

HORIZON OF OAKLAND PARK
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made and entered into as of this ____ day of _____, 2022 (the "**Effective Date**"), by and between **HORIZON OAKLAND PARK, LLC**, a Florida limited liability company (the "**Developer**") and the **CITY OF OAKLAND PARK, FLORIDA**, a Florida municipal corporation (the "**CITY**").

RECITALS

A. The CITY is the owner of six (6) parcels comprising approximately 4.072 acres of land generally located on the east side of Northeast 12th Avenue and north and south of Northeast 38th Street, in the City of Oakland Park, Florida (the "**City**"), 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 CITY desires to be sold to and redeveloped by Developer pursuant to the Purchase and Sale Agreement (hereinafter defined) and this Agreement.

B. The CITY issued **RFP # 011322** on November 15, 2021, in order to select a proposal from a pre-qualified development team for development of the Property as a mixed-use project including residential, live/work, commercial, retail, office, recreational and public amenities, the Woonerf, the Train Station, and/or other appropriate uses. The RFP is incorporated by this reference into this Agreement.

C. The CITY received responses to the RFP for the development of the Project (as hereinafter defined).

D. After extensive review of all responses to the RFP, including presentations of the respective firm's qualifications, project design and development concept, and financial capabilities, the CITY'S Selection Committee and its technical consultants recommended to the CITY Commission that it conditionally award the RFP to Kaufman Lynn Construction, Inc., a Florida corporation and Falcone Group, LLC, a Florida limited liability company, subject to the negotiation of a Purchase and Sale Agreement and Development Agreement for review and approval by the CITY Commission, as well as evaluating and negotiating other criteria including preliminary design concept (Development Plan, massing, height, physical character), preliminary feasibility analyses and financing plan, preliminary environmental impact and traffic analysis; preliminary proposed terms for site disposition, including transfer of the fee interest of all or a portion thereof; preliminary project implementation schedule; and project team composition as it relates to CITY'S goals of redeveloping the Property.

E. KAUFMAN LYNN CONSTRUCTION, INC., a Florida corporation and FALCONE GROUP, LLC, a Florida limited liability company, collectively submitted the RFP Submittal on January 13, 2022. Developer is a Florida limited liability company and a joint venture consisting of KAUFMAN LYNN CONSTRUCTION, INC. and FALCONE GROUP, LLC (or entities that KAUFMAN LYNN CONSTRUCTION, INC. and FALCONE GROUP, LLC beneficially own a majority interest in and control), as authorized members of the Developer.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein set forth, the Developer 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 Property. The Property shall be entitled and developed in substantial accordance with the terms set forth in this Agreement, the Development Plan, the Site Plan, the Construction Documents 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 date of this Agreement, Developer shall diligently, expeditiously, and in good faith take all action necessary to develop 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 submitted by Developer in response to RFP # 011322 issued November 15, 2021 (hereinafter the "RFP Submittal") and as amended and illustrated in Exhibit C. The **Project** consists of the following components proposed under RFP #011322 as the Primary Site Plan: the North Building, the South Building, the Residential Building, the Public Recreational Spaces, the Woonerf, the Train Station, and Open Spaces (all as hereinafter defined), 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"). 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, as may be revised, subject to the Failure to Acquire Parcels provision in Section 3.2 of this Agreement.

(a) **The North Building Component:** 5 Story Mixed Use Building with 12,500 Gross Square Feet of Ground Level Retail, Eight (8) Live Work Units, 47,800 Gross Square Feet of Commercial with covered drop off, Thirty Six (36) Mid Rise Residential Units, a Parking Garage with the required parking spaces to support the Project in tandem with other parking facilities of the Project, and a Rooftop Event Space (collectively the "North Building Component"), any variance in said components greater than ten percent (10%) shall require the approval of the City Commission, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the provisions of Section 3.2, *Failure to Acquire Parcels* may supersede this section.

(b) **The South Building Component:** 6 Story Mixed Use Building with 21,615 Gross Square Feet of Ground Floor Retail, a Parking Garage with the required parking spaces to support the Project in tandem with other parking facilities of the Project and Residential Liner, 239 Mid Rise Residential Units, and an amenity deck (collectively the "South Building Component"), any variance in said components greater than ten percent (10%) shall require the approval of the City Commission, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the provisions of Section 3.2, *Failure to Acquire Parcels* may supersede this section.

(c) **The Residential Building Component:** 3 Story Residential Building with Thirty-six (36) Apartment Flats (each a "Unit" and, collectively, the "Units"); any variance in said components greater than ten percent (10%) shall require the approval of the City Commission, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the provisions of Section 3.2, *Failure to Acquire Parcels* may supersede this section.

(d) **The Public Recreational Space Component:** The construction of Greenleaf

Park which is inclusive of the City Owned Future Greenleaf Park site (currently known as 1300 NE 38th Street) and potentially Parcel B (as defined in the RFP #011322, more specifically described in **Exhibit A** attached hereto). The park shall include an Open-Air Pavilion, Central Courtyard, Basketball Court, Two (2) Tennis Courts, Playground with Shade Canopy, Open Play area, fencing, lighting, conduit as specified and Parking (collectively the "**Public Recreational Space Component**"). The ten percent (10%) variance shall not apply to the Public Recreational Space Component. Notwithstanding the foregoing, the provisions of Section 3.2, *Failure to Acquire Parcels* may supersede this section.

(e) **The Woonerf Component**: 13,597 Gross Square Feet of Greenspace with Three (3) green island spaces. The Woonerf shall include a finished element which shall extend to the edge of the Florida East Coast Railroad (FEC) Right-of-Way as defined herein as the "Enhanced Woonerf" (collectively referred to as the "**Woonerf Component**"). The ten percent (10%) variance shall not apply to the Woonerf Component.

(f) **The Train Station Component**: A 500 Foot by 17 Foot (500' x 17') Station Platform and associated amenities as required by the Florida Department of Transportation (FDOT) or other authorized commuter rail agency (collectively the "**Train Station Component**"). The ten percent (10%) variance shall not apply to the Train Station Component. Notwithstanding the foregoing, the provisions of Section 4.4, *Train Station Agreement* may supersede this section.

(g) **The Open Space Component**: A bioswale and Walking Path, Square Foot Dog /Pocket park with preservation tree (collectively the "**Open Space Component**") will represent a minimum of 25% of the net lot area of the site and rooftop amenities will represent a minimum of 10% of the net lot area of the site, any reduction in the calculated square footage of said components greater than ten percent (10%) shall require the approval of City Commission, which approval shall not be unreasonably withheld; provided however that if Parcel A is not acquired by PURCHASER, then, such bioswale shall not be constructed and shall not be included in the Project. Notwithstanding the foregoing, the provisions of Section 3.2, *Failure to Acquire Parcels* may supersede this section.

(h) **The Public Parking Component**: 195 public parking spaces shall be designated free to the public, of which approximately 135 spaces shall be within the parking structures located in the North Building and the South Building, and approximately sixty (60) spaces which shall be surface parking spaces (collectively the "**Public Parking Component**"). The ten percent (10%) variance shall not apply to the Public Parking Component. Notwithstanding the foregoing, the provisions of Section 3.2, *Failure to Acquire Parcels* may supersede this section.

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:

"Additional Private Property Acquisition" shall mean the acquisition of the two properties, referred to as Parcel A and Parcel B in RFP #011322, more specifically described in **Exhibit A** attached hereto.

"Affiliate" of a Person shall mean: (i) with respect to Developer, the manager(s) of Developer or (ii) any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" or "controlled" for these purposes means the ability, whether by ownership of stock or other equity interests, or by contract or other written agreement, to act as the Manager, Managing Member, President, Managing Director, or Managing Partner, as the case may be depending on the type of entity, or to otherwise have the power to direct, or cause the direction of, the day-to-day management and policies of the Person.

"Agreement" shall mean this Development Agreement.

"Alternate Site Plan – A-1 and A-2" shall mean the alternate site plans proposed by the Developer due to a failure to acquire Parcel A, or Parcel B, or both, all as shown on composite **Exhibit D**, attached hereto and made a part hereof, and revised during the site plan approval process from time to time, subject to the terms of this Agreement. Any variance in said components greater than ten percent (10%) shall require the approval of the City Commission, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the 10% variance shall not apply to the Woonerf, Public Recreational Facilities, the Train Station, or Affordable Housing dedication to be provided by Developer.

"Apartment Flat" Shall mean a self-contained housing unit that occupies only part of a building, for which each designated housing unit shall only occupy one floor.

"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 Oakland Park, a Florida municipal corporation.

"City Commission" shall mean the five (5) public officials elected to serve on the Oakland Park City Commission.

"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 City Land Development Regulations now existing or hereafter amended by the City.

"Construction Contract" shall have the meaning provided in Section 4.8.

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

"Critical Path" shall mean the sequence of activities from development agreement execution to substantial completion of the Project. The Critical Path 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 and this Agreement.

"Cure Period" shall mean the ninety (90) calendar day period after the receipt by the CITY of any Title Objection Notice.

"**Deed**" shall mean a special warranty deed conveying the Property to Developer, subject to the Permitted Exceptions.

"**Deposits**" shall have the meaning set forth in the Purchase and Sale Agreement.

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

"**Developer Equity**" shall mean the Developer's equity contribution to the Project, which, when combined with the amount of Developer Financing in place for each Component, shall be an amount sufficient to develop the Project and complete the Work (as hereinafter defined) for the Project, all based on the approved Development Plan and or Alternate Site Plan for the Project. The Developer's Equity shall be the balance of whatever the Developer Financing is not covering. The equity shall be in the amount necessary and sufficient, when combined with the Developer Financing, to develop the Project and complete the Work, based upon the approved development plan, construction plans and specifications, and approvals of all governmental jurisdictions for the Project.

"**Developer Financing**" shall mean a Construction Loan in an amount of not less than Forty Million Dollars (\$40,000,000) (i) from a reputable lender regularly engaged in commercial real estate lending, (ii) which contains such terms as are typical in Broward 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 CITY 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 have the meaning set forth in the Purchase and Sale Agreement.

"**Development Review Application Date**" shall have the meaning set forth in the Purchase and Sale Agreement.

"**Earnest Money**" shall have the meaning set forth in the Purchase and Sale Agreement.

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

"**Event of Default**" shall have the meaning provided in Article 7.

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

"**Force Majeure**" shall have the meaning provided in Section 3.7.

"**Governmental Authorities**" shall mean the United States Government, the State of Florida, Broward County, the City or any other governmental agency or any instrumentality of any of them.

"Government Approvals" shall have the meaning set forth in the Purchase and Sale Agreement.

"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.

"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).

"Long Term Maintenance Agreement" shall mean the legal instrument that will be executed by the CITY and the Developer in accordance with the Purchase and Sale Agreement that will govern the daily maintenance and operation of the Woonerf, establish level of service standards, and capital replacement schedules.

"Pad Ready" shall refer to the Greenleaf Park Site and shall mean all above ground structures, buildings and associated debris has been removed from site, including black top pavement, parking blocks, trees, shrubs. All below grade structures and debris removed from site inclusive of utilities to be abandoned, with all utilities to be capped and removed from site accordingly. Any existing permits and / or payments shall be closed out with the appropriate governmental entities prior to the demolition of the building(s), to include elevator permits, utility payments, utility permits, and demolition permits to ensure that site is turned over free and clear of pending liens and /or inspections. Site to be left with raw earth at grade. All Hazardous Materials located in, on or under such site shall be remediated and removed in accordance with applicable law at the sole cost of the CITY.

"Parking Garage" shall mean the two (2) parking structures described in Section 4.7.

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

"Primary Site Plan" shall mean the proposed RFP Submittal in response to RFP # 011322 issued November 15, 2021, for the Project and amended as shown on composite **Exhibit C**, attached hereto and made a part hereof, and as revised during the site plan approval process from time to time, subject to the terms of this Agreement. Any variance in the square footage of the commercial Components and any variance in the number of units in the residential Components, in each case, greater than ten percent (10%) shall require the approval of the City Commission, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the 10% variance shall not apply to the Woonerf, Public Recreational Facilities, the Train Station, or Affordable Housing dedication to be provided by DEVELOPER.

"Parking Maintenance Agreement" shall mean the legal instrument that shall be executed by the CITY and the Developer in accordance with the Purchase and Sale Agreement that will govern the long-term preservation and operation of the public parking associated with this development.

"Permitted Exceptions" shall have the meaning set forth in the Purchase and Sale Agreement.

"Permitted Transfers" shall have the meaning provided in Section 12.3.

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

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

"Purchaser Termination Events" shall have the meaning set forth in the Purchase and Sale Agreement.

"Project" shall have the meaning provided in Section 2.2.

"Site Plan Approval Period" shall have the meaning set forth in the Purchase and Sale Agreement, as such time period may be extended as set forth therein.

"Substantial Completion Date" shall mean that date on which the Developer makes application to the CITY for Temporary Certificate of Occupancy (TCO) for the Project with the exception of the Woonerf Component and Train Station Component (if applicable) in accordance with provisions for CITY MANAGER extensions pursuant to Section 3.7 herein and with allowance for time extensions as provided in such Section 3.7.

"Surviving Obligations" shall mean any indemnities, covenants and obligations of Developer 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 Developer contained in this Agreement shall be Surviving Obligations.

"Train Station Delivery Agreement" shall mean the legal instrument executed by the CITY and the Developer in accordance with the Purchase and Sale Agreement that will govern the critical

path, design, construction, development cost responsibilities associated with the completion of the Train Station proximate to the development.

"Termination Notice" shall mean written notice given by Developer to the CITY pursuant to the terms of the Purchase and Sale Agreement stating that Developer has elected to terminate this Agreement for the reasons set forth therein.

"Transfer" shall have the meaning provided in Section 12.1.

"Woonerf" shall mean that segment of Northeast 12th Avenue between Northeast 36th Street and Northeast 38th Street to include a finished element which shall extend to the edge of the Florida East Coast Railroad (FEC) Right-of-Way and that portion of Northeast 37th Street from Northeast 12th Avenue east to NE 13th Avenue. In accordance with the proposed RFP Submittal in response to RFP # 011322 issued November 15, 2021, for the Project, portions of the Woonerf exist both within the Public roadways/ right-of-way and the private property boundaries of the project.

"Woonerf – Enhanced" shall differ from the original Woonerf (NE 12th Avenue) concept which followed the curved road and encompassed mainly the east side of the road with pedestrian activation from the roadway up to the buildings. The Enhanced Woonerf will take that concept and extend it westward to the property line (and easement) along the FEC boundary. The Enhanced Woonerf will take most of the elements from the train welcoming area and repurpose it to serve the Woonerf to include hardscape (concrete and pavers) and softscape (landscaping) that creates an additional public plaza and gathering space. This space will allow for many uses and will have the ability to provide additional event space for the City of Oakland Park and its residents. In addition to the added infrastructure for this purpose, the Enhanced Woonerf will also include additional infrastructure (water, electrical/data conduit, etc.) to allow for the potential future addition of the Train Station with minimal disruption to the overall space reducing the impact and future cost of adding the potential Train Station. The final design will take in account a new primary use of pedestrian activation, but will also be considered a phasing to allow the future potential Train Station to be built.

2.4 Physical Condition after Development Agreement Execution.

The CITY agrees that, after the execution of this Agreement and the delivery by the Developer under the Purchase and Sale Agreement to the Escrow Agent of the Second Deposit, the CITY will not take any actions that could materially and adversely affect (i) the physical condition of the Property owned by the CITY or (ii) the status of title to the Property owned by the CITY (as described in (i) or (ii) of this sentence, each a **"material adverse change"**). At least thirty (30) calendar days, but not more than sixty (60) calendar days, days before the Closing on Project, the Developer shall have the right to update its environmental reports and re-inspect the CITY Property comprising the Project to confirm that the condition of the CITY Property has not materially and adversely changed since the expiration of the Inspection Period. If the updated inspections or reports reveal any material adverse changes in the physical condition of, or title to, the CITY Property occurring after the expiration of the Inspection Period, which were not caused by Developer or Developer's Representatives, the CITY shall have forty-five (45) calendar days, following written notice thereof from the Developer to the CITY, to cure the material adverse change; provided, however, that if such material adverse change is capable of cure but cannot reasonably be cured within forty-five (45) calendar days, such failure shall not constitute an Event of Default so long as the CITY provides the Developer with written notice within fifteen (15) calendar days of receipt of the Developer's notice advising the Developer that the default cannot be reasonably cured within forty-five (45) calendar days and specifying the reasons therefore and, within the thirty (30) 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 one hundred eighty (180) calendar days in the aggregate

after CITY'S receipt of the original written notice. If the CITY cannot cure such material adverse changes to Developer's reasonable satisfaction in the time set forth herein, then, (i) CITY shall be in default under the Purchase and Sale Agreement and (ii) Developer will have the right to terminate this Agreement and the Purchase and Sale Agreement by delivering written notice to the CITY, in which case, (a) the Deposits shall be returned to the Developer and (b) the Developer shall be entitled to recover actual damages against the CITY for such breach as set forth in Section 9.2 of the Purchase and Sale Agreement.

Article 3. Site Plan Development.

3.1 **Primary Site Plan.** the proposed site plan for the Project, submitted by DEVELOPER in response to RFP #011322 issued November 15, 2021 together with elevations of the Project, all as shown on composite **Exhibit C**, attached hereto and made a part hereof, and as revised during the site plan approval process from time to time, subject to the terms of this Agreement. Only conceptual designs have been reviewed and no approval has been issued. The foregoing shall in no way constitute or be construed as the approval or issuance of a 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.

3.2 **Failure to Acquire Additional Parcels:** The Development Program represented in **Exhibit C** shall be defined as the Primary Site Plan. The Developer and the CITY agree that both Parcel A and Parcel B, as defined herein, may be acquired to construct the Primary Site Plan. Should the Developer fail to acquire either Parcel A or Parcel B, or both, the Developer shall instead commit to the construction of the Alternate Site Plan A-1 or Alternate Site Plan A-2. The Developer and the CITY agree that failure to acquire Parcel B will not alter the overall development program, and the recreational elements will be designed and confined to the boundaries of City owned parcels which comprise Greenleaf Park.

(a) **The Alternate Site Plans:** is defined as follows and is illustrated in **Exhibit D** attached hereto as Alternate Site Plan A-1 and Alternate Site Plan A-2:

Alternative Site Plan A-1

- i. **The North Building Component:** 6 Story Mixed Use Building with 5,225 Gross Square Feet of Ground Level Retail, Five (5) Live Work Units, 22,900 Gross Square Feet of Commercial with covered drop off, Fourteen (14) Mid Rise Residential Units, a Parking Garage with the required parking spaces to support the Project in tandem with other parking facilities of the Project, and a Rooftop Event Space (collectively the "**North Building Component**"), any variance in the gross square footage of the commercial Components or the number of units in the residential Components, in each case, greater than ten percent (10%) shall require the approval of the City Commission, which approval shall not be unreasonably withheld.
- ii. **The South Building Component:** 6 Story Mixed Use Building with 21,615 Gross Square Feet of Ground Level Retail, a Parking Garage with the required parking spaces to support the Project in tandem with other parking facilities of the Project and Residential Liner, 239 Mid Rise Residential Units, and a 21,500 Square Foot Amenity Deck (collectively the "**South Building Component**"), any variance in the gross square footage of the commercial Components or the number of units in the residential Components, in each case, greater than ten percent (10%) shall require the approval of the City Commission, which approval shall not be unreasonably withheld.

- iii. **The Residential Building Component:** 3 Story Residential Building with Thirty-Six (36) Apartment Flats (each a "**Unit**" and, collectively, the "**Units**"); any variance in the gross square footage of the commercial Components or the number of units in the residential Components, in each case, greater than ten percent (10%) shall require the approval of the City Commission which approval shall not be unreasonably withheld.
- iv. **The Public Recreational Space Component:** The construction of Greenleaf Park which is inclusive of the City Owned Future Greenleaf Park site (currently known as 1300 NE 38th Street) and potentially Parcel B (as defined in the RFP #011322, more specifically described in **Exhibit A** attached hereto. The park shall include an Open-Air Pavilion, Central Courtyard, Basketball Court, Two (2) Tennis Courts, Playground with Shade Canopy, Open Play area, fencing, lighting, conduit as specified and Parking (collectively the "**Public Recreational Space Component**"). The ten percent (10%) variance shall not apply to the Public Recreational Space Component.
- v. **The Woonerf Component:** 13,597 Gross Square Feet of Greenspace with Three (3) green island spaces. The Woonerf shall include a finished element which shall extend to the edge of the Florida East Coast Railroad (FEC) Right-of-Way as defined herein as the "**Enhanced Woonerf**" (collectively the "**Woonerf Component**"). The ten percent (10%) variance shall not apply to the Woonerf Component.
- vi. **The Train Station Component:** A 500 Foot by 17 Foot (500' x 17') Station Platform and associated amenities as required by the Florida Department of Transportation (FDOT) or other authorized commuter rail agency (collectively the "**Train Station Component**"). The ten percent (10%) variance shall not apply to the Train Station Component.
- vii. **The Open Space Component:** A bioswale and Walking Path, Dog /Pocket Park with preservation tree (collectively the "**Open Space Component**") will represent a minimum of 25% of the net lot area of the site and rooftop amenities will represent a minimum of 10% of the net lot area of the site, any reduction in the calculated square footage of such components greater than ten percent (10%) shall require the approval of City Commission, which approval shall not be unreasonably withheld; provided however that if Parcel A is not acquired by PURCHASER, then, such bioswale shall not be constructed and shall not be included in the Project.
- viii. **The Public Parking Component:** 195 public parking spaces shall be designated free to the public, of which approximately 135 spaces shall be within the parking structures located in the North Building and the South Building, and approximately sixty (60) spaces which shall be surface parking spaces (collectively the "**Public Parking Component**"). The ten percent (10%) variance shall not apply to the Public Parking Component.

Alternate Site Plan A-2

- i. **The North Building Component:** 5 Story Mixed Use Building with 11,000 Gross Square Feet of Ground Level Commercial/Retail, Forty-Two (42) Mid Rise Residential Units, a

Parking Garage with the required parking spaces to support the Project in tandem with other parking facilities of the Project, and a Rooftop Event Space (collectively the “**North Building Component**”), any variance in the gross square footage of the commercial Components or the number of units in the residential Components, in each case, greater than ten percent (10%) shall require the approval of the City Commission, which approval shall not be unreasonably withheld.

- ii. **The South Building Component:** 6 Story Mixed Use Building with 21,615 Gross Square Feet of Ground Level Retail, a Parking Garage with the required parking spaces to support the Project in tandem with other parking facilities of the Project and Residential Liner, 239 Mid Rise Residential Units, and a 21,500 Square Foot Amenity Deck (collectively the “**South Building Component**”), any variance in the gross square footage of the commercial Components or the number of units in the residential Components, in each case, greater than ten percent (10%) shall require the approval of the City Commission, which approval shall not be unreasonably withheld.
- iii. **The Residential Building Component:** 3 Story Residential Building with Thirty-Six (36) Apartment Flats (each a “**Unit**” and, collectively, the “**Units**”); any variance in the gross square footage of the commercial Components or the number of units in the residential Components, in each case, greater than ten percent (10%) shall require the approval of the City Commission which approval shall not be unreasonably withheld.
- iv. **The Public Recreational Space Component:** The construction of Greenleaf Park which is inclusive of the City Owned Future Greenleaf Park site (currently known as 1300 NE 38th Street) and potentially Parcel B (as defined in the RFP #011322, more specifically described in Exhibit A attached hereto. The Park shall include an Open-Air Pavilion, Central Courtyard, Basketball Court, Two (2) Tennis Courts, Playground with Shade Canopy, Open Play area, fencing, lighting, conduit as specified and Parking (collectively the “**Public Recreational Space Component**”). The ten percent (10%) variance shall not apply to the Public Recreational Space Component.
- v. **The Woonerf Component:** 13,597 Gross Square Feet of Greenspace with Three (3) green island spaces. The Woonerf shall include a finished element which shall extend to the edge of the Florida East Coast Railroad (FEC) Right-of-Way as defined herein as the “Enhanced Woonerf” (collectively the “**Woonerf Component**”). The ten percent (10%) variance shall not apply to the Woonerf Component.
- vi. **The Train Station Component:** A 500 Foot by 17 Foot (500’ x 17’) Station Platform and associated amenities as required by the Florida Department of Transportation (FDOT) or other authorized commuter rail agency (collectively the “**Train Station Component**”). The ten percent (10%) variance shall not apply to the Train Station Component.
- vii. **The Open Space Component:** A bioswale and Walking Path, Dog /Pocket Park with preservation tree (collectively the “**Open Space Component**”) will represent a minimum of 25% of the net lot area of the site and rooftop amenities will represent a minimum of 10% of the net lot area of the site, any reduction in the calculated square footage of such components greater than ten percent (10%) shall require the approval of City Commission,

which approval shall not be unreasonably withheld; provided however that if Parcel A is not acquired by PURCHASER, then, such bioswale shall not be constructed and shall not be included in the Project.

- viii. **The Public Parking Component:** 195 public parking spaces shall be designated free to the public, of which approximately 135 spaces shall be within the parking structures located in the North Building and the South Building, and approximately sixty (60) spaces which shall be surface parking spaces (collectively the “**Public Parking Component**”). The ten percent (10%) variance shall not apply to the Public Parking Component.

(b) **Results if Developer Does Not Acquire Parcel A, Parcel B or Both:** The following provisions shall apply in the event that the Developer fails to acquire Parcel A, Parcel B, or both:

- (i) **Failure to Acquire Parcel A:** If the Developer fails to secure Parcel A as a part of the development, then the Developer shall construct one of the Alternate Site Plans. The Developer and the City agree that all other provisions, commitments, financial agreements, incentives, or inducements, agreed to between the parties shall remain the same, despite the decision to construct the Alternate Site Plan.
- (ii) **Failure to Acquire Parcel B:** The Developer shall provide the CITY with \$500,000.00 in capital improvements (construction value) proximate to the development if the Developer fails to acquire title to Parcel B on or before the Closing. These capital improvements shall include, at the discretion of the CITY, the demolition of Greenleaf Park as defined herein, or NE 13th Avenue Improvements, or NE 36th Street Pump station relocation, or other improvements within the proximate boundary illustrated in **Exhibit F** attached hereto. The above-mentioned public benefit shall be completed and accepted by the CITY no later than the date of Substantial Completion for the Project. The Developer shall provide the CITY with a cost estimate for the capital improvement(s). Should the CITY approve the cost estimate and direct the Developer to proceed with such capital improvement(s), then, the CITY and the Developer agree that any capital construction cost in excess of Five Hundred Thousand Dollars (\$500,000) shall be paid for by the CITY (and any such excess costs incurred by the Developer with respect to such capital improvement(s) shall be reimbursed by the CITY).
- (iii) **Failure to Acquire both Parcel A and Parcel B:** If the Developer fails to secure both Parcel A and Parcel B, then the provisions of Sections 3.2(b)(i) and 3.2(b)(ii) shall apply.

3.3 **Government Approvals.** Only conceptual designs have been reviewed by the CITY and no Government Approval by the CITY has been issued. The CITY hereby acknowledges and agrees that either the Primary Site Plan, as shown on **Exhibit C**, or the Alternate Site Plans under the described conditions in Section 3.2, as shown on **Exhibit D**, attached hereto and made a part hereof, are acceptable to the CITY; provided that any variance in the gross square footage of the commercial components in such Site Plan or the number of units in the residential components in such Site Plan, in each case, greater than ten percent (10%) shall require the approval of the City Commission, 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 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 prior to closing the Property, but no longer than what is shown on the Critical Path, as revised from time-to-time in accordance with this Agreement, the Developer shall submit to the CITY for

its review and approval, all applications and other submittals required to obtain the Government Approvals for the Project, such approval not to be unreasonably withheld, delayed or conditioned provided applications and other submittals are consistent with the approved Project and comply with all Applicable Laws. Following such review and approval, the CITY hereby agrees to execute and deliver to the Developer, in the CITY'S capacity as the owner of the Property, all applications and other submittals required to obtain the Government Approvals. If any such documents in which the CITY'S joinder is requested contain material financial obligations binding (or which may become binding) upon the CITY, such obligations must be assumed by the Developer. If the Purchase and Sale Agreement or this Agreement is terminated, then upon the CITY'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, 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 development 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. The CITY shall approve the foregoing if they are substantially consistent with the Primary Site Plan or the Alternate Site Plan attached hereto as **Exhibits C and D**. Thereafter, the Government Approvals shall proceed in accordance with the City's ordinances and Land Development Code and the representative design elements and style portion of the documents, once approved by the CITY, will be the "Architectural Scheme" for the Project.

3.4 Third Party Review To Assist With Government Approvals. The Developer may at its sole discretion 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. The Developer shall be responsible for any and all additional costs associated with the engagement of the outsourced reviews.

3.5 Site Plan. The CITY hereby acknowledges and agrees that the Developer's Primary Site Plan, as shown on **Exhibit C** and the Alternate Site Plans, as shown on composite **Exhibit D**, attached are conceptual designs which have been reviewed and no approval has been issued. The foregoing shall in no way constitute or be construed as the approval or issuance of a 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. For the avoidance of doubt, notwithstanding anything to the contrary set forth in this Agreement or the Purchase and Sale Agreement, the Developer shall have the sole right and discretion to designate the site plan that shall be used to develop the Project (i.e. whether the Primary Site Plan or one of the two Alternate Site Plans).

(a) Developer shall in consultation with CITY staff and the CITY traffic/engineering consultants prepare a conceptual, preliminary traffic and circulation plan for the Project. The complete traffic and circulation plan will be prepared as part of this Site Plan approval process. All landscaping shown on the proposed Site Plan shall be compliant with the City's code requirements. The entire proposed Site Plan, to be based upon either the Primary Site Plan or the Alternate Site Plans attached as **Exhibits C and D** attached hereto, shall be approved by the City and all applicable Governmental Authorities in order for the Developer to proceed with development of the Project. No changes, alterations or modifications shall be made to the Site Plan (either prior to or after Government Approvals) without the prior written approval of the CITY, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however such approval may be withheld in the CITY's sole and absolute discretion if the requested change, alteration or modification consists of a Material Change.

(b) For purposes of this Agreement, a "**Material Change**" to the Site Plan means and refers to a requested change, alteration or modification that (i) increases or decreases the total number of residential units by greater than ten percent (10%), (ii) decreases the amount of square footage in the Commercial Components by greater than ten percent (10%), (iii) eliminates or decreases any improvement constituting the Public Recreational Space, the Woonerf, the Train Station Component, Public Parking, or, in the aggregate with all other changes, alterations and modifications decreases the square footage of open space, building size, landscaped area or any other common areas by ten percent (10%) or more, variance shall not apply to the Public Recreational Space, the Woonerf, the Train Station, Public Parking Spaces, or the Affordable Housing dedication provided by Developer, (iv) significantly modifies traffic circulation on the site as determined by the CITY MANAGER and/or (v) significantly alters the Architectural Scheme from that previously approved by the CITY, as determined by the CITY MANAGER.

(c) All Material Changes are subject to requirements of the City's review process.

(d) Following issuance of the Government Approval for the Site Plan for the Project by the City, the Developer shall not initiate or request review by the City of any changes or alterations to the approved Site Plan for the Project except for Permitted Changes (hereinafter defined), which approval shall be granted in CITY's sole discretion. The CITY shall expeditiously process all requests for Material Changes.

(e) 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 government regulation or law, (ii) any unforeseen site conditions, or (iii) any life safety issues.

3.6 Timeline; Development, Government Approvals and Permits.

(a) Within two hundred and ten (210) calendar days after the expiration of the Inspection Period, the Developer shall provide the City with a Parcel Acquisition Declaration in accordance with Section 10(c) of the Purchase and Sale Agreement. Such declaration will confirm the Developer's selection of the final site plan. The final site plan must be based upon either the Primary Site Plan or the Alternate Site Plan A-1 or Alternate Site Plan A-2 attached as **Exhibits C and D** attached hereto. Any variance in the square footage of the commercial Components or in the number of residential units in the residential Components, in each case, greater than ten percent (10%) shall require the approval of the City Commission, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the 10% variance shall not apply to the Woonerf, Public Recreational Facilities, the Train Station, or Affordable Housing dedication to be provided by Developer. The CITY 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 CITY 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 CITY, then, the Plans and Specifications submitted shall be deemed approved as to compliance with the elements of this Agreement by the CITY.

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

3.7 Critical Path.

(a) The Developer will be responsible for initiating and diligently pursuing the Government Approval applications in accordance with the critical path timeline attached hereto as composite **Exhibit B**

(the “**Critical Path**”), which Critical Path, as amended from time to time, shall serve as the Developer's time frame for performance with respect to obtaining the Government Approvals, to obtaining the Permits for the Project and constructing the Project, subject to the terms of the Purchase and Sale Agreement and this Agreement.

(b) Notwithstanding any other provisions of the 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 governmental approvals or restrictions not due to the fault, delay or negligence of the Developer, (xii) delay or negligence by the CITY; (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; or (xiv) similar events not reasonably foreseeable and beyond the reasonable control of Developer (collectively, “**Force Majeure**”). “Force Majeure” shall not apply to a new or ongoing pandemic, except if said pandemic results in the closure or reduction of CITY government operations that quantitatively or qualitatively affects the Governmental Approval process. In addition to the foregoing, the PURCHASER shall only be permitted to invoke the tolling and extension of permits and other authorizations granted under Section 252.363, Florida Statutes, to extend the deadlines under this Agreement for declarations of a state of emergency for natural emergencies declared for Broward County which directly and materially adversely affect the ability of the PURCHASER to meet the schedule as set forth in this Agreement.

(c) The Developer will be required to provide notice to the CITY that the Developer is requesting an extension due to Force Majeure. The Developer must provide a list of the reasons why the Force Majeure provisions apply and together with supporting documentation as to the extension on the Critical Path. The City Manager shall, within ten (10) business days after receipt of any such list and supporting documentation, provide notice to Developer as to whether CITY disputes that any of the events included in the definition of “Force Majeure” would give rise to an extension of time for Developer's performance based on Force Majeure. In which case, the Developer and the CITY agree to enter into binding arbitration in order to determine if a reasonable extension should be granted. In the event the CITY agrees with the extension requested by Developer, or any portion of the requested extension, then the Critical Path schedule shall be so extended hereunder. The City Manager may not issue extensions for Force Majeure in excess of ninety (90) calendar days in total with the exception of (i) delay or negligence by the CITY, (ii) appeals of governmental approvals or lawsuits by any third party (whether individual or otherwise) instituted to prevent the issuance of any approvals or permits, (iii) the conditions of acts of God; (iv) new occurrences of pandemic, (v) new governmental restrictive laws, regulations, policies, orders, decrees or other action(s) with respect to COVID 19; (iv) terrorism; (v) once construction begins, named storms, hurricanes, inclement weather which is in excess of those days normally forecasted by the National Weather Service for the given month in South Florida which materially and adversely interfere with construction and (vi) unforeseen physical conditions on the site. For the avoidance of doubt, such ninety (90) calendar day time period constitutes a limitation of the authority of the City Manager to grant an extension without separate action by the City Commission; provided that if such Force Majeure extends beyond such ninety (90) calendar day time period, then the approval of the City Commission shall be required for any such extension, which approval shall not be unreasonably withheld or delayed.

(d) The CITY shall cooperate with the Developer in processing all necessary Government Approvals 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 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 under the police power. Nothing in this Agreement is intended to limit or restrict the powers and responsibilities of the City in acting on such applications by virtue of the fact that the CITY may have been required to consent to such applications as the owner of the Property. Nothing in this Agreement shall entitle the Developer and/or the CITY to compel the City to take any action in its police power/quasi-judicial capacity, except to timely process the applications. The Developer shall pay for all permit fees, impact fees, and all other costs and expenses associated with the Government Approvals and as required by Applicable Laws. The CITY agrees to use its good faith efforts to assist the Developer in expediting the review and approval process with applicable Governmental Authorities. Nothing in this Agreement is intended to, nor shall be construed as, zoning by contract.

3.8 Failure to Provide Government Approvals. In the event that the CITY and or its boards, departments, or agencies, acting in their police power/quasi-judicial capacity to consider certain governmental actions, fails to provide Government Approvals necessary to construct the Project prior to the Site Plan Approval Period, as such time period may be extended as set forth in the Purchase and Sale Agreement after the Developer submitted applications necessary for the Project along with Plans and Specifications in compliance with Applicable Laws and in accordance with the Developer's Primary Site Plan shown on Exhibit C or Alternate Site Plan A-1 and A-2 as shown on composite Exhibit D attached hereto and all applicable timeframes for appeals have been exhausted to the City Commission (then, such failure shall entitle the Developer to terminate this Agreement and receive a return of the Earnest Money).

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 the Permits 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 the Closing under the Purchase and Sale Agreement, 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"); provided however that although the design and construction work related to the Greenleaf Park facilities, the Train Station, the Woonerf, the Enhanced Woonerf and the pump station shall not be included in the definition of the "Work" under this Agreement and such design and construction work shall be set forth in the separate agreements to be entered into between the CITY and the Developer (provided that Kaufman Lynn Construction Inc. shall be the general contractor for such construction work). The Developer is responsible for the design and construction of the Greenleaf Park, The Woonerf, The Enhanced Woonerf, and the Train Station (as defined in, and subject to, Section 4.4) (provided that Kaufman Lynn Construction Inc. shall be the general contractor for such construction 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) 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 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 including all punch list items for any part of the Work undertaken on behalf of the CITY for any improvements constituting the Public Recreational Component, the Train Station Component if applicable in accordance with the *Train Station Delivery Agreement*, the Northeast 36th Street Pump Station relocation, and any other public improvements required under Section 3.2, substantially in accordance with Construction Documents, (a) all final certificates of occupancy (or their equivalent) all other certificates, licenses, consents and approvals required for the permanent occupancy, use and operation of all of the Units and common areas in the Project shall have been issued or obtained from the appropriate Governmental Authorities, (b) 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 (the respective "**Project Substantial Completion Date**").

4.2 The Woonerf. In accordance with the Response to the RFP submitted by the City, the Developer shall cause the design, engineering, permitting, construction, and completion of the Woonerf Component, as defined herein. The parties agree that the portions of the Woonerf which exist within the CITY right-of-way will remain the property of the CITY and the portions of the Woonerf which exist within the private property boundaries shall remain the property of the Developer. Developer may from time to time request the closure of the City roadway and right-of-way located along the Woonerf Component shall only be granted through the City's Special Event Permit process, which shall not be unreasonably withheld. The parties further agree that the Developer shall be responsible for the maintenance of the hardscape, landscape, lighting, trash, street furnishing, and treatments and the City shall be responsible for the maintenance of the sub-structure of the roadway, drainage, and capital replacement costs associated with same. The CITY and the Developer shall enter into a Long-Term Maintenance Agreement which shall dictate the agreed upon level of service, maintenance, 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 Woonerf, and the CITY shall be responsible for structural repairs to the roadway and scheduled Capital Replacement, as set forth in the Long-Term Maintenance Agreement. The execution of the Long-Term Maintenance Agreement shall be in accordance with the provisions set forth in the Purchase and Sale Agreement.

4.3 The Public Recreational Space. Notwithstanding of Section 3.2, *Failure to Acquire Parcels*. In accordance with the RFP the Developer shall cause the design, engineering, permitting, construction, and completion of The Public Recreational Space known as Greenleaf Park as defined in Section 2.2(a)(4) of this Agreement. The Developer shall engage separate architectural and/or engineering firm(s) to design and engineer the Greenleaf Park on City owned lands in accordance with the Purchase and Sale Agreement. The CITY and the Developer shall cause Kaufman Lynn Construction Inc., as contractor, to enter into a Construction Agreement to cause the permitting, construction, and completion of the Greenleaf Park on City owned lands in accordance with the Purchase and Sale Agreement. The CITY shall review and approve all Plans and Specifications for the Greenleaf Park prior to the submittal of building

permits and in accordance with the Critical Path attached hereto as **Exhibit B**. Developer shall dedicate Parcel B to the CITY in accordance with the Purchase and Sale Agreement.

4.3.1 **City Responsibilities.** The City shall be responsible for all costs associated with the rezoning of Greenleaf Park and Parcel B if applicable. The City shall complete the rezoning of Greenleaf Park in accordance with the Critical Path attached hereto as **Exhibit B**. Furthermore, the CITY shall be responsible for all costs associated with the demolition and clearing of Greenleaf Park. The CITY shall deliver the City-owned site to the Developer Pad Ready as defined herein, unless otherwise provided in Section 3.2(b) in the event Parcel B is not acquired by the Developer for any reason.

4.4 **The Train Station.** The CITY and Developer agree that the construction of the Train Station is a benefit to the Project and to the community and as such the Developer has committed to design, engineer, permit, construct, and complete the Train Station, with a maximum expenditure of \$1,900,000 in the event (and only in the event) the following three (3) Milestones (each, a "**Train Station Milestone**") are achieved.

- (a) **Train Station Milestone 1.** In the event (and only in the event) both the Broward County Board of County Commissioners and the Broward County Metropolitan Planning Organization approve the initial Locally Preferred Alternative (LPA) documentation naming the City of Oakland Park Downtown as a commuter rail station location prior to the earlier of Closing or August 31, 2023 ("**Train Station Milestone 1**"), then at Closing the Developer shall make a non-refundable cash contribution to the CITY in the amount of \$633,000 ("**Train Station Contribution No. 1**") for consideration of a future train station or other transportation improvements/enhancements within the boundaries of the Oakland Park Downtown Development District as further defined in the CITY Code of Ordinances, with said amount being above the \$11,206,580 Purchase Price. If the "Train Station Milestone 1" is not achieved, then, the Developer is and shall be fully released from any and all responsibilities pertaining to the Train Station. Moreover, the CITY agrees to work with the Developer to support the Developer's efforts to apply for impact fee credits from Broward County with respect to the transportation improvements as a credit against the County's Transportation Concurrency Assessment Fee.
- (b) **Train Station Milestone 2.** In the event (and only in the event) "Train Station Milestone 1" is achieved and the National Environmental Policy Act ("**NEPA**") project development process concludes either of the items below (labeled as "i" and "ii") prior to the earlier of Closing or September 29, 2024 ("**Train Station Milestone 2**"), then at Closing the Developer shall make a non-refundable cash contribution to the CITY in the amount of \$1,275,000 ("**Train Station Contribution No. 2**"), which shall be paid in lieu of of the **Train Station Contribution No. 1**, and shall be for consideration of a future train station or other transportation improvements/enhancements within the boundaries of the Oakland Park Downtown Development District as further defined in the City Code of Ordinances, with said amount being above the \$11,206,580 Purchase Price, then, the Developer and the CITY agree that "provision (b)" shall supersede all of "provision (a)" above. If the "Train Station Milestone 2" is not achieved, then the Developer shall only be responsible for payment related to Train Station Milestone 1 and Train Station Contribution No. 1, to the extent applicable. Moreover, the CITY agrees to work with the Developer to support the Developer's efforts to apply for impact fee credits from Broward County with respect to the transportation improvements as a credit against the County's Transportation Concurrency Assessment Fee.

(i) A Categorical Exclusion (“**CE**”) is declared by the Federal Government in accordance with 40 CFR 1580.4 (https://www.energy.gov/sites/prod/files/NEPA-40CFR1500_1508.pdf) and it is formally documented by the Federal Government that neither an environmental assessment (“**EA**”) nor an environmental impact statement (“**EIS**”) is required.

(ii) A Finding of No Significant Impact (“**FONSI**”) is issued and formally documented by the Federal Government in accordance with 23 CFR Part 771.119-123 (<https://www.federalregister.gov/documents/2018/10/29/2018-23286/environmental-impacts-and-related-procedures>).

- (c) **Train Station Milestone 3.** In the event (and only in the event) all requisite governmental approvals are provided for the construction of the Train Station (including the required achievement of both the “Train Station Milestone 1” and the “Train Station Milestone 2” referenced above) prior to the earlier of the Closing or September 29, 2024 from all relevant governmental agencies and entities with authority and/or jurisdiction over the Train Station’s construction and location between 34th and 38th streets along 12th Avenue (“**Train Station Milestone 3**”), then the Developer shall cause the design, engineering, permitting, construction, and completion of the Train Station, with a maximum expenditure of \$1,900,000 (and this “provision (c)” superseding all of both “provision (a)” and “provision (b)” above), thereby rendering inapplicable any payment related to “Train Station Milestone 1” and “Train Station Contribution No. 1” and any payment related to “Train Station Milestone 2” and “Train Station Contribution No. 2.”.

Moreover, the CITY agrees to work with the Developer to support the Developer’s efforts to apply for impact fee credits from Broward County with respect to the Train Station as a credit against County’s Transportation Concurrency Assessment Fee. The CITY and the Developer agree that if an opportunity arises to fund the cost of the Train Station, the CITY will make the requisite applications to request such funding. However, additional grant funding shall first be dedicated to the payment of costs for the Train Station in excess of \$1,900,000 if applicable. If the “Train Station Milestone 3” is not achieved, then, the Developer is and shall be fully released from any and all responsibilities pertaining to the Train Station except the responsibilities outlined in “Train Station Milestone 2”, to the extent applicable.

4.4.1 **Train Station Delivery Agreement.** The CITY and Developer will jointly cooperate to execute a Train Station Delivery Agreement in accordance with the Purchase and Sale Agreement. The Train Station Delivery Agreement will govern the critical path, design, construction, and development cost responsibilities associated with the completion of the Train Station proximate to the development. The City and Developer agree that the development and execution of the Train Station Delivery Agreement shall not be required if Train Station Milestones 1 and 2 are not achieved in accordance with the provisions of Section 4.4(a) and (b).

4.5 **Northeast 38th Street Improvements.** The Developer shall cause the design, engineering, permitting and construction of the Northeast 38th Street Improvements in accordance with the requirements of the CITY’s Transportation Engineer as described as NE 38th Street Reconfiguration “Option Two” as illustrated and attached hereto as **Exhibit E**. The CITY shall provide Local Transportation Fee credits to the Developer, which shall be equal to the cost for the design, engineering, permitting and construction of the Northeast 38th Street Improvements. The Developer may utilize the credits to satisfy Local

Transportation Fees in accordance with Section 163.31801(5) (a), Florida Statutes, and the Developer may sell or transfer such credits in accordance with Section 163.31801(10), Florida Statutes.

4.6 Pump Station Relocation. The CITY and the Developer agree that it is beneficial to both parties to collaborate on the relocation of the existing pump station located at the corner of Northeast 36 Avenue and NE 12th Avenue. The Developer shall collaborate with the CITY to design the pump station to ensure the advantageous relocation within the Project area. Upon review and approval of the cost estimate submitted by the Developer to the CITY, the CITY may direct the Developer to undertake the relocation and shall reimburse the Developer for the entire cost of the relocation of the pump station, subject to the provisions in Section 3.2(b)(ii), including, without limitation, the permitting costs, the pre-construction design costs, the equipment rental costs, the labor and materials costs, the testing costs, the inspection costs, the construction oversight costs, the third party engineering, architectural and any other costs and expenses incurred by Developer to relocate such pump station in order that such relocated pump station is fully optionally and compliance with applicable local law. The CITY is not obligated to proceed with the pump station relocation unless the pump station relocation project and the aggregate cost of such relocation are deemed advantageous to the CITY. In the event that the CITY desires to engage the Developer to construct such pump station relocation project, then, prior to commencing such work, (i) the CITY and the Developer shall cause Kaufman Lynn Construction Inc., as contractor, to enter into a Construction Contract in form and substance reasonably acceptable to the CITY, the Developer and Kaufman Lynn Construction Inc., as referenced in the Purchase and Sale Agreement with respect to such pump relocation construction project and (ii) the Developer shall provide the CITY a written request for reimbursement that documents the aggregate cost of the pump station relocation and the CITY shall reimburse the Developer (and/or Kaufman Lynn Construction Inc.) within thirty (30) calendar days from the date of the request.

4.7 Public Parking Spaces. The Developer shall, as a part of the requirements for the development, construct Parking Garages to support the Project. In accordance with the RFP Submittal, the Developer shall cause the design, engineering, permitting, construction, and completion of 195 additional parking spaces of which approximately 135 parking spaces shall be in parking structures and approximately 60 spaces shall be surface parking. The additional parking spaces shall be dedicated to the public (referred to as “**designated public parking**”) and shall be over and above the parking spaces needed to meet the parking requirement per the City’s Land Development Code. The Developer shall designate these spaces in perpetuity as free public parking spaces. The CITY and the Developer shall execute a Parking Maintenance Agreement in accordance with the Purchase and Sale Agreement.

4.8 Construction Contract. All contractors and subcontractors on the Project shall be properly licensed and insured and properly skilled in the type of work being done. In accordance with the provisions in the Purchase and Sale Agreement, the CITY and the Developer shall cause Kaufman Lynn Construction Inc., as contractor, to enter into (i) a Construction Contract in form and substance reasonably acceptable to the parties for the relocation of the NE 36th Street Pump Station and the development of Greenleaf Park and (ii) a Construction Contract in form and substance reasonably acceptable to the parties with respect to the construction of the Woonerf and the Enhanced Woonerf.

4.9 Marketing and Leasing. The Developer shall be solely responsible for the marketing, and leasing, and/or sale of all Units and the Commercial / Retail Component included in the Project. The CITY shall have the right to object to any marketing and leasing activities that incorporate recognized signs of hatred or discrimination against any race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, gender identity or expression, or sexual orientation, words or symbols or representations that are violent, obscene, offensive or derogatory.

4.10 Financing of Project. The parties acknowledge and agree that the Developer will obtain Developer Financing for the construction of the Project in an amount not less than Forty Million Dollars

(\$40,000,000). Notwithstanding the Purchase and Sale Agreement, within no less than thirty (30) calendar days prior to Closing, the Developer shall obtain from an Institutional Lender the Construction Loan Commitment from the entities providing Authorized Financing reflecting all material terms of Authorized Financing and containing no conditions that are not capable of satisfaction by the Developer in order to obtain such construction loan for such Project. All financing, as contemplated in this Agreement, shall require an equitable contribution by the Developer of at least twenty percent (20%) of the cost of all improvements, construction, soft costs, and development of the total Project.

4.11 Right of Repurchase. The City shall have the right to repurchase the Property in accordance with the Repurchase Agreement and the Memorandum of Agreement to be executed by the City and the Developer prior to the conveyance of the City Property which shall implement, and be consistent with, the terms and provisions of the Right of Repurchase granted to the City which is set forth in Section 18 of the Purchase and Sale Agreement.

4.12 Public Benefits and Community Centered Initiatives.

- (a) Affordable Housing Designation: The Developer shall dedicate ten percent (10%) of the total residential units in the Project to Affordable Housing for a period of five (5) years. The Affordable Housing dedication shall be at 120% to 140% of the Broward County Area Median Income Level as published by the State of Florida Housing Finance Corporation. If the CITY in partnership with another governmental agency is successful in securing additional financial resources in support of Affordable Housing, then the Developer shall commit to extending the Affordable Housing dedication period commensurate with the requirements of the resources; provided however that any such additional financial resources shall require the prior written approval and consent of the Developer to the extent such funding (i) requires an extension of the initial five year time period to a time period in excess of an additional five years or (ii) otherwise imposes any other Affordable Housing conditions upon any of the residential units in the Project, in each case, as a condition to receiving such funding.
- (b) Small/Minority/Women Owned/ Business Participation and Local Workforce Training Program: The Developer shall take steps necessary to encourage the participation of Small/Minority/Women Owned/ businesses and the Local Workforce in the construction of the Project. In accordance with the submittal of RFP #011322, the Developer has set a goal of eighteen percent (18%) participation from Small/Minority/Women Owned/ businesses in the construction of this Project. The Developer shall provide the City with a comprehensive report on the status of this goal at the commencement of construction and substantial completion, or as requested by the CITY with fourteen (14) calendar days written notice. The Developer has also set forth a program to encourage local workforce participation. The Developer shall provide the City with a comprehensive report on the status of this goal at the commencement of construction and substantial completion, or as requested by the CITY with fourteen (14) calendar days written notice.
- (c) Community Outreach Strategy. The Developer has set forth a community outreach and public involvement plan that includes, but is not limited to, the following: community meetings and workshops (in-person / virtual); media relations (including press releases and announcements to be shared with local, regional and national media outlets), the CITY communications team collaboration; public presentations and speaking engagements; and community partnerships with local organizations.
- (d) Public Art: The CITY and the Developer shall jointly and mutually identify locations throughout the Project which shall include public art. Prior to the installation of any public art throughout the site, the Developer shall gain approval from the City Manager in accordance with the CITY'S

public art process.

- (e) Priority Leasing: The Developer will provide priority leasing (two weeks before leasing opens up to the general public) for prospective residential tenants that meet the following criteria:
 - o Current primary residence (at time of application) is within the City of Oakland Park Downtown Development District area; and
 - o Current employment (at the time of application) includes (but not limited to): teachers, police officers, firefighters, nurses, paramedics, emergency medical technician (EMT), airline pilots, flight attendants, active military, government employees (Federal, State, Broward County, City of Oakland Park); or
 - o Veterans.

4.12 Collaboration and Partnership Initiatives.

- (a) Grants: The Developer and the CITY will collaborate to request grants that benefit the CITY and or the Downtown. The CITY and the Developer agree that if the CITY is the grant applicant, the CITY will be responsible for writing and preparing the grants, and Developer will partner with, and/or commit commercially reasonable grant writing support resources in order to support the preparation of grant applications which request that such grants be awarded to the CITY for use in development and construction of the Project. The CITY and the Developer agree that the CITY shall be the sole beneficiary of said grants. Notwithstanding the foregoing, the CITY and the Developer agree that if a funding opportunity for the Train Station arises, then, the CITY will be responsible for preparing the required funding applications and related fund requesting documents, however funding associated with the Train Station shall first be applied to the payment of costs in excess of \$1,900,000 if applicable and then any excess funds shall be provided to the Developer. Moreover, the CITY agrees to work with the Developer to support the Developer's efforts to apply for impact fee credits from Broward County with respect to the transportation improvements as a credit against the County's Transportation Concurrency Assessment Fee.
- (b) Tower Rights/Broadband Service: The Developer may consider allowing the CITY the license to place a communications tower on the roof of one of the buildings in the Project to support the CITY'S long-term goal of providing Broadband/Wi-fi Services in the Oakland Park Downtown District. The CITY shall be required to first provide the Developer with a written request for the license to install the tower on the roof of one of the buildings in the Project. The written request shall include specifications, plans for ongoing insurance and maintenance, and placement and a commitment by the CITY to be responsible for the construction, installation, insurance and maintenance for such proposed tower. The installation of the tower shall be subject to the Developer's review and approval, which shall not be unreasonably withheld. If the tower project is approved by the Developer, then, the CITY shall be responsible for, and shall pay, for the installation, construction, ongoing insurance for, and ongoing maintenance of, the tower.
- (c) Advocacy: The CITY and the Developer shall use commercially reasonable efforts to jointly provide their individual resources to advocate at the State, local, and Federal level for beneficial policies, programs, and funding in support of the Project and its surrounding areas.

Article 5. Performance of the Work.

5.1 Developer shall commence construction of the Project pursuant to the Construction Documents within ninety (90) calendar days subsequent to the Closing Date. Following commencement of any Work, Developer shall diligently pursue in good faith the commencement and completion of the

Work in order that Substantial Completion of the Project is achieved no later than the Project Substantial Completion Date, subject to extension as provided in this Agreement.

5.2 Prior to commencement of construction for the Project or any portion thereof (including any site work), Developer shall cause to be obtained and delivered to the CITY, payment and performance bonds in amounts for the aggregate "hard construction costs" of the Project as required by the applicable bonding companies, covering any and all of the improvements to be constructed/installed in the Project (collectively referred to herein as the "**Bonds**"). Developer shall maintain such Bonds at all times during the performance of such Work for the Project. The Bonds shall in all respects conform to the requirements of Applicable Laws and shall (a) name the Developer as obligee; and (b) be in a form and substance reasonably satisfactory to the CITY and its legal counsel. Both parties agree that AIA Document A311 and AIA Document A312 are satisfactory forms. The surety(ies) providing the Bonds must be licensed, duly authorized, and admitted to do business in the State of Florida and must be listed in the Federal Register (Dept. of Treasury, Circular 570). Within ten (10) calendar days of issuance, Developer shall record the Bonds in the Public Records of Broward County, which may be recorded by attaching the same to the notice of commencement. In lieu of the "Bonds" provisions in this section, Developer's obligations regarding the Civic improvements may be secured by letters of credit in a form and substance reasonably satisfactory to the CITY and its legal counsel.

5.3 Except as may be otherwise expressly set forth in this Agreement and specifically excluding the CITY Project Expenses, all costs and expenses incurred by the CITY to administer this Agreement, all overhead costs of the CITY and all other costs and expenses incurred by the CITY to otherwise perform its obligations hereunder, Developer shall be responsible for all costs and expenses for the design, engineering, permitting, construction, administration, and inspection of the Work for the entire Project including, but not limited to, the following: (a) all labor and materials for the construction of the Work; (b) all compensation for the design professionals and engineers (and any other consultants) retained by Developer in connection with the preparation of the Primary Site Plan or Alternate Site Plan A-1 and A-2, and Government Approval, Construction Documents, and other documents prepared at the direction of Developer; (c) all permit, license, construction and impact fees and other fees of Governmental Authorities which are legally required at any time during the Developer's performance of the Work; (d) all costs associated with the installation, connection, removal, replacement, relocation and protection of all utilities and all related infrastructure including but not limited to water, sewer (except for NE 36th Street pump station relocation), storm water drainage, telephone, cable, or electric, and (e) all sales, consumer, use and other similar taxes for the Work, which are legally required at any time during the Developer's performance of the Work.

5.4 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, including, without limitation, appropriate fencing, dust control and security to prevent theft or vandalism on the Property and/or any materials, vehicles or improvements located on the Property; and (e) done so as to keep the Property on which the construction is being undertaken in a neat and clean condition, with all material construction debris removed off-site on a regular basis as required by the applicable Construction Contract. Developer shall require its contractor to mitigate the level of noise arising from construction activity at the Property between the hours of 7:00 a.m. and 8:00 a.m. each weekday that the Work is being performed at the Project. These mitigation efforts may include, but are not limited to, limiting or restricting the use of

heavy machinery, adjusting or modifying safety warning signals and coordinating louder activities for later times in the day. The foregoing noise mitigation efforts shall not be required for weekday construction activity performed after 8:00 a.m.. In the event that the Developer needs staging areas outside of the Property, Developer will be required to obtain the approval for the use of such property for staging from the owner of such property. Within one hundred twenty (120) calendar days after the Project Final Completion Date, Developer shall provide the CITY with a complete set of "as built" plans and specifications, including one set of printed "record" drawings and one set on CAD, together with one flash drive containing electronic data in a format of the "as-constructed" or "record" plans for the completed Project as it relates to the Public Recreational Component, The Woonerf, and Train Station Components, and right of way improvements (sidewalks, water and sewer connections, drainage).

5.5 In addition to any warranties provided by Applicable Laws, Developer shall cause the general contractor to warrant the Work for a period of one (1) year from the date of Substantial Completion of each material component of the Project, not to include, however, typical operating repairs and maintenance. Other than with respect to the foregoing warranty, all maintenance and repair obligations with respect to the Work shall be the responsibility of the Developer. The CITY and the Developer acknowledge that different Components of the Project may be substantially completed prior to the entire Project being substantially completed. Accordingly, such one year warranty shall commence with respect to the Substantial Completion of each major Component of the Project.

Article 6. Books and Records.

6.1 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 Public Recreational Component, The Woonerf, and Train Station Components, and right of way improvements (sidewalks, water and sewer connections, drainage).

Article 7. Default; Termination.

7.1 Developer Default. An "**Event of Default**" or "**default**" entitling CITY 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 and such failure shall continue without remedy for twenty (20) Calendar Days after written notice thereof from the CITY to the Developer; 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 Developer provides CITY with written notice within five (5) calendar days of receipt of the CITY's default notice advising the CITY 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

(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) Failure to Commence Construction. Failure to commence construction of the Project as required by the Critical Path schedule (subject to extension by Force Majeure events), as revised from time-to-time pursuant to this Agreement; or

(d) Abandonment of Project. The abandonment of the Project by Developer for more than sixty (60) consecutive calendar days, other than as a result of Force Majeure; or

(e) Failure to Complete by Completion Dates. The failure of the Developer to achieve Substantial Completion of the entire Project by the date set out in the Critical Path, subject to extension as a result of Force Majeure; or

(f) 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, without amending or re-submitting requests for the Government Approvals within one hundred twenty (120) calendar days; or

(g) 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

(h) 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

(i) 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

(j) 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

(k) Unpermitted Transfer. If the Developer effectuates a Transfer not permitted by this Agreement.

(l) Failure to Close. The Developer shall 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

Seller 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.

The parties acknowledge and agree that with respect to the Events of Default set forth in subsections (b) through (l) above, Developer is not entitled to any cure period except as may be expressly set forth therein or as may be set forth in the Purchase and Sale Agreement.

7.2 CITY's Remedies. Upon the occurrence of an Event of Default by the Developer, the CITY shall be entitled to terminate this Agreement and to equitable remedies (excluding specific performance) and, if the Event of Default occurs prior to the Closing Date, the following additional remedies set forth below:

7.2.1 If Developer fails to materially perform or observe any of the covenants, restrictions, requirements and/or stipulations to be performed and/or observed by Developer hereunder and such failure to perform or observe is not cured within twenty (20) Calendar Days after written notice thereof from CITY to Developer (or in the case of a default which cannot be cured in twenty (20) Calendar Days, Developer has failed to commence curing the default within such twenty (20) Calendar Day period), then, as CITY's remedy, (a), if the Event of Default occurred on or prior to the issuance to PURCHASER of the Government Approvals, then, the Earnest Money shall be delivered by the Escrow Agent to the PURCHASER and (ii) if the Event of Default occurred after the issuance to PURCHASER of the Government Approvals, then, subject to the Purchaser Termination Events, the Earnest Money shall be delivered by Escrow Agent to the CITY.

7.2.3 Upon the occurrence of an Event of Default by the Developer, the CITY shall have the right to require the Developer to assign to the CITY, 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 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 a copy of such documents. CITY shall not be entitled to punitive damages, or consequential damages, or loss profits damages from Developer, whether before or after the occurrence of the Closing.

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

(a) Failure to Observe Agreement. The CITY shall fail to observe, satisfy or perform any material term, covenant or agreement contained in this Agreement and such failure shall continue unremedied for twenty (20) Calendar Days after written notice thereof from the Developer to the CITY; 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 provides the Developer with written notice within ten (10) 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 sixty (60) calendar days in the aggregate after CITY'S receipt of the original written default notice.

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

7.4 Developer's Remedies. If CITY fails to materially perform or observe any of the covenants, restrictions, requirements and/or stipulations to be performed and/or observed by CITY hereunder, and such failure to perform or observe is not cured within twenty (20) Calendar Days after written notice thereof from Developer to CITY, then, provided Developer is not in material default herein, Developer's remedies for such default shall be limited to the recovery of the sum of (i) Developer's actual and direct damages, incurred (but not consequential indirect, special, incidental or speculative damages including, without limitation, lost profits, lost opportunities and punitive damages) and upon the receipt thereof, (ii) Developer's receipt of the Deposits and (iii) Developer's attorney fees and costs described in Section 16.13 incurred by Developer to collect items (i) and (ii), then, this Agreement shall become null and void, and neither party shall have any claims of whatsoever kind, type, nature or description against the other party.

7.5 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.

7.6 Reserved

7.7 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 may be permitted under Article 7 of this Agreement; or

(b) Failure of the CITY to provide the Government Approvals as defined herein, necessary to develop the Project as set forth in **Exhibit C or Exhibit D** attached hereto

(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.

7.8 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 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 (iii) not destroy originals without first offering to deliver the same to the CITY.

(b) Notwithstanding anything herein to the contrary, all representations and warranties of Developer shall survive the termination of this Agreement for a period of one (1) year along with any other obligations of Developer that expressly survive termination or by their nature need to survive termination in order to provide the CITY with ability to enforce its rights and remedies hereunder.

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

Article 8. Indemnification.

8.1 Indemnification by the Developer. The Developer agrees to indemnify and hold the CITY, 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), threatened or assessed against, levied upon, or collected from, the CITY arising out of, from, or in any way connected with or arising from the negligence, recklessness, or intentional wrongful misconduct of the Developer in the performance of this Agreement. Notwithstanding the foregoing, the Developer shall not be required to indemnify the CITY with respect to any liability, loss, damages, costs or expenses suffered as a result of the negligence, gross negligence and/or willful misconduct of the CITY or its agents. To the extent this indemnification clause or any other indemnification clause in this Agreement is subject to the provisions of Chapter 725, Florida Statutes, and such does not comply with Chapter 725, Florida Statutes, as such may be amended, such provision shall hereby be interpreted as the parties' intention for the indemnification clauses and to comply with Chapter 725, Florida Statutes, as such may be amended.

8.2 Limitation on Indemnification. Notwithstanding anything in this Article 8 to the contrary, Developer shall not have any obligation to indemnify or defend the CITY against any claims brought against the CITY by any third party challenging: the CITY's legal authority to sell all or any portion of the Property or enter into this Agreement, the 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 8.2 and any other provision in Article 8, this Section shall control and govern.

8.3 Survival. The provisions of this Article 8 shall survive the expiration or earlier termination of this Agreement.

8.4 Tort Liability. Any tort liability to which the CITY 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. The CITY expressly does not waive any of its rights and immunities under Applicable Law.

Article 9. Insurance. Prior to any activity by the Developer, Contractor, or Subcontractor on any portion of the Property, and at all times during the Term of this Agreement, Developer will be responsible for procuring and maintaining the insurance required by this Agreement, at Developer's sole cost and expense.

9.1 General Insurance Provisions.

- (a) All policies must be executable in the State of Florida.
- (b) All insurers must maintain an AM Best rating of A or better.
- (c) The terms and conditions of all policies may not be less restrictive than those contained in the most recent edition of the policy forms issued by the Insurance Services Office (ISO) or

the National Council on Compensation Insurance (NCCI). If ISO or NCCI issues new policy forms during the policy term of the required insurance, Developer will not be required to comply with the new policy forms until the expiration date of the insurance policy affected by the change.

(d) Developer's insurance policies will be primary over any and all insurance available to the CITY, whether purchased or not, and must be non-contributory.

(e) The Developer and its general contractor will be solely responsible for payment of all deductibles and retentions contained in their respective insurance policies. The CITY will be included as an "Additional Insured" on the Commercial General Liability policy and any Umbrella Liability policies, if applicable.

9.2 Evidence of Insurance. Prior to the commencement of any development or construction, Developer shall provide satisfactory evidence of the required insurance to the CITY. Satisfactory evidence of insurance is a certificate of insurance.

9.3 Cancellations and Renewals. All insurance policies shall specify that they are not subject to cancellation or non-renewal without a minimum of thirty (30) days notification to the Developer, and a minimum of ten (10) days notification for non-payment of premium. The Developer will provide the CITY a minimum of thirty (30) days written notice if any policies are cancelled or non-renewed, and ten (10) days written notice of cancellation for non-payment of premium.

9.4 Required Coverages. As a minimum, Developer shall procure and maintain the following insurance coverages, in addition to any additional insurance coverage required in the RFP: Commercial General Liability Insurance. During the term of this Agreement, Developer must maintain Commercial General Liability Insurance, covering the building on an occurrence basis against all claims for personal injury, bodily injury, death and property damage. Such insurance shall be for a combined single limit of Five Million and No/100 Dollars (\$5,000,000), and such limits may be satisfied by Developer through a combination of primary and excess liability insurance.

9.5 All Risk Property Insurance. Developer shall be required to obtain Property Coverage (Special Form), to cover the "All Other Perils" portion of the policy at the Replacement Cost Valuation as determined by a certified property appraiser. The policy will also provide "Law and Ordinance" coverage, while giving deference to the age of the improvements, with limits acceptable to both the CITY and Developer.

(a) Umbrella/Excess Liability Insurance. Bodily injury and property damage combined coverage, with limits of no less than One Million and no/100 Dollars (\$1,000,000.00) per occurrence and One Million and no/100 Dollars (\$1,000,000.00) in the aggregate.

9.6 Coverage Required during Construction will be as follows:

(a) Builders' Risk Insurance. During all construction activities conducted on the Property, including infrastructure development, Developer shall be required to carry builders' risk insurance, including the perils of wind and flood, with minimum limits equal to the "Completed Value" of the improvements being constructed or the total value of the modifications being made, to the extent available. If such levels of coverage are not available, Developer shall carry the full amount of such insurance currently available.

(b) Professional Liability. Developer shall ensure that all architects and engineers performing work on the Project have obtained errors and omissions liability insurance specific to the

design and construction activities prior to the commencement of any design and construction activities. If coverage is provided on a "Claims Made" basis, the policy shall provide for the reporting of claims for a period of two (2) years following the completion of all construction activities. The minimum limits acceptable are \$1,000,000.00 per occurrence and \$1,000,000.00 in the aggregate annually.

9.7 Premiums and Renewals. Developer shall pay on a timely basis all premiums for the insurance required by this Agreement as they become due. Developer shall renew or replace each policy prior to the policy expiration date, and promptly deliver to the CITY all original Certificates of Insurance and copies of all renewals.

9.8 Inadequacy of Insurance Proceeds. In the event that insurance proceeds are not adequate to rebuild and restore damaged improvements to their previous condition before an insurable loss occurred, and the cause of the deficiency in insurance proceeds is the Developer's failure to adequately insure the improvements as required by this Agreement, Developer must rebuild and restore the improvements as required by this Agreement and will be responsible for payment of any costs of the rebuilding and restoration not covered by the insurance proceeds.

Article 10. Condition of Property.

10.1 CITY's Existing Studies. The CITY has 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 consents to Developer's use of the Property Reports in connection with the development of the Project, but the CITY makes no representations or warranties as to the validity, accuracy, or reliability of the Property Reports, and the CITY will not be liable for any errors or omissions in the Property Reports, or for any use of the Property Reports by Developer. Within thirty (30) calendar days after the Effective Date, the CITY 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 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 Survival. The representative and warranties set forth in this Article 11 shall survive the expiration or earlier termination of this Agreement.

Article 12. Restrictions On Transfer and Assignment of Agreement.

12.1 Transfers. For purposes of this Agreement, a "**Transfer**" is any total or partial sale, assignment, or conveyance of any of the following: (i) Developer's interest in the Property or any portion thereof; (ii) Developer's interest in this Agreement; (iii) the Project or any part thereof; (iv) any interest in the Project, or any part thereof; (v) any ownership interest in Developer; (v) any series of such Transfers, or any contract or agreement to do any of the same, that have the cumulative effect of a sale; or (vi) any other transaction or series of transactions in the nature of a sale. The term "Transfer" shall exclude any collateral assignment of this Agreement in connection with any financing for the Project.

12.2 Restrictions on Transfer. Developer represents and agrees for itself and its successors and assigns (except as so authorized by the provisions of this Agreement) that it shall not make, permit, or suffer to be made or created any Transfer unless it complies with the provisions of this Article. Any Transfer that violates this Agreement will be null and void and of no force or effect.

12.3 Transfers Not Requiring CITY Consent. The following Transfers ("**Permitted Transfers**") are permitted without obtaining the written consent of the CITY:

(a) Foreclosure. Any Transfer directly resulting from the foreclosure of a Mortgage on the Property or the granting of a deed in lieu of foreclosure of a Mortgage on the Property, or any Transfer made by the purchaser at foreclosure sale of a Mortgage or by the grantee of a deed in lieu of foreclosure of a Mortgage, if such purchaser or grantee is the Lender or a nominee of the Lender.

(b) Transfers To or Among Affiliates. So long as an Affiliate of Horizon Oakland Park, LLC and/or Arthur J. Falcone is still the acting manager of such Affiliate, then so long as the beneficial Members, Limited Partners and/or Investors of the entity do not violate Section 12.4(a)(iii), (iv) or (v), then the ownership percentages can change.

(c) Transfers of Ownership Interests in Developer. Any Transfer, or series of Transfers, totaling not more than thirty percent (30%) of the direct or indirect ownership interests in Developer, provided that at all times after such Transfer, either Arthur J. Falcone, or a successor individual approved by the CITY, continues to direct the day-to-day management and policies of Developer.

(d) Transfers Resulting from Death or Incapacity. Any Transfer resulting from the death or incapacity of Arthur J. Falcone, or from the death or incapacity of a successor individual approved by the CITY to direct the day-to-day management and policies of Developer, provided that the survivor of Arthur J. Falcone, or the successor individual approved by the CITY, shall continue to direct the day-to-day management and policies of Developer.

(e) Transfers after Completion. Any Transfer, or series of Transfers, of any Parcel, or portion thereof, after all improvements on that Parcel are completed and certificates of occupancy issued for such improvements.

12.4 Transfers Requiring CITY's Consent. This Agreement shall apply to and bind the successors and assigns of CITY and Developer. The Developer shall not assign this Agreement without first obtaining the written approval of the CITY provided, however, Developer may assign this Agreement to an entity which is owned and controlled by Developer (or its principals). In connection with any permitted assignment, Developer shall provide CITY with the name of the assignee and the executed assignment and assumption agreement not more than ten (10) calendar days following to the assignment and assumption.

(a) An "Acceptable Transferee" is an individual or entity meeting the following minimum qualifications:

(i) Development Experience. The proposed transferee, or its management team, must possess development experience in the State of Florida equal to or better than the experience of the Developer as set forth in the Developer's response to the RFP.

(ii) Financial Resources. The proposed transferee must possess the financial resources equal to or better than the financial resources of the Developer as set forth in the Developer's response to the RFP.

(iii) Character and Reputation. The proposed transferee must possess a character, reputation and status in the community equal to or better than the character, reputation and status of the Developer as set forth in the Developer's response to the RFP.

(iv) No Violations. The proposed transferee must have no outstanding material violation of a Governmental Requirement against the proposed transferee or against any property owned or managed by the proposed transferee in the State.

(v) No Convictions or Indictments. The proposed transferee must not be owned, controlled or managed by entities or individuals who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or United States of America jurisdiction.

(vi) No Bankruptcies. Neither the proposed transferee, nor any of the individuals or entities who own at least a 10% equity interest in the proposed transferee or who are officers, directors, managers or otherwise have the power to direct and control the business and affairs of the proposed transferee, have filed or been discharged from bankruptcy, or have been the subject of an involuntary bankruptcy, reorganization or insolvency proceedings within the past five (5) years.

(b) To request approval of any Transfer, other than a Permitted Transfer, the Developer shall send a written Transfer Application to the CITY which includes information showing that the proposed transferee is an Acceptable Transferee, including, at a minimum, (a) three (3) years of externally reviewed financial statements, if available; (b) a letter from a Florida bank or other financial institution doing business in Florida indicating the creditworthiness of the assignee; (c) three (3) letters of reference from unrelated third parties regarding the proposed Acceptable Transferee's character and business reputation in the community; and (d) a proposed assignment and assumption agreement ("Assignment Agreement") [items a-d are collectively referred to as the "Transfer Application"]. Upon request by the CITY, Developer will submit any additional information reasonably requested by the CITY to evaluate the proposed Acceptable Transferee. The CITY will notify the Developer in writing within sixty (60) calendar days after the CITY's receipt of the Transfer Application and additional documentation, if applicable, if the CITY approves the Transfer, which approval shall not be unreasonably withheld, or delayed. If the CITY fails to respond to the Transfer Application within sixty (60) calendar days, the CITY shall be deemed to have approved its consent to the Transfer in question. The CITY may reject a Transfer Application as long as CITY provides reasonable justification, consistent with this Article, explaining why

the proposed Transferee is not an Acceptable Transferee. Any consent to a Transfer shall not waive any of the CITY's rights to consent to a subsequent Transfer.

(c) The CITY, in its sole determination of whether to approve a Transfer, shall be entitled to require, as conditions to granting any such prior approval, that:

(i) Any proposed Acceptable Transferee shall have the business experience and reputation, development track record and sufficient financial capacity to carry out the obligations under this Agreement, as determined, in the sole discretion of the CITY.

(ii) Any proposed Acceptable Transferee, by a written Assignment Agreement satisfactory to the CITY, in its reasonable discretion which is subject to the provisions of this Article, and in recordable form, shall, for itself and its successors and assigns: (a) expressly assume all of the obligations of the Developer under this Agreement with respect to the interest assigned and shall agree to abide by and be subject to all of the terms, conditions, obligations, reservations and restrictions to which the transferor Developer is subject with respect to the interest assigned; and (b) expressly acknowledge that the CITY has all rights and remedies under the Agreement against the Acceptable Transferee if there is a default under the Agreement. As part of the Transfer, the Developer and proposed Acceptable Transferee shall deliver a Proposed Assignment Agreement in a form and substance satisfactory to the CITY and its legal counsel which shall contain an indemnification and hold harmless provisions by the Developer and Acceptable Transferee in favor of the CITY, and by the Acceptable Transferee to Developer, for any liabilities and obligations as the Developer under this Agreement prior to the date of the Assignment Agreement with respect to the interest assigned.

(iii) There shall be submitted to the CITY for review all instruments and other legal documents reasonably necessary to review compliance with this Article 12. A copy of the instruments and other legal documents, including the Assignment Agreement, shall be provided the CITY for review and approval at least sixty (60) calendar days prior to being executed by Developer and the proposed Acceptable Transferee. The CITY agrees to diligently proceed with and complete its review and approval as soon as possible, but in no event later than sixty (60) calendar days after receipt of such instruments and documents.

12.5 Effect on Transfer. Following any Transfer, the Acceptable Transferee is subject to obligations of the "Developer" under this Agreement with respect to the interest assigned and shall agree to abide by and be subject to all of the terms, conditions, obligations, reservations and restrictions to which the transferor Developer is subject relating to the transferred interest. Notwithstanding the foregoing, Developer shall not be released from its remaining liabilities and obligations as the Developer under this Agreement, other than with respect to the interest assigned to the Acceptable Transferee, until the completion of the Project, unless the Transfer was a Transfer of all of Developer's remaining obligations under this Agreement to an Acceptable Transferee, as approved in writing by the CITY in accordance with this Agreement, in which event the Developer is released from any further obligations.

Article 13. Ownership and Control of Developer.

Unless otherwise reasonably approved by the CITY, Developer shall not substitute any of the senior principals of the development team of the Developer on the Project before the Project Completion Date without the prior approval of the CITY. The CITY agrees not to unreasonably withhold its approval to any substitute to any senior principals of the development team of the Developer, provided the qualifications of the substitute individual are at least equal to or better than those of the team member being substituted.

Article 14. Inspections.

14.1 Upon prior notice (which for purposes hereof may include email, oral and/or telephone notice) the CITY shall have reasonable access to the Work for City inspections as required in this Agreement provided that CITY's inspections do not interfere with the Work, but CITY shall not be obligated to conduct any such inspection. The Developer shall provide proper and safe facilities for such access and inspection by the CITY. If any of the Work is required to be inspected or approved by any public authority, the CITY shall cause such inspection or approval to be performed.

14.2 No inspection performed or failed to be performed by CITY shall be a waiver of any of the Developer's obligations or be construed as an approval or acceptance by CITY of the Work or any part thereof.

Article 15. No Liens.

15.1 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 15.1 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 CITY 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.

15.2 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 or the CITY 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 cause such lien to be released and discharged forthwith, or file a bond in lieu thereof. The Developer hereby indemnifies and holds harmless CITY from all claims, losses, demands, causes of action, expenses including attorneys' fees, or suits of whatever nature arising out of any such lien encumbering any of the Property arising from Work engaged by the Developer prior to Closing.

Article 16. Miscellaneous.

16.1 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 Oakland Park, Florida
David Hebert, City Manager
3650 NE 12th Avenue
Oakland Park, FL 33334
Email: davidh@oaklandparkfl.gov

With copies to:

Goren, Cherof, Doody and Ezrol, PA
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, FL 33308
Attn: Donald J. Doody, Esq.
Email: ddoody@cityatty.com

- (b) If to the Developer:
Horizon Oakland Park, LLC
c/o Falcone Group, LLC
1 Town Center Road, Suite 600
Boca Raton, FL 33486
Attn: Arthur Falcone
Alfonso Costa, Jr.
E-mail: alfonsocjr@falconegroup.info

And to:

Kaufman Lynn Construction, Inc.
3185 South Congress Ave.
Delray Beach, FL 33445
Telephone: (561) 886-4311
Attn: Michael Kaufman, President
Joshua Atlas, Chief Legal Officer
E-mail: mkaufman@kaufmanlynn.com
E-mail: jatlas@kaufmanlynn.com

With a copy to:

Berger Singerman LLP – Counsel to Falcone Group, LLC
201 East Las Olas Boulevard
Suite 1500
Fort Lauderdale, Florida 33301
Attn: Robert W. Barron, Esq.
E-mail: rbarron@bergersingerman.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).

16.2 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.

16.3 Assignment. Subject to Article 12, 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 (which may be withheld in the CITY's sole discretion).

16.4 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 obtain the consent of the CITY Commission to the extent required by Applicable Laws or where specifically required under this Agreement. The Developer hereby appoints Alfonso Costa, Jr. 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.

16.5 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.

16.6 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 in Broward County.

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

16.8 Entire Agreement and Amendment. This Agreement and the Purchase and Sale Agreement constitute the entire agreement between the parties hereto related to the development and construction of the Project and no modification hereof shall be effective unless made by a supplemental agreement in writing executed by all of the parties hereto. In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of the Response to RFQ, this Agreement shall control and govern.

16.9 No Joint Venture. The Developer shall not be deemed to be a partner or a joint venturer with the CITY, 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.

16.10 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.

16.11 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.

16.12 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.

16.13 Attorneys' Fees. If any party commences an action against the other party to interpret or enforce any of the terms of this Agreement or as the result of a breach by the other party of any terms hereof, the non-prevailing party shall pay to the prevailing party all reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including those incurred in any appellate proceedings, and whether or not the action is prosecuted to a final judgment.

16.14 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.

16.15 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; provided that the foregoing shall in no way be deemed to inhibit, restrict or require the exercise of the City's police power or actions of the City when acting in a quasi-judicial capacity.

16.16 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.

16.17 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 or the Developer) shall have any right or claim against the CITY or the Developer by reason of those provisions or be entitled to enforce any of those provisions against the CITY or the Developer.

16.18 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.

16.19 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.

16.20 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.

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

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

16.23 Venue. This Agreement shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of this Agreement shall be litigated only in the courts of the Seventeenth Judicial Circuit in and for Broward County, Florida or federal court in the Southern District of Florida.

16.24 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.

Article 17. Safety and Protection.

17.1 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 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; and
- (c) other property at the 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.

17.2 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 shall notify owners of property in accordance with Section 24-163 of the CITY Code of Ordinances regarding the commencement of the Work (and other matters as reasonably determined by Developer), and of underground facilities and utility owners as required by Applicable Laws. All damage, injury or loss to any property located on the Property which is caused, directly or indirectly, in whole or in part, by the negligent acts of Developer, any contractor, subcontractor, materialman, supplier, vendor, or any other individual or entity directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by Developer. Developer's duties and responsibilities for safety and for protection of the construction shall continue until Final Completion.

17.3 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.

17.4 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.

17.5 In emergencies affecting the safety or protection of persons or the construction or property at the Property Site or adjacent thereto, Developer, without special instruction or authorization from the CITY, is obligated to act to prevent damage, injury or loss to the Property. Developer shall give CITY prompt written notice if Developer believes that any significant changes in the construction or variation from the Construction Documents have been caused thereby.

Article 18. CITY's Representative.

18.1 The parties acknowledge and agree that the CITY may engage in one or more consultants to assist the CITY in the administration of this Agreement and the Project. Any such consultants shall act as an "owner's representative" acting on behalf of the City and shall not have authority to bind the CITY or direct the Developer. Developer agrees to reasonably cooperate with any such consultants engaged by the CITY.

[Signatures Appear on Following Page(s)]

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:

HORIZON OAKLAND PARK, LLC,
a Florida limited liability company

By: Arthur Falcone
Arthur Falcone, Manager

Date: 7/21, 2022

By: _____
Michael Kaufman, Manager

Date: _____, 2022

CITY:

CITY OF OAKLAND PARK, FLORIDA,
a Florida municipal corporation

Attest:

By: _____
MAYOR

By: _____
CITY Clerk

Date: _____

Approved as to form and legal sufficiency:

By: _____
CITY Attorney

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:

HORIZON OAKLAND PARK, LLC,
a Florida limited liability company

By: _____
Arthur Falcone, Manager

Date: _____, 2022

By: _____
Michael Kaufman, Manager

Date: 7/21, 2022

CITY:

CITY OF OAKLAND PARK, FLORIDA,
a Florida municipal corporation

Attest:

By: _____
MAYOR

By: _____
CITY Clerk

Date: _____

Approved as to form and legal sufficiency:

By: _____
CITY Attorney

EXHIBIT A

Legal Descriptions for the Project Site:
Legal Description of City Owned Property
Legal Description of Parcel A
Legal Description of Parcel B

EXHIBIT B**Downtown Properties Redevelopment Project Critical Path**

Note: All times periods set forth in this Project Critical Path are subject to Force Majeure extensions of time and the terms and provisions of the Purchase and Sale Agreement and the Development Agreement.

<u>TIME PERIOD</u>	<u>ITEM</u>
DAY 1 – EFFECTIVE DATE	<p>Full execution of the Development Agreement and Purchase and Sale Agreement, defined as the date of the last party's signature</p> <p>Initial Deposit due and payable to the City in the amount of \$450,000</p>
DAY 120 FROM EFFECTIVE DATE	Inspection Period expires.
DAY 210 FROM EFFECTIVE DATE	<p>Developer Deadline to submit the City formal Parcel Acquisition and Development Plan Declaration.</p> <p>City Deadline to complete rezoning for Greenleaf Park.</p> <p>Developer Deadline to file Development Review Application with the City.</p>
6 MONTHS AFTER DEVELOPMENT REVIEW APPLICATIONS SUBMITTED	<p>Developer Deadline to obtain full site plan approval to include City Commission approval of Bonus Provision Elements (Government Approvals).</p> <p>Government Approval Period Ends.</p> <p>Second Deposit due and payable to the City in the amount of \$450,000 within 10 business days after the issuance of the Government Approvals to Developer. Deposits in escrow are no longer refundable to Developer, except as set forth in the Purchase and Sale Agreement.</p>
DATE THAT ALL GOVERNMENT APPROVALS ARE ISSUED	City Milestone One: The City will have completed a relocation and spacing plan for the relocation of City Property Operations and will provide notice to Purchaser.
60 CALENDAR DAYS AFTER RECEIPT OF GOVERNMENT APPROVAL	Deadline for the City and the Developer to execute the: (1) Long Term Maintenance Agreement for Woonerf; (2)

	Construction Agreement for Greenleaf Park AND Pump Station Relocation; (3) Parking Agreement.
180 DAYS AFTER ALL GOVERNMENT APPROVALS ARE ISSUED	City Milestone Two: City Deadline to have completed all formal procurement requirements related to the move of City Property Operations and will provide notice to Purchaser.
300 DAYS AFTER ALL GOVERNMENT APPROVALS ARE ISSUED	City Milestone Three. City Deadline to begin the implementation of the relocation and spacing plan and will provide written notice to Purchaser.
365 DAYS AFTER ALL GOVERNMENT APPROVALS ARE ISSUED	City Milestone Four: City Deadline to Vacate City Hall and all City Property Operations with the exception of the current Greenleaf Park and public parking , as a covenant and as a condition precedent to the occurrence of the Closing. Developer Deadline to obtain all Permits for construction of the Project.
10 BUSINESS DAYS AFTER CITY VACATES ALL CITY PROPERTY OPERATIONS	Third Deposit due and payable to the City in the amount of \$300,000 within 10 business days after City vacates all City Property Operations. Deposits in escrow are no longer refundable to Developer, except as set forth in the Purchase and Sale Agreement.
30 DAYS PRIOR TO CLOSING	Deadline for the City and the Developer to execute the Train Station Delivery Agreement, if applicable Developer Deadline to provide Construction Loan Commitment to the City.
CLOSING (60 DAYS AFTER OBTAINING ALL PERMITS AND APPROVALS)	Developer Deadline to close on Acquisition of Parcels A and B (if applicable) simultaneously with the closing on City owned land. Final Payment due to the City from the Developer at the Closing in the amount of \$10,006,580. City Deadline to complete all demolition activities at the Greenleaf Park and deliver Pad Ready site as defined in the Agreement.
120 DAYS AFTER CLOSING	Developer Deadline to complete construction of Greenleaf Park.

150 DAYS AFTER CLOSING	Developer Deadline to Deed the Greenleaf Park Parcel B to the City, if Parcel B is acquired by Developer.
180 DAYS AFTER CLOSING	Developer Deadline to commence construction on remainder of Project.
26 MONTHS FROM CONSTRUCTION COMMENCEMENT FOR REMAINDER OF PROJECT (OTHER THAN GREENLEAF PARK)	Developer Deadline for Substantial Completion for all of the Project.
28 MONTHS FROM CONSTRUCTION COMMENCEMENT FOR REMAINDER OF PROJECT (OTHER THAN GREENLEAF PARK).	Developer Deadline for Final Completion Developer Deadline to deliver the Woonerf, public parking spaces and public uses.
120 DAYS AFTER FINAL COMPLETION	Developer Deadline to Provide City with As-Builts for Woonerf.

EXHIBIT C

Primary Site Plan

EXHIBIT D

Alternate Site Plans

EXHIBIT E

NE 38th Street Improvement Illustration

EXHIBIT F

Failure to Acquire Parcel B
Capital Improvement Boundary