

**MARGATE COMMUNITY REDEVELOPMENT AGENCY
AGREEMENT FOR DEVELOPMENT OF PROPERTY
(DEVELOPMENT INFRASTRUCTURE ASSISTANCE PROGRAM)**

This Agreement for Development of Property ("Agreement") is made this ____ day of _____, 2016, by and between the MARGTE COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163, Florida Statutes ("Agency"), and _____ ("Developer").

W I T N E S S E T H:

WHEREAS, the Agency desires to encourage and assist projects in the Community Redevelopment Area (the "Area") which further the purposes and goals of the Community Redevelopment Plan for the Area (the "Plan");

WHEREAS, Developer intends to develop a _____ on property owned by _____ located generally on _____ (the "Property");

WHEREAS, the Developer desires to develop the Property as a _____, as depicted in the preliminary Site Plan attached hereto as Exhibit "B" subject to changes as may be consented to by Agency and/or required by permitting agencies (the "Project");

WHEREAS, in order to successfully develop the Project, the Developer has applied for financial assistance through the Agency's Development Infrastructure Assistance Program ("Program");

WHEREAS, the Agency's Board of Commissioners approved the Developer's Application for financial assistance through the Program ("Application"), and in consideration of the Developer agreeing to construct and operate the Project as contemplated by this Agreement, the Agency is willing to financially assist the Developer so that the Project will be developed, opened in a timely manner, and operated consistent with the terms and conditions of the Application and this Agreement.

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

ARTICLE 1. DEFINITIONS.

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

(a) "Act" means the Constitution of the State of Florida; Part III, Chapter 163, Florida Statutes; other applicable provisions of law, and ordinances and resolutions of the City and the Agency implementing them.

(b) "Agency" means the Community Redevelopment Agency of the City, as created by a Resolution of the City, adopted by the City Commission, including any amendments thereto, and any successors or assigns thereto.

(c) "Agency Payments" means the payments made by the Agency to the Developer pursuant to Section 6.01.

(d) "Agreement" means this Agreement for Development of Property, including any Exhibits, and any amendments hereto or thereto.

(e) "Agreement Expiration Certificate" means the instrument executed by the parties hereto as provided in Section 15.19 certifying that all obligations of the parties hereto have been satisfied and this Agreement has expired in accordance with its terms, the form of which is attached hereto as Exhibit "___."

(f) "Agreement Termination Certificate" means the instrument executed by the parties hereto as provided in Section 11.06 stating that this Agreement has been terminated prior to its Expiration Date as provided in Section 11.05, the form of which is attached hereto as Exhibit "_____."

(g) "Application" means the application dated _____, submitted by Developer for financial assistance pursuant to the Agency's Development Infrastructure Assistance Program, which is attached hereto as Exhibit "_____".

(h) "Area" means the area located within the corporate limits of the City having conditions of blight (as those conditions are defined in the Redevelopment Act) as found by the City Commission in establishing the Agency.

(i) "Authorized Representative" means the person or persons designated and appointed from time to time as such by the Developer or the Agency, respectively, pursuant to Section 2.04.

(j) "Building Permit" means, for all or any part of the Project to be constructed on the Property, any permit issued by a Governmental Authority authorizing, allowing and permitting the commencement, prosecution and completion of vertical construction to the extent provided in said permit, but does not include any permit for demolition or site clearance.

(k) "City" means the City of Margate, Florida, a Florida municipal corporation, and any successors or assigns thereto.

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

(m) "Commencement Date" means the date of issuance of the first Building Permit for any part of the Project.

(n) "Construction Documents" means the plans and specifications for the Project, and any part thereof, in sufficient detail and specificity to be filed with the Developer's application for a Building Permit and used for construction of the Project.

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

(p) "County" means Broward County, Florida, a charter county and a political subdivision of the State of Florida.

(q) "Developer" means _____ a Florida _____ company, and any successors and assigns thereof, including any entity, partnership, joint venture, or other person in which _____ is a general partner or principal, but not including any entity, partnership, joint venture, or other person in which _____ is a general partner or principal which is not undertaking or participating in any development of the Project, or any part thereof.

(r) "Effective Date" means the date determined in accordance with Section 15.20 when the Memorandum of Development Agreement is recorded and this Agreement becomes effective.

(s) "Eligible Project Costs" means those Project costs listed in Exhibit "____" of this Agreement, and which the Developer has demonstrated to the reasonable satisfaction of the Agency are attributable to the Project and have been paid by the Developer via documentation reasonably acceptable to the Agency. Eligible Project Costs are limited to those costs contained in Exhibit "____".

(t) "Exhibits" means those agreements, diagrams, drawings, specifications, instruments, forms of instruments, and other documents attached hereto and designated as exhibits to, and incorporated in and made a part of, this Agreement, including any changed, revised, supplemental or replacement versions thereof.

(u) "Expiration Date" means the date on which this Agreement expires, as evidenced by the Agreement Expiration Certificate being recorded in the public records of Broward County, Florida, as provided in Section 15.19 hereof.

(v) "Governmental Authority" means the City, the County, or other governmental entity having regulatory authority over the Project and that issues a Permit or Building Permit for the Project to be constructed and opened for business.

(w) "Increment Revenues" means funds deposited each fiscal year in the Trust Fund pursuant to Section 163.387, Florida Statutes, as may be amended from time to time, and shall have the same meaning as in Section 163.340(22), Florida Statutes.

(x) "Increment Revenues Attributed to the Project" means the Increment Revenues equal to ninety five percent (95%) of the amount calculated by the Agency between each July 1 and October 1 for the subsequent fiscal year by multiplying the aggregate millage rate for all "taxing authorities," as that term is defined in Section 163.340(24), Florida Statutes, by the increase in the assessed valuation of the Property for ad valorem tax purposes as reflected on the preliminary assessment roll of taxable real property located in the Area prepared by the Property Appraiser of Broward County, Florida, and submitted to the Florida Department of Revenue pursuant to Section 193.1142, Florida Statutes, above the assessed valuation of the Property for ad valorem tax purposes as reflected on the most recent preliminary assessment roll of taxable real property located in the Area prepared by the Property Appraiser of Broward County, Florida and submitted to the Florida Department of Revenue pursuant to Section 193.1142, Florida Statutes, prior to the Completion Date.

(y) "Permits" means all zoning, variances, approvals and consents required to be granted, awarded, issued, or given by any Governmental Authority in order for construction of the Project, or any part thereof, to commence, continue, or be completed or to allow occupancy and use, but does not include any Building Permit.

(z) "Plan" means the community redevelopment plan for the Area, as approved by the City Commission, and any amendments to the Plan.

(aa) "Program" means the Agency's Development Infrastructure Assistance Program, including all guidelines, requirements, terms, and conditions as approved by the Agency.

(bb) "Project" means the development to be located on the Property as contemplated by this Agreement and constructed substantially in accordance with the Site Plan, and as further defined at the beginning of this document.

(cc) "Project Assistance Amount" means the total amount to be paid to Developer by the Agency in Agency Payments over time as further specified in Article 6 and Exhibit "____" hereto, including any changes or revisions to Exhibit "____" approved by the parties from time to time.

(dd) "Project Completion Certificate" means the instrument executed by the Developer certifying to the Agency that construction of the Project has been substantially completed and one or more certificates of occupancy have been issued by the appropriate Governmental Authority allowing the use of the Project for its intended purposes, the form of which certificate is attached hereto as Exhibit "____".

(ee) "Project Completion Date" means the date on which construction of the Project is substantially complete as evidenced by a Project Completion Certificate, but in no event beyond the date established in the Project Schedule;

(ff) "Project Professionals" means any architects, attorneys, brokers, engineers, consultants, planners, construction managers or any other persons, or combination thereof, retained or employed by the Developer in connection with the planning, design, construction, permit applications, completion and opening of the Project, but does not include the Developer.

(gg) "Project Schedule" means the schedule for commencement and completion of the Project, the initial form of which is attached hereto as Exhibit "_____".

(hh) "Property" and "Project Site" means the tract of land located in the Area on which the Project will be located, as more particularly described and depicted on Exhibit "_____".

(ii) "Redevelopment Act" means the Community Redevelopment Act of 1969, as amended, codified as Part III, Chapter 163, Florida Statutes.

(jj) "Site Plan" means the plans pertaining to the overall building design and general placement of same on the site, the initial version of which is attached hereto as Exhibit "B" subject to changes as may be required by Developer and/or permitting agencies.

(kk) "Termination Date" means the date on which this Agreement is terminated by either party hereto as provided in Section 11.05, and as evidenced by the Agreement Termination Certificate.

(ll) "Trust Fund" means the Agency's Community Redevelopment Trust Fund created pursuant to Section 163.387, Florida Statutes, in which "increment revenues" are deposited and from which an amount equal to the Increment Revenues Attributed to the Project are credited to the Project Account.

(mm) "Unavoidable Delay" means those events constituting excuse from timely performance by a party hereto from any of its obligations hereunder, as such events are defined in and subject to the conditions described in Article 12 hereof.

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

1.03. Florida Statutes. All references herein to Florida Statutes are to Florida Statutes (2016), as amended from time to time.

1.04. Computation of Days. In the computation of any period of time expressed in day(s) in this Development Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays, including holidays for the City, shall be excluded in the computation. Any period of time that consists of thirty (30) or more days shall be computed on calendar days, and any period of time that consists of less than thirty (30) days shall be computed on business days.

ARTICLE 2. PURPOSE; FINDINGS; INTENT.

2.01. Purpose of Agreement. The purpose of this Agreement is to further the implementation of the Plan by providing for the financial assistance to the Developer as an inducement for and/or assistance with the development, construction, completion and operation of the Project on the Property as contemplated herein all to enhance the quality of life, increase employment and improve the aesthetic and useful enjoyment of the Area through the eradication of conditions of blight, all in accordance with and in furtherance of the Plan and as authorized by and in accordance with the Act. The parties seek to, through development of the Project on the Property, (i) _____ as depicted in the initial Site Plan attached hereto as Exhibit “_____” as same may be subject to changes by the Developer or permitting agencies; (ii) maintain the compatibility with the existing uses located within and around the Project Site; (iii) enhance the appearance, character and charm of the Area; (iv) generate other measurable economic benefits to the City, including significant property taxes and other revenues and fees; and (v) provide a return of the public investment in the Project.

2.02. Findings.

(a) The recitals set forth above in the “Whereas” clauses are hereby approved by the parties and incorporated herein.

(b) The Plan contemplates redevelopment in the Area for, among other things, _____ uses.

(c) Developer intends to develop the Project on the Property.

(d) The Project is consistent with and furthers the provisions of the Plan and the Agency desires to encourage redevelopment of the Property and to encourage Developer to locate the Project in the Area.

(e) The Agency finds that there is a need for financial assistance to the Developer by the Agency to cause the Project to be developed in the Area.

(f) The Agency finds that Increment Revenues attributed to the Project may be used to provide Developer with financial assistance for the Project and may be used to make the Agency Payments.

(g) The Project will enhance the quality of life and the aesthetic and useful enjoyment of the Area and further the goals and intent of the Plan, and conforms to requirements of the Act, is consistent with and furthers the objectives of the Plan, and its objectives and result are in the best interests of the citizens of the City.

(h) The parties hereto recognize and acknowledge and do mutually find that the financial assistance provided pursuant to this Agreement is an important inducement to the Developer undertaking the Project in the Area.

2.03. Intent; Cooperation.

(a) It is the intent of the parties hereto to efficiently, effectively and economically cause the successful development of the Project in order to improve the Property, specifically, and the conditions in the Area, in general, as well as implement the Plan and otherwise further the purposes of the Act.

(b) It is further the intent of the parties that the Developer shall construct, equip, and otherwise complete the Project on the Property by the Completion Date substantially in accordance with the Project Site Plan and Concept Plans and Specifications for use as a _____ development, all of which are in preliminary form and subject to change as may be required by Developer.

(c) The parties mutually recognize and acknowledge that the Developer will require Agency's financial assistance in the form of the Agency Payments, and Agency's obligation to make the Agency Payments is subject to the Developer completing the development of the Project and having it open for business by the Completion Date.

(d) The parties hereto recognize and acknowledge that the successful development of the Project is dependent upon continued cooperation of the parties hereto, and each agrees that it shall: (i) act in a reasonable manner hereunder, (ii) provide the other party with complete and updated information from time to time as may be required by the terms of this Agreement, (iii) make its good faith reasonable efforts to ensure that such cooperation is continuous, (iv) the purposes of this Agreement are carried out to the full extent contemplated hereby and (v) the Project is designed, constructed, equipped, completed and operated as provided herein and in compliance with permitting requirements.

2.04. Authorized Representative.

(a) Each party may designate an Authorized Representative to act on its behalf to the extent of the grant of any authority to such representative. Notice of the designation of such a representative (and any subsequent change in the Authorized Representative) shall be given by the designating party to the other party in writing in accordance with the procedure set forth in Section 15.03 hereof.

(b) Except as otherwise expressly provided in this Agreement, whenever approval or action by the Developer or the Agency is required by this Agreement, such action or approval may, in the discretion of the party considering such approval or action, be taken or given by the Authorized Representative thereof. A party to this Agreement may rely upon the representation of the other party's Authorized Representative that such person has the requisite authority to give the approval or take the action being done by that Authorized Representative. A party may not later deny that its Authorized Representative had the authority represented to and relied upon by the other party or revoke or deny any action taken by such Authorized Representative which was relied upon by the other party.

ARTICLE 3. CONDITIONS PRECEDENT

3.01. Conditions to Developer's Obligations. The Developer's obligation to proceed with construction of the Project on the Project Site is subject to the following conditions precedent:

(a) The Developer has applied for and been issued applicable governmental approvals and permits required to commence construction of the Project on the Project Site; and

(b) The Construction Documents for the Project have been timely and fully approved by the City and any other Governmental Authority having any jurisdiction over the Project Site; and

(d) The initial Building Permit allowing construction of the Project to commence has been issued by the appropriate Governmental Authority; and

(e) Zoning and land use regulations of the City or other Governmental Authority allow development of the Project as contemplated by this Agreement; and

(f) The Developer shall have obtained any required financing.

3.02. Conditions to Agency's Obligations. The Agency's obligation to make the Agency Payments is subject to the following conditions precedent:

(a) The Developer has applied for and been issued applicable governmental approvals and permits required to commence construction of the Project on the Project Site, including the Building Permit; and

(b) The Construction Documents for the Project have been timely and fully approved by the Governmental Authority having jurisdiction over the construction of the Project; and

(c) The Developer has commenced and completed construction of the Project; and

(d) The Project has been issued a certificate of occupancy by the applicable Governmental Authority allowing the use of the Project as contemplated by this Agreement, and the Project, as constructed and completed, has been placed on the ad valorem tax roll of Broward County by the Broward County Property Appraiser as taxable real property; and

- (e) Developer provides proof of payment of property taxes.
- (f) The Increment Revenues Attributed to the Project have been deposited in the Trust Fund; and
- (g) The Developer is not in default of this Agreement; and
- (h) The Project is open for business for the uses contemplated by this Agreement.

ARTICLE 4. DEVELOPMENT OF THE PROJECT.

4.01. Redevelopment Plan. The Agency represents to the Developer and the Developer acknowledges that as of the Effective Date the provisions of the Plan pertaining to the Project Site are consistent with the Project as contemplated by this Agreement.

4.02. Permits.

(a) Developer shall cause its architects and engineers to prepare appropriate plans and specifications for the Project and, at such times as shall be deemed to be appropriate by Developer shall seek all applicable Permits and approvals for the Project as described in such plans and specifications on or before the Commencement Date. The Developer shall prepare and submit to the appropriate Governmental Authority the applications for any and all necessary Permits and Building Permits for the Project, and shall pay all costs of preparing such applications and obtaining such Permits and Building Permits.

(b) The Agency's duties, obligations, or responsibilities under any section of this Agreement, specifically including but not limited to this Section 4.02, do not affect the right, duty, obligation, authority and power of any Governmental Authority to act in its governmental or regulatory capacity in accordance with applicable laws, ordinances, codes or other building or project regulation.

(c) Notwithstanding any other provisions of this Agreement, any required permitting, licensing or other regulatory approvals by any Governmental Authority shall be subject to the established procedures and requirements of the Governmental Authority with respect to review and permitting of a project of a similar or comparable nature, size and scope to the Project. In no event shall a Governmental Authority, due to any provision of this Agreement, be obligated to take any action concerning regulatory approvals except through its established processes and in accordance with applicable provisions of law.

(d) The parties do hereby acknowledge, agree and represent that this Agreement is not intended to be and should not be construed or deemed to be a "development order" or "development permit" within the meaning of those terms in Section 163.3164, Florida Statutes.

ARTICLE 5. PROJECT.

5.01. Project Concept. The Project is to be completed in one construction phase and consists _____ as depicted in the Site Plan attached hereto as Exhibit “_____” subject to modifications as required by the Developer or permitting agencies, on approximately _____ located at _____, Margate, Florida associated with the improvements to the property as described as follows; _____.

5.02. Project Development.

- (a) Developer represents to the Agency that the assistance to be provided by the Agency pursuant to this Agreement, including the Agency Payments, is an important incentive for the development of the project on the project site.
- (b) Developer shall be responsible for all aspects of development, design, construction, ownership, use and operation of the Project and the costs thereof.
- (c) The only obligations of the Agency shall be as specifically provided herein.

5.03. Site Plan.

- (a) The Developer has prepared a Site Plan, a copy of the initial form of which is attached hereto as Exhibit "B," that contemplates development of the Project on the Project Site, which Site Plan has been previously approved by the Agency. In addition to any required government approvals, the Developer agrees that during the term of this Agreement any material changes to the Site Plan will be submitted to the Agency staff for review and comment which upon receipt of a Site Plan change submittal by Developer shall respond with comments no later than fifteen (15) calendar days following receipt of same. However, any changes which may be required of Developer and/or any permitting agency, which are not material changes to the Site Plan shall be attached to this Agreement as Exhibit “_____”, and incorporated herein by reference.
- (b) The Agency shall be the determiner of whether a change to the Site Plan is material for purposes of this Agreement and the Agency agrees to use reasonableness in all such determinations and act in accordance with the terms of this Agreement and general standards for planning and zoning determinations of material versus non-material changes of site plans.
- (c) The Developer is responsible for the cost of preparing, submitting and obtaining approval of the Site Plan.
- (d) The parties acknowledge and agree that the review and approval of the Site Plan shall be completed before the Developer applies for the initial Building Permit. The approval of the Site Plan and the issuance of the initial Building Permit shall be in accordance with the agreed upon Project Schedule, which is attached hereto as Exhibit “_____”. The Project Schedule shall include the Commencement Date and the Project Completion Date. The Agency and Developer further understand, acknowledge and agree that the Project Schedule may need minor schedule revisions and adjustments to reflect Unavoidable Delays and time required for

approval of permits by Governmental Authority outside the control of Developer. Any change to the Project Schedule shall be through the execution of an amendment to this Agreement executed by both parties.

5.04. Construction Documents. The Developer shall be responsible for preparing or causing the Project Professionals to prepare the Construction Documents, file the Construction Documents with the appropriate Governmental Authority with the Developer's application for a Building Permit, and construct the Project substantially in accordance with the Construction Documents as approved by the Governmental Authority issuing the Building Permit.

5.05. Site Clearance. The Property is presently _____. Certain _____ improvements may be removed and/or required by Developer to the extent required by any Governmental Authority. Permits issued by any Governmental Authority for pre-construction activities on the Property, including site clearance and site preparation, shall not be considered a Building Permit for purposes of this Agreement.

5.06. Project Construction.

(a) The Developer shall construct the Project on the Property substantially in accordance with the Construction Documents. Subject to Unavoidable Delay and the terms and conditions in this Agreement, the Developer shall commence construction of the Project on the Commencement Date, which shall be no later than the date set forth in the Project Schedule. Subject to any amendments executed pursuant to this Agreement.

(b) For purposes of this Section, "commence construction" of the Project means commencement of meaningful vertical construction and physical development of the Project as authorized by the Building Permit which is continued and prosecuted with reasonable diligence toward and with the objective of completion of the Project in accordance with any law, ordinance, code, regulation or other requirement of the Governmental Authority issuing the Building Permit, but does not include site clearance and site preparation.

(c) After the Commencement Date, the Developer shall continue, pursue and prosecute the construction of the Project with reasonable diligence to completion by the Project Completion Date and shall not at any time actually or effectively have abandoned (or its Contractor having actually or effectively abandoned) the Property. For purposes of this subsection (b), "abandoned" means to have ceased any meaningful construction work which effectively advances the construction of the Project toward completion, including all or substantially all the construction work force withdrawing from the Property for a period longer than fifteen (15) business days.

(d) All construction work on the Project shall be done substantially in accordance with the Construction Documents as approved by the Governmental Authority issuing a Building Permit.

(e) All obligations of the Developer with respect to commencement, continuation and completion of construction of the Project shall be subject to delays and extensions from time to

time for Unavoidable Delay. The Developer shall not be deemed to be in default of this Agreement to the extent construction or completion of the Project, or any part thereof, is not complete by reason of Unavoidable Delay.

(f) For purposes of this Section, "completion," "complete," "substantially complete" or "substantial completion" means, with respect to construction of the Project, a permanent certificate of occupancy for the Project has been issued by a Governmental Authority for the uses contemplated by this Agreement.

(g) The Developer agrees that each contract between the Developer and its General Contractor for the Project shall provide that notice shall be given to the Agency of any material defaults thereunder by the Developer or the General Contractor.

(e) During the construction of the Project, the Developer may, from time to time, make alterations and improvements, structural or otherwise, to the Project as the Developer deems desirable and consistent with the Site Plan for the uses contemplated by this Agreement; provided, however, that prior to the commencement of any material alterations or improvements of sufficient size and scope as to constitute a material change in the previously approved Site Plan or to require a substantial revision to the Building Permit, the Developer shall notify the Agency of such material change and may submit a change, amendment or revision to the Site Plan to the Agency staff for review. Nothing in this Section is intended nor shall be deemed to limit or restrict the exercise of governmental or regulatory powers or authority by any Governmental Authority or to enlarge its regulatory authority.

5.07. Project Schedule. Developer represents that as of the Effective Date it anticipates that construction of the Project will be commenced by Developer on the Commencement Date, and construction will be diligently prosecuted so that completion of the Project will occur to allow occupancy on or before the Project Completion Date. The Project Schedule, which is attached hereto as Exhibit “_____” may be amended pursuant to the terms and conditions of this Agreement.

5.08. Project Completion Certificate.

(a) Upon the substantial completion of the construction of the Project in accordance with the provisions of this Article, the Developer shall prepare and execute the Project Completion Certificate, which shall then be delivered to the Agency. Upon receipt of the certificate the Agency staff shall promptly and diligently proceed to determine if construction has been completed substantially in accordance with the Site Plan and this Agreement. Upon making such a determination the Agency staff shall execute the certificate and return it to the Developer. The date of the Project Completion Certificate shall be the date when all parties shall have executed said certificate. The Project Completion Certificate shall include the total amount of Eligible Project Costs incurred by the Developer through the completion of the Project.

(b) The Project Completion Certificate shall constitute a conclusive determination by the parties hereto of the satisfaction and termination of the obligations of the Developer

hereunder to construct the Project to completion; provided, however, that nothing in this Section shall be a waiver of the rights, duties, obligations or responsibilities of any Governmental Authority acting in its regulatory or governmental capacity or an approval of said construction for purposes of the issuance of a certificate of occupancy for the Project.

(c) The parties agree that it is their intent that the review by the Agency staff for purposes of the Project Completion Certificate determination pursuant to this Section is not to be an additional or duplicate inspection over and above that required for purposes of the Building Permit, including the issuance of a certificate of occupancy. The Agency agrees that for purposes of determining if the Project has been substantially completed in accordance with the Site Plan, the issuance of a certificate of occupancy for all components of the Project shall be a conclusive determination of substantial completion for purposes of this subsection and, if such certificate has been determined to have been issued, then the Agency agrees its staff will execute the Project Completion Certificate.

(d) If the Agency staff shall refuse or fail to execute the Project Completion Certificate after receipt of a request by the Developer to do so, then the Agency staff shall, within ten (10) days after its receipt of such request, provide the Developer with a written statement setting forth in reasonable detail the reason(s), and support such reasons with specific terms of this Agreement, why the Agency staff has not executed the Project Completion Certificate and what must be done by the Developer to satisfy such objections so that the Agency staff would sign the certificate. Upon the Developer satisfying the Agency staff objections, then the Developer shall submit a new request to the Agency staff for execution of the Project Completion Certificate and that request shall be considered and acted upon in accordance with the procedures in paragraph (a)(1) of this Section for the original request.

(e) The Project Completion Certificate shall be in a form sufficient to be recorded in the public records of Broward County, Florida. After execution by the Agency staff, it shall be promptly returned to the Developer who shall record the certificate in the public records of Broward County, Florida, and pay the cost of such recording.

5.09. Agency Not in Privity with Contractors. The Agency shall not be deemed to be in privity of contract with any Contractor or provider of goods or services with respect to the construction of any part of the Project.

ARTICLE VI: AGENCY FUNDING

6.01. Agency Payments.

(a) The Agency finds that the Project will add significantly to the revitalization of the Area and, when completed, will increase the assessed value of the Property on the real property ad valorem tax roll.

(b) Subject to availability of Increment Revenues Attributed to the Project, in conformance with the Program guidelines, terms, and conditions, and an increase in the assessed value of the Property over the assessed value as of _____(date), the Agency agrees to make three (3) equal annual payments to the Developer in a total amount of the Eligible Project Costs, not to exceed _____. The three (3) annual Agency Payments shall not exceed seventy-five percent (75%) of the actual Increment Revenues Attributed to the Project for any such year, with such Agency Payments to be made until the total amount of Agency Payments made by the Agency is equivalent to the Project Assistance Amount, as provided herein. In the event the Agency is unable to make an Agency Payment during any one year, the amount of the Agency Payment shall carryover to the next year, and subject to the availability of Increment Revenues, and the Developer's compliance with the terms of this Agreement, the Agency shall make the Agency Payment the following year in addition to any Agency Payment due for the following year. In any event, subject to availability of Increment Revenues Attributed to the Project, all Agency Payments shall be made by the Agency no later than five (5) years after the Project is placed on the property tax rolls.

(c) The Agency Payments shall be paid by February 1 of each year beginning the first year after the completed Project is placed on the property tax rolls, and the Increment Revenues Attributed to the Project take into account the value of the construction of the completed Project. The aggregate amount of the Project Assistance Amount may not be increased.

(d) Before the Agency is obligated to pay the Agency Payment for any year, the Developer shall provide the Agency with the following documentation, to the satisfaction of the Agency staff: (1) that the property taxes levied against the Property have been paid for such year; and (2) that the Developer has put forth, and continues to put forth its best, good faith efforts to hire local contractors and residents to perform the work associated with the Project, pursuant to the Local Employment Program, which is attached hereto as **Exhibit “_____,”** and incorporated herein by reference.

(e) The Agency Payments shall be in consideration of and dependent on the development and completion of the Project in accordance with this Agreement and shall continue only so long as the Project and the Property are used for _____depicted in the Site Plan attached hereto as Exhibit “_____”, subject to modifications under the terms of this Agreement.

(f) In the event the Project is closed, at the election of Developer, for sixty (60) days or more during any calendar year, the Agency shall only be obligated to pay to the Developer a prorated portion of the Agency Payments for those days during which the Project was open during the calendar year. The Agency shall not pay the Developer any Agency Payments during any period of time in which the Property is subject to any recorded order entered by any Governmental Authority which relates to the Developer's operation or maintenance of the Project or Property. Once the recorded order is released, the Developer shall provide written notice to the Agency. Upon receipt of the written notice from the Developer, the Agency shall make the applicable Agency Payment to the Developer no later than thirty (30) days after the receipt of the written notice.

(g) The Agency shall be obligated to make Agency Payments only from funds on deposit and available in the Trust Fund. Agency Payments shall be subordinate to any obligations or liens on the Trust Fund in effect prior to the Effective Date.

ARTICLE 7. INSURANCE.

7.01. Insurance Requirements Generally.

(a) The Developer agrees to purchase and maintain in full force and effect such insurance policies with coverage's as specified herein. All insurance shall be obtained from financially responsible insurance companies either duly authorized under the laws of the State of Florida to do insurance business in the State of Florida (or subject to legal process in the State of Florida) and shall be issued and countersigned by duly authorized representatives of such companies for the State of Florida.

(b) Nothing in this Agreement is intended or shall be deemed to be designed by the Agency as a recommended insurance program for the Developer.

(c) The Developer alone shall be responsible for the sufficiency of its own insurance program. The Agency will in no way be responsible to the Developer or any other party for any inadequacy of the Developer's overall insurance program.

7.02. Insurance Exclusive of Indemnity. The insurance policies and coverage's of the Developer contemplated by this Article 7 are exclusive of, and in addition to, any and all indemnity obligations of the Developer under this Agreement.

7.03. No Waiver of Sovereign Immunity. Nothing in this Agreement, specifically including this Article 7, is intended or shall be deemed to constitute a waiver in whole or in part of any sovereign immunity applicable to and that may be asserted by the City or the Agency.

ARTICLE 8. INDEMNIFICATION.

8.01. Indemnification by the Developer.

(a) For good and valuable consideration herein provided, the receipt of which is hereby acknowledged by the Developer, the Developer agrees to indemnify, defend and hold harmless, the Agency, its respective agents, officers, or employees from any and all liabilities, damages, penalties, judgments, claims, demands, costs, losses, expenses or attorneys' fees through appellate proceedings, for personal injury, bodily injury, death or property damage arising out of, or by reason of any act or omission of the Developer, its agents, employees or contractors arising out of, in connection with or by reason of, the performance of any and all services contemplated by this Agreement, or which are alleged to have arisen out of, in connection with or by reason of, the performance of any and all services contemplated by this Agreement, or which are alleged to have arisen out of, in connection with, or by reason of, the performance of such services.

(b) The Developer's indemnity obligations under subsection (a) shall survive the earlier of the Termination Date or the Expiration Date, but shall apply to occurrences, acts, or omissions that arise on or before the earlier of the Termination Date or the Expiration Date even if any claim arising from such occurrences, acts or omissions is asserted after such dates.

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

ARTICLE 9. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DEVELOPER.

9.01. Representations and Warranties. The Developer represents and warrants to the Agency that each of the following statements is currently true and accurate, in all material respects, and agrees the Agency may rely upon each of the following statements:

(a) The Developer is a Florida_____ (LLC, corporation or other) duly organized and validly existing under the laws of the State of Florida, has all requisite power and authority to carry on its business as now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party; is qualified to do business in the State of Florida, and has consented to service of process upon a designated agent for service of process in the State of Florida.

(b) This Agreement and, to the extent such documents presently exist in form accepted by the Agency and the Developer, each document contemplated or required by this Agreement to which Developer is or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, the Developer, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof: (i) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Developer, (iii) contravenes or results in any breach of, default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the Developer under any indenture, mortgage, deed of trust, bank loan or credit agreement, the Developer's articles of organization, or, any other agreement or instrument to which the Developer is a party or by which the Developer may be bound.

(c) This Agreement and, to the extent such documents presently exist in form accepted by the Agency and the Developer, each document contemplated or required by this Agreement to which the Developer is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect

creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

(d) There are no pending or, to the knowledge of the Developer, threatened actions or proceedings before any court or administrative agency against the Developer, or against any controlling shareholder, officer, employee or agent of the Developer, which question the validity of this Agreement or any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of the Developer.

(e) The Developer has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by the Developer, and has paid, or caused to be paid, all taxes shown to be due and payable on such returns or on any assessments levied against the Developer.

(f) The Developer shall be obligated to pay all ad valorem property taxes due upon the Property and the Project as required by Florida law.

(g) All financial information and other documentation, including that pertaining to the Project or the Developer, delivered by the Developer to the City or the Agency, was, on the date of delivery thereof, true and correct, in all material respects.

(h) The principal place of business and principal executive offices of the Developer are in the County and, until the expiration or termination of this Agreement, the Developer will keep original or duplicate records concerning the Project (such as construction contracts, financing documents and corporate documents) and all contracts, licenses and similar rights relating thereto at an office located in the County.

(i) As of the Effective Date and subject to any financing, the Developer has the financial capability to carry out its obligations and responsibilities in connection with the development of the Project as contemplated by this Agreement.

(j) The Developer (with the assistance of its Project Professionals and the Contractor) has the experience, expertise, and capability to develop, cause the construction, and complete the Project and, oversee, operate, and manage the business and/or property as depicted in the Site Plan, which is attached hereto as Exhibit “___”.

9.02. Covenants. The Developer covenants with the Agency that until the earlier of the Termination Date or the Expiration Date:

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

(b) During each year this Agreement and the obligations of the Developer under this Agreement shall be in effect, the Developer shall cause to be executed and to continue to be in effect those instruments, documents, certificates, permits, licenses and approvals and shall cause

to occur those events contemplated by this Agreement that are applicable to, and that are the responsibility of, the Developer.

(c) The Developer shall assist and cooperate with the Agency to accomplish the development and completion of the Project by the Developer in accordance with this Agreement, and the Site Plan and will not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto, including the Plan and the Act.

(d) Subsequent to the Effective Date, the Developer shall maintain its financial capability to develop, construct, complete, open for business, and maintain the operation of the Project, and shall promptly notify the Agency of any event, condition, occurrence, or change in its financial condition which materially adversely affects, or with the passage of time is likely to adversely affect, the Developer's financial capability to successfully and completely develop, construct, complete and open for business the Project as contemplated hereby.

(e) The Developer shall promptly cause to be filed when due all federal, state, local and foreign tax returns required to be filed by it, and shall promptly pay when due any tax required thereby.

(f) Subject to and except as permitted by Section 15.01, prior to the expiration or termination of this Agreement, the Developer shall maintain its existence, will not dissolve or substantially dissolve all of its assets and will not consolidate with or merge into another corporation, limited partnership, or other entity without the prior approval of the Agency, unless the Developer is the surviving entity or retains a controlling interest in the consolidated or merged corporation, in which case no consent by Agency shall be required. In any event, prior to the expiration or termination of this Agreement, the Developer, will promptly notify the Agency of any changes to the existence or form of the business entity of Developer.

(g) Except for the removal of any structures, plants, items or other things from the Property necessary for construction of the Project to commence and continue, the Developer shall not permit, commit, or suffer any waste or impairment of the Property prior to the Commencement Date.

(h) Provided all conditions precedent thereto have been satisfied or waived as provided herein, the Developer shall design, construct, and complete the Project such that it is substantially complete as provided in this Agreement no later than the Project Completion Date.

(i) The Developer shall open the business and/or property as preliminarily depicted in Exhibit “___” no later than the Opening Date as specified in Exhibit “_____”, which is attached hereto, and shall operate the business and/or property pursuant to the terms and conditions of this Agreement.

ARTICLE 10. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE AGENCY.

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

(a) The Agency is a validly existing body corporate and politic of the State of Florida, is the duly created community redevelopment agency of the City under Part III, Chapter 163, Florida Statutes (known as the Community Redevelopment Act of 1969), has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party.

(b) This Agreement and, to the extent such documents presently exist in form accepted by the Agency and the Developer, each document contemplated or required by this Agreement to which the Agency is or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, the Agency, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof (i) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Agency, (iii) contravenes or results in any breach of, or default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the Agency under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Agreement, any other agreement or instrument to which the Agency is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the Agency outstanding on the Effective Date.

(c) This Agreement and, to the extent such documents presently exist in form accepted by the Agency and the Developer, each document contemplated or required by this Agreement to which the Agency is or will be a party constitute, or when entered into will constitute, legal, valid and binding obligations of the Agency enforceable against the Agency in accordance with the terms thereof, except as such enforceability may be limited by public policy or applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

(d) There are no pending or threatened actions or proceedings before any court or administrative agency against the Agency, or against any officer of the Agency, which question the validity of any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of the Agency.

10.02. Covenants. The Agency covenants with the Developer that until the earlier of the Termination Date or the Expiration Date:

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

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

(c) The Agency shall not request or recommend any rezoning of the Project Site, or any part thereof, which will prevent or adversely affect the development of the Project on the Project Site.

(d) The Agency shall maintain its financial capability to make the Agency Payments as contemplated by this Agreement and shall notify the Developer of any event, condition, occurrence, or change in its financial condition which adversely affects, or with the passage of time is likely to adversely affect, the Agency's financial capability to carry out its responsibilities contemplated hereby.

(e) The Agency will not violate any laws, ordinances, rules, regulations, orders, contracts, or agreements that are or will be applicable thereto, or, to the extent permitted by law, enact or adopt or urge or encourage the enactment or adoption of any laws, ordinances, resolutions, rules, regulations, or orders or approve or enter into any contracts or agreements, including issuing any bonds, notes or other forms of indebtedness, that will result in any provision of this Agreement to be in violation thereof.

ARTICLE 11. DEFAULT; TERMINATION.

11.01. Default by Developer.

(a) Provided the Agency is not then in default of this Agreement under Section 11.02 hereof, there shall be an "event of default" by the Developer upon the occurrence of any one or more of the following after the Effective Date:

(1) The Developer shall fail to perform or comply with any material provision of this Agreement applicable to it within the time prescribed therefor; provided, however, that suspension of or delay in performance by the Developer during any period in which the Agency is in default of this Agreement as provided in Section 11.02 hereof will not constitute an event of default by the Developer under this subsection (a); or

(2) The Developer shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any

reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation or shall file an answer admitting, or shall fail reasonably to contest, the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Developer or any material part of such entity's properties; or

(3) Within sixty (60) days after the commencement of any proceeding by or against the Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed or otherwise terminated, or if, within sixty (60) days after the appointment without the consent or acquiescence of the Developer of any trustee, receiver or liquidator of any of such entities or of any material part of any of such entity's properties, such appointment shall not have been vacated.

(b)(1) If an event of default by the Developer described in subsection (a) above shall occur, the Agency shall provide written notice thereof to the Developer, and, if such event of default shall not be cured by the Developer within thirty (30) days after receipt of the written notice from the Agency specifying in reasonable detail the event of default by the Developer, or if such event of default is of such nature that it cannot be completely cured within such time period, then if the Agency is not then in default of this Agreement and the Developer shall not have commenced to cure such default within such thirty (30) day period and shall not diligently prosecute such cure to completion within such reasonable longer period of time as may be necessary then, in addition to any remedy available under Section 11.03, the Agency may terminate this Agreement or pursue any and all remedies to which the Agency is entitled under this Agreement, provided, however, if the Developer shall fail to cure such event of default within said thirty (30) day or longer period or ceases to proceed diligently to timely cure such event of default, then the Agency may proceed to enforce its other available remedies under this Agreement without providing any additional notice to the Developer.

(2) Any attempt by the Agency to pursue any of the above referenced remedies will not be deemed an exclusive election of remedy or waiver of the Agency's right to pursue any other remedy to which either may be entitled hereunder.

(3) Any time periods or deadlines provided in this Agreement shall be tolled or extended by the amount of time to cure any event of default hereunder if such event affects the Developer's or Agency's ability to perform by such deadline or the expiration of such period.

(c) Notwithstanding anything to the contrary herein, upon an occurrence and continuance of an Event of Default by Developer that is not cured within the applicable cure or grace period, Agency's sole remedy under this Agreement shall be to terminate the Agreement. Upon such termination, Agency's obligations to Developer under this Agreement shall cease, including without limitation its obligation to make the Agency Payments. Agency shall have no further right to pursue specific performance or any other remedies at law or equity which Agency may otherwise have. In the event of such termination, Developer's obligations under this Agreement shall cease, excepting only the indemnification as set forth under Article 8 hereof.

11.02. Default by the Agency.

(a) Provided the Developer is not then in default under Section 11.01, there shall be an "event of default" by the Agency under this Agreement in the event the Agency shall fail to perform or comply with any material provision of this Agreement applicable to it; provided, however, that suspension of or delay in performance by the Agency during any period in which the Developer is in default of this Agreement as provided in Section 11.01 hereof will not constitute an event of default by the Agency under this subsection (a).

(b) If an event of default by the Agency described in subsection (a) shall occur, the Developer shall provide written notice thereof to the Agency, and, after expiration of the curative period described in paragraph (2) below, may institute an action to compel specific performance of the terms hereof by the Agency or terminate this Agreement.

(c) The Developer may not terminate this Agreement or institute an action described in paragraphs (a) or (b) above if the Agency cures such event of default within thirty (30) days after receipt by the Agency of written notice from the Developer specifying in reasonable detail the event of default by the Agency, or if any such event of default is of such nature that it cannot be completely cured within such period, then within such reasonably longer period of time as may be necessary to cure such default, provided however, if the Agency is proceeding diligently and in good faith, the curative period shall be extended for a period of not exceeding an aggregate of thirty (30) days without any approval or consent of the Developer being required, but such approval will be required (and shall be given or withheld in Developer's sole discretion) if the curative period is to be extended beyond thirty (30) days after the notice of default has been given by the Developer to the Agency if the Agency has commenced to cure such default within such thirty (30) day period and is diligently prosecuting such curative action to completion. The Agency shall within said thirty (30) day period or such longer period promptly, diligently and in good faith proceed to cure such event of default after receipt of the notice from the Developer and shall succeed in curing such event of default within said period of time, provided, however, if the Agency shall fail to cure such event of default within said thirty (30) day or longer period or ceases to proceed diligently to timely cure such event of default, then the Developer may proceed with its available remedies without providing any additional notice to the Agency.

(d) Any attempt by the Developer to pursue any of the remedies referred to in Section 11.02 will not be deemed an exclusive election of remedy or waiver of the Developer's right to pursue any other remedy to which it might be entitled.

(e) Any time periods or deadlines provided in this Agreement shall be tolled or extended by the amount of time to cure any event of default hereunder if such event affects the Developer's or Agency's ability to perform by such deadline or the expiration of such period.

11.03. Obligations, Rights and Remedies Cumulative. The suspension of, or delay in, the performance of its obligations by the Developer, while the Agency shall at such time be in default of their obligations hereunder shall not be deemed to be an "event of default." The

suspension of, or delay in, the performance of the obligations by the Agency while the Developer shall at such time be in default of its obligations hereunder shall not be deemed to be an "event of default" by the Agency.

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

11.05. Termination.

(a) The Developer and the Agency acknowledge and agree that as of the Effective Date certain matters mutually agreed by the parties hereto are essential to the successful development of the Project have not been satisfied or are subject to certain conditions, legal requirements or approvals beyond the control of any of the parties hereto or which cannot be definitely resolved under this Agreement. In recognition of these events or conditions, the parties hereto mutually agree that, provided the appropriate or responsible party therefor diligently and in good faith seeks to the fullest extent of its capabilities to cause such event or condition to occur or be satisfied, the failure of the events or conditions listed in subsection (b) below to occur or be satisfied shall not constitute an event of default by any party under this Article 11, but may be the basis for a termination of this Agreement as provided in this Section 11.05.

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

(1) The appropriate Governmental Authority, upon petition by the Developer, unduly delays or denies or fails to issue the Permits, issue the Building Permits, or approve any other governmental approvals or permits necessary to commence construction of the Project on the Project Site;

(2) A moratorium on new construction is imposed by a Governmental Authority so as to prevent construction of the Project to commence or be completed;

(3) The Developer has not commenced construction of the Project on the Property by the Commencement Date.

(c) Upon the occurrence of an event described in subsection (b), then the Developer or the Agency may, upon determining that such event cannot reasonably be expected to change in the foreseeable future so as to allow development of the Project, elect to terminate this Agreement by giving a notice to the other party hereto within thirty (30) days of the occurrence of such event or the determination of inability to cause a condition precedent to occur or be

satisfied, stating its election to terminate this Agreement as a result thereof, in which case the counterparty shall have an opportunity to cure such event for a period of thirty (30) days following notice from the notifying party and if the event is not cured within said 30 day period, then this Agreement shall then terminate.

(d) In the event of a termination pursuant to subsection (c), neither the Developer nor the Agency shall be obligated or liable one to the other in any way, financially or otherwise, for any claim or matter arising from or as a result of this Agreement or any actions taken by the Developer and the Agency, or any of them, hereunder or contemplated hereby, and each party shall be responsible for its own costs.

(e) Notwithstanding anything to the contrary contained herein, in the event that any party shall have, but shall not exercise, the right hereunder to terminate this Agreement because of the non-satisfaction of any condition specified herein, and such condition is subsequently satisfied, then the non-satisfaction of such condition shall no longer be the basis for termination of this Agreement.

11.06. Termination Certificate.

(a) In the event of a termination of this Agreement for any reason prior to the Expiration Date, each of the parties hereto do covenant and agree with each other to promptly execute a certificate prepared by the party electing to terminate this Agreement, which certificate shall expressly state that this Agreement has been terminated in accordance with its terms, is no longer of any force and effect except for those provisions hereof which expressly survive termination, that the rights, duties and obligations of the parties hereto have been terminated and released (subject to those surviving provisions hereto).

(b) The certificate described in subsection (a) shall be prepared in a form suitable for recording and promptly after execution by all of the parties hereto shall be recorded in the public records of Broward County, Florida. The cost of recording the termination certificate shall be paid by the terminating party.

(c) The form of the Agreement Termination Certificate is attached hereto as Exhibit "_____."

ARTICLE 12. UNAVOIDABLE DELAY.

12.01. Unavoidable Delay.

(a) Any delay in performance of or inability to perform any obligation under this Agreement (other than an obligation to pay money) due to any event or condition described in paragraph (2) as an event of "Unavoidable Delay" used in the manner provided in this Section 12.01.

(b) "Unavoidable Delay" means any of the following events or conditions or any combination thereof: acts of God, acts of the public enemy, riot, insurrection, war, act of

terrorism, pestilence, archaeological excavations required by law, unavailability of materials after timely ordering of same, epidemics, quarantine restrictions, freight embargoes, fire, lightning, hurricanes, earthquakes, tornadoes, floods, extremely abnormal and excessively inclement weather (as indicated by the records of the local weather bureau for a five-year period preceding the Effective Date), strikes or labor disturbances, delays due to proceedings under Chapters 73 and 74, Florida Statutes, restoration in connection with any of the foregoing or any other cause beyond the reasonable control of the party performing the obligation in question, including, without limitation, such causes as may arise from the act of the other party to this Agreement; or acts of any Governmental Authority (except that acts of the Agency shall not constitute an Unavoidable Delay with respect to performance by the Agency).

(c) An application by any party hereto (referred to in this paragraph (c) and in paragraph (d) as the "Applicant") for an extension of time pursuant to subsection (a) must be in writing, must set forth in detail the reasons and causes of delay, and must be filed with the other party to this Agreement within fifteen (15) days following the end date of the occurrence of the event or condition causing the Unavoidable Delay or fifteen (15) days following the Applicant becoming aware (or with the exercise of reasonable diligence should have become aware) of such occurrence.

(d) The Applicant shall be entitled to an extension of time for an Unavoidable Delay only for the number of days of delay due solely to the occurrence of the event or condition causing such Unavoidable Delay and only to the extent that any such occurrence actually delays that party from proceeding with its rights, duties and obligations under this Agreement affected by such occurrence.

ARTICLE 13. RESTRICTIONS ON USE.

13.01. Restrictions on Use.

(a) Prior to the earlier of the Termination Date or the Expiration Date, no use of the Project or the Project Site other than the uses described in this Agreement shall be permitted unless and until the Developer or the person, if other than the Developer, intending to so use the Property, shall file with the Agency a request for a release from any part of or all of the restriction imposed by this Section 13.01. The Agency governing body shall promptly consider such request and either deny the request, approve the request as filed, or approve the request subject to such terms, conditions and limitations as the Agency may reasonably require. Unless specifically requested and approved, any release of the restriction imposed by this Section 13.01 shall not by its own terms without the consent of the Agency release the Developer from any obligations or restrictions imposed by this Agreement or any agreement, instrument or document contemplated hereby. If any release of the restriction imposed by this Section 13.01 is approved by the Agency, an instrument evidencing such release and in such form that it may be recorded, shall be recorded in the public records of Broward County, Florida, and the cost of such recording shall be paid by the Developer or the person requesting the release.

(b) Nothing in this Section 13.01 is intended to affect or override any law, ordinance, regulation, or other legal restriction not set forth in this Agreement.

(c) The restrictions contained in this Article 13 shall not apply to any lender, or any other person who obtains title to the Project or the Agency Property through foreclosure or conveyance in lieu of and in anticipation of foreclosure.

(d) The restrictions contained herein shall automatically terminate upon the earlier of the Termination Date or the Expiration Date hereof.

ARTICLE 14. MAINTENANCE; FIRE OR OTHER CASUALTY; CONDEMNATION;

14.01. Loss or Damage to Project. If economically feasible, the Developer covenants and agrees to diligently commence and complete the reconstruction or repair of any loss or damage caused by fire or other casualty or by eminent domain (provided the City or the Agency is not the condemning authority) to each and every part of the Project to substantially the same as existed prior to the occurrence of such loss or damage. Any reconstruction or repair of any loss or damage to the Project shall be to the standards, design, plans and specifications of the original construction unless any change therefrom is approved by the Agency.

14.02. Partial Loss or Damage to Project. Any loss or damage by fire or other casualty or exercise of eminent domain to the Project, or any portion thereof, which does not render the Project unusable for the use contemplated by this Agreement, shall not operate to terminate this Agreement or to relieve or discharge the Developer from the timely performance and fulfillment of the Developer's obligations pursuant to this Agreement, subject to an extension of time for an Unavoidable Delay.

14.03. Notice of Loss or Damage to Project. The Developer shall promptly give the Agency written notice of any significant damage or destruction to the Project stating the date on which such damage or destruction occurred, the expectations of the Developer as to the effect of such damage or destruction on the use of the Project, and the proposed schedule, if any, for repair or reconstruction of the Project. If the Developer determines the Project cannot be repaired or restored in an economically justifiable or other manner, then the Developer shall so notify the Agency and state reasons supporting its determination.

14.05. Maintenance.

(a) Developer agrees to operate and maintain the Project in accordance with commonly accepted industry standards for the term of this Agreement for projects in the City similar in type, size and quality to the Project. Developer shall take good care of, and keep and maintain, the Project (interior and exterior, including landscaping) in good and safe condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen or unforeseen, necessary to keep the Project in good and safe order and condition; however, the necessity or desirability therefor may arise. Developer shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Project and shall not demolish the Project (except Developer may demolish interior

improvements in the ordinary course of business). In the event any applicable government agency records a lien against the Property due to non-compliance with any applicable State, County, or City law, rule, or regulation, then the Agency shall not make the Annual Payment for so long as the citation remains unresolved and outstanding.

(b) Notwithstanding subsection (a), Developer may demolish the improvements in the event of a casualty rendering the Project economically infeasible or in order to rebuild if the existing improvements become obsolete. If the Developer demolishes the improvements such that the Project is not open for business at any time, then the Agency shall not make the Annual Payment for so long as the Project is not open for business.

ARTICLE 15. MISCELLANEOUS.

15.01. Assignments.

(a)(1) Prior to the earlier of the Termination Date or the Expiration Date, the Developer may sell, convey, assign or otherwise dispose of any or all of its right, title, interest and obligations in and to the Project, or any part thereof to any person subject to the prior written consent of the Agency's Board of Commissioners, such consent shall not be unreasonably withheld, provided that such party (hereinafter referred to as the "assignee"), to the extent of the sale, conveyance, assignment or other disposition by the Developer to the assignee, shall be bound by the terms of this Agreement the same as the Developer for such part of the Project as is subject to such sale, conveyance, assignment or other disposition.

(2) If the assignee of Developer's right, title, interest and obligations in and to the Project, or any part thereof, assumes all of Developer's obligations hereunder for the Project, or that part subject to such sale, conveyance, assignment or other disposition, then the Developer shall be released from all such obligations hereunder which have been so assumed by the assignee, and the Agency agrees to execute an instrument evidencing such release, which shall be in recordable form.

(b) An assignment of the Project, or any part thereof, by the Developer to any corporation, limited partnership, limited liability company, general partnership, or other legal business entity authorized to do business in the State of Florida, in which the Developer is the general partner or has either the controlling interest or through a joint venture or other arrangement shares equal management rights with a financial institution or joint venture party and maintains such controlling interest or equal management rights for the term of this Agreement (such entities being referred to in this Agreement as an "affiliate" of Developer) shall not be deemed an assignment or transfer subject to any restriction on or approvals of assignments or transfers imposed by this Section 15.01, provided, however, that notice of such assignment shall be given by the Developer to the Agency no less than thirty (30) days prior to such assignment being effective and the assignee shall be bound by the terms of this Agreement to the same extent as would the Developer in the absence of such assignment. If the Developer shall at any time withdraw or be replaced as a general partner or no longer have the controlling interest or management rights as described in this subsection, then that event shall constitute an assignment of the Developer's right, title, interest or obligations under this Agreement for

purposes of this Section 15.01 and the prior approval of the Agency shall be obtained before such an event shall be effective.

15.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

15.03. Notices.

(a) All notices, demands, requests for approvals or other communications given by either party to another shall be in writing, and shall be sent by registered or certified mail, postage prepaid, return receipt requested or by overnight courier service, or by hand delivery to the office for each party indicated below and addressed as follows:

For Agency: Diane Colonna, Executive Director
Margate Community Redevelopment Agency
5790 Margate Boulevard
Margate, Florida 33063
Telephone No. (954) 935-5323
Facsimile No. (954) 935-5211

Copy to: David N. Tolces, Esq.
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Blvd., Suite 200
Fort Lauderdale, FL 33308
Telephone: (561) 276-9400
Facsimile: (954) 771-4923

For Developer: _____

Telephone: _____
Facsimile: _____

(b) Notices given by courier service or by hand delivery shall be effective upon delivery and notices given by mail shall be effective on the third (3rd) business day after mailing. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it may be changed) shall be deemed to have been an effective delivery as provided in this Section 15.03. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other parties and such notices shall be effective upon receipt. Until notice of change of address is received as to any particular party hereto, all other parties may rely upon the last address given.

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

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

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

15.06. Venue; Submission to Jurisdiction.

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

(b) Each party to this Agreement hereby submits to the jurisdiction of the State of Florida, Broward County and the courts thereof and to the jurisdiction of the United States District Court for the Southern District of Florida, for the purposes of any suit, action, or other proceeding arising out of or relating to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.

(c) If at any time during the term of this Agreement the Developer is not a resident of the State of Florida or has no office, employee, agency or general partner thereof available for service of process as a resident of the State of Florida, or if any permitted assignee thereof shall be a foreign corporation, partnership or other entity or shall have no officer, employee, agent, or general partner available for service of process in the State of Florida, the Developer hereby designates the Secretary of State, State of Florida, its agent for the service of process in any court action between it and the Agency arising out of or relating to this Agreement and such service shall be made as provided by the laws of the State of Florida for service upon a non-resident; provided, however, that at the time of service on the Florida Secretary of State, a copy of such service shall be delivered to the Developer at the address for notices as provided in Section 15.03.

15.07. Agreement Not a Chapter 86-191, Laws of Florida, Development Agreement. The Developer and the Agency acknowledge, agree and represent that this Agreement, including, without limitation, any of the Exhibits, is not a development agreement as described in Sections 19-31, Chapter 86-191, Laws of Florida, codified as Sections 163.3220-163.3243, Florida Statutes.

15.08. Estoppel Certificates. The Developer and the Agency shall at any time and from time to time, upon not less than ten (10) days prior notice by another party hereto, execute, acknowledge and deliver to the other parties a statement in recordable form certifying that this Agreement has not been modified and is in full force and effect (or if there have been modifications that the said Agreement as modified is in full force and effect and setting forth a

notation of such modifications), and that to the knowledge of such party, neither it nor any other party is then in default hereof (or if another party is then in default hereof, stating the nature and details of such default), it being intended that any such statement delivered pursuant to this Section 15.08 may be relied upon by any prospective purchaser, mortgagee, successor, assignee of any mortgage or assignee of the respective interest in the Project, if any, of any party made in accordance with the provisions of this Agreement.

15.09. Complete Agreement; Amendments.

(a) This Agreement, and all the terms and provisions contained herein, including without limitation the Exhibits hereto, constitute the full and complete agreement between the parties hereto to the date hereof, and supersedes and controls over any and all prior agreements pertaining to the subject matter of this Agreement, understandings, representations, correspondence, and statements whether written or oral, including the Application and Program Guidelines.

(b) Any provisions of this Agreement shall be read and applied *in para materia* with all other provisions hereof.

(c) This Agreement cannot be amended or revised except by written amendment approved by the parties hereto, which approval shall be evidence by the amendment or revision being signed by the authorized representatives of the parties hereto.

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

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

15.12. Exhibits. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto shall be treated as if they are part of this Agreement. Any Exhibit may be changed, revised or replaced by mutual agreement of the parties.

15.13. No Brokers. The Developer and Agency hereby represent that no real estate broker or other person is entitled to claim or to be paid a commission as a result of the execution and delivery of this Agreement, including any of the Exhibits. Developer hereby indemnifies the Agency and agrees to hold the Agency free and harmless from and against any and all liability, loss, cost, damage and expense, including, but not limited to, attorneys' fees and costs of litigation, both prior to and on appeal, which the Agency shall ever suffer or incur because of any claim by any agent, broker or finder, engaged by Developer, whether or not meritorious, for any fee, commission or other compensation with respect to this Agreement

15.14. Not an Agent. During the term of this Agreement, the Developer hereunder shall not be an agent of the City or the Agency, with respect to any and all services to be performed by the Developer (and any of its agents, assigns, or successors) with respect to the Project, and the Agency is not an agent of the Developer (and any of its agents, assigns, or successors).

15.15. Memorandum of Development Agreement. The Agency and the Developer agree to execute, in recordable form, on the Effective Date, the short form "Memorandum of Development Agreement," the form of which is attached hereto as Exhibit "C," and agree, authorize and hereby direct such memorandum to be recorded in the public records of Broward County, Florida, as soon as possible after execution thereof. The Developer shall pay the cost of such recording.

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

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

15.18. Technical Amendments; Survey Corrections. In the event that due to minor inaccuracies contained herein or any Exhibit attached hereto or any other agreement contemplated hereby, or due to changes resulting from technical matters arising during the term of this Agreement, the parties agree that amendments to this Agreement required due to such inaccuracies, unforeseen events or circumstances which do not change the substance of this Agreement may be made and incorporated herein. The Executive Director of the Agency is authorized to approve such technical amendments on behalf of the Agency, respectively, and is authorized to execute any required instruments, to make and incorporate such amendment to this Agreement or any Exhibit attached hereto or any other agreement contemplated hereby.

15.19. Term; Expiration; Certificate.

(a) If not earlier terminated as provided in Section 11.05, the term of this Agreement shall expire and this Agreement shall no longer be of any force and effect as of the date the final Agency Payment is paid to the Developer by the Agency.

(b) Upon completion of the term of this Agreement, all parties hereto shall execute the Agreement Expiration Certificate, the form of which is attached hereto as Exhibit "E." The Agreement Expiration Certificate shall constitute (and it shall be so provided in the certificate) a conclusive determination of satisfactory completion of all obligations hereunder and the

expiration of this Agreement, provided, however, execution and recording of the certificate shall not be a precondition to this Agreement expiring in accordance with its own terms.

(c) The Agreement Expiration Certificate shall be in such form as will enable it to be recorded in the public records of Broward County, Florida. Following execution by all of the parties hereto, the Agreement Expiration Certificate shall promptly be recorded by the Developer in the public records of Broward County, Florida, and the Developer shall pay the cost of such recording.

15.20. Attorney's Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled, provided, however, that this clause pertains only to the parties to this Agreement.

15.21 Effective Date. Following execution of this Agreement (and such of the Exhibits as are contemplated to be executed simultaneously with this Agreement) by the authorized officers of the Agency and by authorized representatives of the Developer following approval hereof by the Agency and the Developer this Agreement (and any executed Exhibits) shall be in full force and effect in accordance with its terms and upon the recording of the Memorandum of Development Agreement as contemplated by Section 15.15 hereof.

15.22. Time Is Of The Essence. Time is of the essence in the performance of all obligations and all approvals or reviews contemplated by this Development Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and their respective seals affixed as of the date and year set forth above.

ATTEST:

MARGATE COMMUNITY
REDEVELOPMENT AGENCY

Diane Colonna, Executive Director

By: _____
Frank Talerico, Chair

ATTEST:

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____,
201_, by _____, as _____ (name of officer or agent,
title of officer or agent), of _____, on behalf of
the company. He/She is personally known to me or has produced
_____ (type of identification) as identification

Notary Public – State of Florida

LIST OF EXHIBITS

EXHIBIT	DESCRIPTION
---------	-------------