

**WMODA MIXED USE DEVELOPMENT  
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”), by and between SUNSHINE LAKE WORTH DEVELOPMENT, LLC, a Florida limited liability company (the “Developer”) and the CITY OF LAKE WORTH BEACH, FLORIDA, a Florida municipal corporation (the “CITY”), and the LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY, an entity created pursuant to Florida Statutes, Chapter 163 (the “CRA”).

**RECITALS**

A. The CRA is the owner of approximately 1.7 acres of land generally located in the City of Lake Worth Beach, Florida, as more particularly described on Exhibit A attached hereto (each of such parcels being referred to herein individually as a “Parcel,” or jointly as the “Parcels,” and collectively, as the “Property”), which Property the CRA desires to be sold to and redeveloped by Developer pursuant to the Purchase and Sale Agreement (hereinafter defined) and this Agreement; and

B. The CITY and CRA are the owners of that certain K Street Property (hereinafter defined) which K Street Property the CITY and CRA desire to be developed into a parking garage to support downtown parking for the Property (as developed) and other public parking; and

C. The Developer is proposing to design and construct certain improvements on the Property and K Street Property which improvements are estimated to provide the City of Lake Worth Beach with \$56M in economic output during construction (first two (2) years), increase visitors to the CITY and downtown, increase jobs, increase downtown business revenues, provide an increase in property taxes over 10 years, and provide additional residential units and eight (8) affordable live/work artist units; and,

D. The CITY and CRA recognize the positive public impacts the Developer’s improvements will bring to the City of Lake Worth Beach. The CITY and CRA agree to enter this Agreement with the Developer to advance the positive public impacts that the Developer’s proposed improvements will make to the City of Lake Worth Beach and its residents, guests and visitors; and

D. The Parties find entering this Agreement is in each Party’s best interest and serves a valid public purpose.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein set forth, the sufficiency of which is acknowledged by the Developer, CRA, and CITY, the Developer, CRA, and CITY hereby agree as follows:

**Article 1. Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

**Article 2. General; Project; Definitions.**

2.1 General. The purpose of this Agreement is to provide the terms and conditions pursuant to which the Developer shall develop the Project, obtain entitlements for the Property, close on the Property and develop the Project and the Property in substantial accordance with the terms set forth in this Agreement, the Development Plan, the Site Plan, all other Government Approvals, the Construction Documents, Permits and Applicable Laws (all as hereinafter defined) and within the time periods set forth in the Critical

Path (as hereinafter defined). From and after the Effective Date of this Agreement, Developer shall diligently, expeditiously, and in good faith take all action necessary to develop the Project (inclusive of all Components (as hereinafter defined)) and the Property for the Project in accordance with the terms and conditions of this Agreement, and in compliance with the Project timeline set forth in the Critical Path attached as Exhibit B to this Agreement.

2.2 “Project” means the comprehensive project by Developer as illustrated in Exhibit C. The Project consists of the following components proposed under the Site Plan: 33,000 square foot museum, 102 market rate residential apartment units, eight (8) artist lofts with artist workspace dedicated at 80%-120% of adjusted median income for 15 years, 117 parking space subterranean parking structure to support residential uses, offsite parking garage on K street to support museum parking and public parking, art alley between L and M Street, relocation of four (4) contributing structures, together with related amenities and utilities, as generally set forth in the Development Plan, attached hereto as Exhibit C (individually a “Component” and collectively, the “Components”). Except for certain Components (hereinafter defined), each respective Component of the Project will be developed on that portion of the Property which is so designated on the Development Plan and each component of the Project is more particularly described as follows:

(a) Museum and Residential Component: 33,000 square foot museum, 102 market rate residential apartment units, eight (8) artist lofts with artist workspace dedicated at 80%-120% of adjusted median income for 15 years, 117 parking space subterranean parking structure to support the residential uses.

(b) K Street Parking Component: offsite parking garage on K street to support museum parking and public parking on property owned by the CITY and CRA. The CITY and Developer will enter a comprehensive agreement to set forth the parameters of the K Street Parking Component consistent with the CITY’s Parking Feasibility Study (hereinafter defined). The CITY and CRA shall enter into a ground lease for the proposed site of the K Street Parking Component. The CITY, CRA, and the Developer shall enter into a Construction Agreement for the purpose of developing the K Street Parking Component, which shall require the contributions of \$1 million from the Developer, \$2.5 million from the CITY, and \$1.5 million from the CRA along with the CRA issuing a \$3.5 million capital improvement revenue note. The CITY, CRA, and the Developer shall collaborate to identify Cost Savings for the K Street Parking Component as derived from the CITY’s Parking Feasibility Study. Cost Savings identified for the K Street Parking Component shall be designated to fund the Arts Alley Extension (as hereinafter defined). The CITY, CRA, and the Developer shall execute a Long Term Parking Agreement for a term of less than twenty (20) years as further defined herein.

(c) Arts Alley Component: Arts Alley shall be limited to the portions of this amenity that lies between L Street and M Street. The Developer shall construct and maintain the Arts Alley which includes part of the Property and the existing public easement. The Arts Alley shall be open to the public in perpetuity. The Developer shall maintain the portion of the Arts Alley within the existing public easement and Property boundaries. The CITY and the Developer shall enter into a Long-Term Maintenance Agreement for the Arts Alley that lies between L and M Street which shall dictate the agreed upon maintenance, repair, and capital replacement responsibilities between the CITY and the Developer. The Parties agree that the Developer shall be responsible for the day-to-day maintenance of the Arts Alley, and the CITY shall be responsible for repairs and capital replacement needed as a result of infrastructure and or utility line repairs or upgrades, as set forth in the Long-Term Maintenance Agreement. All other terms and conditions shall be set forth in the Long-Term Maintenance Agreement.

(d) Arts Alley Extension: The Developer shall provide the CITY with design documents for the extension of the Arts Alley in the public easement between L and K Streets. The design shall match the

design implemented along the L and M Street portion of the Arts Alley within the existing public easement and Property boundaries. The CITY, CRA, and the Developer agree that the extension of the Arts Alley to K Street benefits the overall campus concept of the Project. If sufficient funding from the K Street Parking Component's Cost Savings and/or other sources are realized to construct the Arts Alley Extension, the Developer shall construct the Arts Alley Extension on behalf of the CITY. The Parties agree and acknowledge that the Developer's obligation to construct the Arts Alley Extension shall be limited to the amount of the Cost Savings realized from the construction of the K Street Parking Component. Absent sufficient funding from the Cost Savings of the K Street Parking Component or otherwise, the Developer shall be under no obligation to construct the Arts Alley Extension.

(e) Structure Relocation: The Developer shall relocate the four (4) contributing structures currently located on the Property to 704 and 710 1st Avenue South and 126 South J Street. Three (3) contributing structures shall be relocated to 704 and 710 1<sup>st</sup> Avenue South and one (1) contributing structure shall be moved to 126 South J Street, as set forth in detail below:

- 17 South M and Garage: 17 South M and its garage shall be relocated from its current location to the lot on South K and 1st Avenue South, situated on the northwest corner.
- 24 South L: 24 South L shall be relocated from its current location to 126 South J, contingent upon the CITY's approval for the demolition of the existing house at that location.
- 26 South L: 26 South L shall be relocated to the lot on South K and 1st Avenue South, situated on the southwest corner adjacent to the CITY buildings.

CITY and CRA shall be responsible for any permit fees and utility relocation costs associated with the relocation of the structures. The Developer shall obtain all Government Approvals, prepare and make ready the site and construct the foundation and exterior utility connections for the structure currently located at 17 South M Street. The Developer's obligation for the relocation of all four (4) contributing structures shall not exceed \$500,000. In the event that costs exceed \$500,000, the CITY and the CRA shall be responsible for the amount in excess of that value. CITY and CRA shall also obtain all Government Approvals, prepare and make ready the relocation sites at 704 and 710 1<sup>st</sup> Avenue and 126 South J Street in accordance with the specifications from the qualified house mover for the delivery of the remaining three (3) contributing structures. The CITY shall be responsible for all utility hook-ups for the relocated structures, including the former 17 South M and Garage. The Developer shall ensure its qualified house mover(s) use best efforts to preserve the structures during relocation, however, except for the exterior utility connections, the CITY and CRA agree to accept the relocated structures in their as-is condition upon delivery, which terms shall be included within the Construction Agreement Relocation of Contributing Structures (as hereinafter defined) to be entered by the parties. This provision shall survive the termination of this Agreement.

2.3 Definitions. As used in this Agreement, the following defined terms shall have the following meanings; provided however that each capitalized term which is used but not defined in this Agreement shall have the meaning set forth in the Purchase and Sale Agreement:

"Agreement" shall mean this Development Agreement.

"Applicable Laws" shall mean any applicable law, statute, code, ordinance, regulation, permit, license, approval or other rule or requirement now existing or hereafter enacted, adopted, promulgated, entered, or issued by Governmental Authorities, including, but not limited to, the Florida Building Code.

"Authorized Financing" shall mean acquisition, development, or construction financing consisting of, without limitation: debt financing, private equity, equity participations, joint venture, hybrid financing, mezzanine financing, or other financing arrangements, provided in each such event the material terms of

all such financing arrangements shall be documented in the Construction Loan Commitment (or its reasonable equivalent).

"Business Day" shall mean any day that the CITY is open for business.

"CITY" shall mean the City of Lake Worth Beach, a Florida municipal corporation.

"CITY Commission" shall mean the five (5) public officials elected to serve on the Lake Worth Beach City Commission.

"CITY Parking Feasibility Study" shall mean that study conducted by WGI, Inc., and provided to the CRA and Developer in draft form in September, 2024.

"Closing Date" shall have the meaning set forth in the Purchase and Sale Agreement.

"Code" shall mean the CITY's Charter, Code of Ordinances, including but not limited to the Land Development Regulations now existing or hereafter amended.

"Comprehensive Agreement" means an agreement required under Section 255.065 Florida Statutes (2024) to be entered into between the Developer and the CITY for the construction of the K Street Parking Component.

"Construction Agreement K Street Parking Component" means the transaction contemplated between the Developer, CITY, and CRA which shall govern the construction of a Parking Component on K Street to support the museum and public parking.

"Construction Loan Commitment" shall have the meaning set forth in the Purchase and Sale Agreement.

"Construction Agreement Relocation of Contributing Structures" The transaction contemplated between the Developer, CITY, and CRA shall be subject to the relocation of four (4) contributing structures. The material terms for this Construction Agreement shall include but not be limited to, construction costs, critical path, location of facilities, site specifications, roles and responsibilities of the parties, cost overruns, and liability.

"Cost Savings" shall be defined as the difference between the City's Parking Feasibility Study estimate of cost and savings realized as may be set forth in the Construction Agreement for the K Street Parking Component or herein.

"CRA" shall mean the Lake Worth Beach Community Redevelopment Agency.

"Critical Path" shall mean the sequence of activities from this Agreement's execution to Final Completion of the Project. The Critical Path, which is attached hereto as composite Exhibit B, describes the consequential elements of the schedule of the Purchase and Sale Agreement and this Agreement, including but not limited to, development obligations, termination, and default and is subject to the terms of the Purchase and Sale Agreement (for those Critical Path items only) and this Agreement.

"Developer" shall have the meaning provided in the introductory paragraph herein.

"Developer Financing" shall mean a Construction Loan (i) from a reputable lender regularly engaged in commercial real estate lending, (ii) which contains such terms as are typical in Palm Beach

County for loans similar in size and purpose to the Construction Loan and (iii) which contains business terms such as interest rate, terms of repayment, loan to value, guaranty and collateral and equity requirements which are typical in State of Florida for loans similar in size and purpose to the Construction Loan and are otherwise reasonably acceptable to Developer. The Construction Loan Commitment must be provided to the CRA on the date prescribed on the Critical Path.

"Developer's Representatives" shall mean Developer and its directors, officers, employees, agents, affiliates, or other representatives (including without limitation, attorneys, accountants, engineers, experts, consultants, contractors, financial advisors, and any other person or entity performing services for Developer in connection with this Agreement), and their respective successors and assigns.

"Development Review Application" shall mean the Application submitted by the Developer to the CITY for all Entitlements for the Project.

"Development Review Application Date" shall mean the date the Development Review Application is submitted to the CITY.

"Effective Date" shall mean the date when the CITY Commission and CRA Board respectively approves and authorizes the proper CITY and CRA officials to execute and deliver the Agreement previously executed by the Developer, which date shall be inserted on the first page of this Agreement.

"Entitlements" shall mean those CITY approvals required for the Developer to seek Permits for the construction of the Project Components.

"Final Completion Date" shall mean that date which is defined in composite Exhibit "B", the Critical Path.

"Governmental Authorities" shall mean the United States Government, the State of Florida, Palm Beach County, the CITY (in its legislative/police power/quasi-judicial capacity), the CRA, and/or any other governmental agency or any instrumentality of any of them.

"Government Approvals" shall mean all approvals required from all applicable Governmental Authorities for the Entitlements, Permits, and other licenses and authorizations for the Developer to develop all Components of the Project. .

"Governmental Approval Date" shall mean all or each date the Developer obtains Government Approvals.

"Hazardous Materials" shall mean any material which may be dangerous to health or to the environment, including, without implied limitation, all "hazardous matter", "hazardous waste", and "hazardous substances", and "oil" as defined in or contemplated by any applicable federal, state or local law, rule, order or regulation relating to the protection of human health and the environment or hazardous or toxic substances or wastes, pollutants or contaminants, including all of the following statutes and their implementing regulations, as the same may have been amended from time to time:

- (a) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.;
- (b) Toxic Substances Control Act, 15 U.S.C. §2601 et seq.;
- (c) Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136;
- (d) Hazardous Materials Transportation Act, 49 U.S.C. §§1801 -1812;
- (e) Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.;

- (f) Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.;
- (g) Clean Air Act, 42 U.S.C. §7401 et seq.;
- (h) Safe Drinking Water Act, 42 U.S.C. §3808 et seq.; or
- (i) Applicable or equivalent laws and regulations of the State of Florida relating to hazardous matter, substances or wastes, oil or other petroleum products, and air or water quality.

"Inspection Period" shall have the meaning set forth in the Purchase and Sale Agreement and as identified in the Critical Path.

"Institutional Lender" established federally chartered United States bank, United States trust company or other such recognized United States financial institution (or consortium thereof) of good repute and sound financial condition and having assets in excess of One Hundred Million Dollars (\$100,000,000.00).

"K Street Property" means that real property owned by the CITY and CRA generally located at 13 South K Street, 19 South K Street, and 25 South K Street (with PCNs: 38-43-44-21-15-019-0220, 38-43-44-21-15-019-0230, and 38-43-44-21-15-019-0290) to be utilized as the site for the K Street Parking Component.

"Long Term Maintenance Agreement Arts Alley" means the agreement by which the transaction contemplated between the Developer and the CITY that will govern the roles and responsibilities of each party regarding the long term maintenance and repair of the Arts Alley.

"Long Term Parking Agreement" The transaction contemplated between the Developer, the CITY, and the CRA that will govern the access, parking fees, special event parking, residential lease opportunities, and liability for the K Street Parking Component.

"Museum" means that certain building located on the corner of Lake Avenue and South M Street to be built by the PURCHASER for the display of Fired Art as part of the Project.

"Museum Parcel" means that portion of the Property as set forth the Site Plan.

"Permits" shall mean those permits issued by the CITY in its police-power/regulatory power for the construction of the Project's Components.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

"PILOT Agreement" means the agreement for payment in lieu of taxes to be made by the Developer to the CITY and CRA (as applicable) as set forth herein for the Museum Parcel.

"Placed-In-Service" shall mean the date when the Developer notifies the CITY and the CRA in writing that it has received the final certificate of occupancy, certificate of completion, and executed any and all bills of sale and easements required under this Agreement or other agreement contemplated herein and that the Project and all Components are complete and operational.

"Purchase and Sale Agreement" shall mean that certain Purchase and Sale Agreement between the CRA and Developer for the CRA-owned Property as defined in Exhibit A, as the same may be amended from time to time by the parties thereto.

"Site Plan " shall mean the proposed submittal for the Project and as conceptually shown on composite Exhibit C, attached hereto and made a part hereof, and as may be revised during the site plan approval process from time to time, subject to the terms of this Agreement.

"Substantial Completion Date" shall mean that date on which the Developer makes application to the CITY for Temporary Certificate of Occupancy (TCO) (and maintains the same until Final Completion or obtains a final Certificate of Occupancy (CO)) for the Project.

"Surviving Obligations" shall mean any indemnities, covenants and obligations of the Parties which survive the closing under the Purchase and Sale Agreement, and any termination of this Agreement. Unless otherwise expressly set forth in this Agreement, all indemnities of the Parties contained in this Agreement shall be Surviving Obligations.

"Unsolicited Proposal for Qualifying Project Process" shall mean the public entity procedures required under Section 255.065 Florida Statutes (2024) for the CITY to proceed with an unsolicited proposal for the construction of the K Street Parking Component. Approval of this Agreement shall be contingent upon the CITY Commission's determination that the K Street Parking Component is in the public's best interest consistent with the requirements of the aforementioned statutory section.

"Utility Incentive Fund" shall mean a maximum amount of \$82,547, which is based upon the CITY's calculation of a reasonable rate of return to the CITY for the estimated increase in utility revenues from the Project (whose parameters are stated herein) and the City's current utility rate schedules. If the as-built Project parameters differ from what is stated in this Agreement or the City's current rate schedule(s) changes, the Utility Incentive Fund amount paid by the CITY to the Developer will be revised to be an estimate based upon the as-built parameters and the then current rate schedule(s). The CITY's calculations for the Utility Incentive Fund are set forth herein.

"Water and Sewer Public Utility Relocation Incentive" shall mean the lump sum payment to be made by the CITY to the Developer based on certain water and sewer utility relocations the Developer will be required pay for and perform as part of the Work for the Project.

2.4 Physical Condition after Development Agreement Execution. The CITY and CRA agree that, after the execution of this Agreement, the CITY and CRA shall not take any actions that could materially and adversely affect (i) the physical condition of the Property and/or the K Street Property owned by the CITY and/or CRA or (ii) the status of title to the Property and/or K Street Property owned by the City or the CRA (as described in (i) or (ii) of this sentence, each a "material adverse change"). The parties acknowledge that the CRA will demolish, at its own cost, the existing structure on the Property located at 501 Lake Avenue, Lake Worth Beach, prior to the Closing Date as set forth in the Critical Path.

### **Article 3. Site Plan Development.**

3.1 Government Approvals. The CITY and CRA hereby acknowledges and agree that the conceptual Site Plan, as shown on Exhibit C, under the described conditions herein, is generally acceptable to the CITY and CRA; provided that any Material Change (as hereinafter defined), shall require the approval of the CRA Board before submission to the CITY as part of the Development Review Application, which approval shall not be unreasonably withheld. The foregoing shall in no way constitute or be construed as the Government Approval of the Site Plan or issuance of a CITY development order, it being expressly acknowledged and agreed by the Developer that the "Site Plan" will require separate submission, review, and approval pursuant to the requirements of the CITY's Code and requirements of any other Governmental Authorities. As soon as practicable and consistent with the Critical Path(subject to a Force Majeure event), the Developer shall submit to the CITY for its review and approval, the Development Review Application

required to obtain the Entitlements and Government Approvals for the Project, which applications and other submittals are consistent with this Agreement and comply with all Applicable Laws. Prior to submittal of the Development Review Application and other submittals required to obtain the Government Approvals, the Developer shall present to the CRA the Site Plan for review. Following such review, the CRA hereby agrees to execute and deliver to the Developer, in the CRA's capacity as the owner of the Property and a portion of the K Street Property, all applications and other submittals required to obtain the Government Approvals. If the Purchase and Sale Agreement or this Agreement is terminated prior to obtaining the Government Approvals, then upon the CITY and CRA's request, Developer shall withdraw all of its pending applications and terminate all agreements which are terminable and/or withdrawable by Developer, with respect to the Government Approvals, which foregoing obligations shall survive termination of this Agreement. No later than the time of Site Plan submittal to the CITY as part of the Development Review Application, the Developer shall complete and submit to the CITY: all design requirements, including the proposed Site Plan prior to submittal; preliminary civil engineering; any other plans and specifications required for the Project to proceed; design elements (excluding logos) for the various buildings within the Project, including definitions of sample architectural styles with representative illustrations; and copies of applications for any Government Approvals required for the development and construction of the Project. Once the CITY approves the foregoing (if they are substantially consistent with the Site Plan attached hereto as Exhibits C), the CITY hereby agrees to execute and deliver to Developer, in the CITY's capacity as the owner of a portion of the K Street Property, all applications and other submittals required to obtain the Government Approvals. Thereafter, the Government Approvals shall proceed in accordance with the CITY's Code and other Applicable Law, Governmental Authorities, and Government Approvals and the representative design elements and style portion of the documents, if approved, will be the Entitlements for the Project.

3.2 Third Party Review To Assist With Government Approvals. The Developer may at its sole discretion and cost in order to expedite the Government Approval process, including construction and inspection phase, request that the CITY engage the services of an outsourced consulting firm to complete the various development reviews in connection with the issuance of the Government Approvals should the CITY so elect to outsource the development review process.

3.3 Site Plan. The CITY hereby acknowledges and agrees that the Developer's Site Plan, as shown on Exhibit C, is the conceptual designs which have been reviewed and no formal approval has been issued by the CITY in its police power/quasi-judicial capacity. The foregoing shall in no way constitute or be construed as the approval or issuance of a CITY development order, it being expressly acknowledged and agreed by the Developer that the "Site Plan" will require separate submission, review, and approval pursuant to the requirements of the CITY's Code and requirements of any other Governmental Authorities.

(a) For purposes of this Agreement, a "Material Change" to the Site Plan, at Exhibit C, means and refers to a requested change, alteration or modification that (i) increases or decreases the total number of residential units by greater than fifteen percent (15%), (ii) decreases the amount of square footage in the Museum by greater than fifteen percent (15%), (iii) revisions that significantly alters the architectural scheme from that previously approved by the CRA, as determined by the CRA EXECUTIVE DIRECTOR. For the avoidance of doubt, a Material Change hereunder shall refer to a change, alteration or modification of the Site Plan prior to such Site Plan approval by the CITY in its police power/quasi-judicial capacity. Furthermore, Material Change shall not refer to any increase or decrease of the square footage of the K Street Parking Component.

(b) All Material Changes to the Site Plan attached as Exhibit "C" are subject to requirements of the CITY and CRA's review process.



(c) Following issuance of the Entitlements for the Site Plan for the Project by the CITY, the CITY shall endeavor to expeditiously process all requests by the Developer for Material Changes and Permitted Changes (hereinafter defined) consistent with the CITY's Code.

(d) For the purposes of this Agreement, "Permitted Changes" mean revisions or changes that arise as a result of (i) any term or provision in the Florida Building Code, the fire code, or any other Applicable Law, (ii) any unforeseen site conditions which reasonably require a revision or change, or (iii) any life safety issues.

### 3.4 Timeline; Development, Government Approvals and Permits.

(a) Any Material Change shall require the approval of the CRA Board, which approval shall not be unreasonably withheld. The CRA shall provide its written approval or disapproval (specifying the basis for disapproval and/or comments) to any such plans and specifications as to the existence of Material Changes within ten (10) Business Days of receipt of request for same. If the CRA fails to either approve or disapprove (either with or without conditions) the submitted plans and specifications within fifteen (15) Business Days following written notice to the CRA, then, the plans and specifications submitted shall be deemed approved as to compliance with the elements of this Agreement by the CRA.

(b) However, should the final Site Plan include a Material Change the aforementioned timelines for review shall not apply.

### 3.5 Critical Path.

(a) The Developer will be responsible for initiating and diligently pursuing the Government Approval applications and Entitlements in accordance with the Critical Path as amended from time to time due to a Force Majeure event, shall serve as the Developer's time frame for performance with respect to obtaining the Government Approvals and Entitlements, to obtaining the Permits for the Project, and constructing the Project, and as applicable, subject to the terms of the Purchase and Sale Agreement and this Agreement.

(b) Notwithstanding any other provisions of this Agreement, the Critical Path may be extended for delays occasioned by the following events: (i) acts of God; (ii) pandemic or other health related occurrence; (iii) terrorism; (iv) once construction begins - extreme weather, a named storm, a hurricane or other tropical event as declared by the National Weather Service, (v) strikes, lockouts or other labor trouble, (vi) inability to procure material that adversely affect the construction of the Project, (viii) restrictive governmental ordinances, orders, policies, directives, decrees, laws, regulations or any other form of governmental controlling guidance, (ix) riots, insurrections, or war, (x) other reason of like nature not within the control of and not the fault of the party delayed in performance work or doing acts required under this Agreement, (xi) withholding of Government Approvals or restrictions not due to the fault, delay or negligence of the Developer, (xii) unreasonable delay or negligence by the CITY or CRA; (xiii) appeals of governmental approvals or lawsuits by any third party (whether individual or otherwise) instituted to prevent the issuance of any approvals or permits, or otherwise stop construction of the development after commencement; (xiv) unreasonable delay or negligence by the Developer; or (xv) similar events not reasonably foreseeable and beyond the reasonable control of the Party requesting to extend the Critical Path (collectively, "Force Majeure"). Any Party seeking an extension for a Force Majeure event shall send written notice to the other Parties within ten (10) Business Days of the start of the delay, which notice may be sent via email (delivery receipt requested). Failure to provide such notice shall waive the delay until proper notice is provided unless otherwise agreed to by both of the other Parties in writing. The Parties shall work together to maintain the Critical Path.

(c) The CITY shall cooperate with the Developer in processing all necessary Government Approvals and Entitlements to be issued by the CITY, as well as by all other applicable Governmental Authorities. The parties recognize that certain Government Approvals will require the CITY and/or its boards, departments or agencies, acting in their legislative/police power/quasi-judicial capacity, to consider certain governmental actions. The parties further recognize that all such considerations and actions shall be undertaken in accordance with established requirements of Applicable Laws in the exercise of the CITY's jurisdiction.

(d) Time is of the essence for the performance of all obligations under this Agreement consistent with the Critical Path, which may be extended as stated herein. The timeframes set forth herein for the Developer's obligations may be extended in writing by the CITY's City Manager and CRA's Executive Director up to a maximum of 60 calendar days. Beyond 60 calendar days, a written amendment to this Agreement with CITY Commission, CRA Board, and Developer approval shall be required. The Developer shall give the CITY and CRA at least fifteen (15) calendar days' notice prior to the deadline to be extended.

3.6 Failure to Provide Government Approvals. In the event that the CITY and or its boards, departments, or agencies, acting in their legislative/police power/quasi-judicial capacity to consider certain governmental actions, fails to provide Government Approvals and Entitlements necessary to construct the Project, as such time period may be extended as set forth herein after the Developer submitted the Development Review Application in compliance with Applicable Laws and in accordance with the Developer's Site Plan shown on Exhibit C and all applicable timeframes for appeals have been exhausted to the City Commission then, such failure shall entitle the Developer to terminate this Agreement.

3.7 As noted in the Critical Path, the parties recognize that the following agreements are anticipated to be entered as part of the Project:

- (a) Comprehensive Agreement: between CITY and Developer for K Street Parking Component;
- (b) K Street Ground Lease: between CITY and CRA for K Street Parking Component;
- (c) Construction Agreement – K Street Parking Component: between CITY, CRA and Developer;
- (d) Construction Financing Agreement: between CRA and Developer;
- (e) Repayment Loan Agreement: between CRA and CITY;
- (f) Long Term Parking Agreement: between Developer, CRA and CITY;
- (g) Construction Agreement – Relocation of Contributing Structures: between CITY, CRA, and Developer;
- (h) PILOT Agreement: between CITY, CRA and Developer;
- (i) Long Term Maintenance Agreement: between CITY and Developer for Arts Alley; and,
- (j) Purchase and Sale Agreement : between CRA and Developer.

#### **Article 4. Development Obligations.**

##### 4.1 General Obligations.

(a) Subject to the terms and provisions of this Agreement, in the event the Government Approvals and Entitlements are issued to Developer, then, the Developer shall be responsible for the design, engineering, and permitting of the Project in accordance with the terms of this Agreement. After obtaining all required Permits, , then, the Developer shall be responsible to construct the Project pursuant to the approved Construction Documents and within the time periods required by the Critical Path.

(b) In connection therewith, Developer shall provide or cause to be provided and furnish or cause to be furnished, all materials, supplies, apparatus, appliances, equipment, fixtures, tools, implements and all other facilities provided for in the Construction Documents, and shall provide all labor, supervision, transportation, utilities and all other services, as and when required for or in connection with the construction, furnishing or equipping of, or for inclusion or incorporation in the Project, (collectively, the "Work").

(c) Developer shall cause the design, engineering, permitting, and construction of the Project to be prosecuted with diligence and continuity and will achieve Substantial Completion (as defined herein) and Final Completion of the Work, free and clear of liens or claims for liens for materials supplied and for labor or services performed in connection therewith on or before the Final Completion Date (as hereinafter defined). The Developer shall diligently and in good faith proceed to obtain the issuance of all permanent certificates of occupancy or their equivalent and all other certificates, licenses, consents, and approvals required for the permanent occupancy, use and operation of the Project, all within the time frames required by Applicable Laws and the Critical Path.

(d) For the purposes of this Agreement, "Final Completion" shall mean all Work for the Project shall have been fully completed, in accordance with Construction Documents, (1) all final certificates of occupancy (or their equivalent) all other certificates, licenses, consents and approvals required for the permanent occupancy, use and operation of the Project shall have been issued or obtained from the appropriate Governmental Authorities, and (2) all record drawings (other than as-builts to be delivered to the CITY), electronic files, warranties, and manuals have been delivered to the CITY. Substantial Completion of the Project shall occur not later than the respective "Project Substantial Completion Date" set forth on the Critical Path, subject to a day for day extension for events of Force Majeure.

#### 4.2 K Street Parking Component.

(a) The Developer shall, as a part of the requirements for the Project, construct the K Street Parking Component to support the museum and public parking. The Developer shall cause the design and construction of the K Street Parking Component in accordance with the specifications outlined the City's Parking Feasibility Study, the Entitlements, the Permits, and in accordance with the K Street Parking Component Critical Path Attached hereto as Exhibit B-1 .

(b) The Developer shall provide construction financing for the construction of the K Street Parking Component to the CRA in an amount not to exceed \$3.5 Million at a four (4%) percent rate of interest for a period of five (5) years. Payments of principal and interest by the CRA shall be made annually based on a five (5) year amortization schedule until paid in full.

(c) The CRA shall issue a capital improvement revenue note providing for the covenant to budget and appropriate amounts necessary for the payments of the \$3.5 Million capital improvement revenue note. The Developer's obligation to provide construction financing in an amount not to exceed \$3.5 Million is contingent upon CRA issuing the Developer a capital improvement note in an amount necessary to repay the loan and the CRA shall covenant to budget and appropriate, each year, monies sufficient to pay the principal and interest on the obligation to the Developer. The CITY and the CRA shall enter into a loan repayment agreement no later than the CITY's and the CRA's execution of the Construction Agreement for the K Street Parking Component to provide for the CITY's and CRA's respective obligations with respect to the repayment of the capital improvement note.

(d) The CITY, CRA, and the Developer shall execute a Long Term Parking Agreement which shall govern Developer's access, parking fees, special event parking, residential leasing opportunities, and liability for a term of less than 20 years.

(e) The CITY and Developer shall enter the Comprehensive Agreement for the K Street Parking Component and the CITY, CRA, and the Developer shall enter a Construction Agreement for the K Street Parking Component. In addition to the statutory requirements for the Comprehensive Agreement, the aforementioned agreements shall include, but not be limited to, construction cost, critical path, payment schedules, revenue note commitments, and ground lease provisions. The Parties agree that the aforementioned agreements for the K Street Parking Component shall be executed by the Parties no later than the expiration of the Inspection Period. If not (and not due to a Force Majeure event), then the Developer at its discretion may either extend the Inspection Period in accordance with the Purchase and Sale Agreement or terminate this Agreement.

4.3 Construction Contracts. All Developer's contractors and subcontractors on the Project shall be properly licensed and insured and properly skilled in the type of work being done.

4.4 Financing of Project. Except as specifically set forth above for the K Street Parking Component, the parties acknowledge and agree that the Developer will obtain Developer Financing for the construction of the Project. All financing under this provision of the Agreement shall be in conformance with the Purchase and Sale Agreement.

4.5 No General Obligation. Any funding or financing obligation of either the CITY or CRA as contemplated under this Agreement shall not be considered a general obligation of either the CITY or CRA. Neither this Agreement or any other agreement entered into with respect to the Project, nor the obligations imposed upon the CITY or the CRA hereunder shall be or constitute an indebtedness or general obligation of the CITY, the CRA, or other Governmental Authorities within the meaning of any constitutional statutory or charter provisions requiring the CITY, the CRA, or other Governmental Authorities to levy ad valorem taxes nor a lien upon any properties or funds of the CITY, the CRA, or other Governmental Authorities. Developer agrees that the obligations of the CITY and the CRA to provide any funding or to make any payments to Developer pursuant to this Agreement, or any other agreement related to the Project, shall be subordinate to the obligations of the CITY or the CRA to pay debt service on any bonds or notes issued by the CITY or CRA as contemplated by the CITY's and CRA's approved annual budgets, up to the principal amount of such bonds or notes. Nothing contained herein shall be deemed, construed, or applied to cause any Governmental Authorities, specifically including the CITY or CRA, to waive its right to exercise its governmental power and authority or to consider any request causing the exercise of its governmental powers in any manner other than that which is customary for the exercise of such governmental powers.

Notwithstanding the foregoing, the CRA hereby covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from lawfully available funds in each fiscal year of the CRA, amounts sufficient to pay the principal and interest due on the capital improvement revenue note not to exceed \$3.5 Million at a four (4%) percent rate of interest for a period of five (5) years, as further referenced in Section 4.2 herein. "Lawfully available funds" means all revenues of the CRA derived from any source other than ad valorem taxation on real or personal property and which are legally available to make the payments required under this section, but only after provision has been made by the CRA for the payment, to the extent are not otherwise provided for by ad valorem taxes, of (a) all services necessary for conducting of the governmental obligations of the CRA and (b) all legally mandated services of the CRA. Such covenant and agreement on the part of the CRA to budget and appropriate such amounts of legally available funds shall be cumulative to the extent not paid, and shall continue until such legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid.

4.6 Lack of Appropriations. Based upon the timeframes set forth in this Agreement, the CITY agrees to propose in each applicable fiscal year budget an amount to cover the CITY's obligations as stated herein commencing with the Fiscal Year 2024-2025 budget; however, the CITY's funding obligations as

stated herein are all subject to the CITY's annual budgeting and appropriation process. The Developer understands and agrees that the CITY's funding obligations hereunder are payable exclusively from duly appropriated or otherwise legally available funds and shall not be construed to be debt, liability or obligation within the meaning of any applicable constitutional or statutory limitation or requirement.

4.7 Right of Repurchase. The CRA shall have the right to repurchase the Property in accordance with the Purchase and Sale Agreement and the Memorandum of Agreement to be executed by the CRA and the Developer prior to the conveyance of the CRA Property.

4.8 CITY Obligations. Subject to a Force Majeure event, the CITY shall be responsible for the following obligations:

- (a) The CITY shall vacate all operations on the Property in accordance with the Critical Path.
- (b) Subject to the CITY Commission's legislative approval capacity, the CITY shall complete the Unsolicited Proposal for Qualifying Project Process in accordance with the Critical Path.
- (c) The CITY shall complete the electric utility services upgrades in and around the project, which includes but is not limited to placing utility lines underground along the Arts Alley and the relocation of lines around the site as defined in the Critical Path.
- (d) Enter into a ground lease with the CRA for the K Street Parking Component site in accordance with the Critical Path.
- (e) Enter into a loan repayment agreement with the CRA for the K Street Parking Component.

4.9 CRA Obligations. Subject to a Force Majeure event, the CRA shall be responsible for the following obligations:

- (a) The CRA shall demolish the existing building located at 501 Lake Avenue in accordance with the Critical Path.
- (b) The CRA shall prepare the sites located at 126 South J. Street and 701 and 710 1<sup>st</sup> Avenue South for the two (2) contributing structures, currently located at 24 South L and 26 South L to be renovated by the CRA in accordance with the Critical Path.
- (c) Enter into a ground lease with the CITY for the K Street Parking Component site in accordance with the Critical Path.
- (d) Enter into a loan repayment agreement with the CITY for the K Street Parking Component.
- (e) Issue a capital improvement revenue note for the construction of the K Street Parking Component in accordance with the Critical Path .

**Article 5. Performance of the Work.**

5.1 Developer shall commence construction of the Project pursuant to the Critical Path. Following commencement of any Work, Developer shall diligently pursue in good faith the commencement and completion of the Work in order that Final Completion of the Project is achieved no later than the Final Completion date set forth in the Critical Path, subject to a Force Majeure event.

5.2 The Developer agrees that all Work performed under this Agreement shall be (a) performed in accordance with Applicable Laws, including the Florida Building Code; (b) executed in a good and workmanlike manner, free from defects, and that all materials shall be new or made of recycled materials generally accepted and used in the construction industry; (c) undertaken in such a commercially reasonable manner as to minimize, to the extent reasonably practicable, material interference and not materially adversely affect the business or residential operations of the parties and their respective tenants, invitees, customers and/or guests; (d) done in a manner consistent with industry standards and providing for safety measures for persons and property as is standard within the construction industry;

5.3 Warranty. In each Construction Agreement contemplated herein for the Project, the Developer shall provide a warranty of its Developer's Representatives Work for a period of 12-months from the date of Substantial Completion for all faults and defects in the Work and any provided materials and/or equipment (unless otherwise covered under the applicable manufacturer's warranty which must be at least 12-months in duration).

5.4 The Developer agrees that all Work on public property including but not limited to relocation of the structures and the K Street Parking Component will not commence until a public construction bond consistent with section 255.05, Florida Statutes, is secured and recorded in the Official Records in and for Palm Beach County, Florida, with the CITY and/or CRA (as applicable) as obligees thereof.

5.5 OPPORTUNITIES FOR CITY OF LAKE WORTH BEACH RESIDENTS AND BUSINESSES. The Developer shall make commercially reasonable efforts consistent with Applicable Law to provide City of Lake Worth Beach residents with opportunities for training and employment in connection with the Project. The Developer shall also make commercially reasonable efforts consistent with Applicable Law to provide City of Lake Worth Beach business concerns with opportunities in connection with the Project, including the utilization of small business, minority/women-owned business enterprises, and veteran-owned business enterprises.

## **Article 6. Incentives**

6.1 Intentionally Omitted.

6.2 CRA Infrastructure. In recognition of the additional expense associated with the incorporation of underground parking to minimize the scale of the development for the community, the public dedication of the arts alley, and the construction of community art space, the Developer shall receive \$2,000,000.00 in infrastructure improvement grants from the CRA as follows:

a)	Fiscal year 25/26	\$500,000
b)	Fiscal year 26/27	\$500,000
c)	Fiscal year 27/28	\$500,000
d)	Fiscal year 28/29	\$500,000

6.3 Water and Sewer Public Utility Relocation Incentive. The Developer shall receive a one-time, lump sum payment of \$250,000 from the CITY to support water and sewer public utility relocation costs required for the Project (which relocation costs are estimated to cost the Developer \$400,000). The Developer shall be responsible for the water and sewer public utility relocations potentially within the City right of way. If the Project changes and the water and sewer public utility relocations are not made by the Developer, the CITY and the Developer shall agree to a new amount for the CITY to pay consistent with the water and sewer public utility relocation(s) and the estimated cost of the same actually made by the

Developer for the Project. If no water and sewer public utility relocations are made by the Developer for the Project, the CITY shall be relieved of making any such payment to the Developer.

This one-time lump sum payment shall be made by the CITY upon completion when the Project is deemed to have been Placed-In-Service upon written request of the Developer, which written request shall be submitted at least 60-days in advance of the payment due date.

6.4 Utility Rate Incentive. The Developer shall receive, an economic investment incentive from the CITY based on the projected Project revenue streams to the CITY's electrical, water, sewer, and stormwater utilities estimated at a maximum amount of \$82,547 based on the following Project parameters:

- Water Utilities - 0.0999 per sq ft of conditioned space
- Stormwater - \$0.04 per sq ft of conditioned space
- Electric - \$.50 per sq ft of conditioned space
- For the Project estimate of 129,000 sq. ft.

The maximum amount of \$82,547 to be paid by the CITY to the Developer is the total Utility Incentive Fund set forth in this Agreement; however, if the above stated Project parameters change, the City's actual payment shall be the lesser of the maximum amount to be paid for the Utility Incentive Fund set forth in this Agreement or a re-calculation of the Utility Incentive Fund based upon the actual as-built Project parameters. Upon the Project being Placed-In-Service, the Developer shall submit a written request to the CITY for the disbursement of the Utility Incentive Fund and identify in its request to whom and where payment shall be made by the CITY. Within ninety (90) days of the CITY's receipt of the Developer's written request for the disbursement of the Utility Incentive Fund, the City shall re-calculate the Utility Incentive Fund based on the as-built Project parameters ("Re-Calculated Amount"). The CITY shall then pay the lesser of the total Utility Incentive Fund as set forth in this Agreement or the Re-Calculated Amount to the Developer.

6.5 Entitlement Fee Waivers.

(a) Developer shall be entitled to certain entitlement fee waivers from the CITY in the estimated amounts listed below but in no event shall the entitlement fee waivers to the Developer be less than the total cost calculated by the CITY for the fees listed below:

Transfer of Development Rights:	\$ 183,000.00
Sustainable Bonus Incentive:	\$ 67,000.00
Land Development Application Fees:	\$ 15,000.00
Affordable Housing Waiver:	\$ 340,080.00

(b) The CITY agrees and acknowledges that the Developer's \$1,000,000 contribution to the K Street Parking Component shall satisfy the full cost of all parking in lieu of parking waiver fees imposed by the CITY.

6.6 Affordable Housing. Developer agrees to offer eight (8) Residential Units as Artist Lofts. These lofts are inclusive of artist workspace and will be dedicated as affordable at the 80-120% Area Median Income Level as follows: three (3) One Bedroom unit at 80% Area Median Income ("AMI"); two (2) bedroom units at 80% of AMI; and three (3) two bedroom units at 120% of AMI for the Arts community for a period of 15 years. The affordability of the Artist Lofts shall be evidenced by a Land Use Restriction Agreement recorded in the public records of Palm Beach County. In return, the CRA will provide an Affordable Housing Construction Incentive to the Developer in the total amount of \$1,400,000.00 payable at the time of Closing. If the developer adjusts the unit mix of the residential component, the CRA reserves

the right to recalculate the affordable housing buydown for the sole purpose of confirming the Affordable Housing Construction Incentive value . If the Affordable Housing Incentive value is less than previous estimates, the developer may adjust the affordable housing unit mix to equal a total amount of \$1,400,000 in Affordable Housing Incentive Value.

(a) The CRA shall partner with the Developer to screen and pre-qualify artists for the program. If the CRA is unable to identify qualified candidates to occupy the units within 12 months of operation, Developer shall have the option of returning the units to market rate rentals. Upon notification that the Developer intends to exercise its right to offer the units at market rate, the Developer shall reimburse the CRA for the full value of what was paid to the Developer for the units that shall be returned to market rate status.

(b) Post Lease Up Provision: After a period of twenty-four (24) months from the issuance of the certificate of occupancy for the Artist Lofts, the Developer may exercise its rights to offer the units as market rate should the CRA be unable to provide qualified candidates to occupy vacated units after a five (5) month vacancy period. Upon notification that the Developer intends to exercise its right to offer the units at market rate, the Developer shall reimburse the CRA for the remaining value of what was paid to the Developer for the units that shall be returned to market rate status. The remaining value shall be reduced by \$11,667 per year.

6.7 Community Art Space. Developer shall provide 2,100 SF of Community Art space along the Art Alley which shall be open to the public and available as a community gathering space for the arts. This space shall be programed and activated in partnership with the CRA and Developer. The Developer shall have the flexibility to adjust the square footage of this space up to fifteen (15%) percent at its sole discretion.

6.8 Impact Fees. CITY and CRA shall support and reasonably assist the Developer in obtaining from the Palm Beach County an abatement or significant reduction in impact fees (currently estimated at \$1,092,334).

6.9 Arts Alley Extension Contribution. The City shall dedicate \$340,000 toward the construction of the Arts Alley Extension.

6.10 Museum Parcel Payment in Lieu of Taxes. The CITY and/or the CRA shall enter into a Payment in Lieu of Tax (PILOT) agreement (the "PILOT Agreement") with the Developer for the Museum Parcel for a period of fifteen years prior to the Project being Placed-In-Service. The PILOT Agreement shall commence in the calendar year 2031, at which time the Developer will pay twenty-five (25%) percent of the total ad valorem tax liability due to the CITY for a period of five years (2031 through 2035). If the CRA is still in existence the Developer will pay twenty-five (25%) percent of the total ad valorem tax liability due for both the CITY and the County portion of the annual property tax bill to the CRA. Beginning in the year 2036, the Developer shall be responsible for the payment of fifty (50%) percent of the total ad valorem tax liability due to the CITY for a period of ten (10) years (2036 through 2045). If the CRA is still in existence the Developer will pay fifty (50%) percent of the total ad valorem tax liability due for both the CITY and the County portion of the annual property tax bill to the CRA. The provisions of this subsection shall survive until 2045.

**Article 7. Books and Records.** Upon execution of this Agreement by the Developer, the Developer shall maintain complete and accurate books, records and accounts of all costs and expenses incurred in connection with the Project.



**Article 8. Default; Termination.**

8.1 Developer Default. An "Event of Default" or "default" entitling CITY or the CRA to its remedies below shall occur by the Developer on the happening of any of the following events:

(a) Failure to Observe Agreement. The Developer shall fail to observe, satisfy or perform any material term, covenant or agreement contained in this Agreement; or

(b) Inaccuracy of Representation and Warranties. Any material representation or warranty made herein by the Developer shall prove to have been incorrect in any material respect as of the date made; or

(c) Abandonment of Project. The abandonment of the Project by Developer , other than as a result of Force Majeure. "Abandonment of the Project" shall be defined unilateral cessation of work by the Developer without justification or prior notification to the CITY and CRA for reasons other than as a result of Force Majeure . The CITY and CRA may not consider the Project abandoned until the following conditions are met: (i) the Developer ceases operations without notice for a period of fifteen consecutive days; and (ii) the Developer refuses to resume work after being notified by the CITY and/or the CRA after the 16<sup>th</sup> consecutive day of abandonment.; or

(d) Failure to Complete by Completion Dates. The failure of the Developer to achieve Substantial Completion and/or Final Completion of the entire Project by the date set out in the Critical Path, unless subject to a Force Majeure event; or

(e) Abandonment of Government Approvals. The Developer abandons the diligent prosecution of any of the Government Approvals for the Project, or withdraws applications for the Government Approvals, each without the consent of the CITY and CRA, without amending or re-submitting requests for the Government Approvals within one hundred twenty (120) calendar days; or

(f) Material Adverse Change. The occurrence of a material adverse change in the financial condition of the Developer that materially and adversely impairs the Developer's ability to perform or to cause to be performed its obligations under this Agreement; or

(g) Bankruptcy. The Developer shall generally fail to pay debts as such debts become due or shall admit in writing its or their inability to pay its or their debts as such debts become due or shall make a general assignment for the benefit of creditors; the Developer shall commence any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or them or its or their debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for it or them or for all or any substantial part of its or their property; or any case, proceeding or other action against the Developer shall be commenced seeking to have an order for relief entered against the Developer, as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Developer or their debts under any law relating to insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official for the Developer or for all or any substantial part of their respective properties, and (i) the Developer shall by any act or omission, indicate its consent or approval, of, or acquiescence in such case, proceeding or action, (ii) such case, proceeding or action results, in the entry of an order for relief that is not fully stayed within sixty (60) calendar days after the entry thereof, or (iii) such, case, proceeding or action remains undismissed for a period of ninety (90) calendar days or more or is dismissed or suspended only pursuant to Section 305 of the United States Bankruptcy Code or any corresponding provision of any future United States bankruptcy law; or

(h) Attachment/Garnishment. The issuance of any attachment or garnishment against the Developer and the failure to discharge the same (by bond or otherwise) within sixty (60) calendar days from the issuance thereof, and the impact of which shall materially and adversely affect the Developer's ability to perform its obligations hereunder; or

(i) Judgments. One or more judgments, orders or decrees shall be entered against the Developer which materially interfere with Developer's ability to perform under this Agreement, and such judgments, orders, or decrees are not fully covered by effective insurance (less deductibles) or shall not have been vacated, discharged, stayed or bonded pending an appeal within thirty (30) calendar days from the entry of such judgment, order or decree; or

(j) Failure to Close. Should the Developer fail to close on the purchase of Property by the Closing Date, as such Closing Date may be extended by the Purchase and Sale Agreement, unless the CRA under the Purchase and Sale Agreement has defaulted or a condition to Developer's obligations under the Purchase and Sale Agreement has not been satisfied. Nothing in this sub-section shall be construed as limiting any other provision of this Agreement or the Purchase and Sale Agreement providing an extension of the Closing Date.

8.2 CITY and CRA's Remedies. Upon the occurrence of an Event of Default by the Developer, which Event of Default continues without remedy for twenty (20) calendar days after written notice thereof from the CITY or CRA to the Developer; provided, however, that if such Event of Default is capable of cure but cannot reasonably be cured within twenty (20) calendar days, such failure shall not constitute an Event of Default so long as the Developer provides CITY and CRA with written notice within five (5) calendar days of receipt of the CITY or CRA's default notice advising the CITY or CRA that the default cannot be reasonably cured within twenty (20) calendar days and specifying the reasons therefore and, within the twenty (20) Calendar Day period, commences and thereafter is in good faith proceeding diligently and continuously to remedy such failure, but in no event shall any additional time to cure granted hereunder exceed ninety (90) calendar days in the aggregate after Developer's receipt of the original written default notice unless approved by the CITY or CRA, CITY and/or CRA shall have the right to terminate this Agreement if the Event of Default and the following additional remedies:

(a) Require the Developer to assign to the CITY and CRA, on a non-exclusive basis, all of Developer's assignable rights in and to the non-privileged plans and specifications produced in conjunction with the Project. The Developer shall deliver to the CITY and CRA within thirty (30) calendar days, an assignment of all of Developer's assignable rights in and to all plans, construction documents, reports, studies, permits, drawings, and designs produced by the Developer and the Developer's contracted professionals as of the date of termination and Developer shall deliver to the CITY and CRA a copy of such documents. CITY and CRA shall not be entitled to punitive damages, or consequential damages, or loss profits damages from Developer, whether the default occurs before or after the occurrence of the Closing.

(b) The sum of (i) CITY and CRA's documented actual and direct damages incurred in furtherance of the Project's development after the Effective Date of this Agreement; and, (ii) CITY and CRA's reasonable attorney fees and costs incurred by CITY and CRA to collect its actual and direct damages under this subsection.

(c) Any and all other remedies under any other agreement contemplated herein and duly executed by the Developer, CITY and/or CRA.

8.3 CITY or CRA Default. An "Event of Default" or "default" entitling the Developer to its remedies below shall occur by the CITY or CRA upon the happening of any of the following events:

(a) Failure to Observe Agreement. The CITY or CRA shall fail to observe, satisfy or perform any material term, covenant or agreement contained in this Agreement.

(b) Inaccuracy of Representation and Warranties. Any representation or warranty made herein by the CITY or the CRA shall prove to have been incorrect in any material respect as of the date made.

8.4 Developer's Remedies. Upon the occurrence of an Event of Default by the CITY and/or CRA, which Event of Default shall continue unremedied for twenty (20) calendar days after written notice thereof from the Developer to the CITY and CRA; provided, however, that if such failure is capable of cure but cannot reasonably be cured within twenty (20) calendar days, such failure shall not constitute an Event of Default, so long as the CITY or CRA provides the Developer with written notice within five (5) calendar days of receipt of the Developer's default notice advising the Developer that the default cannot be reasonably cured within twenty (20) Calendar Days and specifying the reasons therefore and, within the twenty (20) calendar day period, commences and thereafter is in good faith proceeding diligently and continuously to remedy such failure, but in no event shall any additional time to cure granted hereunder exceed ninety (90) calendar days in the aggregate after CITY or CRA's receipt of the original written default notice, the Developer shall have the right to terminate this Agreement and the following additional remedies:

(a) The sum of (i) Developer's documented actual and direct damages incurred in furtherance of the Project's development after the Effective Date of this Agreement; and, (ii) Developer's reasonable attorney fees and costs incurred by Developer to collect its actual and direct damages under this subsection.

(b) Any and all other remedies under any other agreement contemplated herein and duly executed by the Developer, CITY and/or CRA.

8.5 In no event shall either party be liable to the other for any indirect, incidental, consequential, special, or punitive damages, including but not limited to loss of profits, revenue, or business opportunities, arising out of or relating to this Agreement, regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise, even if such party has been advised of the possibility of such damages. For the avoidance of doubt, the CITY and CRA are not jointly and severally liable under this Agreement and the default of one such party shall not cause the other party to be in default, provided, however, that termination of this Agreement by Developer as a result of a default of one such party shall entitle Developer to terminate this Agreement as to all parties.

8.6 Cross Termination. The parties agree that notwithstanding anything to the contrary herein a default (after the expiration of any applicable notice and cure period related thereto, if any) by either party under either this Agreement or the Purchase and Sale Agreement shall afford either party the right to terminate this Agreement and/or the Purchase and Sale Agreement.

8.7 Termination. This Agreement (but not the Surviving Obligations) shall terminate upon the occurrence of the earlier of the following events:

- (a) A termination of this Agreement as otherwise may be permitted in accordance with the provisions of this Agreement; or
- (b) Failure of the Project to obtain the Entitlements or Permits as defined herein necessary to develop the Project, which failure is not an Event of Default.

- (c) The completion of the development and construction of the Project and the remaining obligations of the parties under this Agreement with respect to the Project pursuant to the terms and conditions of this Agreement.

8.8 Effect of Termination. If this Agreement shall terminate prior to Closing, the Developer shall, as soon as practicable, but in no event later than the fifteenth (15) calendar days after a termination notice is given, or such shorter period of time in the event of emergency or a life/safety issue:

(a) Furnish all such information and otherwise cooperate in good faith in order to effectuate an orderly and systematic ending of the Developer's duties and activities hereunder, including, without limitation, the delivery to the CITY and CRA of any written reports required hereunder for any period not covered by prior reports at the time of termination. With regard to the originals of all papers and records pertaining to the Project, the possession of which are retained by the Developer after termination, the Developer shall: (i) reproduce and retain copies of such records as it desires; (ii) deliver the originals to the CITY and CRA; and (iii) not destroy originals without first offering to deliver the same to the CITY and CRA.

(b) Notwithstanding the above in the event of CITY or CRA Default and the Developer elects to terminate this Agreement, Developer shall have no obligation or responsibility to produce documentation referenced in this section to the defaulting party.

#### **Article 9. Indemnification.**

9.1 Indemnification by the Developer. The Developer agrees to indemnify and hold the CITY and CRA, its Commission members, agents, consultants and employees harmless, to the fullest extent permitted by law, from all liabilities, losses, interest, damages, costs and/or expenses (including, without limitation, reasonable attorneys' fees, whether suit is instituted or not, and if instituted, whether incurred at any trial, appellate or post judgment level), assessed against, levied upon, or collected from, the CITY or CRA arising out of, from, or in any way connected with or arising from any Developer's breach of its obligations under this Agreement. The CITY and/or CRA shall be required to provide notice to the Developer of any liability, loss, damage, interest, or cost and/or expense, which the Developer is required to hold the CITY or CRA harmless in accordance with this provision, within ten (10) days of receipt of by the CITY and/or the CRA of such claim or request for damages, provided, however, that the failure to give such prompt written notice shall not, however, relieve the Developer of its indemnification obligations, except and only to the extent that the Developer forfeits rights or defenses by reason of such failure. Notwithstanding the foregoing, the Developer shall not be required to indemnify the CITY or CRA with respect to any liability, loss, damages, costs or expenses suffered as a direct and proximate result of the negligence, gross negligence and/or willful misconduct of the CITY or CRA or its agents.

9.2 Limitation on Indemnification. Notwithstanding anything in this Article to the contrary, Developer shall not have any obligation to indemnify or defend the CITY or CRA against any claims brought against the CITY or CRA by any third party challenging: (1) the CRA's or CITY's legal authority to sell all or any portion of the Property or enter into this Agreement, (2) the CRA's or CITY's judgment in selling all or any portion of the Property or entering into this Agreement or the terms and provisions of this Agreement, regardless of whether such claim seeks monetary damages or injunctive, declaratory or other relief. In this event of any conflict between this Section and any other provision in this Article, this Section shall control and govern.

9.3 Survival. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

9.4 Tort Liability. Any tort liability to which the CITY or CRA is exposed under this Agreement will be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations will be applied as if the parties had not entered into this Agreement. This Agreement shall not be construed or interpreted as the CITY or CRA's waiver of any of their rights and immunities under Applicable Law or consent to be sued by a third party.

**Article 10. Condition of Property.** CITY and CRA's Existing Studies. The CRA and CITY have previously provided to Developer copies of all existing engineering studies, surveys, maps, and reports in the CITY's possession pertaining to the Property (the "Property Reports"). The CITY and CRA consent to Developer's use of the Property Reports in connection with the development of the Project. Within thirty (30) calendar days after the Effective Date, the CITY and CRA will deliver to a Developer a written list describing all Property Reports and copies of any Property Reports not previously delivered to Developer.

**Article 11. Representations and Warranties.**

11.1 Developer. The Developer represents and warrants to the CITY and CRA as follows:

(a) That (i) the Developer is a limited liability company duly organized, validly existing and in good standing under the laws of Florida; (ii) the execution, delivery and performance of this Agreement and the consummation of the transactions provided for in this Agreement have been duly authorized and upon execution and delivery by the Developer will constitute the valid and binding agreement of the Developer enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by the Developer hereunder, will not conflict with, or breach or result in a default under, any agreement to which it is bound.

(b) That there are no pending, threatened, judicial, municipal or administrative proceedings, consent decrees or judgments against Developer which would materially and adversely affect Developer's ability to perform its obligations hereunder.

(c) That the Developer has the credit worthiness and financial capacity to reasonably obtain conventionally acceptable financing to complete this Project.

11.2 CITY. The CITY represents and warrants to the Developer that it is a public body corporate and politic of the State of Florida duly organized under the laws of the State of Florida; (ii) the execution, delivery and performance of transactions provided for this Agreement have been duly authorized and upon execution and delivery by the CITY will constitute the valid and binding agreement of the CITY enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by the CITY hereunder, will not conflict with, or breach or result in a default under any agreement to which it is bound.

11.3 CRA. The CRA represents and warrants to the Developer that it is a public body corporate and politic of the State of Florida duly organized under the laws of the State of Florida; (ii) the execution, delivery and performance of transactions provided for this Agreement have been duly authorized and upon execution and delivery by the CRA will constitute the valid and binding agreement of the CRA enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by the CRA hereunder, will not conflict with, or breach or result in a default under any agreement to which it is bound.

11.4 Survival. The representative and warranties set forth in this Article shall survive the expiration or earlier termination of this Agreement.

**Article 12. No Liens.**

12.1 Developer acknowledges and agrees that prior to Closing, the Property is excluded from the definition of "real property" upon which liens may be placed as set forth in Section 713.01(24), Florida Statutes. The Developer shall include a provision substantially similar to this Section in each of its contracts and purchase orders to be performed prior to Closing, requiring contractors, subcontractors, materialmen, vendors and suppliers to waive any claim or entitlement to a mechanic's or materialmen's lien on the Property owned by the CRA upon which the Work or any portion thereof is to be performed and to look solely to the credit of the Developer or its surety or the credit of the contractor or its surety for payment of any sums due in connection with the Work.

12.2 Prior to Closing, the Developer shall not voluntarily permit any laborer's, materialmen's, mechanic's, or other similar lien to be filed or otherwise imposed on any part of the Work, the K Street Property, or the Property on which the Work is performed. If any laborer's, materialmen's, mechanic's, or other similar lien or claim thereof is filed, the Developer shall provide notice thereof to the CITY and the CRA and shall cause such lien to be released and discharged forthwith, or file a bond in lieu thereof, within thirty (30) days.

**Article 13. Miscellaneous.**

13.1 Notices. All notices, requests, consents, demands, approvals or other communications required or permitted under this Agreement shall be in writing, addressed to the appropriate person at the receiving party, and shall be (as elected by the person giving such notice): (a) hand delivered, (b) delivered by overnight courier by a nationally recognized courier, with all fees prepaid; (c) delivered by Registered or Certified Mail, in each case, return receipt requested and postage prepaid; or (d) delivered by email with "FORMAL NOTICE UNDER DEVELOPMENT AGREEMENT" in the subject line (but only if a party's email address is included in its notice address and a hard copy is delivered via one of the other methods described in (a) through (c), addressed to:

- (a) If to the CITY:  
City of Lake Worth Beach, Florida  
Jaime Brown , Interim City Manager  
1749 3<sup>rd</sup> Avenue South  
Lake Worth Beach, Florida 33460

With copies to:  
Torcivia, Donlon, Goddeau, and Rubin, PA  
Attn: Christy Goddeau, Esq.  
701 Northpoint Parkway, 209  
West Palm Beach, FL 33407

- (b) If to the CRA:  
Lake Worth Beach Community  
Redevelopment Agency  
Joan Oliva, Executive Director  
1121 Lucerne Avenue  
Lake Worth Beach, FL 33460

With copies to:

Weiss, Serota, Helfman, Cole, and Bierman  
Attn: David N. Tolces, Esq.  
2255 Glades Road, Suite 200 E  
Boca Raton, FL 33431

- (c) If to the Developer:  
Sunshine Lake Worth Development, LLC  
16711 Collins Avenue  
Sunny Isles Beach, FL 33160

With copies to:

R. Miller Consulting Group  
ATTN: Renee Miller  
[reneem@rmcglc.com](mailto:reneem@rmcglc.com)  
Phone: 786-253-8436

Goren, Cherof, Doody and Ezrol, PA  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, FL 33308  
Attn: Donald J. Doody, Esq.  
Email: [ddoody@gorencherof.com](mailto:ddoody@gorencherof.com)

Each such notice shall be deemed delivered: (i) if delivered by hand, the date the receipt is signed; (ii) if sent by overnight courier, on the courier's confirmation of delivery date, (iii) if sent by Registered or Certified Mail, upon receipt as indicated by the date on the signed return receipt; (iv) if sent by email, the date the notice was emailed (but only if a party's email address is included in its notice address and a hard copy is delivered via one of the other methods described in (i) - (iii) above); or (v) if the notice is rejected or refused at a physical notice address shown above, or to such other address as either party may designate by notice to the other party from time to time (as long as such rejection or refusal of delivery occurs on a business day).

13.2 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one and the same instrument.

13.3 Assignment. The Developer may not assign this Agreement or any of its rights and obligations hereunder, in whole or in part, without the prior written consent of the CITY and CRA.

13.4 Project Representatives. The CITY hereby appoints the CITY Manager to serve as its representative. The CITY Manager shall have the right and authority to provide all consents and approvals, and take other actions, required hereunder on behalf of the CITY; provided, however the CITY Manager shall have the right at any time to obtain the approval of the CITY Commission to the extent required by Applicable Laws, where specifically required under this Agreement, or when deemed necessary in the CITY Manager's sole discretion. The CRA hereby appoints the CRA Executive Director to serve as its representative. The CRA Executive Director shall have the right and authority to provide all consents and approvals, and take other actions, required hereunder on behalf of the CRA; provided, however the CRA Executive Director shall obtain the consent of the CRA Board to the extent required by Applicable Laws or where specifically required under this Agreement. The Developer hereby appoints David Kastner, Esq., to serve as its representative. The parties may change their respective designated representative(s) at any time by providing written notice thereof to the other party.

13.5 No Permit. This Agreement is not and shall not be construed as a development agreement under Chapter 163, Florida Statutes, nor a development permit, Government Approval or authorization to commence development.

13.6 Governing Law. The nature, validity and effect of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida and venue shall lay exclusively in Palm Beach County, Florida.

13.7 Captions. Captions are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

13.8 Entire Agreement and Amendment. This Agreement constitutes the entire agreement between the parties hereto related to the development and construction of the Project as of the Effective Date and no modification hereof shall be effective unless made by a supplemental agreement in writing executed by all of the parties hereto.

13.9 No Joint Venture. The Developer shall not be deemed to be a partner or a joint venturer with the CITY and CRA, and the Developer shall not have any obligation or liability, in tort or in contract, with respect to the Property, either by virtue of this Agreement or otherwise, except as may be set forth to the contrary herein. The Developer shall not have nor claim any entitlement to the CITY or the CRA's immunities under Applicable Law.

13.10 Severability. If any provision of this Agreement, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

13.11 Successors. Except as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

13.12 Pronouns. Whenever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter.

13.14 Civil Rights Compliance. The Developer warrants and represents that it shall not discriminate against any of its employees or prospective employees on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

13.15 Further Assurances. The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligations under, this Agreement in order to secure to themselves the mutual benefits created under this Agreement; and, in that regard, the parties shall execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement.

13.16 Equitable Remedies. In the event of a breach or threatened breach of this Agreement by any party, the remedy at law in favor of the other party will be inadequate and such other party, in addition to any and all other rights which may be available, shall accordingly have the right of injunction in the event of any threatened breach of this Agreement by any party.



13.17 Third Party Rights. The provisions of this Agreement are for the exclusive benefit of the parties to this Agreement and no other party (including without limitation, any creditor of the CITY, CRA or the Developer) shall have any right or claim against the CITY, CRA or the Developer by reason of those provisions or be entitled to enforce any of those provisions against the CITY, CRA or the Developer.

13.18 Survival. All covenants, agreements, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

13.19 Remedies Cumulative; No Waiver. The rights and remedies given in this Agreement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Agreement or given to a non- defaulting party by law.

13.20 No Waiver. One or more waivers of the breach of any provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

13.21 Signage. Subject to the reasonable approval of the CITY and CRA and in accordance with Applicable Laws, the Developer shall have the right to place one or more appropriate signs upon the Property.

13.22 Construction. This Agreement shall be interpreted without regard to any presumption or rule requiring construction against the party causing this Agreement to be drafted.

13.23 Compliance. In the performance of all parties' obligations under this Agreement, each party shall perform its obligations in accordance with all Applicable Laws.

13.24 WAIVER OF JURY TRIAL. The parties to this Agreement hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the matters to be accomplished in this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

13.25 CONFLICT OF INTEREST. The Developer represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and Palm Beach County's Code of Ethics. Developer further represents that no person having any such conflicting interest shall be employed for said performance. Developer shall promptly notify the CITY and CRA, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence Developer's judgment or quality of performance being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that Developer may undertake and request an opinion of the CITY and CRA as to whether the association, interest or circumstance would, in the opinion of the CITY and CRA, constitute a conflict of interest if entered into by Developer. The CITY and CRA agree to notify Developer of their opinion(s) within thirty (30) days of receipt of notification by the Developer. If, in the opinion of the CITY and/or CRA, the prospective business association, interest or circumstance would not constitute a conflict of interest by Developer, the CITY and CRA shall so state in the notification and the Developer may, at its option, enter into said association, interest or circumstance.

13.26 PUBLIC ENTITY CRIMES, SCRUTINIZED COMPANIES, E-VERIFY AND HUMAN TRAFFICKING.

(a) As provided in Sections 287.132-133, Florida Statutes, as amended from time to time, by entering into this Agreement, the Developer certifies that it, its affiliates, suppliers, subcontractor and any other contractors who will perform hereunder, have not been placed on the convicted contractor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof.

(b) As provided in Section 287.135, Florida Statutes, as amended from time to time, by entering into this Agreement, the Developer certifies that it is not participating in a boycott of Israel. The Developer agrees that the CITY will have the right to terminate this Agreement is found to have been placed on the Scrutinized Companies that Boycott Israel List or as otherwise set forth in Section 287.135, Florida Statutes.

(c) To the extent applicable, Developer shall comply with the E-Verify requirements of section 448.095, Florida Statutes.

(d) By signing this Agreement as set forth below, the Developer's authorized representative swears or affirms under penalty of perjury that the Developer does not use coercion for labor or services as defined in section 787.06, Florida Statutes.

13.27 PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL. Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes, but is not limited to, the power to review past, present and proposed City contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the City and its agents in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a breach of this Agreement and may result in termination of this Agreement or other sanctions or penalties as set forth in the Palm Beach County Code.

13.28 PUBLIC RECORDS. The Developer shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, to the extent applicable to any public records related to or arising from this Agreement.

13.29 CONFIDENTIAL INFORMATION. If during the term of this Agreement, any party is provided access to any records or other information that is confidential or proprietary in nature, the other party shall maintain the confidentiality of such information consistent with Florida's Public Records laws including, but not limited to, any building plans or GIS information provided to or by the Developer or the Developer's Representatives. The Developer shall ensure the Developer's Representatives are also contractually required to maintain the confidentiality of such information.

**Article 14. Safety and Protection.**

14.1 Developer shall be responsible for initiating, maintaining and supervising commercially reasonable safety precautions and programs in connection with the Work. Developer shall take all necessary safety precautions (required by Applicable Laws), and shall take commercially reasonable industry practices and precautions, to prevent damage, injury or loss to:

(a) all persons on the Property or K Street Property or who may be affected by the construction;

(b) all Work and materials and equipment to be incorporated in the Project, whether in storage on or off the Property or K Street Property; and

(c) other property at the Property or K Street Property or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadway, structures, utilities and underground facilities (i.e., the Force Main) not designated for removal, relocation or replacement in the course of construction.

14.2 Developer shall comply with Applicable Laws of Governmental Authorities having jurisdiction for safety or persons or property to protect them from damage, injury or loss; and shall erect and maintain commercially reasonable safeguards for such safety and protection, taking into consideration the effect on the Project. Developer's duties and responsibilities for safety and for protection of the construction shall continue until Final Completion.

14.3 Developer shall act in a commercially reasonable manner to protect and prevent damage to all components of the Work, and any existing facilities or improvements, including but not limited to the protection thereof from damage by the elements, theft, or vandalism. During the course of the Work, the Developer shall remain responsible for the risk of loss of the Work and shall promptly remedy, repair and replace all damage and loss (other than damage or loss insured under required insurance) to the Work caused in whole or in part by the Developer, the general contractor, a contractor, subcontractor, or anyone directly or indirectly employed or controlled by any of them, or by anyone for whose acts they may be liable and for which the Developer is responsible.

14.4 Developer shall cause its general contractor to be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Applicable Laws.

**Article 15. CITY's Representative.**

15.1 The parties acknowledge and agree that the CITY and CRA may engage in one or more consultants to assist the CITY and CRA in the administration of this Agreement and the Project. The Developer agrees to reasonably cooperate with any such consultants engaged by the CITY and CRA.

**[This Space is Intentionally Blank; Signature Pages to Follow]**

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be duly executed by their duly authorized officer where applicable and sealed as of the date first above written.

**DEVELOPER:**

SUNSHINE LAKE WORTH DEVELOPMENT, LLC,  
a Florida limited liability company

By: \_\_\_\_\_  
Arthur Wiener, Manager

Date: \_\_\_\_\_, 2024

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this \_\_\_\_ day of \_\_\_\_\_ 2024, by \_\_\_\_\_, as the \_\_\_\_\_ [title] of Sunshine Lake Worth Development, LLC, who is personally known to me or who has produced \_\_\_\_\_ as identification, and who did take an oath that the facts stated with regard to section 787.09, Florida Statutes, are true and correct, and he or she is duly authorized to execute the foregoing instrument and bind Sunshine Lake Worth Development, LLC, to the same.

\_\_\_\_\_  
Notary Public Signature  
Notary Seal:

**Remainder of this page intentionally left blank**  
**Signature page of CITY and CRA follows**

**CITY:**

CITY OF LAKE WORTH BEACH, FLORIDA,  
a Florida municipal corporation

Attest:

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

By: \_\_\_\_\_  
CITY Clerk

Date: \_\_\_\_\_

Approved as to form and legal sufficiency:

Approved for financial sufficiency

By: \_\_\_\_\_  
CITY Attorney

By: \_\_\_\_\_  
Financial Services Director

**CRA:**

LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY

Attest:

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

By: \_\_\_\_\_  
Board Clerk

Date: \_\_\_\_\_

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
CRA Attorney

EXHIBIT A

Legal Descriptions for the Project Site:

EXHIBIT B  
EXHIBITB-1

Project Critical Path  
Parking Component Critical Path

EXHIBIT C  
Site Plan