

**DEVELOPMENT AGREEMENT FOR
STREETSCAPE ENHANCEMENT PROGRAM
INSIDE FOCUS AREA**

[THRIVE PROGRESSO]

This Development Agreement for Streetscape Enhancement Program (the "Agreement") is entered into this _____ day of _____, 20____ by and between the Fort Lauderdale Community Redevelopment Agency, a community redevelopment agency created pursuant to Part III, Chapter 163, Florida Statutes (the "Agency") and 744-748 NW 5 AVE LLC, a Florida limited liability company, Bayit Investments, LLC, a Florida limited liability company, 710 NW 5th AVENUE LLC, a Florida limited liability company and 413 NW 7th Street, LLC, a Florida limited liability company (collectively referred to as the "Developer" or "Developers").

WHEREAS, the Agency desires to encourage and assist projects in its area of operation which furthers the purposes and goals of the Community Redevelopment Plan for the Community Redevelopment Area; and

WHEREAS, the Developer has purchased the Property (as described in Exhibit "A") and is constructing the Project in the Community Redevelopment Area; and

WHEREAS, on June 11, 2019, the Advisory Board recommended approval of funding for this Project with funds under the Development Incentive Program as an economic development incentive to provide affordable commercial rents; and

WHEREAS, at its _____, 2019 meeting, the Board of Commissioners of the Agency authorized execution of an agreement with the Developer providing a forgivable loans to be paid to the Developer through the Agency's Streetscape Program to cover a portion of the costs related to the construction of streetscape improvements in connection with the development of the Project; and

NOW, THEREFORE, for and in consideration of the recitals, the mutual promises, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1
Definitions**

- 1.1. Advisory Board means the Northwest Progresso Flagler Heights Redevelopment Advisory Board.
- 1.2. Agency means the Fort Lauderdale Community Redevelopment Agency.
- 1.3. Authorized Representative means the Agency's Executive Director or his designee and Jonathan Fish and Abraham Fish, jointly, as to the Developer
- 1.4. Agency Staff means the staff of the Agency, whether employees or contract employees.
- 1.5. Agreement means this Agreement for development of the Streetscape Improvements on the Property.
- 1.6. Certificate of Occupancy means the CO issued by the City or other appropriate Governmental Authority for the entire Project that allows the Project to be occupied, opened for business and used as contemplated by this Agreement. For purposes of Project Completion Date, a TCO shall not constitute a Certificate of Occupancy.
- 1.7. City means the City of Fort Lauderdale, Florida, a Florida municipal corporation.
- 1.8. Commercially Reasonable Efforts means that level of effort which a prudent business would

undertake in circumstances which are the same as or substantially similar to the circumstances referred to or described, but without any obligation to incur any unreasonable or unduly burdensome expenses or obligations or any guaranty of completion or results.

- 1.9. Community Redevelopment Area means the Northwest/Progresso/Flagler Heights Community Redevelopment Area as described in Resolution No. 95-86 of the City adopted on June 2, 1995 and such other resolutions as may amend the boundaries of such area.
- 1.10. County means Broward County, Florida, a political subdivision of the State of Florida.
- 1.11. Developer means 744-748 NW 5 AVE LLC, a Florida limited liability company, Bayit Investments, LLC, a Florida limited liability company, 710 NW 5th AVENUE LLC, a Florida limited liability company and 413 NW 7th Street, LLC, a Florida limited liability company, jointly and severally.
- 1.12. Developer's Lender means Ocean Bank, a Florida banking corporation, which has provided financing in the amount of \$975,000 as secured by a mortgage recorded in the public records of Broward County, Florida which encumbers the real property owned by 710 NW 5th Avenue LLC and financing in the amount of \$2,025,000.00 as secured by a mortgage recorded in the public records of Broward County, Florida which encumbers real property owned by Bayit Investments, LLC.
- 1.13. Developer Streetscape Improvements means the following street improvements: Installation of new hardscape improvements such as concrete sidewalks, curbs and landscaping irrigation system, rain garden and bioswales along and within the boundaries of NW 5th Avenue . All such Developer Streetscape Improvements are as more particularly described on Exhibit "B" attached hereto and made a part hereof.
- 1.14. Plans and Specifications means architectural, engineering and construction documents constituting the concept documents, preliminary plans and drawings, schematic design documents, design development documents and construction documents for the Streetscape Improvements as shown on Exhibit "C" attached hereto and made a part hereof.
- 1.15. Effective Date means the date on which the last party executes this Agreement.
- 1.16. Governmental Authorities means all state, city, county, administrative or other governmental authorities which now or hereafter have jurisdiction, review, approval or consent rights relating to the design, development, construction, ownership, occupancy or use of the Property or the Project.
- 1.17. Permits and Approvals means any and all development, zoning, platting, subdivision, site plan, design, Plans and Specifications, construction permit and other applicable permits and approvals and variances, if necessary, from all applicable Governmental Authorities pertaining to the Project and the Property.
- 1.18. Person means any individual, corporation, firm, partnership, trust, association, limited liability company or other entity of any nature.
- 1.19. Project means the renovation and repurposing of existing industrial warehouses on the Property to accommodate commercial uses such as office and retail and other uses permitted under the City's Unified Land Development Regulations.
- 1.20. Project Completion Date means the date on which the construction of the entire Project is substantially complete and the Certificate of Occupancy or Completion has been issued by the appropriate Governmental Authority which date shall be no later than _____, 2022.
- 1.21. Property means the parcel of land owned by Developer on which the Project will be located as

described on **Exhibit "A"** attached hereto and made a part hereof.

- 1.22. **Redevelopment Plan** means the Northwest/Progresso/Flagler Heights Redevelopment Area Plan adopted by the City Commission on November 7, 1995, as amended, a copy of which is on file with the Agency.
- 1.23. **Reimbursement Amount** means an amount not to exceed the lesser of \$340, 374.87 or 90% of the eligible costs under the Agency's Streetscape Program to be paid by the Agency to the Developer in consideration of the installation and construction of the Developer Streetscape Improvements. For purposes hereof, the term Developer's Costs shall include the Developer's costs and expenses incurred in making improvements or constructing the Developer Streetscape Improvements that are construction costs, costs to bring utilities to the site, site preparation costs, lighting, landscaping, paving and fencing as approved with the Plans and Specifications. No improvements being funded under any other CRA program is eligible for reimbursement.
- 1.24. **Restrictive Covenant** means the Developer's agreement to provide a community benefit by limiting the rents charged on at least thirty thousand square feet of the leasable area ("Restricted Commercial Space") within the Project to \$17.00 per square foot, triple net, with a yearly increase in rent not to exceed five percent (5%) as certified by an independent accounting firm, selected by the Agency, but paid for by the Developer, for five (5) years following the date of the first disbursement under this Agreement. For purposes of this community benefit, lease is defined as any concession, license or other agreement, whether written or verbal, which grants a party the right to occupy, use or possess all or a portion of the Property, whether continuous or intermittent, for of period of thirty (30) days or more. Starting in year 2 of the term of this Restrictive Covenant and provided at least 10,000 of the Restricted Commercial Space has been leased at the initial rate of \$17.00 per square feet, the Developer may charge the escalated rent (\$17.00 plus annual 5% increase) as appropriate for each year thereafter on the remaining Restricted Commercial Space.
- 1.25. **TCO** means a temporary certificate of occupancy issued by the City or other applicable Governmental Authority for all or a portion of the Project.

ARTICLE 2

Findings

The parties to this Agreement do hereby find and acknowledge the following:

- 2.1. The City Commission of the City adopted Resolution No. 95-86 finding the existence of blight conditions in the Community Redevelopment Area, as more particularly described in that Resolution, in which the Property is located.
- 2.2. The Agency for the Area was created by Resolution No. 95-86 adopted by the City Commission of the City pursuant to part III of Chapter 163, Florida Statutes.
- 2.3. By adoption by the City Commission of Resolution No. 95-170, the Redevelopment Plan was adopted on November 7, 1995 and has been amended.
- 2.4. By adoption of Resolution No. 95-1084 on November 26, 1995, the Broward County Board of County Commissioners approved the Redevelopment Plan and such plan has been subsequently amended.
- 2.5. The Redevelopment Plan contemplates redevelopment in the Community Redevelopment Area.

- 2.6. Pursuant to the Redevelopment Plan, it is contemplated that the Agency will provide funding for certain streetscape improvements in the Community Redevelopment Area.
- 2.7. Intentionally Omitted.
- 2.8. The Project is consistent with and furthers the provisions of the Redevelopment Plan and the Agency desires to encourage redevelopment of the Property for use for the Project and to encourage Developer in its development, design, construction, use, ownership and operation of the Project.
- 2.9. Certain street improvements, which will include, but are not limited to, the Developer Streetscape Improvements are required to support the Project and will be necessary for the successful development of the Project.

ARTICLE 3

Project Overview

- 3.1 Project Development. Developer shall be responsible for all aspects of development of the Project. The only obligations of the Agency shall be as specifically provided herein.
- 3.2 Determinations by Agency. The Agency hereby determines that the Project is consistent with and furthers the goals and objectives of the Redevelopment Plan and that its design, development, construction, ownership, use and operation will promote the health, safety, morals and welfare of the residents of the Area.
- 3.3 Termination if Construction not Completed. In the event that the Developer has not completed construction of the Developer Streetscape Improvements and Project by the Project Completion Date, then this Agreement may be terminated by the Agency.

ARTICLE 4

Obligations of the Parties

- 4.1 Developer. Developer shall use Commercially Reasonable Efforts to obtain or cause to be obtained all Permits and Approvals, including, without limitation, all permits, consents, replatting (if necessary) and subdivision variances, waivers and other approvals necessary under applicable law for the design, development, construction, operation and use of the Project as described in the Plans and Specifications, which shall include, when applicable, the timely filing of necessary applications, with permit fees when required, the prosecution of the application to the same extent as used by the party charged with the effort as such party has devoted to the approvals, timely follow through with such amendments and revisions or additions to the documentation required by the application or other process as shall be customary with like kind projects of economic magnitude in the Broward County area, and the prompt payment of costs and fees associated therewith. Prior to the issuance of the Certificate of Occupancy, Developer shall not abandon construction of the Project, which shall mean the cessation of meaningful construction work on the Project for a period of 120 days or more. For purposes of this Section 4.1, "meaningful construction work on the Project" shall be the standard set forth in the applicable building code for purposes of maintaining any Permits and Approvals. The Developer shall maintain all Permits and Approvals for the Project and agrees to observe all applicable laws and requirements of all applicable Governmental Authorities in connection with the Project. With respect to the Streetscape Improvements, the Developer shall comply with the City's procurement code and competitively bid the scope of work for the Streetscape Improvements before awarding any contracts for the Streetscape Improvements. Evidence of compliance with the City's

procurement requirements as determined by the Agency in its sole discretion is a condition precedent to the Agency's obligation to advance the Reimbursement Amount. At a minimum, the Developer shall secure three (3) competitive bids for the same scope of work from three qualified unaffiliated and unrelated parties.

- 4.2 Developer Streetscape Improvements. Developer shall design, construct and install the Developer Streetscape Improvements as provided herein. Provided Developer satisfies all conditions, the Agency shall be responsible for paying the Reimbursement Amount directly to Developer in accordance with disbursement schedule set forth herein. The CRA agrees to reimburse the Developer up to the Reimbursement Amount subject to the terms and conditions contained herein. The Developer shall construct the Developer Streetscape Improvements as provided herein and in accordance with the applicable standards and specifications for such construction as set forth by the Governmental Authorities. Developer shall pay and discharge, or cause to be paid and discharged, prior to delinquency all taxes, charges, liabilities or claims of any type at any time assessed against or incurred by the Property or the Project, provided that nothing in this Section 5.3 shall require the payment of any such sum if Developer contests the same in good faith by appropriate proceedings. The Developer shall not allow any taxes to be delinquent so that the Property is subject to the sale of tax certificates according to Florida law. The Developer shall notify the Agency within 5 days of any notice of tax delinquency on the Property or the Project.
- 4.3 Permits and Approvals. Intentionally Omitted.
- 4.4 Developer Ad Valorem Tax Payments. Developer shall be obligated to pay all ad valorem property taxes due upon the Property and the Project as required by Florida law.
- 4.5 Approval of Agreement.
- 4.5.1 The Agency hereby represents and warrants to Developer that the execution and delivery hereof have been approved at duly convened meetings of the Agency and the same is binding upon the Agency.
- 4.5.2 Developer hereby represents and warrants to the Agency that (i) the execution and delivery hereof have been approved by all parties whose approval is required under the terms of the governing documents creating Developer, (ii) this Agreement does not violate any of the terms or conditions of such governing documents and the same is binding upon Developer and enforceable against it in accordance with its terms; (iii) the Persons executing this Agreement on behalf of Developer are duly authorized and empowered to execute the same for and on behalf of the Developer; (iv) Developer is a Florida limited liability company and is duly authorized to transact business in the State of Florida; and (v) this Agreement and any other documents, including the mortgage in favor of the Agency, do not violate the terms of any other agreement to which the Developer is a party.
- 4.6 Developer shall immediately notify agency in writing of any pending, or to the knowledge of the Developer, threatened actions or proceedings before any court or administrative agency against the Developer, or against any member, officer, employee, partner or shareholder of the Developer, which question the validity of this Agreement or any Exhibit hereto, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of the Developer.

ARTICLE 5

Project Financing

- 5.1 **Developer.** Developer shall use its own funds and/or funds obtained from an institutional lender to develop the Streetscape Improvements for the purposes contemplated by this Agreement. Developer shall be free to arrange financing in connection with the Property and the Project as Developer may desire, whether using any institutional lender for such financing. Developer shall promptly notify Agency of the new lender. Developer shall within 5 days' notice from its lender, notify the Agency of the occurrence of any event of default under any such financing. The Developer shall use commercially reasonable efforts to obtain the agreement of its lender that in the event of a default by the Developer under the financing of the Project by such institutional lender, that such lender will notify the Agency of such default and what will be necessary, if anything, for the Agency to cure such default at the election of the Agency.
- 5.2 **Forgivable Loan.** In order to secure the Restrictive Covenant and other terms, conditions, covenants and obligations contained herein, and prior to paying the Reimbursement Amount to Developer, Developer shall execute and record a Promissory Note, Mortgage, and Restrictive Covenant in substantially the same form as **Exhibits " ", " " and " "** attached hereto and made a part hereof and such other documents as reasonably requested by the Agency and its counsel. The amount of the Promissory Note and Mortgage shall be equal to the actual Reimbursement Amount of the Developer Streetscape Improvements.
- 5.2.1 **Interest Rate.** The interest rate on the Principal amount of the loan shall be zero percent (0%) per annum, except in the event of default, interest shall accrue at the maximum rate permitted by law.
- 5.2.2 **Term of Repayment.** Payment on the principal amount of the loan shall not be required so long as the Property is not sold, transferred or conveyed, is maintained as the Project, is not in default, the Restrictive Covenant is satisfied, for a five (5) year period following the Project Completion Date. The loan will be forgiven five (5) years after the first disbursement under the Development Agreement for Development Incentive Program by and between the Agency and the Developer. A prorata portion of the Reimbursement Amount shall be due and payable depending on the month in which the default occurred and as more fully described in the Note. If no sale, transfer, assignment or other event of default occurs during the five (5) year period, the terms of this encumbrance shall be satisfied and the Developer shall be issued a Satisfaction of Mortgage executed by the Agency.
- 5.2.3 **Subordination.** Agency acknowledges and agrees that the terms and provisions of this Agreement and all rights and obligations described herein and the rights of Agency under its mortgage are and shall be subordinate to the Developer's Lender as to the parcels owned by _____ and _____. Otherwise, Agency shall hold a first lien position on the other parcels. The subordination herein described shall be self-operative and effective without the requirement for the execution of a separate instrument; provided however, if required by Developer's Lender, Agency agrees to execute such instrument reasonably requested of it by Developer's Lender.
- 5.3 **Lender's Right to Cure.** The Agency shall provide Developer's Lender with a copy of the written notice of default and the opportunity to cure the breach on behalf of the Developer under the same terms and conditions as provided for the Developer, provided the Agency receives in writing the name, title and address of the Developer's Lender representative.
- 5.4 **Cross-Default.** Developer has applied for and simultaneously with this Agreement, Agency has agreed to provide funding in the amount of \$2,500,000 under its Development Incentive Program

("DIP") as evidenced by the DIP Agreement bearing the same date as this Agreement. A default under the DIP Agreement shall be deemed a default under this Agreement.

5.6 Conditions Precedent to Initial Advance, Subsequent Advance and Final Advance.

As conditions precedent to the Initial Advance and funding of the Reimbursement Amount, Agency shall have received and approved the following:

(a) The Developer shall provide evidence to Agency that it has sufficient funding to cover the remaining cost of the Streetscape Improvements after giving credit for the Reimbursement Amount and the Note, Mortgage, Restrictive Covenant, Environmental Indemnity Agreement and other documents have been executed by Developer and delivered to Agency ("Closing").

(b) Developer shall deliver to Agency Developer's proposed cash flow, draw schedule, construction budget, schedule of values and construction schedule for the Streetscape Improvements, and Agency shall be satisfied, in its sole discretion, that the Streetscape Improvements may be completed in accordance with the construction schedule and for costs not exceeding those set forth in the construction budget.

(c) Developer shall deliver to Agency three (3) prints of an original survey of the Property and improvements thereon dated not more than sixty (60) days prior to the date of this Agreement.

(d) Developer shall deliver to Agency one (1) true and correct copy of all existing Plans (including the site plan), together with evidence satisfactory to Agency that all applicable governmental authorities, Developer, its architect, engineer, general contractor, and other contractors have approved the same. Final plans and specifications signed and sealed by all engineers and bearing evidence of the approval of the appropriate governmental authorities shall be submitted prior to Closing. The Streetscape Improvements shall be constructed substantially in accordance with said final plans and specifications to be submitted to Agency for approval, subject to value engineering which shall be approved by Developer's architect, engineer and all governmental authorities prior to Closing.

(e) Contracts. Developer shall have delivered to Agency (a) a list containing the names and addresses of all existing material contractors, architects, engineers, and other suppliers of services and materials for the Streetscape Improvements, their respective contract amounts, and a copy of their contracts; (b) duly executed, acknowledged and delivered originals from the general contractor, architect, engineer, and other subcontractors, or suppliers of services or materials required by Agency, whether or not engaged by the general contractor for all labor, materials and equipment to complete the Streetscape Improvements thereon, of (i) consents or other agreements satisfactory to Agency from the general contractor, architect and engineer, and (ii) agreements satisfactory to Agency subordinating all rights, liens, claims and charges they may have or acquire against Developer or the Property to the rights, liens and security interests of Agency; and (c) all other documentation as the Agency may reasonably require. If Developer enters into any contract with any contractor, including, without limitation, the general contractor, such contract shall set a "guaranteed maximum price" limit on the total amount to be paid by the Developer to the general contractor as provided in the contract. The Agency shall have received and approved an acceptable guaranteed maximum price contract as to the Streetscape Improvements. The construction contract will provide that any general contractor fee shall be subordinate to the Agency rights. The Project Completion Date for the Improvements in the construction contract shall not be later than _____, 2022, subject to Force Majeure Events. The general contractor will, prior to Closing, provide all contracts with major subcontractor(s). Developer shall also deliver to Agency a copy of the general contractor's license which must be valid and current.

(f) Cost Breakdown. Developer shall deliver to Agency a cost breakdown satisfactory to Agency in Agency's reasonable discretion including detailed sources and use budget for construction of the Streetscape Improvements including items for contingencies.

(g) Insurance Policies. Developer shall deliver to Agency the following insurance, together with evidence satisfactory to Agency that all premiums therefor have been paid for a period of not less than one (1) year from commencement of construction of the Project and the Streetscape Improvements and that the policies are in full force and effect.

(i) A Builder's Risk insurance policy in an amount not less than one hundred percent (100%) of the hard costs shall be provided. The Mortgagee clause shall be addressed to: Fort Lauderdale Community Redevelopment Agency, 914 Sistrunk Blvd, Suite 200, Fort Lauderdale, FL 33311 and such policy shall provide that it will not be canceled without thirty (30) days prior written notice to Mortgagee and that all insurance proceeds will be paid directly to Mortgagee. The deductible for said insurance shall not exceed five percent (5%) of the amount of the Builder's Risk secured, without co-insurance.

(ii) At such time as a Certificate of Completion has been issued for the Streetscape Improvements, insurance against casualty to the Property under a policy or policies covering such risks as are presently included in the "special form" (also known as "all risk") coverage, including such risks as are ordinarily insured against by similar businesses, but in any event including fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, damage from aircraft, smoke, vandalism, malicious mischief and acts of terrorism. Such insurance shall name Agency as mortgagee and loss payee. The insurance shall be for an amount equal to the lesser of 100% of replacement cost value, with a deductible amount, if any, satisfactory to Agency. No policy of insurance shall be written such that if the proceeds thereof will produce less than the minimum coverage required by this Section by reason of co-insurance provisions or otherwise.

(iii) Public liability insurance insuring against all claims for personal or bodily injury, death, or property damage occurring upon, in or about the Property in an amount of not less than One Million Dollars (\$1,000,000.00) single limit coverage.

(iv) Workers compensation insurance coverage which evidences Developer's compliance with all of the requirements of applicable law with respect to workers compensation insurance.

(v) General liability insurance for One Million Dollars (\$1,000,000.00) per occurrence and workers compensation insurance from the general contractor. Developer and Agency will be listed as additional insured/loss payee.

(vi) If the Property is located in an area designated by the Director of Federal Emergency Management Agency as a special flood hazard area, Developer shall provide evidence of flood insurance which shall be in an amount equal to the lesser of: (i) \$500,000.00 or (ii) the maximum insurable value of any vertical Improvements.

(vii) Upon the issuance of the Certificate of Completion, Windstorm coverage in an amount of the lesser of 100% of replacement cost value or the Streetscape Improvements.

(viii) Upon the issuance of a Certificate of Completion, Business interruption insurance coverage insuring against any peril that would result in the inability of Developer or Developer's tenants, subtenants, or lessees to conduct its business on the Property upon the issuance of the Certificate of Completion in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) with a maximum of a seven (7) day deductible period. Such policy shall include an additional insured endorsement naming the Mortgagee as an additionally insured and lost payee.

(ix) All policies shall provide that the policies shall not be invalidated by any waiver of the right of subrogation by any insured and shall provide that the carrier shall have no right to be subrogated to Mortgagee. Mortgagor, upon request of Mortgagee, will deliver to Mortgagee from time to time the policies or certificates of insurance in form satisfactory to Mortgagee, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days' prior written notice to Mortgagee. Each insurance policy also shall include an endorsement providing that coverage in favor of Mortgagee will not be impaired in any way by any act, omission or default of Mortgagor or any other person.

(h) Environmental Compliance/Report. Developer shall deliver to Agency evidence satisfactory to Agency that no portion of the Property is "wetlands" under any applicable law and that the Property does not contain and is not within or near any area designated as a hazardous waste site by any tribunal, that neither the Property nor any adjoining property contains or has ever contained any substance classified as hazardous or toxic (or otherwise regulated, such as, without limitation, asbestos, radon and/or petroleum products) under any law or governmental requirement pertaining to health or the environment, and that neither the Property nor any use or activity thereon violates or is or could be subject to any response, remediation, clean-up or other obligation under any law or governmental requirement pertaining to health or the environment including without limitation, a written report of an environmental assessment of the Property, made within twelve (12) months prior to the date of this Agreement, by an engineering firm, and of a scope and in form and content satisfactory to Agency showing that there is no evidence of any such substance which has been generated, treated, stored, released or disposed of in the Property, and such additional evidence as may be required by Agency. All reports, drafts of reports, and recommendations, whether written or oral, from such engineering firm shall be made available and communicated to Agency. Additionally, as a condition to Closing, Developer hereby covenants and agrees to indemnify Agency and its successors and assigns harmless from any harm, damage or claim arising from the present or future existence of hazardous substances. It is expressly understood and agreed to between the parties that such obligations under this environmental indemnity are enforceable whether or not Agency seeks recovery against the collateral at any time securing the Reimbursement Amount. Agency reserves the right to ask for additional information or evidence of compliance with this Section in its sole discretion. If any substance classified as hazardous or toxic (or otherwise regulated, such as, without limitation, asbestos, radon and/or petroleum products) under any law or governmental requirement pertaining to health or the environment is found on the Property, then Developer shall be required to engage in appropriate and legally required remediation or clean-up, removal, disposal, implement institutional or engineering controls and otherwise take such other steps and actions as approved and authorized by the appropriate governmental authority.

(i) Notice of Commencement. Developer shall execute for recording a Notice of Commencement (or an amended Notice of Commencement) complying with Chapter 713, Florida Statutes listing the Agency as a party to receive notice to owner. The Notice of Commencement shall be recorded subsequent to the recording of the Mortgage and the Development Incentive Program mortgage and shall be posted by Developer on the construction site in compliance with Chapter 713, Florida Statutes. In addition, Developer shall execute and deliver an Affidavit of Posting, certifying that the Notice of Commencement has been posted at the Project site.

(j) Permits. Agency shall have received true and correct copies of all permits (including, without limitation, the building permit and all other permits) required to be issued for construction of the Streetscape Improvements, together with all other consents, licenses, permits and approvals required to be issued for the construction of the Streetscape Improvements, all in assignable form (to the extent appropriate) and in full force and effect. Developer shall, provide proof, satisfactory to Agency, that it has obtained all applicable licenses, permits (including the final, unconditional building permit), authorizations, consents, zoning and land use, concurrency, site plan, or other approvals from each governmental authority necessary for the immediate development/construction of the Streetscape Improvements; all such licenses, permits, authorizations, consents, zoning and land use, concurrency, site plan, or other approvals shall be and shall remain throughout the term of this Agreement in full force and effect. Copies of all building permits and/or licenses free of contingencies are to be submitted to Agency for approval for all Streetscape Improvements, including related amenities. Prior to Closing,

Developer shall deliver to Agency all authorizations, permits or approvals required by any governmental authority for the construction of the Streetscape Improvements and operation of the Property for the purposes contemplated under this Agreement.

(k) Code Violations. Developer shall submit a plan approved by the appropriate governing authority to remedy the code violations on the Property and such plan shall provide adequate detail and completion dates for bringing the Property into compliance.

(l) Subsequent Advance. Advances hereunder shall be made in three draws upon compliance with the conditions of this Agreement and the following conditions in form and substance satisfactory to Agency, in its sole but reasonable discretion:

(m) No Default: The warranties and representations contained in this Agreement are correct and true, all the covenants, terms and conditions of this Agreement remain satisfied, all conditions contained herein have been satisfied, and no unmatured event of default or event of default has occurred as of the date of the advance.

(n) Request and Evidence of Construction and Payment: Ten (10) business days prior to each advance, Developer shall supply Agency with a written request for (in form acceptable to Agency) executed by Developer for an advance, which request shall set forth the amount sought, shall constitute a covenant and affirmation of Developer that the warranties and representations in this Agreement are correct and true, that all the covenants, terms and conditions of this Agreement are being complied with, and that no unmatured event of default or event of default has occurred as of the date of the advance. The form for advances for one third of the Reimbursement Amount must be executed by general contractor and all requests for all or a portion of the Reimbursement Amount must be accompanied by such other evidence as may from time to time be reasonably requested by Agency, including, but not limited to, applications, certificates and affidavits of Architect, general contractor, and title company, if any. showing:

(i) The percentage of completion of the improvements and the value of that portion of the improvements completed at that time.

(ii) To the extent required under applicable Florida law, waiver of liens one month in arrears from all subcontractors and materialmen indicating the dollar amount received from previous draw. Waiver of liens from general contractor for the total amount of the previous draw and indicating that all outstanding claims for labor, materials and fixtures through the date of the last advance have been paid and liens therefor waived in writing, except for non-paid claims approved by Agency.

(iii) That Developer has complied with all of their respective obligations under the Agency documents as of the date of the request for an advance.

(iv) To the extent required by Agency, copies of all bills or statements for expenses for which the advance is required.

(v) That all change orders and extras required to be approved have been approved in writing by Agency.

(vi) That the amount of undisbursed Agency Funds is sufficient to pay the cost of completing the Streetscape Improvements in accordance with the Plans, as same may have been amended or evidence that Developer has sufficient funds to cover the cost overruns.

(vii) That each requisition of funds is to be used for the specific account for which the requisition is made.

(viii) That funds requested to be disbursed are not for any other purpose or in any other amount than as described and allocated on the construction budget for the Streetscape Improvements.

(ix) Any change orders, cost overruns or other associated construction costs that are not covered by the balance of the loan, must first be funded by the Developer prior to the Agency funding the next draw.

The request for an advance shall contain claims for labor and materials to the date of the last inspection by the Agency and not for labor and materials rendered thereafter. The Agency may inspect the Property to determine the percentage of completion for purposes of the next request for an advance.

(o) Disbursements. Disbursements shall be made to Developer by Agency, or at Agency's option, through title company, if any, and Agency shall comply with all disbursing requirements of Agency and title company.

(p) Developer's Contribution. Developer shall be obligated to fund the balance of the costs for the Streetscape Improvements in excess of the Reimbursement Amount and any costs overruns. Disbursement by the Agency hereunder shall be made *pari passu* with the Developer's contribution.

(q) Final Advance. Within ten (10) days of the completion of the Streetscape Improvements being funded with Agency funds, in addition to satisfying all of the conditions and supplying all of the documents required under this Agreement, Developer shall supply Agency with the following documents prior to payment of the final advance and, in form and substance reasonably acceptable to Agency:

1) Certificates from Developer's architect, engineer, contractor, certifying that the Streetscape Improvements (including any off-site improvements) have been completed in accordance with, and as completed comply with, the Plans and all laws and governmental requirements; and Agency shall have received two (2) sets of detailed "as built" Plans approved in writing by Developer, Developer's architect, and each contractor;

2) Final affidavits (in a form approved by Agency) from architect, engineer, general contractor and each contractor certifying that each of them and their subcontractors, laborers, and materialmen has been paid in full for all labor and materials for construction of the improvements; and final lien releases or waivers (in a form approved by Agency) by architect, engineer, general contractor, and all subcontractors, materialmen, and other parties who have supplied labor, materials, or services for the construction of the improvements, or who otherwise might be entitled to claim a contractual, statutory or constitutional lien against the Property;

3) Evidence satisfactory to Agency that all laws and governmental requirements have been satisfied, including receipt by Agency of all necessary governmental licenses, certificates and permits (including certificates of occupancy) with respect to the completion, use, occupancy and operation of the improvements, together with evidence satisfactory to Agency that all such licenses, certificates, and permits are in full force and effect and have not been revoked, canceled or modified;

4) Three (3) copies of a final as-built survey satisfactory to Agency;

5) All Certificates of Occupancy for the improvements;

6) Policies of fire, lightning and extended coverage insurance, and such other types of insurance as may be reasonably required by Agency in such amounts and containing such terms as required in this Agreement or as otherwise required by Agency, endorsed to show the interests of Agency and in form and substance and written by companies satisfactory to Agency.

7) Execution and Recording of a Maintenance Agreement for the Streetscape Improvements, in form and substance acceptable to the Agency, and the regular and customary form used by the City's Department of Sustainable Development ("DSD") unless waived by DSD.

ARTICLE 6

Project Development

- 6.1 Project Schedule. Developer represents that the Project Completion Date shall occur in accordance with the Project Schedule set forth on **Exhibit E**. Upon written request by Developer the Agency Authorized Representative may, upon good cause shown by Developer, extend the time for the Project Completion Date for an additional six (6) month period but shall not extend beyond the sunset date of the Agency.

ARTICLE 7

Developer Defaults; Agency Remedies

- 7.1 Event of Default. Subject to Force Majeure, the occurrence of any one or more of the following and the continuance thereof uncured or uncorrected for the period of time hereinafter provided shall constitute an Event of Default hereunder:
- 7.1.1 The Developer defaults in the performance of any obligation imposed upon it under this Agreement, the Note, Mortgage or Restrictive Covenant or the Developer fails to complete any item required to be completed by it as provided herein, including constructing the Project substantially in accordance with the final Plans & Specifications or constructing the Streetscape Improvements, or violating the terms of the Restrictive Covenant and the Developer does not cure such default within thirty (30) days after delivery of notice of such default from the Agency; or
 - 7.1.2 Any statement, representation or warranty made by the Developer herein or in any writing now or hereafter furnished in connection herewith shall be false in any material respect when made and which materially and adversely affects the rights, duties or obligations of the Agency hereunder; or
 - 7.1.3 (i) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating the Developer bankrupt or insolvent, approving a petition seeking a reorganization or appointing a receiver, trustee or liquidator of the Developer or of all or a substantial part of its assets, or (ii) there is otherwise commenced as to the Developer or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues without being dismissed after any stay thereof expires.
- 7.2 Remedies. Upon the occurrence and during the continuance of any Event of Default by Developer hereunder, the Agency shall have the following rights (a) to terminate this Agreement, upon which termination Developer agrees upon request by the Agency it shall assign and transfer to the Agency, free of any liens or other obligations or conditions, all plans, specifications and contracts for the Developer Streetscape Improvements (b) to stop any disbursements of funds by the Agency hereunder, including the Reimbursement Amount (c) to recover all funds paid by the Agency under this Agreement or (d) to pursue other rights or remedies which are or may be available to Agency at law or in equity to enforce any of the terms of this Agreement. Notwithstanding, nothing herein shall be deemed a pledge or the right to place a lien on the Agency's revenue. This Agreement shall not be construed as a grant or consent to encumber the Redevelopment Trust Fund of the Agency or to grant a right of specific performance as an

equitable remedy. Further, payments under this Agreement are subordinate and inferior to existing debt service payments and administrative and overhead expenses of the Agency.

ARTICLE 8

Agency Defaults, Developer Remedies

- 8.1. Agency Event of Default. The occurrence of any one or more of the following and the continuance thereof for the period of time hereinafter provided shall constitute an Event of Default hereunder by the Agency:
- 8.1.1 If for any reason the Agency fails to timely pay, perform or complete any or all of its material obligations under this Agreement as and when required including the obligation to pay the Reimbursement Amount and the Agency does not cure such default within thirty (30) days after delivery of notice of such default from the Developer.
- 8.2 Remedies. If at any time there is a default by the Agency which is not cured within any applicable cure period provided herein, Developer shall have the right to terminate this Agreement and/or to pursue other rights or remedies which are or may be available to Developer at law or in equity to enforce any of the terms of this Agreement.

ARTICLE 9

General Provisions

- 9.1 Non-liability of Agency and City Officials. No member, official or employee of the Agency or the City or the Agency Staff of any employee of the City shall be personally liable to the Developer or to any Person with whom the Developer shall have entered into any contract, or to any other Person in the event of any default or breach by the Agency, or for any amount which may become due to the Developer or any other Person under this Agreement.
- 9.2 Approval. Whenever this Agreement requires the Agency or the Developer to approve any contract, document, plan, specification, drawing or other matter, such approval shall not be unreasonably withheld, delayed or conditioned. The Developer and the Agency shall perform all obligations imposed upon them under this Agreement in a reasonable and timely fashion.
- 9.3 Force Majeure. Neither the Developer nor the Agency shall be deemed in default hereunder where such a default is based on a delay in performance as a result of war, insurrection, terrorist activity, strikes, lockouts, riots, floods, earthquakes, fires, casualty, acts of God, acts of public enemy, epidemic, quarantine restrictions or freight embargo, or excessive delays in the permitting process not caused by Developer; provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay and a reasonable time to resume after such delay. The party invoking this Section 9.3 shall deliver notice to the other party as provided in Section 9.4 setting forth the event of Force Majeure and the anticipated delay resulting from such event of Force Majeure. Upon expiration of the event of Force Majeure, either party may notify the other that the event has expired and that the extension of time granted as a result of such delay has ended. Lack of funding or an inability to secure financing by the Developer shall not be deemed a Force Majeure event.
- 9.4 Notices. All notices to be given hereunder shall be in writing and (a) personally delivered, (b) sent by registered or certified mail, return receipt requested, or (c) delivered by a courier service utilizing return receipts. Such notices shall be deemed given and received for all purposes under this Agreement (i) three (3) business days after the date same are deposited in the United States Mail if sent by registered or certified mail, or (ii) the date actually received if sent by personal

delivery or courier service, or (iii) the date of transmission of a facsimile, with telephonic or machine confirmation of receipt:

If to the Agency:

Fort Lauderdale Community Redevelopment Agency
914 NW Sixth Street, Suite 200
Fort Lauderdale, FL 33311
Tel: 954-828-4514
Fax: 954-828-4500

With a Copy to:

CRA General Counsel
914 NW Sixth Street, Suite 200
Fort Lauderdale, Florida 33311

If to the Developer:

with a copy to:

Jamie Tarich, Esq.
The Tarich Law Firm P.A.

Any change to an address shall be given in the same manner as a notice under this Section 9.4.

- 9.5. Time. Time is of the essence in the performance by any party of its obligations hereunder.
- 9.6. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.
- 9.7. Amendment. This Agreement may be amended by the Parties hereto only upon the execution of a written amendment or modification signed by the Parties.
- 9.8. Waivers. All waivers, amendments or modifications of this Agreement must be in writing and signed by both parties. Any failures or delays by any party in asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or other default by any other party.
- 9.9. Restrictions on Transfers. Developer represents and agrees for itself and its successors and assigns that it will not, prior to expiration of the term of the forgivable loan, as to a proposed assignment or transfer of the Project Site or Property, permit, 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 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 loans provided by the Developer's Lender (hereinafter, collectively, known as "Transfer") in any other mode or form or with respect to this Agreement or the Project Site or Property, without first

obtaining the prior written approval of the Agency, which approval shall not be unreasonably withheld. Further Developer represents and agrees for itself and its successors and assigns that it will not, prior to expiration of the term of the forgivable loan, sell, transfer or convey the controlling interest of Jonathan Fish and Abraham Fish (the "Principals") in the Developer without the written approval and consent of the Agency which will not be unreasonably withheld, conditioned or delayed. The Developer may not assign any or all of its rights, duties and obligations under this Agreement, the Note, Mortgage or Restrictive Covenant to any other Person unless and until the Agency has agreed to such assignment. The Agency may assign this Agreement to the City or to any successor to the Agency at any time without any prior approval by the Developer, provided that notice of such assignment shall be given by the Agency to the Developer as provided in Section 9.4 of Article 9.

(a) The Agency shall be entitled to require 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 this section.

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

The provisions of this section shall survive termination or expiration of this Agreement until the maturity date of the forgivable loan.

9.10 Indemnification. Developer agrees to protect, defend, indemnify and hold harmless the Agency, and their public officials, officers, employees and agents, from and against any and all lawsuits, penalties, claims, damages, settlements, judgments, decrees, costs, charges and other expenses or liabilities of every kind, sort or description including, but not limited to, attorneys' fees at both the trial and appellate levels, in connection with or arising, directly or indirectly, out of or resulting from this Agreement or the Developer's acts or omissions in performing its obligations under this Agreement. Without limiting the foregoing, any and all such claims, relating to personal injury, death, damage to property, defects in material or workmanship, actual or alleged infringement or any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance administrative order, rule or regulation or decree of any court, are included in the indemnity. The Developer further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claim(s) is

groundless, false or fraudulent. However, the Agency retains the right to select counsel of its own choosing. This provision shall survive expiration or termination of this Agreement and shall not be limited by any insurance required hereunder.

- 9.11 Severability. The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect any other provision of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 9.12 Contingent Fee. The Developer represents and warrants that it has not employed or retained any Person to solicit or secure this Agreement and that it has not paid or agreed or promised to pay any Person any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the execution of this Agreement, including any broker fee or commission.
- 9.13 Independent Contractor. In the performance of this Agreement, the Developer will be acting in the capacity of an independent contractor and not as an agent, employee, and partner of the Agency. The Developer and its employees and agents shall be solely responsible for the means, methods, techniques, sequences and procedures utilized by the Developer in the performance of its obligations under this Agreement.
- 9.14 Timing of Approvals. Each party hereto shall have a period of not more than thirty (30) business days from the date of submission to such party of any item under this Agreement to take any action or give its approval or denial and the failure to take any such action, or give such approval or denial within such period of time shall be deemed approval, provided that no approval by the Agency shall be governed hereby.
- 9.15 Not A General Obligation.
- (a) Neither this Agreement nor the obligations imposed upon the Agency hereunder shall be or constitute an indebtedness or general obligation of the Agency or other Governmental Authority within the meaning of any constitutional, statutory or charter provisions requiring the Agency or other Governmental Authority to levy ad valorem taxes nor a lien upon any properties or funds of the Agency or other Governmental Authority. The Developer agrees that the obligation of the Agency to make any payments by the Agency to the Developer pursuant to this Agreement shall be subordinate to the obligations of the Agency to pay debt service on any bonds to be issued by the Agency up to the principal amount of the first issuance of such bonds.
- (b) Nothing contained herein shall be deemed, construed or applied to cause any Governmental Authority, specifically including the Agency, to waive its right to exercise its governmental power and authority or to consider any request causing the exercise of its governmental powers in any manner other than that which is customary for the exercise of such governmental powers.
- 9.16 Parties to Agreement. This is an agreement solely between the Agency and the Developer. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any Person not a party hereto other than the successors or assigns of the Agency and the Developer.
- 9.17 Venue; Applicable Law. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Broward County, Florida, or the United States District Court for the Southern District of Florida. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement.
- 9.18 Insurance. During the term of this Agreement, the Developer shall obtain and maintain casualty insurance on the Project in an amount equal to the cost of replacing the Project (subject to a commercially-reasonable deductible) in the event of a damage or destruction of the Project, including builder's risk insurance during construction. Subject to the prior rights of Developer's Lender, Developer shall use the proceeds of such insurance to rebuild or repair the Project to

substantially the same condition as before such damage or destruction. The Developer shall also obtain and maintain liability insurance in such an amount as is customary for a project of the size and scope of the Project. Certificate(s) of insurance evidencing such insurance to the reasonable satisfaction of the Agency shall be provided to the Agency by the Developer.

- 9.19 Termination. In the event of a termination of this Agreement as provided herein prior to its expiration, the party terminating the Agreement shall provide notice to that effect to the other party and upon receipt of such notice and the expiration of any cure period provided herein this Agreement shall then be of no force and effect, neither party will be liable to the other for any payments or other obligations other than any payments or obligations earned or incurred as of such date of termination.
- 9.20 Term. This Agreement shall take effect upon the Effective Date and, if not earlier terminated as provided herein, shall expire on the date of the payment of the Reimbursement Amount to the Developer by the Agency.
- 9.21 Records/Right to Audit. Agency shall have the right to audit the books, records, and accounts of Developer that are related to the Developer Streetscape Improvements as defined in Section 1.12 as more fully set forth in Exhibits D of 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 in accordance with generally accepted accounting practices and standards. 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 Agency 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 the Developer Streetscape Improvements as defined in Section 1.12 as more fully set forth in Exhibits D of this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit, litigation or other action has been initiated and has not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings, litigation or other action. If the Florida public records law is determined by Agency to be applicable, Developer shall comply with all requirements thereof. 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.

- 9.22 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. The Developer and all contractors or subcontractors (the "Contractor") engaging in services in connection with construction, operation and/or maintenance of the Project shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the 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 this Agreement and as to Contractor's 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, operation or maintenance of 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 construction, operation or maintenance 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 construction, operation or maintenance 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.

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.

9.23 Local Preference. The Developer shall use its best efforts to work with the Agency to notify local business firms, minority owned firms, women-owned firms or labor surplus area firms of the opportunity to submit bids for work on the Project. Bids will be selected based upon competitiveness of the bid and the qualifications and capacity of the bidder. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Developer may rely on written representations by businesses owners regarding their status as minority and female business enterprises in lieu of an independent investigation.

9.24 Not A Development Agreement. The parties acknowledge, agree and represent that this Agreement, including without limitation, any of the Exhibits, is not a development agreement as described in Sections 163.3220-163.3243, Florida Statutes.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Agreement is executed the day and year above written.

AGENCY:

WITNESSES:

Fort Lauderdale Community Redevelopment Agency, an agency created pursuant to Part III, Chapter 163, Florida Statutes

Print Name

By: _____

Christopher J. Lagerbloom
Executive Director

Date: _____

Print Name

APPROVED AS TO FORM:

Alain E. Boileau, CRA General Counsel

ATTEST:

By: _____

Lynn Solomon, Assistant General Counsel

By: _____

Jeffrey A. Modarelli, CRA Secretary

WITNESSES:

DEVELOPER:

Bayit Investments LLC, a Florida Limited Liability Company

(Signature)
Printed Name: _____

By: _____
Jonathan Fish, Authorized Member

(Signature)
Printed Name: _____

By: _____
Abraham Fish, Authorized Member

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Jonathan Fish, as Authorized Member of Bayit Investments, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Abraham Fish, as Authorized Member of Bayit Investments, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

WITNESSES:

DEVELOPER:

744-748 NW 5 Ave LLC, a Florida Limited Liability Company

(Signature)

Printed Name: _____

By: _____

Jonathan Fish, Authorized Member

(Signature)

Printed Name: _____

By: _____

Abraham Fish, Authorized Member

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Jonathan Fish, as Authorized Member of 744-748 NW 5 Ave, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Abraham Fish, as Authorized Member of 744-748 NW 5 Ave, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

WITNESSES:

DEVELOPER:

710 NW 5th Avenue LLC, a Florida Limited Liability Company

(Signature)

Printed Name: _____

By: _____

Jonathan Fish, Authorized Member

(Signature)

Printed Name: _____

By: _____

Abraham Fish, Authorized Member

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Jonathan Fish, as Authorized Member of 710 NW 5th Avenue, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

Notary Public, State of Florida

(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires:

Commission Number

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Abraham Fish, as Authorized Member of 710 NW 5th Avenue, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

Notary Public, State of Florida

(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires:

Commission Number

WITNESSES:

DEVELOPER:

413 NW 7th Street, LLC, a Florida Limited Liability Company

(Signature)

Printed Name: _____

By: _____

Jonathan Fish, Authorized Member

(Signature)

Printed Name: _____

By: _____

Abraham Fish, Authorized Member

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Jonathan Fish, as Authorized Member of 413 NW 7th Street, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

Notary Public, State of Florida

(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires:

Commission Number

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Abraham Fish, as Authorized Member of 413 NW 7th Street, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

Notary Public, State of Florida

(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires:

Commission Number

EXHIBIT LIST:

- A. **PROPERTY**
- B. **DEVELOPER STREETSCAPE IMPROVEMENTS (GRANT APPLICATION)**
- C. **PLANS AND SPECIFICATIONS**
- D. **PROJECT CONSTRUCTION PRICING AND MATERIAL LIST**
- E. **PROJECT SCHEDULE**
- F. **PROMISSORY NOTE**
- G. **MORTGAGE**
- H. **RESTRICTIVE COVENANT**

EXHIBIT "A"

PROPERTY

All of Lots 21, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 and the East One-Half (E 1/2) of Lots 38, 39, 40, 41 and 42, in Block 282, of Progresso, a Sub-division according to the plat thereof as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida, said lands situate, lying and being in Broward County, Florida.

Together With

Lots 25, 26 and 27, Block 282, of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida, and said lands situate, lying and being in Broward County, Florida.

Together With

Lots 22, 23, and 24, Block 282, PROGRESSO, according to the map or plat thereof as recorded in Plat Book 2, Page 18, Public Records of Miami-Dade County, Florida- Said lands situate, lying and being in Broward County, Florida.

Together With

Lots 7, 8, 9, 10 & 11, Block 281, of PROGRESSO, according to the Plat thereof, recorded in Plat Book 2, page 18, of the Public Records of Miami-Dade County, Florida; said lands situate and being in Broward County, Florida.

Together With

Lots 12, 13, 14, 15 & 16, Block 281, of PROGRESSO, according to the Plat thereof, recorded in Plat Book 2, page 18, of the Public Records of Miami-Dade County, Florida; said lands situate and being in Broward County, Florida.

Together With

Lots 17, 18, 19 & 20, Block 281, of PROGRESSO, according to the Plat thereof, recorded in Plat Book 2, page 18, of the Public Records of Miami-Dade County, Florida; said lands situate and being in Broward County, Florida.

Together With

Lots 21, 22, 23 & 24, Block 281, of PROGRESSO, according to the Plat thereof, recorded in Plat Book 2, page 18, of the Public Records of Miami-Dade County, Florida; said lands situate and being in Broward County, Florida.

Together With

Lots 43 thru 48 and the West 1/2 of Lots 38 thru 42, Block 282, Progresso, according to the Plat thereof as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands, now situate, lying and being in Broward County, Florida.

EXHIBIT “B”

Developer Streetscape Improvements
(including costs)

Streetscape Grant Application
(On File with the Agency and incorporated herein)



STREETSCAPE APPLICATION

City of Fort Lauderdale

Northwest-Progresso-Flagler Heights
Community Redevelopment Agency
(NWPF CRA)



APPLICATION FOR CRA FUNDING ASSISTANCE

Name of Principal Owner in Charge Jonathan Fish / Abraham Fish		Tel. No. (786) 444-6830		E-Mail Address jonathan@nationalwaterrestoration.com	
Primary Contact for this CRA Request John A Halliday		Tel. No. (954) 767-0700		E-Mail Address jhalliday@hallidaygroup.com	
Name of Business DAYIT INVESTMENTS LLC, 710 NW 5TH AVENUE LLC, 744-748 NW 5 AVE LLC, 413 NW 7TH STREET LLC		Tax I.D. No. 47-1706727; 81-4632708 83-2097240; 82-5380885		Company Website N/A	
Business Address 746 NW 5 Avenue		Tel. No. (786) 444-6830		Fax No. N/A	
City Fort Lauderdale		State Florida		Zip Code 33311	
Commencement Date to Begin Project: 12/01/2019 TBD				JOB INFORMATION	
Completion Date for Project: 07/15/2021 TBD				Full Time Equivalent (FTE) Jobs to be created _____	
Check Appropriate Description ↑ Existing Business <input checked="" type="checkbox"/> ↑ New Business <input type="checkbox"/>		Project Type ↑ Expansion <input checked="" type="checkbox"/> ↑ Relocation <input type="checkbox"/>		Facility Description Existing Space 61,764 sq. ft. New Space 0 sq. ft.	
NAICS Code / Industry Type Real Estate Investors		Date of Incorporation 08/27/14; 11/28/16 09/05/18; 02/16/16		State where the business was incorporated Florida	
Proposed Project Location/City Fort Lauderdale		Proposed Address 5th Ave between 7th & 8th Streets			
Property Control Number(s) City's property		Property Owner The City of Fort Lauderdale			
Owner Tel. No. (include Area Code)		Is there a lien on the property? ↑ Yes ↑ No No		TYPE OF BUSINESS Sole Proprietor _____ Partnership _____ Joint Venture _____ Corporation _____ Cooperative _____ Limited Liability Company <input checked="" type="checkbox"/> X _____ Non-Profit Org. _____ Other: _____	
Bank(s) Where Business Accounts for Projects Are Held					
1. N/A			2. _____		
Name of Participating Bank/Lender					
Amount \$	Contact Person	Tel. No. (include Area Code)		Fax No. (include Area Code)	
Name of Other Financial Source N/A					
Amount \$	Contact Person	Tel. No. (include Area Code)		Fax No. (include Area Code)	
Name of Other Financial Source N/A					
Amount \$	Contact Person	Tel. No. (include Area Code)		Fax No. (include Area Code)	
Name of Other Financial Source N/A					
Amount \$	Contact Person	Tel. No. (include Area Code)		Fax No. (include Area Code)	
Project Purpose and Economic Impact The purpose is to renovate and upgrade the streetscape on the 5th Avenue between 7th and 8th Streets.					

NOTE 1: If the project receives funds via another City, County, Federal or State program which also requires job creation/retention, the jobs created/retained for those programs must be in addition to the jobs required under this program.

NOTE 2: If project includes the purchase of equipment using CRA funds, then there must not be another UCC filing for the equipment.

Management: Owners, partners, officers, all holders of outstanding stock --- 100% of ownership must be shown (use separate sheet if necessary).

Name	Complete Address	% Owned	From	To
JONATHAN FISH	9232 ABBOTT AVE, SURFSIDE, FL 33021			
Name	Complete Address	% Owned	From	To
ABRAHAM FISH	17501 NE 9 AVE, MIAMI, FL 33162			
Name	Complete Address	% Owned	From	To
Name	Complete Address	% Owned	From	To
Name	Complete Address	% Owned	From	To

PROJECT/ACTIVITY COST SUMMARY	
1. Please state the overall project cost:	\$ 378,194.30
2. Please state the overall project costs related to the CRA's assisted activity?	\$ 378,194.30
3. Please indicate the sources and uses of funds for the project on the following table.	

Project Source(s) of Funding	Amount	Rate	Term
Bank Loan (specify)			
City funds			
CRA funds	\$340,374.87	0%	
Company's current cash assets			
Owner equity (specify)	\$37,819.43		
Other (specify)			
Other (specify)			
Other (specify)			
Total Sources	\$378,194.30		
Select the Use(s) of Funds and the Amount Need for Each	Sources of Funds (Yes or No)	Amount	
Land Acquisition			
Real Property Acquisition			
Utility and road infrastructure improvements	Yes	\$378,194.30	
New construction of commercial and industrial buildings			
Rehabilitation of commercial and industrial buildings			
Purchase and installation of equipment and fixtures			
Other (specify)			
Other (specify)			
Other (specify)			
Total Uses			

NOTE 3: Other "uses" include Architectural/Engineering Fees, Application Fees, Permit Fees Impact Fees

* The Owners commit to invest no less than \$1,250,000.00 into the redevelopment project. If the Owners can save on construction costs, the Owners will realize those savings up until the amount of commitment.

BUSINESS INDEBTEDNESS: Furnish the following information on all outstanding installment debts, code and other liens, notes and mortgages payable that relate to this project. The present balances should agree with the latest balance sheet submitted (*use a separate sheet if necessary*).

To Whom Payable	Original Amount	Original Date	Present Balance	Rate of Interest	Maturity Date	Monthly Payment
Name: _____	\$ _____		\$ _____	% <input type="text"/>		\$ _____
Name: _____	\$ _____		\$ _____	% <input type="text"/>		\$ _____
Name: _____	\$ _____		\$ _____	% <input type="text"/>		\$ _____
Name: _____	\$ _____		\$ _____	% <input type="text"/>		\$ _____
Name: _____	\$ _____		\$ _____	% <input type="text"/>		\$ _____

THE FOLLOWING ITEMS MUST BE COMPLETED AND SUBMITTED WITH YOUR APPLICATION

1. A business plan which describes the company mission, market analysis, applicant capacity, economic analysis and project feasibility, a brief history and description of the company (*including the founding of the company*), overview of operations, product information, customer base, method and areas of distribution, primary competitors and suppliers within the County.
2. A list of general and limited partners, officers, directors and shareholders of the company. Please provide a resume for all the principals and key management.
3. Corporate income tax returns for the last three years (*personal returns may also be requested*).
4. Two separate lists that detail the existing jobs on your payroll and the new jobs to be created (*within the list please provide the job title of each position, a brief description of each position, annual salary for existing and new positions and the industry average salary for those positions*).
5. If machinery and equipment are being purchased with CRA funds, provide a list of all the items to be purchased, with quotes on vendor's letterhead. Include a statement from the manufacturer, attesting to the economic life of the equipment.
6. If business is a franchise, include a copy of the franchise agreement;
7. Bank Commitment Letter detailing the conditions of the loan approval.
8. Copy of IRS determination letter as a non-profit organization (*required for all non-profit organizations only*).
9. Signed copy of resolution or minutes from the meeting of the governing body authorizing submission of the application (*required for all non-profit organizations only*).
10. Articles of Incorporation or Division of Corporations information identifying authorized signatories
11. Copy of the Property Deed (*if the applicant is the owner*)
12. Copy of By-Laws (*required for all non-profit organizations only*).
13. Please sign and submit *Statement of Personal History and Credit Check Release* (as attached).
14. If project involves construction, please provide a minimum of two (2) detailed cost estimates prepared by Architect/Engineer and/or General Contractor, preliminary plans and specifications, Architectural Illustration and photos of existing conditions.
15. Attach a street map showing the location of the proposed project, Property Folio number and Legal Description.
16. Preliminary Project Schedule.

The following items are also needed, if your funding request is \$500,000 or more
(*not applicable for Commercial Façade, Streetscape Enhancement and Property and Business Improvement Incentive requests*)

17. CPA audited corporate financial statements for the last three years (*Profit and Loss Statement and a Balance Sheet*).
18. If the most recent business return and/or financial statement is more sixty (60) days old, please submit a current Interim Financial Statement.
19. Three year financial pro formas which include operating statements, balance sheets, funding sources, and use details.
20. Ten year revenue and expense projection for the project
21. Copy of sales/purchase agreement when purchasing land or a building (*or an executed lease if applicable*).
22. Provide details regarding any credit issues, bankruptcies and lawsuits by any principal, owning 20% or more of the business.
23. The names of all affiliates and/or subsidiary companies, and their previous three (3) years financial statements and Interim Financial Statements if the financial statements are more than sixty (60) days old.
24. Letter from the Department of Sustainable Development (DSD) approving the proposed project with zoning and land use designations, and Plan Development Review number and comments.
25. Identification and qualifications of project development team (*i.e., attorney, engineer, architect, general contractor, etc.*).

26. Current Broward County Assessed Value, new capital investment dollars and total estimated new assessment when completed and placed into service.
27. Existing Leases, Lease commitments and tenant makeup (*if applicable*).
28. Copy of Environmental Report showing there are no Environmental issues (*if applicable*).
29. Copy of Appraisal Report (*if applicable*).

THE FOLLOWING ITEMS ARE REQUIRED AFTER CRA BOARD APPROVAL AND PRIOR TO EXECUTION OF AN AGREEMENT AND RELEASE OF FUNDS

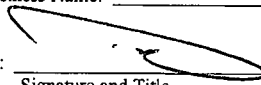
30. Evidence that all funds are in-place to fully fund the project.
31. A copy of the City approved project plans, contract with General Contractor and permits (Prior to Release of Funds)
32. Scope of work and all project costs
33. Copies of Insurance Certificates (Builders Risk/All Risk Policy, Commercial General Liability, Workers Compensation with the City of Fort Lauderdale and the Fort Lauderdale CRA listed as Additional Insured.

APPLICANTS CERTIFICATION

By my signature, I certify that I have read and understand the application, criteria, loan fees and program requirements. I further certify that all the information I (we) supplied is correct and accurate. All of the owners of the company/organization (*regardless of ownership percentage*) are aware of this loan and are in full agreement with the business securing financing for this project. My (our) signature(s) represent my (our) agreement to comply with City of Fort Lauderdale Community Redevelopment Agency, as it relates to this CRA funding request.

Each Proprietor, General Partner, Limited Partner and Business Owner, owning 20% or more must sign below. For all Non-Profit Organizations, all guarantors must be approved by City of Fort Lauderdale Community Redevelopment Agency.

Business Name: Bayit Investments LLC; 710 NW 5th Avenue LLC; 744-748 NW 5 Ave LLC; 413 NW 7th Street LLC

By:  *covers* 06/06/2019
Signature and Title Date

Guarantors:

Signature and Title	Date
Signature and Title	Date
Signature and Title	Date
Signature and Title	Date
Signature and Title	Date



Northwest-Progresso-Flagler Heights Community Redevelopment Agency

APPLICATION REQUEST SUPPLEMENTAL INFORMATION

CRA Incentive Programs

Please select the incentive(s) you are applying for and insert the amount of funding assistance you are seeking:

<input type="checkbox"/>	COMMERCIAL FAÇADE IMPROVEMENT PROGRAM	\$ _____
<input type="checkbox"/>	PROPERTY AND BUSINESS IMPROVEMENT PROGRAM	\$ _____
<input checked="" type="checkbox"/>	STREETSCAPE ENHANCEMENT PROGRAM	\$ 340,374.87
<input type="checkbox"/>	DEVELOPMENT INCENTIVE PROGRAM	\$ _____
<input type="checkbox"/>	PROPERTY TAX REIMBURSEMENT PROGRAM	\$ _____

Please provide a supplement sheet responding to the following numbered questions:

1. Please describe your project.
2. What is the address, folio number and legal description of the property.
3. What is the existing and proposed use of the property? Please note that certain uses are not eligible for CRA assistance. This includes convenience stores, pawn shops, check cashing stores, tattoo parlors, massage parlors, liquor stores and other uses as may be determined by the CRA that are inconsistent with the CRA Community Redevelopment Plan. Please note that there will be restrictive covenants placed on the property for minimum of 5 years restricting use of the property to only those uses for which CRA funding was provided.
4. Are the proposed improvements to the property being made on behalf of a proposed tenant for the property. If so, please provide a copy of the lease agreement.
5. What is the zoning of the property?
6. Are you the property owner? Please provide a copy of the deed of the property. You must be the owner of the property to apply.
7. Is your project new construction or is it renovation?
8. What is the total capital investment of your project and what is your hard construction and soft cost? (While property acquisition cost is not an eligible CRA expense, it may be included in your total capital investment)
9. What is the current Broward County Assessed Value of the property?
10. Is there a mortgage on the property? Please provide OR Book and Page. Please note that CRA funding is in the form of a 0% interest forgivable loan, forgiven after 5 year of project completion secured by a first

mortgage or subordinate mortgage on the property. Projects receiving over \$225,000 in CRA assistance will be secured by a forgivable loan forgiven after 7 years to 10 years depending on the level of CRA funding. Other forms of security in lieu of a forgivable mortgage will be considered on a case by case basis.

11. Are there any other liens or pending liens on the property? Please provide OR Book and Page.
12. Are there any code violations on the property? Identify.
13. Is the property listed "For Sale." Please note that properties listed for sale may not apply for CRA program funding.
14. How many new permanent jobs will be created by the project? Please describe the jobs to be created and projected salaries.
15. What is the estimated construction commencement date of the project? Please note that no work is to commence on the project unless a Program Agreement is approved and fully executed between the CRA and the property owner and that work must commence within 90 days of CRA funding approval.
16. What is the estimated completion date of the project? Please note that all approved projects must be completed within a maximum of three (3) years.
17. Please provide proof of your matching funds (i.e. bank statement, line of credit, etc.) and identify other proposed forms of financing for your project.
18. Do you have general liability and fire and casualty insurance on the property? You will be required to demonstrate proof of insurance and may include bonding requirements as required by the City/CRA prior to commencement of work. The cost of insurance may be included as part of your total project cost funded by the program.
19. Have you previously received funding from the CRA? Explain.

If you are applying for funding from the Commercial Façade Improvement Program, Property & Business Improvement Program and/or Streetscape Enhancement Program, please also complete the following:

20. Do you have a detailed scope of work? If so, please include for CRA review and approval.
21. Do you have completed architectural drawings for the scope of work to be performed? Please include along with architectural illustration(s) of the proposed work, material specifications, color selections, etc. Please note that architectural cost may be included as part of your total project cost.
22. Have your project plans been submitted for City Development Review and/or permitting and if so what are the status of the plans and the plan review number? All work must be permitted and approved by the Building Official.
23. Do you have detailed, written contractor cost estimates? If so, please provide.
24. Have you selected a contractor from the attached City/CRA Approved Contractor List? Please note if your contractor is not on the City/CRA approved list, it may be possible to have your contractor become an approved CRA Contractor. He/She will need to complete the attached Contractor Application for consideration.
25. If you are applying for the Facade Program or Property and Business investment Program, and if you are not using a City /CRA Approved Contractor, you must secure two detailed licensed and insured contractor cost estimates and CRA funding is limited to 60% of the lowest cost estimate not to exceed \$50,000 which can only be funded on a reimbursement basis, rather than a direct payment to the contractor. In addition, all

projects over \$50,000 may be assigned a CRA Construction Review Specialist who will determine the scope of work to be funded and will secure contractor pricing for the project, manage funding request and provide general project oversight.

26. For Streetscape Enhancement Program projects, see additional requirements for projects in excess of \$300,000 as required by Florida Statute 255.20.

I Jonathan Fish attest that the information is correct to the best of my knowledge. I further understand that the CRA program benefits are contingent upon funding availability and CRA approval and are not to be construed as an entitlement or right of a property owner/applicant. I further understand that I am responsible for providing all documentation required by The CRA.

 Signature of
Property Owner or Business Owner

Jonathan Fish
Print Name

I ABRAHAM FISH attest that the information is correct to the best of my knowledge. I further understand that the CRA program benefits are contingent upon funding availability and CRA approval and are not to be construed as an entitlement or right of a property owner/applicant. I further understand that I am responsible for providing all documentation required by The CRA.

 Signature of
Property Owner or Business Owner

ABRAHAM FISH
Print Name



**Northwest-Progresso-Flagler Heights
Community Redevelopment Agency**

**APPLICATION REQUEST
SUPPLEMENTAL INFORMATION**

1. Please describe your project.

The Thrive Progresso renovation project is a complete renovation of an entire industrial block within the industrial portion of the Northwest-Progresso-Flagler Heights CRA district, bringing new businesses and a revitalized energy into an area that has become stagnant over the last few decades. This part is to renovate and upgrade the streetscape on the 5th Avenue between 7th and 8th Streets specifically.

2. What is the address, folio number and legal description of the property?

5th Avenue between 7th and 8th Streets, Fort Lauderdale

3. What is the existing and proposed use of the property?

The existing and proposed continued use is as a public municipal road.

4. Are the proposed improvements to the property being made on behalf of a proposed tenant for the property? If so, please provide a copy of the lease agreement.

No

5. What is the zoning of the property?

Public road

6. Are you the property owner? Please provide a copy of the deed of the property.

No

7. Is your project new construction or is it renovation?

Renovation

- 8. What is the total capital investment of your project and what is your hard construction and soft cost?**

Total cost estimate is \$378,194.30
Please see the attached estimate.

- 9. What is the current Broward County Assessed Value of the property?**

N/A

- 10. Is there a mortgage on the property? Please provide OR Book and Page.**

No

- 11. Are there any other liens or pending liens on the property? Please provide OR Book and Page.**

No

- 12. Are there any code violations on the property? Identify.**

No

- 13. Is the property listed "For Sale"?**

No

- 14. How many permanent new jobs will be created by the project? Please describe the jobs to be created and projected salaries.**

N/A

- 15. What is the estimated construction commencement date of the project?**

We will begin working on permitting immediately after we receive a financial commitment from the CRA.

- 16. What is the estimated completion date of the project?**

We are anticipating the completion date of the project to be approximately 18 months after the commencement date.

- 17. Please provide proof of your matching funds (i.e. bank statement, line of credit, etc.) and identify other proposed forms of financing for your project.**

All relevant financial documentation has been included in the attached sealed manila folders.

18. Do you have general liability and fire and casualty insurance on the property?

N/A

19. Have you previously received funding from the CRA? Explain.

No

20. Do you have a detailed scope of work? If so, please include for CRA review and approval.

Please see the attached package.

21. Do you have completed architectural drawings for the scope of work to be performed? Please include along with architectural illustration(s) of the proposed work, material specifications, color selections, etc. Please note that architectural cost may be included as part of your total project cost.

Please see the attached package.

22. Have your project plans been submitted for City Development Review and/or permitting and if so what are the status of the plans and the plan review number? All work must be permitted and approved by the Building Official.

Plans have not been submitted for City Development Review. However, we have met with the various City of Fort Lauderdale officials and Fort Lauderdale Building Department heads, where we have received positive feedback about this project moving forward.

23. Do you have detailed, written contractor cost estimates? If so, please provide.

Please see the attached package.

24. Have you selected a contractor from the attached City/CRA Approved Contractor List? Please note if your contractor is not on the City/CRA approved list, it may be possible to have your contractor become an approved CRA Contractor. He/She will need to complete the attached Contractor Application for consideration.

We are currently working with Cadence Landscape Architects, who have been involved in other CRA projects.

Order of Cost Magnitude
Thrive Progresso
East Parcel: 710 - 744 NW 5th Ave
West Parcel: 701 - 745 NW 5th Ave

May 6, 2019

Scope of Work	Quantity	Unit Cost	Cost	Notes
Misc Site Prep/Demolition				
Landscape & Tree Removal	1 EA	\$3,500.00	\$3,500.00	
		Demolition Sub Total	\$3,500.00	
Earthworks and Grading	1 EA	\$25,000.00	\$25,000.00	TBD, Allowance
		Sub Total	\$25,000.00	
Hardscape				
Stamped Asphalt	5500 SF	\$6.00	\$33,000.00	
Asphalt Roadway (24' width)	16,267 SF	\$4.00	\$65,068.00	
Concrete Sidewalk	10,235 SF	\$8.00	\$81,880.00	
Concrete Curbs	781 LF	\$15.00	\$11,715.00	
Asphalt Striping	1 EA	\$10,000.00	\$10,000.00	
		Hardscape Sub Total	\$201,663.00	
Landscape Material				
Shade Trees	15 QTY	\$1,500.00	\$22,500.00	
Palm Trees	24 QTY	\$500.00	\$12,000.00	
Bioswale & Rain Garden Planting	1,965 SF	\$10.00	\$19,650.00	
		Landscape Sub Total	\$54,150.00	
Irrigation System	1 EA	\$17,500.00	\$17,500.00	Allowance
Rain Garden Infrastructure	2 QTY	\$10,000.00	\$20,000.00	Allowance
Soft Costs	1 QTY	\$22,000.00	\$22,000.00	Landscape Architect design and construction documents
		Total	\$343,813.00	

* Contingency

10% \$34,381.30

Total with Contingency \$378,194.30

* Can include items such as: underground utility burial, new power receptacles in the landscape, new gas lines if needed, permitting costs, construction fencing, construction port.

Numbers included above are opinions of probable construction costs provided by the Landscape Architects and are based on the Landscape Architect's familiarity with the landscape construction industry. These costs are provided only to assist the Client in budget planning; such opinions shall not be construed to provide a guarantee or warranty that the actual construction costs will be within the Project budget parameters at the time construction bids are solicited or construction contracts negotiated. All work outside of Landscape Architect's scope of work (civil, utilities, drainage, etc.) is a best guess number based on recently completed comparable work in the City of Fort Lauderdale.

cadence

Rebecca Bradley, PLA, ASLA
Founding Principal
rebecca@cadence-living.com

435 N Andrews Ave No. 2
Fort Lauderdale, Florida 33301

@cadenceliving
954.766.4572

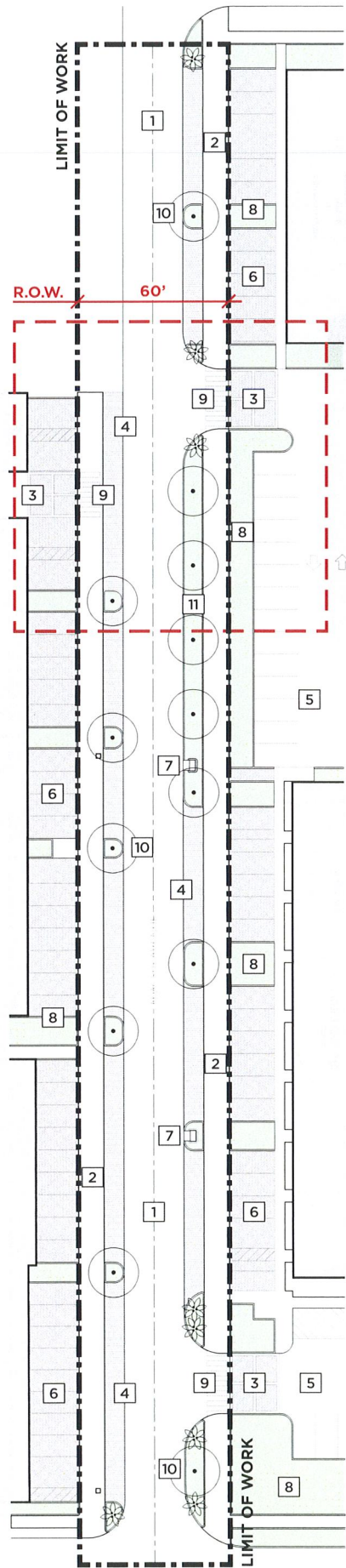
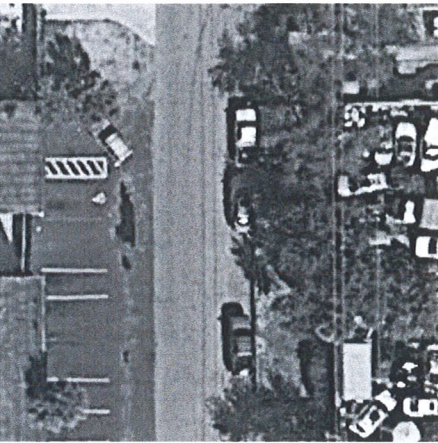
cadence

Gage Couch, ASLA
Founding Principal
gage@cadence-living.com

435 N Andrews Ave No. 2
Fort Lauderdale, Florida 33301

@cadenceliving
954.766.4572

EXISTING CONDITIONS



OVERALL CONCEPT PLAN

- 1 24' Asphalt Roadway
- 2 10' Shared Path (Pedestrian & Bicycle)
- 3 Parking Lot Access
- 4 8' Stamped Asphalt Transition Zone (Rumble Strip)
- 5 Thrive Parking Lot
- 6 Existing Back-out Parking to Remain
- 7 Catchment Basin with Rain Garden
- 8 Planting Bed
- 9 Pedestrian Crosswalk
- 10 Shade Tree
- 11 Bioswale

scale 1" = 30'

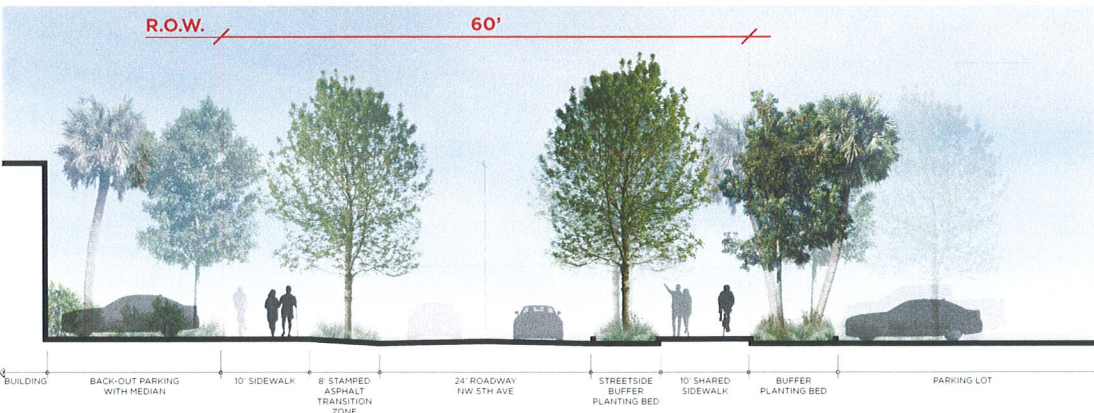
ENLARGEMENT PLAN

scale 1" = 10'

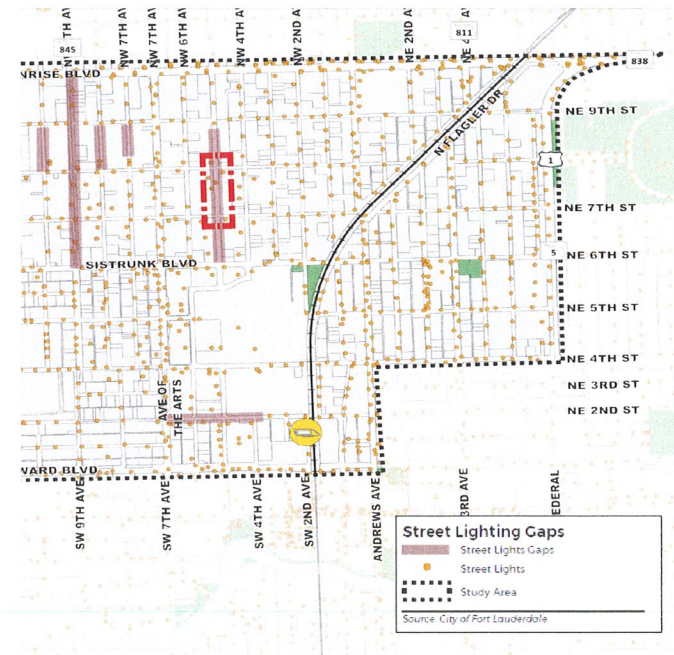
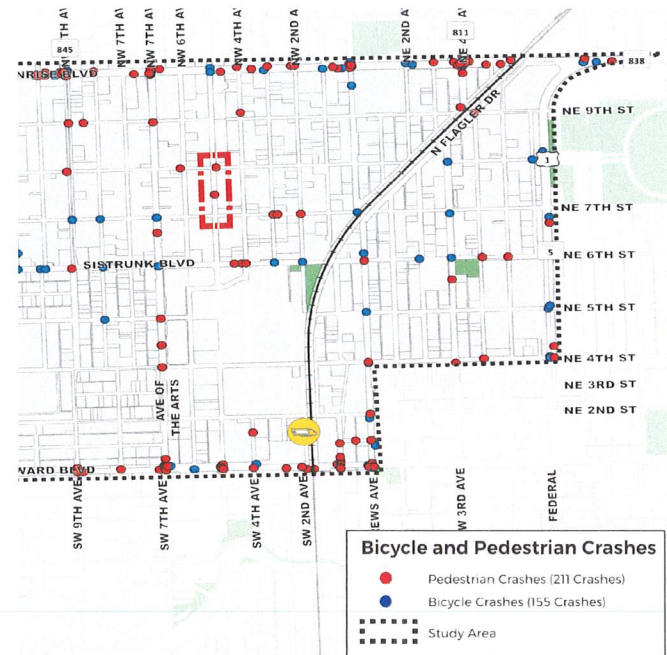
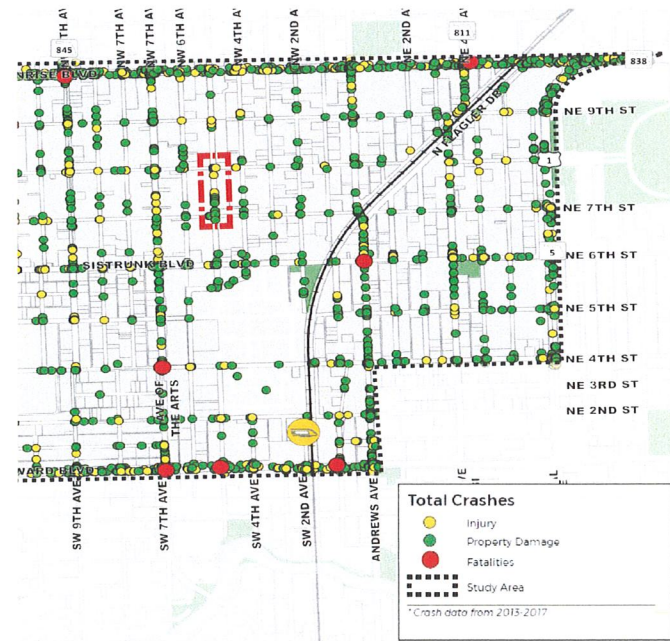
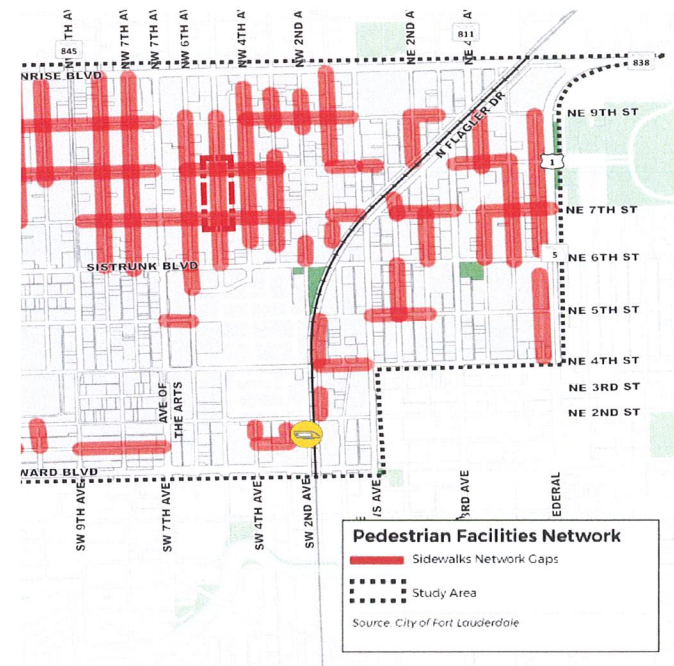
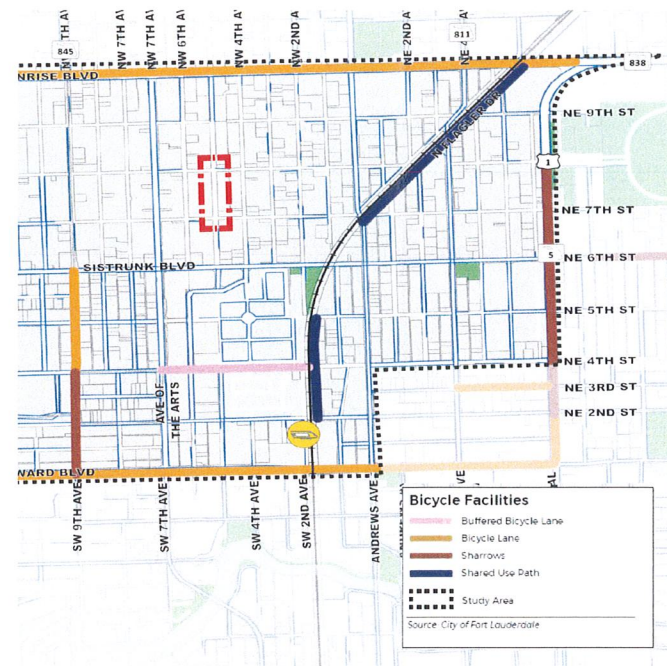
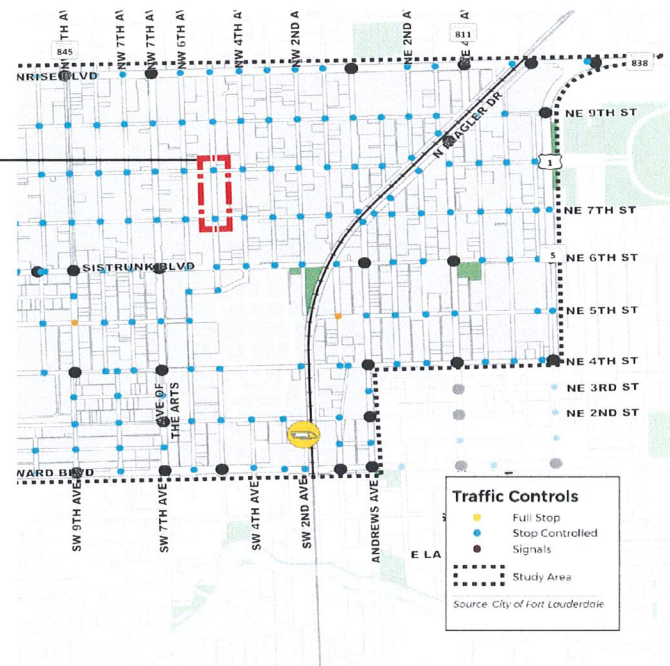


SECTION A

scale 1" = 10'



PROJECT SITE



DATA COLLECTED AND SHARED FROM NPF-CRA MOBILITY MASTER PLAN PRESENTATION BY KITTELSON AND ASSOCIATES



Bike Path



Flush Curb Street



Detection Warning Pavers



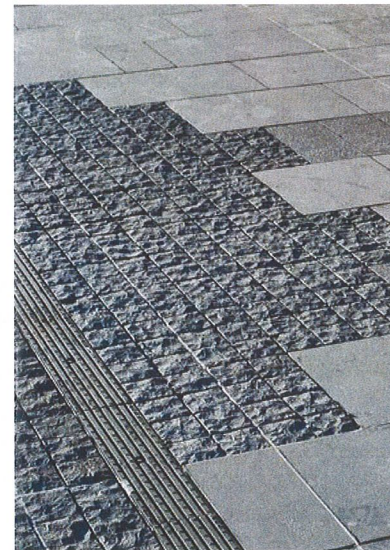
Pavement Graphics



Crosswalk with Bike & Pedestrian Delineation



Pervious Paver Parking



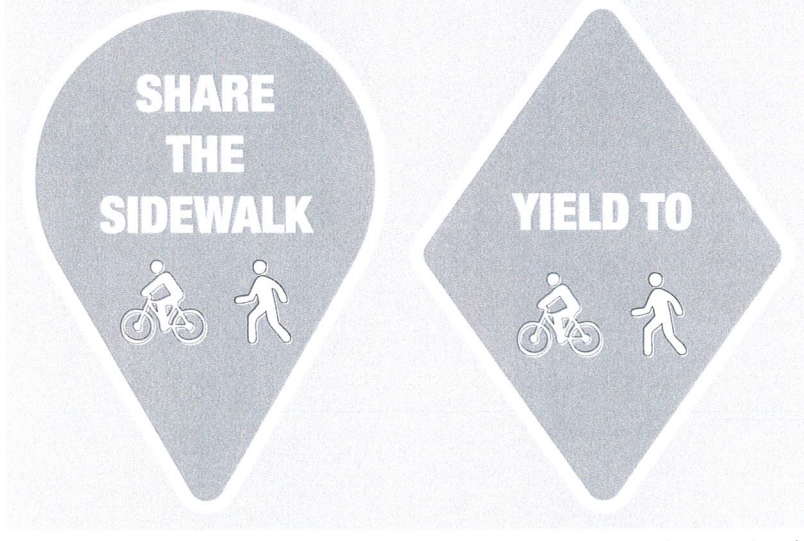
Tactile Paving



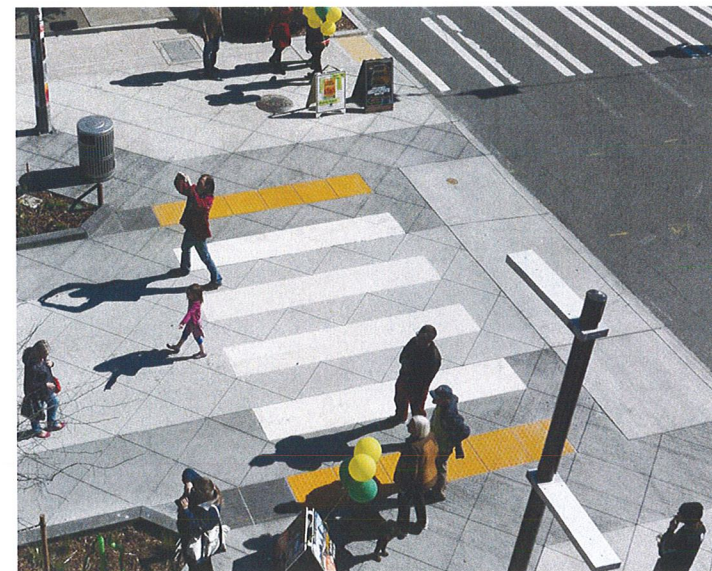
Pavement Information Graphic



Bike Lane and Pedestrian Sidewalk



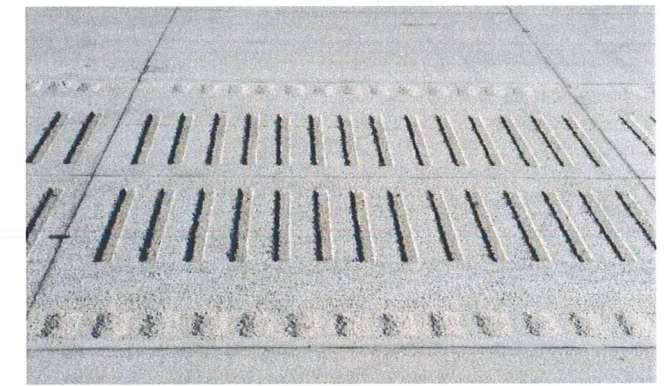
Signage Study



Crosswalk



Crosswalk with Bike & Pedestrian Delineation



Rumble Strip

HARDSCAPE & MULTIMODAL DESIGN CHARATER IMAGES

Thrive Progresso | 04.29.2019



Native Plants in Rain Garden



Bioretention



Rain Garden



Tactile Paving & Curb Cuts



Rain Garden



Curb Cuts at Rain Garden



Bioretention Area



Native Plants in Bioswale



Curb Cut Inlet



Native Ground Cover



Pre-fabricated Curb Insert



Flush Curb to Allow for Maximum Sheet Flow



Native Turf Alternative



Rain Garden

STORMWATER MANAGEMENT & LANDSCAPE CHARACTER IMAGES

Thrive Progresso | 04.29.2019

cadence
www.cadence-living.com

EXHIBIT "C"

Plans and Specifications
TO BE PROVIDED

1. See plans on file at City's Department of Sustainable Development
Case No. _____

EXHIBIT “D”

Project Construction Pricing and Material list

EXHIBIT “E”

PROJECT SCHEDULE
(Estimate)

Effective Date	Date on which Agreement is fully executed by both parties
Participant obtains all governmental approvals and permits	Within _____ days after Effective Date
Commence streetscape improvements	Within _____ months after the Effective Date
Project Completion Date	Within _____ months of commencing improvements

EXHIBIT “F”

PROMISSORY NOTE

(Attached)

THIS INSTRUMENT PREPARED BY:

City Attorney's Office
City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

\$_____

Fort Lauderdale, Florida

_____ 20_____

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned 744-748 NW 5 AVE LLC, a Florida limited liability company, Bayit Investments, LLC, a Florida limited liability company, 710 NW 5th AVENUE LLC, a Florida limited liability company and 413 NW 7th Street, LLC, a Florida limited liability company, jointly and severally, (collectively referred to as the "Maker") promises to pay to the order of the FORT LAUDERDALE COMMUNITY REDEVELOPMENT AGENCY, a Community Redevelopment Agency created pursuant to Chapter 163, Part III, Florida Statutes (the "Agency") or its successors in interest, the principal amount of _____ (\$_____).

- I. TERM: The term of this loan is five (5) years from the first disbursement under the Development Agreement for Development Incentive Program between the Agency and the Maker. Notwithstanding this Promissory Note is evidence of the Development Agreement for Streetscape Enhancement Program between Maker and Agency dated _____, 20_____ (the "Agreement") such Agreement being on file with the City Clerk of the City of Fort Lauderdale, Florida, 100 North Andrews Avenue, Fort Lauderdale, Florida.
- II. INTEREST RATE: The interest rate on the principal amount of the loan shall be zero percent (0%) per annum, except in any event of default under this Note, the Mortgage (as hereinafter defined), the Restrictive Covenant (as defined in the Agreement) or the Agreement in which case the maximum legal interest rate shall be applied to the principal amount due and owing commencing thirty (30) days after the date of an event of default.

PAYMENT: Payment on the principal amount of the loan shall not be required so long as the Maker is not in default of any provision of the Agreement, the Note, Mortgage or Restrictive Covenant. The principal amount of this Note shall be forgiven on a prorata basis, so long as the Maker completes the Streetscape Improvements, completes the Project and operates and maintains the Project for five years from the first disbursement under the Development Incentive Program Agreement by and between the Agency a and the Maker, complies with the Restrictive Covenant and is otherwise not in material default of the Agreement. For each year the Maker complies with the terms of the Note, one fifth of the principal amount of this loan shall be forgiven.

Any payments of required and all interest on this Note shall be made in lawful money of the United States paid at:

Fort Lauderdale Community Redevelopment Agency
100 North Andrews Avenue
Fort Lauderdale, FL 33301

or such other place as shall be designated by the holder of this Note in writing.

- III. SECURITY: This Note is secured by a Mortgage on real estate by Maker in favor of Agency dated_____, duly filed in the public records of Broward County, Florida (the "Mortgage"). The Agency agrees to look solely to the real estate described in the Mortgage as security for this Note in part or in full, at any time to satisfy the debt established by this Note.

WAIVER: The Maker of this Note further agrees to waive demand, notice of non-payment and protest, and to the extent authorized by law, any and all exemption rights which otherwise would apply to the debt evidenced by this Note. In the event suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, the Maker agrees to pay all costs of such collection, including reasonable attorney's fees and court costs at the trial and appellate levels.

- IV. Unless defined herein, Capitalized Terms shall have the meaning ascribed in the Agreement. Failure of the Agency to exercise any of its rights hereunder shall not constitute a waiver of the right of Agency to exercise the same.

- V. GOVERNING LAW: This note is to be construed and enforced according to the laws of the State of Florida.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Mortgage has been duly signed and sealed by the Mortgagor on or as of the day and year first above written.

WITNESSES:

DEVELOPER:

Bayit Investments LLC, a Florida Limited Liability Company

(Signature)
Printed Name: _____

By: _____
Jonathan Fish, Authorized Member

(Signature)
Printed Name: _____

By: _____
Abraham Fish, Authorized Member

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Jonathan Fish, as Authorized Member of Bayit Investments, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Abraham Fish, as Authorized Member of Bayit Investments, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

WITNESSES:

DEVELOPER:

744-748 NW 5 Ave LLC, a Florida Limited Liability Company

(Signature)

Printed Name: _____

By: _____

Jonathan Fish, Authorized Member

(Signature)

Printed Name: _____

By: _____

Abraham Fish, Authorized Member

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Jonathan Fish, as Authorized Member of 744-748 NW 5 Ave, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Abraham Fish, as Authorized Member of 744-748 NW 5 Ave, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

WITNESSES:

DEVELOPER:

710 NW 5th Avenue LLC, a Florida Limited Liability Company

(Signature)

Printed Name: _____

By: _____

Jonathan Fish, Authorized Member

(Signature)

Printed Name: _____

By: _____

Abraham Fish, Authorized Member

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Jonathan Fish, as Authorized Member of 710 NW 5th Avenue, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

Notary Public, State of Florida

(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires:

Commission Number

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Abraham Fish, as Authorized Member of 710 NW 5th Avenue, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

Notary Public, State of Florida

(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires:

Commission Number

WITNESSES:

DEVELOPER:

413 NW 7th Street, LLC, a Florida Limited Liability Company

(Signature)
Printed Name: _____

By: _____
Jonathan Fish, Authorized Member

(Signature)
Printed Name: _____

By: _____
Abraham Fish, Authorized Member

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Jonathan Fish, as Authorized Member of 413 NW 7th Street, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Abraham Fish, as Authorized Member of 413 NW 7th Street, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

EXHIBIT “G”
Mortgage

(Attached)

This Instrument Was Prepared By,
Lynn Solomon, Esq.
Fort Lauderdale Community
Redevelopment Agency.
914 Sistrunk Blvd (N.W. 6th Street), Suite 200
Fort Lauderdale, Florida 33311

Return to:
Lynn Solomon, Esq.
Fort Lauderdale Community
Redevelopment Agency.
914 Sistrunk Blvd (N.W. 6th Street), Suite 200
Fort Lauderdale, Florida 33311

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE (herein "Instrument") is made this ____ day of _____, 2019, between 744-748 NW 5 AVE LLC, a Florida limited liability company, Bayit Investments, LLC, a Florida limited liability company, 710 NW 5th AVENUE LLC, a Florida limited liability company and 413 NW 7th Street, LLC, a Florida limited liability, whose address is _____ (herein "Mortgagor"), and 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 whose address is 914 Sistrunk Blvd. Suite 200, Fort Lauderdale, FL 33311 (herein "Mortgagee").

WHEREAS, Mortgagor has executed and delivered to Mortgagee that certain Note dated on even date herewith (herein the "Note"), the Restrictive Covenant executed on even date herewith and that Development Agreement for Streetscape Enhancement Program (collectively referred to as the "Development Agreements").

TO SECURE TO MORTGAGEE (a) the obligations evidenced by the Development Agreements, and (b) the performance of the covenants and agreements of Mortgagor herein contained, Mortgagor does hereby mortgage grant, convey and assign to Mortgagee the real property more particularly described in Exhibit "A" attached hereto and by reference made a part hereof.

TOGETHER WITH all buildings, improvements, and tenements now or hereafter erected on such real property, and all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, and all fixtures, machinery, equipment, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with the property and related machinery and equipment; all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this Instrument; and all of the foregoing, together with the real property described in Exhibit "A" are herein referred to as the "Property."

Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, convey and assign the Property that the Property is unencumbered, and that Mortgagor will warrant and defend generally the title to the Property against all claims and demands.

Mortgagor and Mortgagee covenant and agree as follows:

1. **PERFORMANCE OF DEVELOPMENT AGREEMENTS OBLIGATIONS.** Mortgagor shall promptly perform the obligations evidenced by the Development Agreements.

2. **CHARGES; LIENS.** Mortgagor shall pay all water and sewer rates, taxes, assessments, premiums, and other impositions attributable to the Property. Mortgagor shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Mortgagee's prior written permission, Mortgagor shall not allow any lien inferior to this Instrument to be perfected against the Property.

3. **HAZARD INSURANCE.** Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured by carriers and in such amounts as shall be required by the Senior Mortgagee (as hereinafter defined) against casualties and liabilities.

All insurance policies and renewals thereof shall include a standard mortgage clause in favor of and in form acceptable to Mortgagee. Mortgagor shall promptly furnish to Mortgagee all renewal notices and all receipts of paid premiums. At least thirty days prior to the expiration date of a policy, Mortgagor shall deliver to Mortgagee a renewal policy in form satisfactory to Mortgagee.

In the event of loss, Mortgagor shall give immediate written notice to the insurance carrier and to Mortgagee. Subject to the rights of the Senior Mortgagee, Mortgagor hereby authorizes and empowers Mortgagee as attorney-in-fact for Mortgagor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies. Insurance proceeds shall be applied as provided in the Senior Mortgage ((as hereinafter defined).

4. **PRESERVATION AND MAINTENANCE OF PROPERTY.** Mortgagor (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (f) shall provide for professional management of the Property by a property manager reasonably satisfactory to Mortgagee pursuant to a contract approved by Mortgagee in writing, unless such requirement shall be waived by Mortgagee in writing, (g) shall generally construct and build Single Family Homes and sell same to Eligible Homebuyers consistent with the Development Agreements, , and (h) shall give notice in writing to Mortgagee of and, unless otherwise directed in writing by Mortgagee, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Mortgagee. Neither Mortgagor nor any tenant or other person shall remove, demolish or alter any improvement now existing or here after erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

5. **USE OF PROPERTY.** Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Property without Mortgagee's prior written consent.

6. **INSPECTION.** Mortgagee may make or cause to be made reasonable entries upon and in inspections of the Property during business hours and upon not less than 48 hours advance notice.

7. **BOOKS AND RECORDS.** Mortgagor shall keep and maintain at all times at Mortgagor's address stated below, or such other place as Mortgagee may approve in writing, complete and accurate books of account and records adequate to reflect correctly the results of development of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records,

contracts, leases and other instruments shall be subject to examination and inspection by Mortgagee during business hours and upon not less than 48 hours advance notice.

8. **CONDEMNATION.** Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed by Mortgagee in writing. Subject to the rights of the Senior Mortgagee, Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, shall be applied as provided in the Senior Mortgage.

9. **FORBEARANCE BY MORTGAGEE NOT A WAIVER.** Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to exercise any of the various rights or remedies herein provided, including but not limited to the foreclosure of the Mortgage, and cumulatively all other rights, options, and privileges provided by law or in equity.

10. **ESTOPPEL CERTIFICATE.** Mortgagor shall within ten days of a written request from Mortgagee furnish Mortgagee with a written statement, duly acknowledged, setting forth the obligations secured by this Instrument and any right of counterclaim or other defense which exists against the performance of the obligations of this Instrument.

11. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Mortgagor hereby grants Mortgagee a security interest in said items. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Mortgagor's breach of any covenant or agreement of Mortgagor contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code and, at Mortgagee's option, may also invoke the remedies provided in paragraph 20 of this Instrument as to such items. In exercising any of said remedies, Mortgagee may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the Uniform Commercial Code or of the remedies provided in paragraph 20 of this Instrument.

12. **REMEDIES CUMULATIVE.** Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

13. **TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN MORTGAGOR; ASSUMPTION.** On sale or transfer of any beneficial interests in Mortgagor except for permitted transfers in the Development Agreements, Mortgagee may, at Mortgagee's option, invoke any remedies permitted by paragraph 20 of this Instrument.

14. **NOTICE.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Mortgagor provided for in this Instrument or in the Development Agreements shall be given by mailing such notice by certified mail addressed to Mortgagor at Mortgagor's address stated below or at

such other address as Mortgagor may designate by notice to Mortgagee as provided herein, and (b) any notice to Mortgagee shall be given by certified mail, return receipt requested, to Mortgagee's address stated herein or to such other address as Mortgagee may designate by notice to Mortgagor as provided herein. Any notice provided for in this Instrument or in the Development Agreements shall be deemed to have been given to Mortgagor or Mortgagee when given in the manner designated herein.

15. **SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Mortgagee and Mortgagor. All covenants and agreements of Mortgagor shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Mortgagee may act through its employees, agents or independent contractors as authorized by Mortgagee. The captions and headings of the paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

16. **GOVERNING LAW; SEVERABILITY.** This Instrument shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision of this Instrument or the Development Agreements conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Development Agreements which can be given effect without the conflicting provisions, and to this end the provisions of this Instrument and the Development Agreements are declared to be severable.

17. **WAIVER OF STATUTE OF LIMITATIONS.** Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Development Agreements or any other obligation secured by this Instrument.

18. **WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interests in the Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Mortgagee shall have the right to determine the order in which any or all portions of the obligations secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

19. **ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; MORTGAGEE IN POSSESSION.** Mortgagor hereby absolutely and unconditionally assigns and transfers to Mortgagee all the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Mortgagor hereby authorizes Mortgagee or Mortgagee's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Mortgagee or Mortgagee's agents; provided, however, that prior to written notice given by Mortgagee to Mortgagor of the breach by Mortgagor of any covenant or agreement of Mortgagor in this Instrument, Mortgagor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Mortgagee and Mortgagor, to apply the rents and revenues so collected to the sums secured by this Instrument, with the balance, so long as no such breach has occurred, to the account of Mortgagor, it being intended by Mortgagor and Mortgagee that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Mortgagee to Mortgagor of the breach by Mortgagor of any covenant or agreement of Mortgagor in this Instrument, and without the necessity of Mortgagee entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Mortgagee shall immediately be entitled to possession of all rents and revenues of the Property as specified in this paragraph as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Mortgagor as trustee for the benefit of Mortgagee only; provided, however, that the written notice by Mortgagee to Mortgagor of the breach by Mortgagor shall contain a statement that Mortgagee exercises its rights to such rents. Mortgagor agrees that

commencing upon delivery of such written notice of Mortgagor's breach by Mortgagee to Mortgagor, each tenant of the Property shall make such rents payable to and pay such rents to Mortgagee or Mortgagee's agents on Mortgagee's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Mortgagor.

Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, Mortgagee may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Mortgagee's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument. In the event Mortgagee elects to seek the appointment of a receiver for the Property upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, Mortgagor hereby expressly consents to the appointment of such receiver. Mortgagee or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

Any entering upon and taking and maintaining of control of the Property by Mortgagee or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Mortgagee under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Instrument ceases to secure Mortgagee's obligations under the Development Agreements.

20. **REMEDIES.** Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, Mortgagee at Mortgagee's option may foreclose this Instrument by judicial proceeding and may invoke any other remedies permitted by applicable law or provided herein.

21. **RELEASE.** Upon performance of all obligations secured by this Instrument and the Development Agreements, Mortgagee shall cancel this Instrument. Mortgagor shall pay Mortgagee's reasonable costs incurred in canceling this Instrument.

22. **ENVIRONMENTAL HAZARDS.** In addition to Mortgagor's covenants and agreements under paragraph 4 hereof, Mortgagor further covenants and agrees that Mortgagor shall not (a) cause or permit the presence, use, generation, manufacture, production, processing, installation, release, discharge, storage (including above- and under-ground storage tanks for petroleum or petroleum products, but excluding small containers of gasoline used for maintenance equipment or similar purposes), treatment, handling, or disposal of any Hazardous Materials on, under, in or about the Property, or in any way affecting the Property or which may form the basis for any present or future claim, demand or action seeking cleanup of the Property, or the transportation of any Hazardous Materials to or from the Property, or (b) cause or exacerbate any occurrence or condition on the Property that is or may be in violation of Hazardous Materials Law. Mortgagor shall take all appropriate steps to secure compliance by all tenants and subtenants on the Property with Mortgagor's covenants and agreements in this paragraph.

Mortgagor hereby agrees to indemnify and hold Mortgagee harmless from all loss, cost, damage, claim and expense incurred by Mortgagee on account of (i) the violation of any representation, warranty or covenant set forth in this paragraph, (ii) Mortgagor's failure to perform any obligations of this paragraph, (iii) the failure of Mortgagor or the Property to fully comply with all environmental laws, rules and regulations, or with all occupational health and safety laws, rules and regulations, or (iv) any other matter related to environmental conditions on, under or affecting this transaction, the exercise of any right or remedy under the Development Agreements, and any subsequent sale or transfer of the Property. Such indemnity shall not apply to Hazardous Materials first introduced onto the Property following the satisfaction of this Instrument or the transfer of title by foreclosure or deed in lieu thereof.

Mortgagor further agrees at all times to comply fully and in a timely manner with, and to cause all employees, agents, contractors, and subcontractors of Mortgagor and any other persons occupying or present on the Property to so comply with (a) any program of operations and maintenance (O&M) relating to the Property that is required by Mortgagee with respect to one or more Hazardous Materials, and (b) all applicable federal, state, and local laws, regulations, guidelines, codes, and other legal requirements relating to the generation, use, handling, storage, treatment, transport, and disposal of any Hazardous Materials now or hereafter located or present on or under the Property.

Mortgagor shall promptly notify Mortgagee in writing of: (a) any enforcement, cleanup, removal or other governmental or regulatory action, investigation, notice or any other proceeding instituted, completed or threatened in connection with any Hazardous Materials; (b) any suit, cause of action, or any other claim made or threatened by any third party against Mortgagor or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; and (c) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause all or any portion of the Property to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under Hazardous Materials Law. The provisions of the preceding sentence shall be in addition to any and all other obligations and liabilities that Mortgagor may have to Mortgagee under applicable law.

The term "Hazardous Materials," for purposes of this paragraph, includes petroleum and petroleum products (excluding a small quantity of gasoline used in maintenance equipment on the Property), flammable explosives, radioactive materials (excluding radioactive materials in smoke detectors), polychlorinated biphenyls, asbestos in any form that is or could become friable, hazardous waste, toxic or hazardous substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise including, but not limited to, those materials defined as "hazardous substances," "extremely hazardous substances," "hazardous chemicals," "hazardous materials," "toxic substances," "toxic chemicals," "air pollutants," "toxic pollutants," "hazardous wastes," "extremely hazardous waste," or "restricted hazardous waste" by Hazardous Materials Law.

The term "Hazardous Materials Law," for the purposes of this paragraph, means any federal, state, or local law, ordinance or regulation or any court judgment applicable to Mortgagor or to the Property relating to industrial hygiene or to environmental or unsafe conditions including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Materials, those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property, and those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Property. "Hazardous Materials Law" also shall include, but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act and the Occupational Safety and Health Act, and all regulations adopted in respect to the foregoing laws.

23. **MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Mortgage:

Amendments. This Mortgage constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage and supersedes all prior understandings and correspondence, oral or written, with respect to the subject matter hereof. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bond by the alteration or amendment.

Caption Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Mortgagee in any capacity, without the written consent of Mortgagee.

Severability. If a court of competent jurisdiction finds any provision of this Mortgage to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provisions cannot be so modified, it shall be stricken and all other provision of this Mortgage in all other respects shall remain valid and enforceable.

24. **WAIVER OF TRIAL BY JURY.** MORTGAGOR AND MORTGAGEE (BY ACCEPTANCE OF THIS INSTRUMENT) HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS MORTGAGE, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE, THE GUARANTY, OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO OR TO ANY LOAN DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGOR AND MORTGAGEE ENTERING INTO THE SUBJECT LOAN TRANSACTION.

25. **Subordinate Mortgage.** This Instrument is subject and subordinate and subject to the lien of that certain mortgage (the "Senior Mortgage") of even date herewith, made by Mortgagor in favor of Ocean Bank, a Florida banking corporation (the "Senior Mortgagee") to recorded prior to this Instrument in the Public Records of Broward County, Florida, securing a two (2) Promissory Notes in the principal sum of \$_____ and \$_____. with respect to the Senior Mortgage:

(a) The Mortgagor covenants and agrees to comply with all of the terms and conditions of the Senior Mortgage.

(b) Nothing contained herein shall be construed to require Mortgagee to perform Mortgagor's covenants in the Senior Mortgage.

(c) Mortgagor agrees promptly to forward copies of any and all notices received from the Senior Mortgagee to Mortgagee.

(d) A default under the Senior Mortgage shall be deemed a default under this Instrument.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Mortgagor has executed and sealed this Instrument or has caused the same to be executed and sealed by its representatives thereunto duly authorized.

Signed, sealed and delivered in the presence of:

WITNESSES:

DEVELOPER:

744-748 NW 5 Ave LLC, a Florida Limited Liability Company

(Signature)

Printed Name: _____

By: _____

Jonathan Fish, Authorized Member

(Signature)

Printed Name: _____

By: _____

Abraham Fish, Authorized Member

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Jonathan Fish, as Authorized Member of 744-748 NW 5 Ave, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Abraham Fish, as Authorized Member of 744-748 NW 5 Ave, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

WITNESSES:

DEVELOPER:

Bayit Investments LLC, a Florida Limited Liability Company

(Signature)
Printed Name: _____

By: _____
Jonathan Fish, Authorized Member

(Signature)
Printed Name: _____

By: _____
Abraham Fish, Authorized Member

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Jonathan Fish, as Authorized Member of Bayit Investments, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Abraham Fish, as Authorized Member of Bayit Investments, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

WITNESSES:

DEVELOPER:

710 NW 5th Avenue LLC, a Florida Limited Liability Company

(Signature)

Printed Name: _____

By: _____

Jonathan Fish, Authorized Member

(Signature)

Printed Name: _____

By: _____

Abraham Fish, Authorized Member

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Jonathan Fish, as Authorized Member of 710 NW 5th Avenue, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

Notary Public, State of Florida

(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires:

Commission Number

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Abraham Fish, as Authorized Member of 710 NW 5th Avenue, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

Notary Public, State of Florida

(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires:

Commission Number

WITNESSES:

DEVELOPER:

413 NW 7th Street, LLC, a Florida Limited Liability Company

(Signature)

Printed Name: _____

By: _____

Jonathan Fish, Authorized Member

(Signature)

Printed Name: _____

By: _____

Abraham Fish, Authorized Member

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Jonathan Fish, as Authorized Member of 413 NW 7th Street, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Abraham Fish, as Authorized Member of 413 NW 7th Street, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.
(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:
Commission Number

Exhibit A

All of Lots 21, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 and the East One-Half (E 1/2) of Lots 38, 39, 40, 41 and 42, in Block 282, of Progresso, a Sub-division according to the plat thereof as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida, said lands situate, lying and being in Broward County, Florida.

Together With

Lots 25, 26 and 27, Block 282, of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida, and said lands situate, lying and being in Broward County, Florida.

Together With

Lots 22, 23, and 24, Block 282, PROGRESSO, according to the map or plat thereof as recorded in Plat Book 2, Page 18, Public Records of Miami-Dade County, Florida- Said lands situate, lying and being in Broward County, Florida.

Together With

Lots 7, 8, 9, 10 & 11, Block 281, of PROGRESSO, according to the Plat thereof, recorded in Plat Book 2, page 18, of the Public Records of Miami-Dade County, Florida; said lands situate and being in Broward County, Florida.

Together With

Lots 12, 13, 14, 15 & 16, Block 281, of PROGRESSO, according to the Plat thereof, recorded in Plat Book 2, page 18, of the Public Records of Miami-Dade County, Florida; said lands situate and being in Broward County, Florida.

Together With

Lots 17, 18, 19 & 20, Block 281, of PROGRESSO, according to the Plat thereof, recorded in Plat Book 2, page 18, of the Public Records of Miami-Dade County, Florida; said lands situate and being in Broward County, Florida.

Together With

Lots 21, 22, 23 & 24, Block 281, of PROGRESSO, according to the Plat thereof, recorded in Plat Book 2, page 18, of the Public Records of Miami-Dade County, Florida; said lands situate and being in Broward County, Florida.

Together With

Lots 43 thru 48 and the West 1/2 of Lots 38 thru 42, Block 282, Progresso, according to the Plat thereof as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands, now situate, lying and being in Broward County, Florida.

EXHIBIT "H"
RESTRICTIVE COVENANT

TO BE PROVIDED