

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR DEVELOPMENT INCENTIVE PROGRAM GRANT
(THE SISTRUNK MARKET PROJECT)

This FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR DEVELOPMENT INCENTIVE PROGRAM GRANT (the "Agreement") is made as of this ____ day of _____, 2020, by and between the FORT LAUDERDALE COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163, Florida Statutes (the "Agency") and NORTH WEST 6TH INVESTMENTS, LLC, a Florida limited liability company ("Developer").

WITNESSETH:

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

WHEREAS, the Northwest-Progresso-Flagler Heights Plan ("Redevelopment Plan") was adopted on November 7, 1995 and subsequently amended in 2001, 2002, 2013, 2016 and 2018 and provides for redevelopment of the Northwest-Progresso-Flagler Heights Area (the "Redevelopment Area");

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

WHEREAS, the Developer, pursuant to the terms of the Programs, has applied for funding to renovate a 23,000 warehouse to create a food hall which may include a coffee roasting facility, event space, classroom and meeting spaces, food, art, and craft kiosks and a roof top urban garden but shall include a micro-brewery with tap room at 115 West Sistrunk Boulevard, Fort Lauderdale, Florida which is within the Redevelopment Area;

WHEREAS, on July 18, 2017, the Agency's Northwest-Progresso-Flagler Heights Advisory Board (the "Advisory Board") approved the Developer's funding request for the Project;

WHEREAS, on December 5, 2017, after review of the Developer's Proposal (as hereinafter defined), the Agency accepted Developer's Proposal as being in the public interest and in furtherance of the goals, objectives and provisions of the Redevelopment Plan and authorized negotiation of a development agreement between the Agency and Developer setting forth the terms and conditions for the funding and development of the Project;

WHEREAS, the Agency and Developer have entered into and concluded negotiations for the Project pursuant to the Development Incentive Grant Program, which negotiations have resulted in the Developer Agreement dated January 30, 2019;

WHEREAS, Developer has been actively and diligently renovating the Project, marketing the Project and creating Food Hall, Brewery and Community Space as contemplated;

WHEREAS, as a result of the COVID 19 pandemic, Developer's Project has been significantly and adversely impacted by Federal, State and local occupancy limitations, operational hour limitations and

requirements of Federal, State and local authorities to minimize and avoid indoor gatherings, especially where alcohol is served;

WHEREAS, the Project had a "soft" opening on August 20, 2020 as a result of capacity limiting restrictions imposed by the appropriate authorities;

WHEREAS, due to the COVID 19 pandemic impact, Developer has requested and the Agency has agreed to advance \$400,000 of the Grant in two (2) increments of \$200,000 over six (6) months without regard to the Job Creation Requirement, but subject to terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby Amend the Agreement

1.The following definitions in Section 1.02 are deleted and replaced with the following:

"Grant Eligibility Period" means a term of five (5) years starting from the Completion Date plus the period of time starting from August 20, 2020 and ending on the Completion Date.

"Completion Date" means the date on which a final Certificate of Completion is issued for the commercial components of the Project, the Project is substantially open for business as a food hall, the Closing Date has occurred. Thereafter, Developer is eligible for disbursement of the Development Incentive Program Grant as set forth in Section 6.02.

"Independent Contractor" means a person or entity retained under written contract to perform work or services for the Developer on the Project. Such person or entity is not an employee of the Developer but has certain defined duties and is entitled to receive compensation as provided in the written contract.

2. Paragraph 6. 02 of the Agreement is deleted and replaced with the following:

6.02 Disbursement of Grant Proceeds.

Subject to an annual appropriation by the Board of Commissioners of the Agency and provided the Developer provides satisfactory proof of payment for eligible costs and expenses under the Development Incentive Program related to the Project, the Development Incentive Program Grant shall be disbursed as set forth below. No disbursement shall be made if an Event of Default has been declared under this Agreement. No disbursement shall be made sooner than the Closing Date and not until after the Completion Date. Funding for this project is subordinate and subject to funding for operating and administrative costs of the Agency and the senior debt of the Agency and will be funded on an equal basis with other obligations of the Agency.

Provided all conditions for disbursement have been met, the parties agree disbursement shall be made as follows:

1. Upon issuance of a Final Certificate of Occupancy or Completion for the Project, \$200,000 shall be disbursed to the Developer. No sooner than six months after the issuance of the Final Certificate of Occupancy or Completion, an additional \$200,000 shall be disbursed to the Developer, provided a final Certificate of Occupancy or Completion is issued for the microbrewery and it is open for business ; and

2. The lesser of \$500,000 or a prorata portion of the Grant equal to the FTE Job Hours created during the prior years and accepted and approved by the Agency shall be made within 75 days after the second anniversary of the Completion Date; and
3. In years 3, 4 and 5 within 75 days of the anniversary date of the Completion Date, so much of the Grant as has not been disbursed to the extent FTE Job Hours has been created and accepted and approved by the Agency.

3. Article 7 of the Agreement is deleted and replaced with the following:

ARTICLE 7. JOB CREATION AND MAINTENANCE REQUIREMENTS

7.01 **Job Creation Requirements.** The Developer shall open, operate and maintain the Project during the Grant Eligibility Period. The Developer create on an annual basis for two years FTE Job Hours for up to 50 employees during the Grant Eligibility Period. Developer shall use commercially reasonable efforts to insure that at least twenty percent (20%) of the employees reside in the Northwest-Progress-Flagler Heights Community Redevelopment Area at the time of the hire or subsequently moves to the Redevelopment Area within ninety days (90) after being hired. Subject to the approval process set forth below, any employee hired by the Developer, its Affiliates, an Approved Tenant or Independent Contractor at the Project Site and who performs services at the Project shall be eligible for calculation of FTE Job Hours and satisfaction of the Job Creation Requirement. Provided an event of default has not been declared under this Agreement, a portion of the Development Incentive Program Grant Amount shall be forgiven for each FTE Job Hours created and approved by the Agency in accordance with this Article 7. Notwithstanding, the occurrence of an event of default, including without limitation, failure to open and operate the Project for a minimum of five years, sale, transfer or conveyance of the Property or sale, conveyance or transfer of the stock or membership interest of Steve J. D'Apuzzo, Sr. in the Developer as described in Article 12 shall require a repayment of the entire Grant without credit for creation of any FTE Job Hours.

The annual Job Creation Requirement shall be calculated by multiplying a forty (40) hour work week by fifty two (52) weeks per employee for a total of 104,000 FTE Job Hours for each year. The total FTE Job Hours required under this Agreement is 208,000 FTE Job Hours. It is anticipated that the Job Creation Requirement shall be satisfied during the Grant Eligibility Period.

7.02 **Job Creation Reports.** To the extent Developer is seeking credit for FTE Job Hours, Developer shall provide to Agency an annual written report ("Job Report") certifying the number of FTE Job Hours created for the preceding year within forty five days of the first anniversary of the Completion Date and each anniversary thereafter for two (2) years through the end of the Grant Eligibility Period, if necessary. The Job Report shall be substantially in the format attached as Exhibit "C" and shall include the following information for each employee for which FTE Job Hours credit is requested: (i) the name of the employer of the employee; (ii) the identification number for the employee; (iii) the employee's job title; (iv) the date on which the employee resided in the Redevelopment Area, if any; (v) the employee's annual salary, or if paid hourly, the employee's hourly rate; (vi) the number of FTE Job Hours claimed for the employee. Upon a written request, the Developer shall provide the Agency within five (5) days the name of any employee for which FTE Job Hours credit is sought. Failure to provide the requested information for any employee shall eliminate the FTE Job Hours credit for that employee.

- 7 **Approval of Affiliates, Independent Contractors and Approved Tenants.** FTE Job Hours created by Independent Contractors, Affiliates and Approved Tenants may be eligible but must be approved by the Agency. Developer shall submit the following information within 60 days after a business of an Affiliate, Independent Contractor, Approved Tenant opens for business, performs work or provides a service within the Project and not less than 90 days before submission of the Job Report for which the Developer intends to seek FTE Job Hours credit; (i) the name of the employer; (ii) the estimated number of jobs to be created by the employer; (iii) a description of the business operations of the employer and of the Affiliate, Independent Contractor or the Approved Tenant; (iv) a certified copy of the written lease, license, service agreement or other agreement which governs the occupancy, duties, work or service of the employee for the applicable party in the Project which instrument may incorporate preservation of public records and audit rights in favor of the Agency, (v) the principals with controlling interest of the Affiliate, if applicable; and (v) such other reasonable information requested by the Agency. The Agency shall have 45 days after the submission of the above referenced information to determine if the Approved Tenant, Affiliate or Independent Contractor will qualify for FTE Job Hours which approval shall not be unreasonably withheld, conditioned or delayed. Failure to render a decision within the 45 days shall be considered an approval. The Developer shall not be entitled to receive FTE Job Hours credit originating from prohibited business or uses as described in the Declaration of Restrictive Covenant. Notwithstanding anything set forth in this Agreement to the contrary: (1) in no event shall any construction jobs created which are solely related to construction or renovation of the Project be included in the calculation of Full Time Equivalent (FTE) Job Hours under this Agreement. If an Approved Tenant, Independent Contractor or Affiliate fails to: (a) provide the information for the Jobs Report; (b) submit to an audit as required under Section 16.19 or (c) comply with a public records request as required under Section 16.20, then the job hours for that particular Affiliate, Independent Contractor or Approved Tenant shall not count towards the Job Creation Requirement and the Developer shall not be entitled to receive a reduction in the principal balance of the Grant for such Full Time Equivalent (FTE) Job Hours unless and until all of the requirements set forth herein have been satisfied.
4. **Ratify.** In all other respects, the Agreement remains unchanged and is still in full force and effect, except as amended by this First Amendment.

AGENCY:

WITNESSES:

**FORT LAUDERDALE COMMUNITY
REDEVELOPMENT AGENCY**, a body corporate
and politic of the State of Florida created pursuant to
Part III, Chapter 163

By: _____

Dean J. Trantalis, Chair

[Witness print or type name]

By: _____

Christopher J. Lagerbloom,
Executive Director

[Witness print or type name]

ATTEST:

APPROVED AS TO FORM:
Alain E. Boileau, CRA General Counsel

Jeffrey A. Modarelli, CRA Secretary

Lynn Solomon, Assistant General Counsel

WITNESSES:

DEVELOPER
North West 6th Investments, LLC
a Florida limited liability company

[Witness print or type name]

Print Name: _____
Title: Authorized Representative

[Witness print or type name]

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by means of ☐ physical presence or ☐ online notarization by _____ as Manager of Northwest 6th Investments LLC on behalf of the company. He is personally known to me or has produced _____ as identification.

(SEAL)

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

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

Commission Number