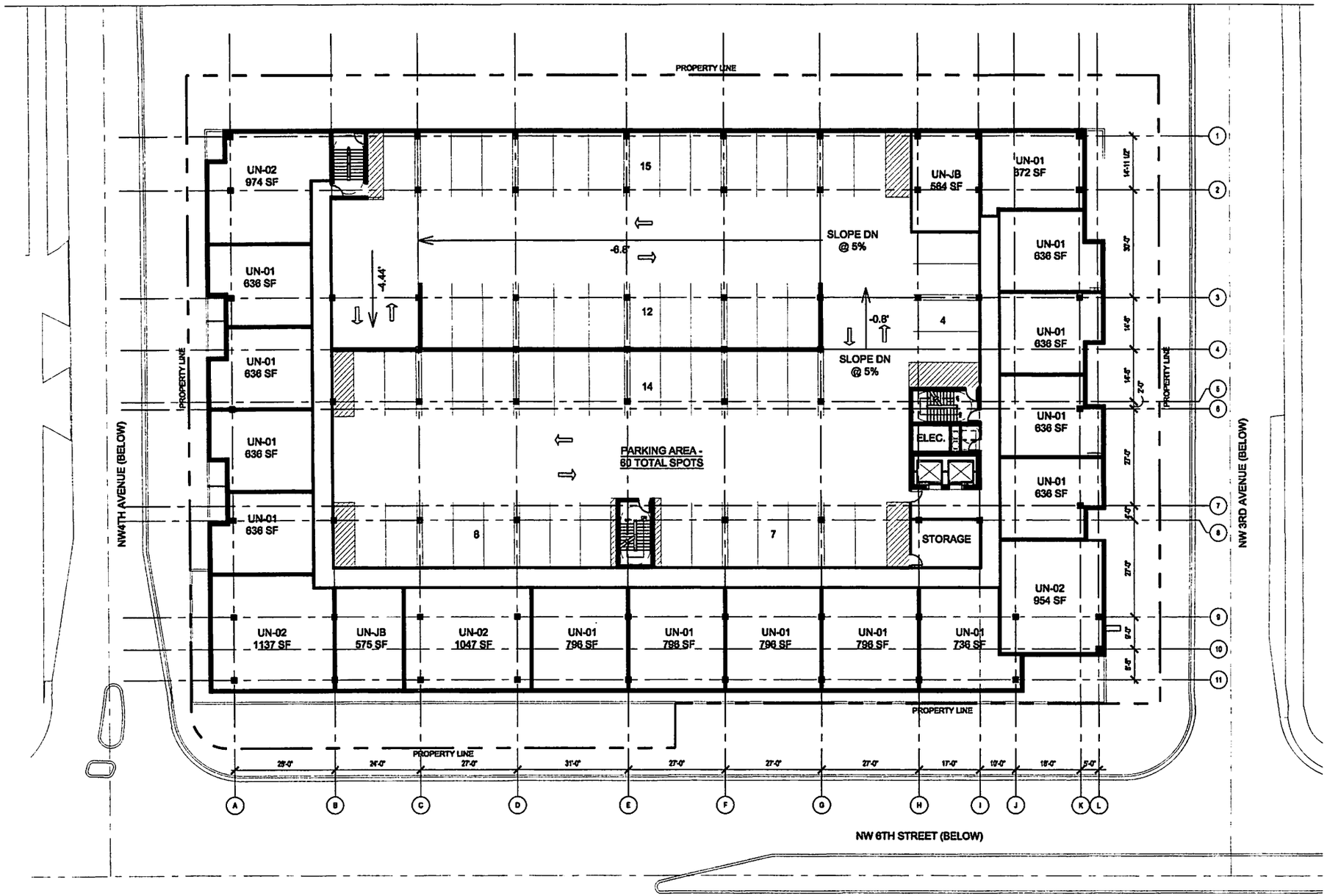


① 2ND FLOOR PLAN

RINKA|CHUNG

PRELIMINARY DRAFT
NOT FOR CONSTRUCTION

OCTOBER 6, 2017
170210.00

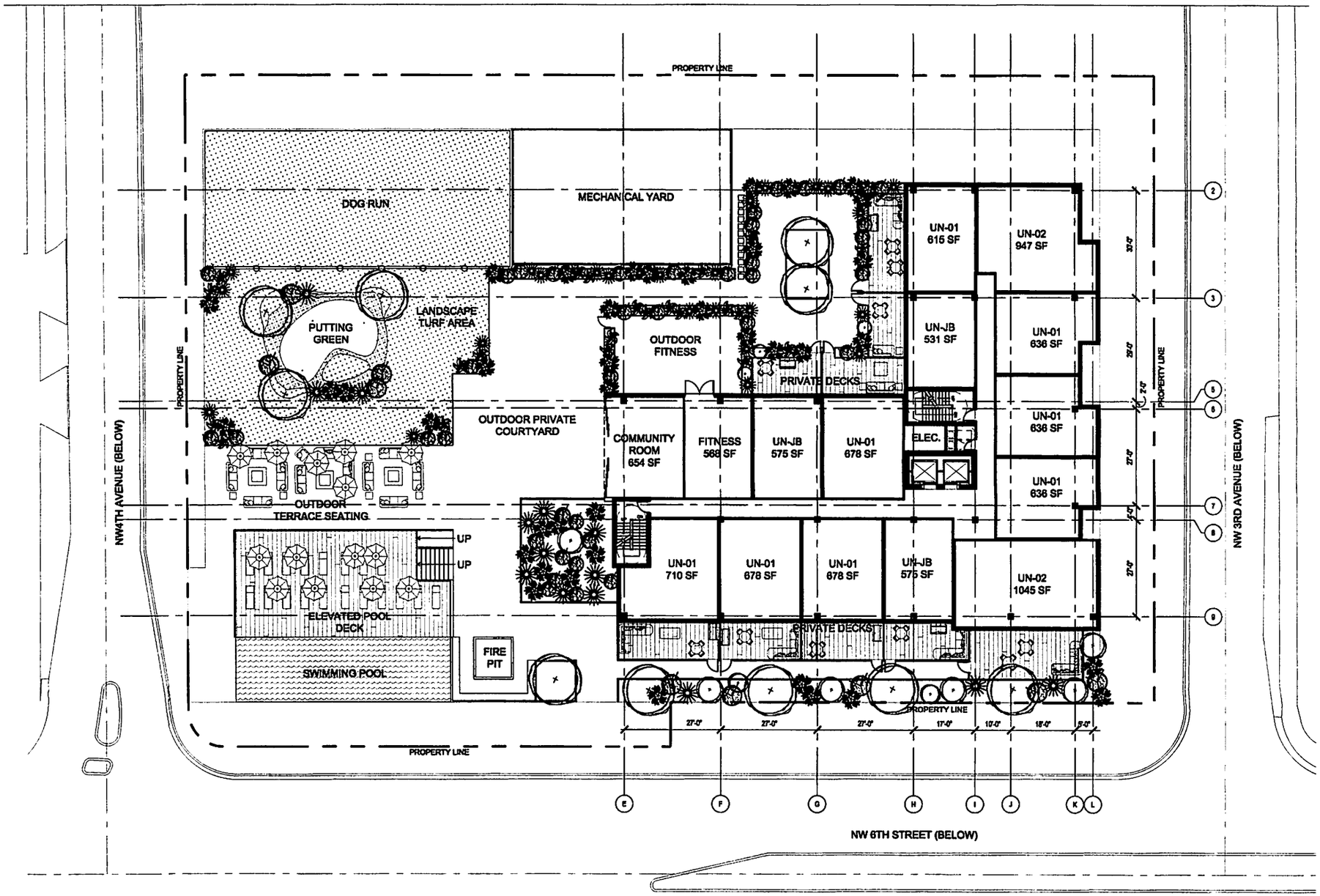


① 3RD FLOOR PLAN

RINKA|CHUNG

PRELIMINARY DRAFT
NOT FOR CONSTRUCTION

OCTOBER 6, 2017
170210.00

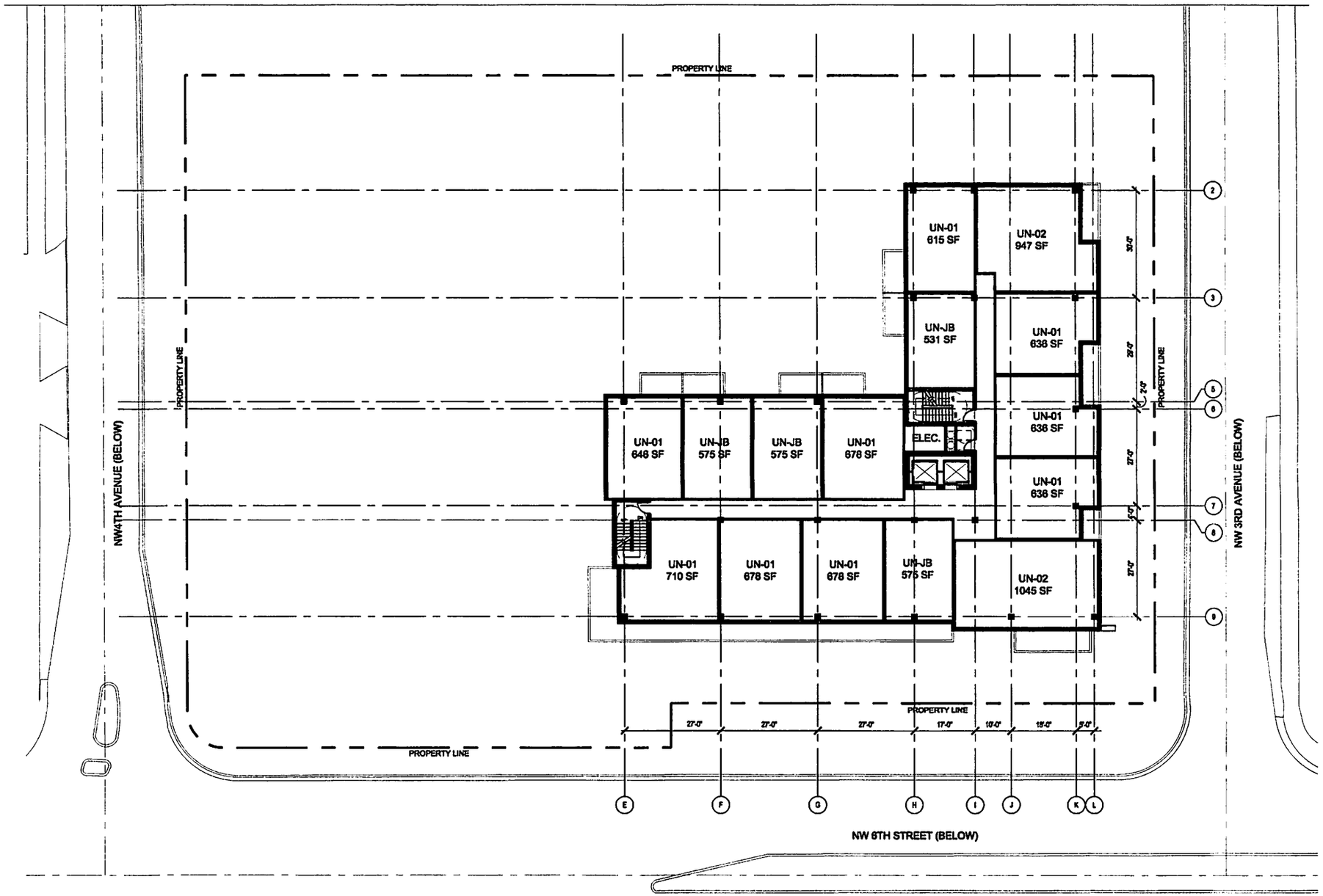


4TH FLOOR PLAN

RINKA|CHUNG

PRELIMINARY DRAFT
NOT FOR CONSTRUCTION

OCTOBER 6, 2017
170210.00



① 5-10 FLOOR PLAN

RINKA|CHUNG

PRELIMINARY DRAFT
NOT FOR CONSTRUCTION

OCTOBER 6, 2017
170210.00

EXHIBIT "B"

LEGAL DESCRIPTION

LOTS 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31 and 32, BLOCK 322, of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; together with LOT 25, BLOCK 322, LESS that portion thereof described as follows:

BEGIN at the Southeast corner of said Lot 25; thence go Westerly 135.0 feet along the South line thereof to the Southwest corner of said Lot 25; thence Northerly along the West line thereof 22.55 feet (22.50 feet calculated) to the tangent point of a circular arc having a radius of 10 feet and being concave to the Northeast; thence Southerly to Easterly along said arc 15.71 feet through a central angle of 90 degrees 00' to the end of said arc; thence Easterly and tangent to said arc along a line being 35 feet North of and parallel to the South boundary of the North 1/2 of Section 3, Township 50 South, Range 42 East, 125.0 feet to the East line of said Lot 25; thence Southerly 12.60 feet (12.50 feet calculated) along said East line to the point of beginning.

ALL BEING IN BLOCK 322 OF PROGRESSO, according to the Plat thereof, recorded in Plat Book 2, at Page 18, of the Public Records of Miami-Dade County, Florida, said lands lying and being in Broward County, Florida.

EXHIBIT "C"

DEVELOPMENT INCENTIVE CONSTRUCTION GRANT AGREEMENT

Exhibit "A-1"

Final Site Plan

(To be incorporated prior to closing)

CONSTRUCTION GRANT AGREEMENT

THIS CONSTRUCTION GRANT AGREEMENT ("Agreement") is entered into this _____ day of _____, 2017 by and between 613 NW 3rd Ave Holdings, Inc., a Florida corporation whose mailing address is 414 North Andrews Avenue, Fort Lauderdale, FL 33301 (herein referred to as "Holdings"), and Fort Lauderdale Community Redevelopment Agency, a body politic and corporate created pursuant to Part III, Chapter 163, Florida Statutes, whose mailing address is 100 North Andrews, Fort Lauderdale, FL 33301 (herein referred to as "Agency ").

RECITALS:

A. Holdings and Agency entered into that certain Agreement for Site Development and Development Incentive Program Grant dated October ____, 2017 (the "Development Incentive Agreement").

B. This Agreement is the Development Incentive Construction Grant Agreement referenced in the Development Incentive Agreement.

C. Holdings owns issued and outstanding controlling membership interests of 613 NW 3rd Avenue, LLC, a Florida limited liability company (herein referred to as "Developer").

D. On the date hereof, Developer has entered into that certain [Construction Loan Agreement] and related documents (the "Construction First Lien Financing Documents") with _____ ___(the "Construction First Lien Lender").

E. Holdings has negotiated with Agency for a grant ("Grant") in the amount of Seven Million Dollars ($7,000,000) to be contributed to Developer for the purpose of developing a mixed use development with approximately 142-unit apartment residences, approximately 8,300 square feet of ground level commercial, a parking garage and other improvements in accordance with the plans and specifications which have been approved by Agency (the "Plans and Specifications"). (All at the foregoing construction is referred to as "Construction of the Improvements") on the property located at 613 NW 3rd Avenue, Fort Lauderdale, Florida, Broward County, Florida, more fully described in **EXHIBIT "A"** attached hereto (the "Real Property").

F. Holdings and Agency wish to enter into this Agreement in order to set forth (among other things) the terms and conditions of the Grant.

G. The Grant is the Development Incentive Construction Grant referenced in the Development Incentive Agreement.

NOW, THEREFORE, in consideration of the Grant and the sum of Ten and No/100 Dollars ($10.00) each to the other in hand paid, the receipt and sufficiency of which is hereby acknowledged, and the other terms and conditions set forth hereafter, Holdings and Agency agree as follows:

ARTICLE I
GRANT DOCUMENTS

Developer and/or Holdings, as applicable, have executed and delivered, or caused to be executed and delivered, to Agency the following documents (hereinafter collectively and together with this Agreement referred to as "Grant Documents"), concurrently herewith:

A. GUARANTY AGREEMENT: A unconditional guaranty executed by Developer of Holdings' obligations under the Development Incentive Agreement and this Agreement (herein referred to as the "Obligations").

B. REAL ESTATE MORTGAGE AND SECURITY AGREEMENT: A Mortgage and Security Agreement (the "Mortgage") encumbering (among other things) the Real Property and securing the Obligations which upon recordation shall constitute a second lien on said Real Property, together with the improvements located and constructed thereon and/or to be constructed thereon (herein referred to as the "Improvements"), together with all appurtenant fixtures (herein referred to as "Fixtures") and other personal property (including but not limited to any equipment and furniture and Fixtures) located or to be located thereon (herein referred to as "Personal Property"). (The Real Property, the Improvements, the Fixtures and Personal Property shall be collectively referred to as the "Property").

C. UCC-1 FINANCING STATEMENTS: UCC-1 Financing Statements (state and local) covering all Personal Property, Fixtures, and equipment placed or to be placed on or under said Property, and such other documents as will insure Agency a second perfected interest in and to said Personal Property, Fixtures, and equipment, including all licenses, permits, plans and specifications relating to the Property.

D. COLLATERAL ASSIGNMENT OF LEASES AND RENTS: A general collateral assignment (subject to the rights of the Construction First Lien Lender) of all leases, income, rents and profits, and rents and profits from or concerning the Property, whether now or in the future.

E. MORTGAGEE TITLE INSURANCE BINDER AND POLICY: A mortgagee title insurance binder and policy in the face amount of Seven Million Dollars ($7,000,000), insuring the Mortgage as a valid second lien on the Real Property subject only to exceptions as shall be approved in writing by Agency issued by a title insurance company

("Title Company") satisfactory to Agency, and containing such endorsements, and in a form reasonably satisfactory to and approved by Agency. All standard title exceptions for mechanic's liens, survey matters, and rights of parties in possession shall be eliminated from and not included in the mortgagee title insurance policy.

F. SURVEY: A survey, certified to Agency and the title insurance company, satisfactory to Agency, of all properties covered by the Mortgage showing public access and all improvements and no material encroachments or easements on the property lines. The Survey shall also certify to Agency whether the Property is or is not located within an area identified pursuant to the Flood Disaster Act of 1973 as having flood hazards. The survey shall further show all easements on the Property as reflected in the title policy.

G. COLLATERAL ASSIGNMENT OF CONTRACT RIGHTS: A collateral assignment (subject to the rights of Construction First Lien Lender) by the Developer in favor of the Agency of all contract rights (this will include, but not be limited to, any construction contracts, architectural contracts, and/or engineering contracts) of the Developer in and to any contracts or documents affecting the Property with respect to the contemplated construction of the Improvements.

H. ENVIRONMENTAL INDEMNIFICATION AGREEMENT: An agreement by the Developer, in favor of Agency whereby Developer indemnifies Agency against any liability relative to hazardous pollutants or toxic materials and agrees to certain other terms and conditions concerning such substances.

I. AGREEMENT TO COMPLY WITH THE AMERICANS WITH DISABILITIES ACT OF 1990 AND FLORIDA AMERICANS WITH DISABILITIES ACCESSIBILITY IMPLEMENTATION ACT: An Agreement by the Developer in favor of Agency whereby Developer agrees to comply with the Americans With Disabilities Act of 1990, Florida Americans With Disabilities Accessibility Implementation Act, and any acts recognized under the laws of the State of Florida providing benefits to Americans with Disabilities, and to indemnify Agency from any such claims.

J. COLLATERAL ASSIGNMENT OF AGREEMENTS AFFECTING REAL ESTATE: A collateral assignment (subject to the rights of Construction First Lien Lender) by Developer to Agency of all contract rights arising under all contracts, licenses, permits and any agreements affecting the Property.

K. FUNDING AGREEMENT: That certain agreement between the Construction First Lien Lender, the Developer, Holdings and Agency setting forth the obligations of each party to disburse construction funds pursuant to the Sources and Uses Funds Schedule agreed to by the parties and attached thereto.

L. SUBORDINATION AND INTERCREDITOR AGREEMENT: That certain

agreement between the Construction First Lien Lender, the Developer, Holdings and Agency setting forth the rights and obligations of the Agency and the Construction First Lien Lender concerning defaults of Developer and/or Holdings hereunder and under the Construction First Lien Financing Documents.

M. REGULATORY AGREEMENT: That certain Regulatory Agreement of even date herewith restricting the rental income of the tenants of the Premises.

N. AFFIDAVITS OF DEVELOPER: Affidavits of Ownership as to the Property and as to the nonexistence of any liens and encumbrances on the Property or relating to Developer; certificates delivered to Agency from Developer regarding organizational documents of Developer.

O. OTHER DOCUMENTS: Such other documents, affidavits and certificates requested by Agency and/or referenced herein and/or executed in conjunction with the Grant, including but not limited to the following:

_____

_____

_____

ARTICLE II
REPRESENTATIONS AND WARRANTIES REGARDING DEVELOPER AND/OR HOLDINGS

Except as disclosed in the disclosure schedule of Holdings delivered to the Agency, Holdings hereby represents and warrants to Agency as follows:

A. VALIDITY OF GRANT DOCUMENTS: That (i) the Grant Documents are in all respects legal, valid, and binding according to their terms and (ii) the Mortgage grants to Agency a direct, valid, and enforceable second lien interest in the Property now and hereafter.

B. ENTITY EXISTENCE OF DEVELOPER AND HOLDINGS; COMPLIANCE WITH LAW: Each of Developer and Holdings is duly organized, and validly existing and in good standing under the laws of the State of Florida. Each of Developer and Holdings has the legal power to own its properties (including the Property) and to carry on its business as now being conducted, and each of Developer and Holdings is in compliance with all other material requirements of law applicable to it and to its business.

C. PRIORITY OF LIEN ON PERSONAL PROPERTY AND FIXTURES: That no bill of sale, security agreement, financing statement, or other title retention agreement (except those executed in favor of Agency) has been or will be executed with respect to any Personal Property and Fixtures and equipment used, in conjunction with the operation,

or maintenance of the Improvements, now or hereafter located on the Real Property except for the lien of the Construction First Lien Lender.

D. CONFLICTING TRANSACTIONS OF DEVELOPER OR HOLDINGS: That the consummation of the transactions hereby contemplated and the performance of the obligations of Developer and Holdings under and by virtue of the Grant Documents will not result in any breach of, or constitute a default or Event of Default under, any mortgage, deed, deed of trust, lease, bank loan or credit agreement, corporate charter or by-laws or other instrument to which Developer or Holdings is a party or by which it may be bound or affected.

E. PENDING LITIGATION: That there are no actions, suits, or proceedings pending, or to the knowledge of Developer or Holdings, threatened against or affecting it or the Property, or involving the validity or enforceability of any of the Grant Documents or the priority of the lien thereof, at law or in equity, or before or by any governmental authority; and to the Developer's or Holding's, knowledge, it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority.

F. VIOLATIONS OF GOVERNMENTAL LAW, ORDINANCES OR REGULATIONS: That Developer has no actual knowledge of any material violations or notices of violations of any federal or state law or municipal ordinance or order or requirement of the county or city in which the Property is located or any municipal department or other governmental authority having jurisdiction affecting the Property, which violations in any way relate to or affect the Property.

G. COMPLIANCE WITH ZONING ORDINANCES AND SIMILAR LAWS: That the Plans and Specifications and construction of the Improvements pursuant thereto and the use of the Property contemplated hereby complies and will comply in all material respects with all governmental laws and regulations, and requirements, standards, and regulations of appropriate supervising boards of fire underwriters and similar agencies.

H. AVAILABILITY OF UTILITIES: That all utility services necessary for the construction of the Improvements and for the operation thereof for their intended purpose are available on or at the boundaries of the Real Property, including water supply, storm and sanitary sewer facilities, electric and telephone facilities.

I. CONDITION OF PROPERTY: To Developer's actual knowledge, the Property is not now damaged or injured as a result of any fire, explosion, accident, flood, or other casualty.

J. LEASES: To Developer's actual knowledge, there are presently no leases which touch and affect the Property.

K. NON-COMMENCEMENT OF CONSTRUCTION: Unless otherwise notified to Agency in writing, Developer has not caused or permitted any labor to be furnished in connection with construction of the Improvements or caused or permitted any materials to be delivered to the Property that has not been paid for in full; and that no contractor nor any supplier or subcontractor shall be permitted to deliver any materials to the Property or excavate for footings, or otherwise perform any work on the Property until the Mortgage shall be recorded

L. SOURCES AND USES: That Funding Agreement (inclusive of the Sources and Uses Funds Schedule attached thereto) states the understanding of all parties as to the sources and uses of funds.

M. EQUITY/OTHER FINANCING SOURCES: That Developer has delivered to Agency satisfactory evidence of a minimum of Six Million Nine Hundred Forty Four Thousand Five Hundred Ninety Six Dollars ($6,944,596) being provided to the Project from Developer's equity, the Construction First Lien Lender and other financing sources.

N. ACCESS: That the rights of way for all roads necessary for the full utilization of the Improvements for their intended purposes have either been acquired by the appropriate governmental authority or have been dedicated to public use and accepted by such governmental authority, and all such roads shall have been completed, or all necessary steps shall have been taken by the Developer and such governmental authority to assure the complete construction and installation thereof prior to the date upon which access to the Property via such roads will be necessary. All curb cuts and traffic signals shown on the Plans and Specifications are existing or have been fully approved by all necessary governmental authorities.

O. ENVIRONMENTAL:

1. Developer is the fee simple title holder of the Real Property.

2. Developer has undertaken such inquiry into the previous ownership and uses of the Property as is consistent with good commercial practice in an effort to minimize liability with respect to "Hazardous Substances", which terms shall include: any hazardous or toxic substances, materials or wastes, including, but not limited to solid, semi-solid, liquid or gaseous substances which are toxic, ignitable, corrosive, carcinogenic or otherwise dangerous to human, plant or animal health or well-being and those substances, materials, and wastes listed in the United States Department of Transportation Table (49 CFR 972.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a "hazardous substance"

pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251, et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. (42 U.S.C. Section 9601), (vii) defined as "hazardous waste" as defined in Chapter 403 (Part IV) of the Florida Statutes.

3. To Developer's knowledge, the Property is presently free from contamination by or the presence of Hazardous Substances, and the Property and activities conducted thereon do not pose any significant hazard to human health or the environment or violate any applicable federal, state or local laws, ordinances, rules, regulations or requirements pertaining to Hazardous Substances including, but not limited to, any of the above referenced Laws, Statutes, Codes and/or Regulations.

4. To Developer's knowledge, the Property and any improvements now or hereafter located thereon have not in the past been used, are not presently being used, and will not be used for the generation, release, treatment, discharge, emission, handling, storage, transportation, or disposal of Hazardous Substances.

P. SURETY BOND: If required by the Construction First Lien Lender, to cause Developer to obtain (i) a surety bond in form and amount satisfactory to Construction First Lien Lender from a surety satisfactory to Construction First Lien Lender or (ii) such other available payment and performance insurance acceptable to Construction First Lien Lender.

Q. RECITALS: That the Recitals are true and correct and are incorporated herein by reference verbatim.

ARTICLE III

COVENANTS OF HOLDINGS

Holdings hereby covenants and agrees with Agency to cause Developer as follows:

A. CONSTRUCTION CONTRACT: (i) To permit no material default under the terms of the Construction Contract with _____ (the "Contractor") dated _____ ("Construction Contract") or any contract relating to the construction of the Improvements, (ii) to not waive any of material obligations of the Contractor or any subcontractor thereunder, and (iii) to do no act which would relieve the Contractor or a subcontractor from its obligations to construct the Improvements according to the Plans and Specifications, and (iv) to make no amendments, other than change orders as may be

permitted under the terms of the Construction First Lien Documents, to the Construction Contract without the written consent of Construction First Lien Lender as required pursuant to the terms of the Construction First Lien Financing Documents.

B. INSURANCE: To obtain and maintain the following insurance:

1. Hazard Insurance. With respect to any buildings and Improvements now or hereafter constructed on the Real Property, "all risk" coverage insurance, and such other hazard insurance as the Construction First Lien Lender may require with standard non-contributing mortgagee clauses and standard subrogation clauses, such insurance to be in such amounts and form and by such companies as shall be approved and required by the Construction First Lien Lender, such insurance to be obtained immediately upon completion of construction of the Improvements and before issuance of the Certificate of Occupancy and before any portion of the Property is occupied by Developer or any tenant of Developer, with such insurance to be kept in full force and effect at all times thereafter until the satisfaction of the Mortgage.

2. Comprehensive General Liability and Statutory Workers' Comprehensive Insurance. A certificate from an insurance company indicating that Developer and Contractor are covered to the satisfaction of the Construction First Lien Lender by comprehensive general liability insurance coverage and statutory workers' compensation coverage, in such amounts and form and by such companies as shall be approved by the Construction First Lien Lender.

3. Flood Insurance. Flood insurance issued by an acceptable company in the amount of the Grant or the maximum coverage available or appropriate evidence that such insurance is not necessary.

4. Builders Risk Insurance. Builder's risk insurance in amounts sufficient to satisfy full replacement costs of the construction of the Improvements and any other work contemplated hereunder, or in such other amounts, and by such companies as shall be approved by the Construction First Lien Lender.

As to all of the insurance obtained, the originals of such policies (together with appropriate endorsements thereto), evidence of payment of premiums thereon, shall be promptly delivered to Agency and further shall name Agency as mortgagee on the loss payee clause as an additional insured. The policies shall include an agreement by the insurer to provide Agency thirty (30) days prior written notice of any intention to cancel or amend.

C. COLLECTION OF INSURANCE PROCEEDS: Subject to the terms of the Construction First Lien Financing Documents, to cooperate with Agency in obtaining for Agency the benefits of any insurance or other proceeds lawfully or equitably payable to

them in connection with the transactions contemplated hereby and the collection of any obligation of Developer to Agency incurred hereunder (including the payment by Developer of the expense of an independent appraisal on behalf of Agency in case of a fire or other casualty affecting the Property).

D. APPLICATION OF PROCEEDS: Subject to the terms of the Construction First Lien Financing Documents, Holdings agrees that all proceeds of property or casualty insurance, received by Developer as a result of such loss or damage shall be used for payment of the costs of the reconstruction or repair of the Improvements to the extent necessary to repair or reconstruct the Improvements.

E. EXPENSES: To pay, the following expenses at the closing of the Grant: recording expenses, title insurance premium, intangible taxes and documentary stamps. Agency agrees to pay and be responsible for the fees of Agency's inspector, attorneys' fees, paralegal fees and other fees and costs incurred by Agency in connection with the closing and servicing of the Grant.

F. COMMENCEMENT AND COMPLETION OF CONSTRUCTION: To commence construction of the Improvements within 540 days of June 6, 2017 and to diligently pursue said construction to completion; and supply such sums of money and perform such duties as may be necessary to complete the construction of said Improvements pursuant to the Plans and Specifications and in material compliance with all terms and conditions of the Grant Documents, all of which shall be accomplished on or before 720 days from the date of commencement of construction of the Improvements, and without liens, claims, or assessments (actual or contingent) asserted against the Property for any material, labor, or other items furnished in connection therewith and all in material compliance with the Florida Construction Lien Law, Chapter 713, Florida Statutes, and the laws of Florida, including but not limited to any and all laws regarding the enforcement of liens, and further in compliance with all construction, use, building, zoning, and other similar requirements of any pertinent governmental authority and all other restrictions, if any, affecting the Property. Holdings shall cause Developer to provide to Agency upon request, evidence of satisfactory compliance with all such requirements. Agency agrees that all of the foregoing is subject to Unavoidable Delays (as defined in the Development Incentive Agreement) and extensions provided by the Executive Director (as defined in Development Incentive Agreement).

G. RIGHT OF AGENCY TO INSPECT PROPERTY: To permit Agency and its representatives and agents to enter upon the Property and to inspect the Property at all reasonable times and with reasonable prior notice to the Developer or Holdings and the Contractor. Developer or Holdings and the Contractor shall be given the opportunity to be present at any inspections.

H. CORRECTION OF DEFECTS: To promptly correct any structural defect in

the Improvements. The advance of any grant proceeds shall not constitute a waiver of Agency's right to require compliance with this covenant.

I. **BOOKS AND RECORDS:** To keep and maintain proper and accurate books, records and accounts reflecting all items of income and expense of Developer in connection with the Property and, upon the request of Agency, to make such books, records, and accounts immediately available to Agency for inspection or independent audit, at Agency's sole expense.

J. **NOTIFICATION OF CLAIMS BY SUBCONTRACTORS AND MATERIALMEN:** To advise Agency immediately, (no later than twenty-four (24) hours after notice whether written or oral) and in writing, if Developer receives any Notice To Owner or Claim of Lien, written or oral, from any laborer, subcontractor, or materialmen in connection with any labor or materials furnished in the construction of the Improvements or any labor or materials furnished on the Property.

K. **APPROVAL AND LIMITATION ON CHANGES:** To obtain Agency's approval to any material amendments to the Plans and Specifications.

L. **PRESERVATION OF SECURITY:** To sign and deliver to Agency such documents, instruments, assignments, and other writings, and to do such other acts necessary or desirable, to preserve and protect the collateral at any time securing or intended to secure the Obligations, as Agency may reasonably require.

M. **FUTURE ASSURANCES:** To do and execute all and such further lawful and reasonable acts, conveyances, and assurances in the law for the better and more effective carrying out of the intents and purposes of this Agreement as Agency shall reasonably require from time to time.

N. **NOTICE OF COMMENCEMENT:** To not commence any such construction and make no payments to any contractors, materialmen, laborers prior to recordation of the Notice of Commencement.

O. **BUILDING PERMITS:** To furnish to Agency copies of all building permits.

P. **CONSTRUCTION SCHEDULE:** To furnish to Agency copies of the construction progress schedules furnished to the Construction First Lien Lender

Q. **CONSTRUCTION BUDGET:** If not already furnished, to furnish to Agency prior to Agency approving commencement of construction or funding, a cost breakdown and construction budget which must be agreed to by the Contractor and reasonably acceptable to the Agency.

R. CERTIFICATE OF OCCUPANCY/COMPLETION: To furnish to Agency when available a certificate of occupancy, certificate of completion or any other necessary certificate required by any governmental agency.

S. USE OF PROCEEDS: To use the proceeds of the Grant solely for the payment of Hard Costs and Soft Costs. "Hard Costs" shall mean costs for Real Property acquisition and work, labor and materials required to demolish pre-existing structures on the Property and construct and complete the Improvements. "Soft Costs" means those costs associated with the development and construction of the Project which are not Hard Costs, including, without limitation, architectural and engineering fees, consultant fees, professional fees, real estate taxes, insurance and bonding costs, and interest and financing fees; provided that "Soft Costs" shall not include developer fees, general overhead charges or other similar fees payable to Affiliates of the Developer or Holdings.

T. ORGANIZATIONAL DOCUMENTS: To the extent Developer is not a natural person, to furnish to Agency a Certificate of Good Standing of Developer certified by the Secretary of State of the state of formation of Developer. Developer shall also furnish to Agency such organizational documents requested by Agency and any amendments thereto of Developer, accompanied by a certificate from the appropriate officer of Developer that the company is active and that organizational documents have not been amended, annulled, rescinded or revoked since the date of the Certificate of the Secretary of State and a copy of the Resolution of Developer, and such other authorizing documents authorizing execution, delivery and performance of the Grant Documents and the borrowings contemplated hereunder on behalf of Developer, and specifying the officer or officers of Developer are authorized to execute the Grant Documents accompanied by a certificate from an appropriate officer of Developer that the resolutions are true and complete, were duly adopted at a duly called meeting at which a quorum was present and acting throughout, or were duly adopted by a written action, and have not been amended, annulled, rescinded or revoked in any respect and remain in full force and effect on the date of the certificate. (All documents delivered above shall further be deemed "Grant Documents").

The organizational documents of the Developer will not, throughout the term of the Grant, be in any way or manner, changed, modified, or altered, without the prior written consent of Agency.

For purposes hereof, "organizational documents" shall mean such documents in existence which are necessary to create the Developer or setting forth the rules governing the operation of Developer, such as a partnership agreement in the case of a partnership, articles of incorporation and by-laws with respect to a corporation and articles of organizations and operating agreement with respect to a limited liability company.

ARTICLE IV

GRANT; DISBURSEMENT OF GRANT PROCEEDS

A. GRANT: The Agency hereby grants Seven Million Dollars ($7,000,000) (the "Grant Amount") to Holdings to be utilized in accordance with the terms of this Agreement and the Grant Documents. Holdings shall immediately contribute the proceeds of the Grant Funds to Developer. Holdings shall cause Developer to use the proceeds of the Grant Funds solely for the payment of Hard Costs and Soft Costs related to the construction of the Project as set forth in the Sources and Uses of Funds Schedule.

B. PROCEDURE FOR DISBURSEMENT:

1. Agency Disbursements.

(a) Provided that no Event of Default has occurred and is continuing beyond the applicability of any cure period, Agency agrees to appropriate the Grant Amount as follows (the "Grant Funds"):

(i) Four Million Dollars ($4,000,000) in Agency's Fiscal Year 2017;
(ii) Two Million Dollars ($2,000,000) in Agency's Fiscal Year 2018; and
(iii) One Million Dollars ($1,000,000) in Agency's Fiscal Year 2019.

(b) Fiscal Year 2017 shall begin on October 1, 2016 and end on September 30, 2017, with the same date range applying for each additional specified Fiscal Year. In the event that the Agency does not appropriate the required Grant Funds in a particular Fiscal Year, then the Agency shall appropriate the shortfall in the next Fiscal Year. In the event that the Agency has not appropriate the entire Grant Funds by September 30, 2019, then the Agency shall appropriate the shortfall as soon as the funds become available to the Agency. To the extent permitted by and in accordance with applicable law, the Agency agrees to budget and appropriate the Development Incentive Grant Funds for each fiscal year subordinate to Overhead and Administrative Costs of the Agency and Senior Debt of the Agency. 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. Holdings agrees, on its behalf and on behalf of the Developer, that the obligation of the Agency to make any payments by the Agency to Holdings or the Developer pursuant to this Agreement shall be subordinate to Overhead and Administrative Costs and the obligations of the Agency to pay debt service on Senior Debt of the Agency.. The parties agree this Agreement is not intended to create debt of the Agency nor does this Agreement constitute an unconditional obligation to pay the Development Incentive Grant Funds. This section is merely

descriptive of the process by which the Development Incentive Grant Funds will be made available by the Agency. The agreement to budget and appropriate shall not constitute a lien, either legal or equitable, on the 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 Developer a prior claim on the revenue of the Agency.

(c) As soon as the funds become available to Agency in each Fiscal Year, in lieu of disbursing the Grant Funds in accordance with Section A above, Agency agrees to disburse such funds to _____ (the "Funding Agent") in accordance with the terms of the Funding Agreement.

2. Funding Agent Disbursements. The Construction First Lien Lender and the Funding Agent shall disburse the Grant Funds on behalf of Holdings and Developer in accordance with the terms of the Funding Agreement.

B. MISCELLANEOUS TERMS REGARDING DISBURSEMENT:

1. Payment of Construction Costs. Agency shall be under no duty or obligation to anyone to ascertain whether Developer has used or will use the proceeds of the Grant for the payment of bills incurred by Developer in connection with the construction of the Improvements. Payment of all bills for labor and materials in connection with the construction of the Improvements shall be the responsibility of Developer, and Agency's sole obligation shall be to advance the proceeds of the Grant subject to, and in accordance with, this Agreement.

2. Lien Law. Holdings shall cause Developer to in all respects comply with Chapter 713 Florida Statutes.

ARTICLE V
EVENTS OF DEFAULT

An event of default ("Event of Default") shall be deemed to have occurred hereunder, if:

A. DEFAULT UNDER GUARANTY: Any default or "Event of Default" occurs under the Guaranty Agreement; or

B. DEFAULT UNDER OTHER GRANT DOCUMENTS: Any default or "Event of Default" occurs under any of the Grant Documents; or

C. BREACH OF WARRANTY: Any material warranties, representations, terms, covenants and/or obligations made or agreed to be made in any of the Grant Documents (which include any other document executed in conjunction with the Grant) shall be breached by Developer or Holdings or shall prove to be false or misleading, in each case

which will have a material adverse effect on the Developer; or

D. FILING OF LIENS AGAINST THE PROPERTY: Any lien for labor, material, taxes, or otherwise shall be filed against the Property and not be removed or otherwise discharged within thirty (30) days thereafter; or

E. LEVY UPON THE PROPERTY: A levy be made under any process on, or a receiver be appointed for the Property or any other property of Developer; or

F. BANKRUPTCY OR INSOLVENCY OF DEVELOPER:

1. The filing by Developer of a voluntary petition in bankruptcy for adjudication as bankrupt or insolvent, or the filing by Developer of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Developer seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of Developer of all of the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of creditors, or the admission in writing of its inability to pay its debts generally as they become due; or

2. The failure to timely answer or to discharge within ninety (90) days of filing a petition filed against Developer seeking any reorganization, arrangement, composition, readjustment, liquidation or dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the appointment of any trustee, receiver or liquidator for Developer, or of all or any substantial part of the Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of Developer; or

G. BANKRUPTCY OR INSOLVENCY OF HOLDINGS:

1. The filing by Holdings of a voluntary petition in bankruptcy for adjudication as bankrupt or insolvent, or the filing by Holdings of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Holdings seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of Holdings of all of the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of creditors, or the admission in writing of its inability to pay its debts generally as they become due; or

2. The failure to timely answer or to discharge within ninety (90) days of

filing a petition filed against Holdings seeking any reorganization, arrangement, composition, readjustment, liquidation or dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the appointment of any trustee, receiver or liquidator for Holdings, or of all or any substantial part of the Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of Holdings; or

H. ASSIGNMENT FOR THE BENEFIT OF CREDITORS: Developer or Holdings shall make a general assignment for the benefit of creditors; or

I. TRANSFER OF PROPERTY: Developer shall without the prior written consent of Agency voluntarily or by operation of law sell, transfer, or convey all or any part of its interest in the Property (excepting only transfers due to involuntary condemnation or foreclosure by the Construction First Lien Lender) which do not render the Property useless for its intended purpose hereunder. A transfer of any membership interests of Developer or shares of Holdings in violation of the Development Incentive Agreement shall be deemed a transfer hereunder; or

J. LIEN AGAINST PROPERTY: Developer grants any material lien or encumbrance upon the Property; or

K. CHANGE IN OWNERSHIP OF DEVELOPER OR HOLDINGS: Any change in the ownership, membership or control or any portion thereof of the Developer or Holdings in violation of the Development Incentive Agreement; or

L. DEFAULT OR TERMINATION OF CONSTRUCTION CONTRACT: Developer shall be in default beyond any applicable cure periods of the Construction Contract with _____.

ARTICLE VI
DEVELOPER'S AND HOLDING'S CURE RIGHTS AND REMEDIES OF AGENCY

A. DEVELOPER'S AND HOLDING'S CURE RIGHTS. Upon the occurrence of any one or more of the Events of Default under Article V, the Agency shall provide written notice thereof to Developer or Holdings, as applicable, and,

(i) if such event of default shall not be cured by Developer or Holdings within ninety (90) days after receipt of the written notice from the Agency specifying in reasonable detail the event of default by Developer or Holdings; or

(ii) if such event of default is of such nature that it cannot be Developer or Holdings shall not have commenced to cure such default within such time period and shall not continue to diligently prosecute such cure to completion within such reasonable longer period of time as may be necessary,

Agency shall at its option be entitled, in addition to and not in lieu of the remedies provided for in the Guaranty Agreement, Mortgage, and other Grant Documents, but subject to the terms of the Construction First Lien Financing Documents and the Subordination and Intercreditor Agreement, to proceed to exercise any and/or all or some of the remedies set forth below.

In the event Developer or Holdings commences to cure a default but finds that the default is of such a nature that it cannot be completely cured within time provided in subsection (A)(i) above and Developer or Holdings intends to continue to diligently prosecute such cure to completion, then Developer or Holdings shall be obligated to provide notice to Agency as to the time frame reasonably needed to cure such default, which such time frame shall be subject to the Agency's approval in its reasonable discretion. If Developer or Holdings has failed to complete the cure by the end of the time frame designated as the reasonable additional time needed to cure, then Agency shall be entitled, but subject to the terms of the Construction First Lien Financing Documents and the Subordination and Intecreditor Agreement, to proceed to exercise any and/or all or some of the remedies set forth below.

B. DEFAULT CONSTITUTES DEFAULT UNDER GRANT DOCUMENTS: The occurrence of such Event of Default shall constitute a default or Event of Default under each of the Grant Documents, thereby entitling Agency (i) to exercise any of the various remedies therein provided, including but not limited to the foreclosure of the Mortgage, and (ii) cumulatively to exercise all other rights, options, and privileges provided by law or in equity.

C. RETURN OF GRANT FUNDS BY HOLDINGS: Agency may seek the return of Grant Funds from Holdings in accordance with the terms herein. The obligations of Holdings to return any portion of the Grant Funds shall expire five (5) years subsequent to the Completion Date (the "Development Incentive Construction Grant Term") provided that there is not an uncured Event of Default. The return of any portion of the Grant Funds shall not be required except for an uncured Event of Default. The returnable balance of the Grant Funds (the "Outstanding Balance") shall be reduced proportionately over the Development Incentive Construction Grant Term, with 20% principal reduction per year or $1,400,000, provided that there is not an uncured Event of Default in that year. Any amount not reduced in years 1 through 5 shall expire in year 5 provided that there is not an uncured event of default. "Completion Date" means the later of (i) the date on which a Certificate of Occupancy is issued for the residential components of the Improvements and

(ii) the date on which a Certificate of Completion is issued for the commercial components of the Improvements.

D. RIGHT OF AGENCY TO ASSUME POSSESSION: Upon the request of Agency, Developer shall vacate the Property and permit Agency to:

1. to enter into possession;

2. to perform or cause to be performed any and all work and labor necessary to complete the Improvements in accordance with the Plans and Specifications;

3. to employ security watchmen to protect the Property, and

4. to disburse that portion of the Grant proceeds not previously disbursed (including any retainage) to the extent necessary to complete construction of the Improvements in accordance with the Plans and Specifications, and if the completion requires a larger sum than the remaining undisbursed portion of the Grant, to disburse such additional funds, all of which funds so disbursed by Agency shall be deemed to have been disbursed to Developer and Holdings and shall be secured by the Mortgage and pursuant to the same terms and conditions as provided herein and in the Development Incentive Grant Agreement. For this purpose, Developer hereby constitutes and appoints Agency its true and lawful attorney-in-fact with full power of substitution to complete the construction of the Improvements in the name of the Developer and hereby empowers Agency as said attorney to take all actions in connection therewith including, but not limited to, the following: To use any funds of Developer or Holdings including any balance which may be held in escrow and any funds which may remain unadvanced hereunder for the purpose of completing the Improvements in the manner called for by the Plans and Specifications; to make such additions and changes and corrections in the Plans and Specifications which shall be necessary or desirable to complete the Improvements in substantially the manner contemplated by the Plans and Specifications; to employ such contractors, subcontractors, agents, architects, and inspectors as shall be required for said purposes; to pay, settle, or compromise all existing or future bills and claims which are or may be liens against said Property or may be necessary or desirable for the completion of the Improvements or the clearance of title to the Property; to execute all applications and certificates in the name of Developer which may be required by any construction contract and to do any and every act with respect to the construction of the Improvements which Developer may do in its own behalf. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked by death, dissolution or otherwise. Said attorney-in-fact shall also have power to prosecute and defend all actions or proceedings in connection with the construction of the Improvements and to take such action and require such performance as it deems necessary. In accordance therewith, Holdings hereby assigns and quit claims to Agency all sums to be advanced hereunder, including retainage and any sums in escrow conditioned upon the

use of said sums, if any, for the completion of the Improvements. Notwithstanding any matters set forth above, Agency shall have no obligation to perform any such responsibilities if Agency elects. If Agency does elect to perform any such responsibilities, Agency agrees to act reasonably in such performance.

E. WRIT OF GARNISHMENT: Holdings hereby consents to the issuance of a continuing writ of garnishment or attachment against disposable earnings in accordance with Section 221.11, Florida Statutes, in order to satisfy, in whole or in part, any money judgment entered in favor of Agency.

F. GENERAL: Agency is entitled to exercise any and all rights and remedies available at law and/or in equity including, but not limited to, the right to have a receiver appointed for the Developer, Holdings and/or the Property and the right to institute foreclosure proceedings.

Agency shall have the right to exercise any right or remedy available to Agency as a secured party under the Florida Uniform Commercial Code. Agency may proceed to realize upon and all other security for the Obligations in such order as Agency may elect; no such action shall constitute any election or remedies by Agency nor in any manner alter, diminish, or impair the security interest created by this Agreement unless and until the Outstanding Balance is paid in full.

G. JUDGMENT: Agency may seek and recover judgment for all amounts due and payable in accordance with the Grant Documents either before, after or during the pendency of any other proceedings or action to obtain relief under or with respect to this Agreement or the Grant Documents or both and Agency's right to seek and recover any such judgment will not be affected by obtaining any such other relief. Neither the security interest referenced in this Agreement nor the rights and remedies to the Agency hereunder will be impaired in any way by the recovery of any judgment of Agency against Developer or Holdings, or by the levy of an execution upon such judgment upon any portion of the Property until the Outstanding Balance is paid in full.

H. RETURN OF GRANT FUNDS HELD BY FUNDING AGENT: Agency may seek the return of Grant Funds being held by the Funding Agent.

I. OTHER RIGHTS: No right or remedy conferred upon or reserved to Agency by this Agreement is intended to be exclusive of any other right or remedies; and each and every right and remedy is cumulative and in addition to any other right or remedy otherwise available. Every right, power, privilege and remedy granted Agency by this Agreement or the Grant Documents or both or otherwise available at law or in equity may be exercised by Agency from time to time as often as Agency deems expedient until the Outstanding Balance is paid in full. Agency's failure to insist at any time upon a strict observance or performance by Developer or Holdings of any of the provisions of the Grant Agreement, or

to exercise any right or remedy provided in this Agreement will not impair any such right or remedy nor be construed as a waiver or relinquishment thereof for the future. Receipt of Agency of any payment required to be made pursuant to this Agreement or the Grant Documents or both with knowledge of the breach or Event of Default of any provision of this agreement or the Grant Documents or both will not constitute a waiver of such breach or Event of Default. In addition to all of the remedies provided in this Agreement and Grant Documents, Agency will be entitled, to the extent permitted by law and/or by virtue of any equitable rights, to injunctive relief in the case of a violation or attempted or threatened violation of any of the provisions of this Agreement or the Grant Documents or both or to a decree coercing performances of any of the provisions of any of the foregoing.

ARTICLE VII
MISCELLANEOUS

A. NOTICES TO ALL PARTIES:

All notices under this Agreement to be given by one party to the other shall be in writing and the same shall only be deemed given if transmitted as follows:

(a) By facsimile, certified mail, return receipt requested, by courier or overnight service or personal hand-delivery to the following addresses:

Developer or Holdings:	639 NW 3rd Ave Holdings, Inc. 414 North Andrews Avenue Fort Lauderdale, FL 33301 Attn: Jeff Burns e-mail: JBurns@AffiliatedCos.com
With a copy to:	Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. 150 West Flagler Street Miami, Florida 33130 Attn: Brian McDonough, Esq. Email: bmcdonough@stearnsweaver.com Fax: 305-789-2637
Agency:	City of Fort Lauderdale Community Redevelopment Agency 100 North Andrews Avenue Fort Lauderdale, Florida 33301 Attn: Executive Director, e-mail lfeldman@fortlauderdale.gov

With a copy to:

City of Fort Lauderdale
City Attorney's Office
100 North Andrews Avenue
Fort Lauderdale, Florida
Attn: Lynn Solomon, Esq.
e-mail: LSolomon@fortlauderdale.gov
Fax: (954) 828-5915

AND

J. Michael Haygood, Esq.
J. Michael Haygood, P.A.
701 Northpoint Parkway
Suite 209
West Palm Beach, Florida 33401
e-mail: mhaygood@haygoodlaw.com
Fax: (561) 471-8055

Or to such other addresses as the parties may be writing designate to the other party from time to time. All notices, demands, deliveries, or other communications hereunder shall be deemed to have been given or served for all purposes hereunder on the day a facsimile is sent with confirmation of its sending, forty-eight (48) hours after the time that such communication was deposited in the United States mails (Saturdays, Sundays and legal holidays excluded), postage prepaid, in the manner aforesaid, one (1) day after delivery to a recognized overnight courier service, or upon delivery, whichever event shall first occur.

(b) Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it may be changed) shall be deemed to have been an effective delivery.

B. NO PARTNERSHIP OR JOINT VENTURE: Nothing herein nor the acts of the parties hereto shall be construed to create a partnership or joint venture between Developer, Holdings and Agency.

C. NO ASSIGNMENT BY HOLDINGS: This Agreement may not be assigned by Holdings without the prior written consent of Agency which may be withheld in Agency's sole and absolute discretion. If Agency approves an assignment hereof by Holdings, Agency shall be entitled to make advances to such assignee and such advances shall be evidenced by this Agreement and secured by the Mortgage and Grant Documents. Holdings shall remain liable for payment of all sums advanced hereunder before and after such assignment.

D. RELIEF FROM AUTOMATIC STAY: Holdings hereby agrees that, in consideration of the Agency funding the Grant, in the event that the Developer or Holdings shall (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the United States Code, as amended ("Title 11"); (ii) be the subject of any order for relief issued under Title 11; (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state act of law relating to insolvency or bankruptcy, or other relief from creditors for debtors; (iv) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator; (v) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to insolvency or bankruptcy, or other relief from creditors for debtors, the Agency shall thereupon be entitled to relief from any automatic stay imposed by Section 362 of Title 11, or otherwise, on or against the exercise of the rights and remedies otherwise available to the Agency under this Agreement and the Grant Documents, and as otherwise provided by law.

E. RIGHTS OF THIRD PARTIES: All conditions of the obligations of Agency hereunder, including the obligation to make advances, are imposed solely and exclusively for the benefit of Agency, its successors and assigns, and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Agency will refuse to make advances in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Agency at any time if in its sole discretion it deems it desirable to do so. In particular, Agency makes no representations and assumes no obligations as to third parties or otherwise concerning the quality of the construction of the Improvements by Developer or the absence therefrom of defects.

F. INDEMNIFICATION: Holdings agree to and shall indemnify Agency from any liability, claims or losses, and attorneys' fees resulting from the disbursement of the Grant proceeds or from the condition of the Property whether related to the quality of construction or otherwise and whether arising during or after the term of the Grant made by Agency to Holdings in connection herewith. Furthermore, Holdings agrees to indemnify and hold harmless Agency from any costs or damages whatsoever arising under this Agreement and the Grant Documents from any cause whatsoever, including reasonable attorneys' fees and costs for Agency through appeal or in Federal Bankruptcy actions through final appellate level. The provisions shall survive the repayment of said Grant and shall continue in full force and effect so long as the possibility of such liability, claims or losses exists.

G. ASSIGNMENT: Agency may not assign all or any part of its interest

hereunder to any third party. Holdings may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Agency, consent which may be withheld in Agency's sole and absolute discretion.

H. SUCCESSORS AND ASSIGNS INCLUDED IN PARTIES: Whenever in this Agreement one of the parties hereto is named or referred to, the heirs, legal representatives, successors, and permitted assigns of such parties shall be included and all obligations which shall be binding upon them, and all covenants and agreements contained in this Agreement by or on behalf of Holdings or by or on behalf of Agency shall bind and inure to the benefit and detriment of their respective heirs, legal representatives, successors and permitted assigns whether so expressed or not.

I. HEADINGS: The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

J. INVALID PROVISIONS TO AFFECT NO OTHERS: If fulfillment of any provision hereof or any transaction related hereto at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision or portion thereof herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision or portion thereof only shall be ineffective and deleted as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect.

K. NEUTER AND GENDER: Whenever the singular or plural number, masculine or feminine, or neuter gender is used herein, it shall equally include the other.

L. AMENDMENTS: Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated orally, but only by instrument in writing signed by Holdings and Agency.

M. GOVERNING LAW: This Agreement shall be governed by and construed according to the laws of the State of Florida.

N. TIME: Time is of the essence with respect to all obligations, terms, duties and periods of time set forth herein.

O. NO WAIVER: Agency shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Agency, and then only to the extent specifically set forth in writing. A waiver on one event shall not be construed as continuing or as a bar to or waiver of any right or remedy to a subsequent event.

P. AGENCY LIABILITY:

1. **To Third Persons.** This Agreement shall not be construed to make Agency liable to any lienors as defined by Chapter 713, Florida Statutes, or others for goods or services delivered by them in or upon the Property, or for debts or claims to any such parties against Developer or for claims of any nature made by third persons arising out of the construction or the financing provided hereunder.

2. **Inspection Service.** It is expressly agreed that all inspection and other services rendered by Agency officers or agents shall be rendered solely for the protection and benefit of the Agency, and Developer and Holdings shall not be entitled to claim any loss or damage, either against Agency or its officers or agents, for failure of said officers or agents, for failure of said officers or agents to properly discharge their duties to Agency. Agency, its officers or agents shall not be liable for failure of any dealer, contractor, craftsman or laborer to deliver the goods or perform the services to be delivered or performed by them, nor for the quality, sufficiency or fitness of the said goods or services

Q. EXPIRATION AND TERMINATION: Except as may be expressly specified otherwise herein, this Agreement shall expire upon the Satisfaction Date. Thereafter, this Agreement shall no longer be of any force and effect, except as to such provisions of the Agreement which expressly survive expiration or termination thereof. For purposes hereof, "Satisfaction Date" means the earlier of (i) the date that the obligation of Holdings to return the Outstanding Balance to the Agency pursuant to this Agreement is extinguished or (ii) the date that a satisfaction of the Mortgage is recorded in the public records of Broward County, Florida.

R. ADDITIONAL CLAUSES:

1. **Promotion.** Holdings will permit Agency to publicize its involvement in the Property and construction of the Improvements and will, at Agency's request, name Agency as a construction Agency in all publicity and promotion which Developer, Holdings or their respective agents publishes in connection therewith, and will permit Agency to place and keep its signs upon the Property at all times during the term of the Grant.

2. **Releases by Agency.** Agency, from time to time, without notice to any person and without affecting the liability of Developer, Holdings or of any other person (other than any person expressly released by Agency in writing) for the payment of any of the Outstanding Balance, and without affection the priority or extent of the security interest of the Grant Documents, may do any and/or all of the following: (i) release in whole or in part any person liable for payment of any or all of the Outstanding Balance; (ii) extend the

time or otherwise alter the terms of payment of the Outstanding Balance, in whole or in part, or; (iii) accept additional or substitute security of any kind, or; (iv) release or otherwise deal with any property, real or personal, securing the Obligations.

3. **Additional Miscellaneous.** This Grant Agreement cannot be changed or terminated orally. If any portion of this Agreement is rendered unenforceable, same shall not affect the remaining portions of this Agreement, which remaining portions shall remain in full force and effect. Venue for any proceeding arising under this Agreement shall be Broward County, Florida.

4. **Special Clauses**. _____

_____

_____

S. NONRECOURSE. In the event of any default or breach by Developer or Holdings with respect to any of the terms, covenants and conditions of this Agreement or the Grant Documents, no property of the members of Developer or shareholders of Holdings or their respective ultimate beneficial owners shall be subject to levy, execution or other enforcement procedures for the satisfaction of Agency's remedies.

T. WAIVER OF RIGHT TO JURY TRIAL: AGENCY AND HOLDINGS HEREBY WAIVE ANY OBJECTION TO VENUE BEING IN COURTS LOCATED IN BROWARD COUNTY, FLORIDA, FOR ANY DISPUTE ARISING OUT OF THE GRANT AND THIS GRANT AGREEMENT. HOLDINGS AND AGENCY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE NOT TO SEEK A TRIAL BY JURY AND WAIVE ANY RIGHTS TO HAVE SAME IN RESPECT OF ANY LITIGATION (INCLUDING BUT NOT LIMITED TO ANY CLAIMS, CROSS-CLAIMS, THIRD PARTY CLAIMS) ARISING IN CONNECTION WITH THE GRANT AGREEMENT, THE GRANT DOCUMENTS, AND THE TRANSACTIONS CONTEMPLATED THEREIN AND ALL AND ANY COMBINATION OF THE FOREGOING. HOLDINGS ACKNOWLEDGES THAT THE AGENCY HAS BEEN INDUCED TO ENTER INTO THE GRANT BY, INTER ALIA, THE PROVISIONS OF THIS PARAGRAPH.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF Holdings and Agency have hereunto caused these presents to be executed on the date first above written.

AGENCY:

FORT LAUDERDALE COMMUNITY
REDEVELOPMENT AGENCY

_____, as
LEE R. FELDMAN
EXECUTIVE DIRECTOR

ATTEST:

By:_____
Jeffrey A. Modarelli, CRA Secretary

APPROVED AS TO FORM:
Cynthia A. Everett, General Counsel

By:_____
Lynn Solomon
Assistant General Counsel

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ___ day of _____, 2017, by _____, Lee R. Feldman, Executive Director of Fort Lauderdale Community Redevelopment Agency. He who is personally known to me or has produced a valid driver's license as identification.

Printed/Typed Name:_____
Notary Public-State of Florida
Commissioner Number:
Printed/Typed Name:_____
Notary Public-State of Florida
Commissioner Number:

HOLDINGS:

613 NW 3RD AVE HOLDINGS, INC.,
a Florida corporation

By: _____
Jeffrey R. Burns, its President

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ___ day of _____, 2017, by _____, as _____ of 613 NW 3rd Ave. Holdings, Inc., a Florida corporation. He who is personally known to me or has produced a valid driver's license as identification.

Printed/Typed Name:_____
Notary Public-State of Florida
Commissioner Number:

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "A"

LEGAL DESCRIPTION

LOTS 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31 and 32, BLOCK 322, of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; together with LOT 25, BLOCK 322, LESS that portion thereof described as follows:

BEGIN at the Southeast corner of said Lot 25; thence go Westerly 135.0 feet along the South line thereof to the Southwest corner of said Lot 25; thence Northerly along the West line thereof 22.55 feet (22.50 feet calculated) to the tangent point of a circular arc having a radius of 10 feet and being concave to the Northeast; thence Southerly to Easterly along said arc 15.71 feet through a central angle of 90 degrees 00' to the end of said arc; thence Easterly and tangent to said arc along a line being 35 feet North of and parallel to the South boundary of the North 1/2 of Section 3, Township 50 South, Range 42 East, 125.0 feet to the East line of said Lot 25; thence Southerly 12.60 feet (12.50 feet calculated) along said East line to the point of beginning.

ALL BEING IN BLOCK 322 OF PROGRESSO, according to the Plat thereof, recorded in Plat Book 2, at Page 18, of the Public Records of Miami-Dade County, Florida, said lands lying and being in Broward County, Florida.

Exhibit "D"
Form of Rental Report

(To be incorporated prior to closing)

Exhibit "E"
Form of Jobs Report

(To be incorporated prior to closing)

4 (L) (6) 10/13/17

RUSH

COMMISSION AGENDA ITEM DOCUMENT ROUTING FORM

Today's Date: 10/11/17

DOCUMENT TITLE: Agreement for Site Development and Development Incentive Program Grant (Six13 Project)

COMM. MTG. DATE: 6/6/17 **CAM #:** 17-0633 **ITEM #:** R-1 **CAM attached:** ☒YES ☐NO

Routing Origin: CAO **Router Name/Ext:** Shaniece Louis / Ext. 5036

CIP FUNDED: ☐ YES ☐ NO

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

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2) City Attorney's Office # of originals attached: 4 Approved as to Form: ☒YES ☐NO

Date to CCO: 10/12/17 **LS**
Initials

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3) City Clerk's Office: # of originals: 4 **Routed to:** Gina Ri/CMO/X5013 **Date:** 10/12/17

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4) City Manager's Office: CMO LOG #: Oct-56 Date received from CCO: 10/13/17

Assigned to: L. FELDMAN ☐ S. HAWTHORNE ☐ C. LAGERBLOOM ☒
L. FELDMAN as CRA Executive Director ☐

☐ APPROVED FOR LEE FELDMAN'S SIGNATURE ☐ N/A FOR L. FELDMAN TO SIGN

PER ACM: **S. HAWTHORNE** _____ (Initial/Date) **C. LAGERBLOOM** _____ (Initial/Date) ☐ **PENDING APPROVAL** *(See comments below)*
Comments/Questions:

Forward 4 originals to ☐ Mayor ☒ CCO **Date:** 10/13/17

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

INSTRUCTIONS TO CLERK'S OFFICE

City Clerk: Retains 1 original and forwards 3 original(s) to: Glendon Hall / CRA/ Ext. 5903 ***(Name/Dept/Ext)***

Attach ___ certified Reso # ____ ☐YES ☐NO **Original Route form to CAO**

please email an executed copy to Shaniece Louis*

Rev. 6/10/16

RUSH