

## ECONOMIC DEVELOPMENT AGREEMENT

This **ECONOMIC DEVELOPMENT AGREEMENT** (this “Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), between the **CITY OF JACKSONVILLE**, a municipal corporation and a political subdivision of the State of Florida (the “City”) and **AVION MF PARTNERS, LLC**, a Florida limited liability company authorized to transact business in Florida (the “Developer”).

### Article 1. PRELIMINARY STATEMENTS

#### 1.1 **The Project.**

The Developer has submitted a proposal to develop an approximately 320-unit apartment community, located generally on Duval Road, north of I-295 and west of Biscayne Boulevard in Jacksonville, Florida as more particularly described on **Exhibit A** attached hereto (the “Project Parcel”). The development, which will be known as “The Avion,” will consist of a mix of 1-, 2- and 3- bedroom units, with ninety-six (96) units set aside for workforce housing. The construction of the Improvements (defined below) and the obligations of the Developer under this Agreement are collectively referred to herein as the “Project.” The Project is expected to represent an estimated Capital Investment of approximately \$65,000,000 by or on behalf of the Developer.

#### 1.2 **Authority.**

The City has authorized this Agreement pursuant to its Resolution 2023-\_\_-A (the “Resolution”).

#### 1.3 **City Determination.**

The City has determined that the Project is consistent with the goals of the City in that the Project will, among other things:

- (a) generate significant new ad valorem taxes, including significant new tax revenues for the public school system;
- (b) help meet the overall community goal of business development and growth in Jacksonville;
- (c) create induced and indirect job effects which will have a positive impact on local small businesses; and
- (d) promote and encourage private Capital Investment of \$65,000,000.

#### 1.4 **Jacksonville Small and Emerging Business Program.**

As more fully described in City of Jacksonville (“City”) Ordinance 2004-602-E, the City has determined that it is important to the economic health of the community that whenever a company receives incentives from the City, that company provides contracting opportunities to the maximum extent possible to small and emerging businesses in Duval County as described in Section 6.1.

1.5 **Coordination by City.**

The City hereby designates the Economic Development Officer of the OED or his or her designee to be the Project Coordinator who will, on behalf of the City, coordinate with the Developer and administer this Agreement according to the terms and conditions contained herein and in the Exhibit(s) attached hereto and made a part hereof. It shall be the responsibility of the Developer to coordinate all project related activities and all matters under this Agreement with the designated Project Coordinator, unless otherwise stated herein.

1.6 **Maximum Indebtedness.**

The maximum indebtedness of the City for all grants, fees, reimbursable items or other cost pursuant to this Agreement shall not exceed the sum of SEVEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$7,500,000.00).

1.7 **Availability of Funds.**

The City's obligations under this Agreement are contingent upon availability of lawfully appropriated funds for the Project and this Agreement.

**NOW THEREFORE**, in consideration of the mutual undertakings and agreements herein of City and Developer, and for Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are acknowledged, City and Developer agree that the above Preliminary Statements are true and correct, and represent, warrant, covenant and agree as follows:

**Article 2.  
DEFINITIONS**

As used in this Agreement, the following terms shall have the meaning set opposite each:

2.1 **Base Year.**

The base year for purposes of this Agreement shall be the 2022 tax year.

2.2 **Capital Investment.**

Money invested by a developer to purchase items that may normally be capitalized by a developer in the normal conduct of its business to design, construct and develop a project, including land acquisition costs.

2.3 **City Council.**

The body politic, as the same shall be from time to time constituted, charged with the duty of governing the City.

#### 2.4 **Commencement of Construction.**

The terms "Commence" or "Commenced" or "Commencing" Construction as used herein when referencing the Improvements or any portion thereof means the date when Developer (i) has completed all pre-construction engineering and design; obtained all necessary licenses, permits and governmental approvals to commence construction of the Improvements; engaged the general (i.e., prime) contractor and ordered such equipment and supplies as the general contractor reasonably deems necessary so that physical construction of the Improvements may begin and proceed to completion without foreseeable interruption; and (ii) has submitted to the City evidence of construction financing or other financial resources obtained by Developer sufficient to complete the construction of the Improvements; and (iii) has "broken ground" and begun physical, material construction (e.g., site preparation work or such other evidence of commencement of construction as may be approved by the City in its reasonable discretion) of the Improvements on an ongoing basis without any Impermissible Delays (defined herein).

#### 2.5 **Impermissible Delays.**

The term "Impermissible Delay" means failure of Developer to proceed with reasonable diligence with the construction of the applicable Improvements within the timeframe for Substantial Completion contemplated in this Agreement, or after commencement of the applicable Improvements, abandonment of or cessation of work on any portion of the Improvements at any time prior to the Substantial Completion of such improvements for a period of more than forty (40) consecutive calendar days, except in cases of a Force Majeure Event. Notwithstanding the foregoing, any delay or cessation of any of the Improvements as to which Developer has been unable to secure the necessary permits and approvals after diligent efforts shall not be an Impermissible Delay, as long as Developer continues its diligent efforts to obtain such permits and approvals.

#### 2.6 **Improvements.**

All of the improvements that are incorporated into the Project on the Project Parcel, as described on **Exhibit B** attached hereto. The Improvements include the construction of an approximately 320-unit apartment community, with ninety-six (96) Workforce Housing Units.

#### 2.7 **OED.**

The Office of Economic Development of the City of Jacksonville.

#### 2.8 **Project Parcel.**

The term "Project Parcel" is defined in Section 1.1 above.

#### 2.9 **Substantial Completion.**

As to the Improvements, "Substantially Completed", "Substantial Completion" or "Completion" means that, with respect to the Improvements (except for any space to be occupied by a tenant), a certificate of substantial completion has been issued by the contractor and verified by the architect of record, a temporary or permanent certificate of occupancy has been issued, if applicable, so that the Improvements are available for use in accordance with its intended purpose, without material interference

from uncompleted work and subject to commercially reasonable punch list items, completion of tenant improvements and similar items.

2.10 **Workforce Housing Units.**

“Workforce Housing Units” means thirty percent (30%) of the units constructed within the Improvements (but in no event less than ninety [90] units) set aside as workforce housing units. The rental and income limits for the workforce housing units will be established based on the 100% AMI level for 2022 published by United States Department of Housing and Urban Development (HUD) and the Florida Housing Finance Corporation (FHFC), which will be locked in for the first four (4) years following Substantial Completion of the Improvements. Thereafter, the annual increase for the workforce housing units will be capped at a maximum of two percent (2%).

Other capitalized terms not defined in this Article shall have the meanings assigned to them elsewhere in this Agreement.

**Article 3.**  
**APPROVALS; PERFORMANCE SCHEDULES**

3.1 **Performance Schedule.**

The Developer and the City have jointly established the following dates for the performance of each party’s respective obligations under this Agreement (herein called the “Performance Schedule”):

- (i) Developer shall Commence Construction of the Improvements and provide written notice to the City thereof on or before December 31, 2023, and thereafter Developer shall proceed through Substantial Completion of the Improvements without any Impermissible Delays (the “Commencement of Construction Date”).
- (ii) Developer shall Substantially Complete the Improvements on or before December 31, 2025 (the “Completion Date”).

The City and the Developer have approved this Performance Schedule. By the execution hereof, and subject to the terms of this Agreement, the Developer hereby agrees to undertake and complete the construction and development of the Improvements in accordance with this Agreement and the Performance Schedule, and to comply with all of the Developer’s obligations set forth herein. The Executive Director of the OED may extend each component of the Performance Schedule for up to twelve (12) months in his or her sole discretion for good cause shown by Developer. Any extensions greater than twelve (12) months (with the exception for extensions due to Force Majeure Events) shall require City Council approval. Any change to the Commencement of Construction Date pursuant to this paragraph shall automatically result in a corresponding extension to the Completion Date. Extensions to any other dates within the Developer Performance Schedule shall serve only to extend the individual date referenced.

3.2 **Approval of Agreement.**

By the execution hereof, the parties certify as follows:

- (a) Developer certifies that:
- (i) the execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents creating the particular Developer entity;
  - (ii) this Agreement does not violate any of the terms or conditions of such governing documents and the Agreement is binding upon the Developer and enforceable against it in accordance with its terms;
  - (iii) the person or persons executing this Agreement on behalf of the Developer are duly authorized and fully empowered to execute the same for and on behalf of the Developer;
  - (iv) the Developer and each entity composing the Developer is duly authorized to transact business in the State of Florida and has received all necessary permits and authorizations required by appropriate governmental agencies as a condition to doing business in the State of Florida; and
  - (v) the Developer, its business operations, and each person or entity composing the Developer are in compliance with all federal, state and local laws.
- (b) The City certifies that the execution and delivery hereof is binding upon the City to the extent provided herein and enforceable against it in accordance with its terms.

**Article 4.  
REV GRANT**

**4.1 Recapture Enhanced Value Program; Amount.**

Subject to the terms and conditions of this Agreement, the City shall make a Recapture Enhanced Value grant (“REV Grant”) to the Developer, in a total amount not to exceed \$7,500,000, payable in annual installments beginning, if at all, in the first year following the Substantial Completion of the Improvements and their inclusion on the City tax rolls at full assessed value (the “Initial Year”) and ending fifteen (15) years thereafter, but not later than 2040 (the “Final Year”), payable in fiscal year 2041, all as more fully described below in this Article 4.

**4.2 Payments of REV Grant.**

The REV Grant shall be paid by the City to the Developer by check or wire transfer, in annual installments determined in accordance with Section 4.3, due and payable on or before May 15 of each calendar year, commencing May 15 of the Initial Year and ending May 15 of the Final Year, or when the maximum amount of the REV Grant shall have been paid to the Developer, whichever occurs first. The City shall have no liability for any REV Grant in excess of the amount stated in Section 4.1 or after payment of the final installment due May 15 of the Final Year, and, except as expressly provided in this Agreement, the REV Grant payments as determined pursuant to Section 4.3 shall not be subject to reduction or repayment.

#### 4.3 Determination of Annual Installments of REV Grant.

The amount of each annual installment of the REV Grant shall be the sum which is equal to 75% of the “Annual Project Revenues” (as defined and determined in this Section 4.3) actually received by the City during the twelve (12) month period ended April 1 preceding the due date of such annual installment. For the purposes of this Agreement, “Annual Project Revenues” means the amount of all municipal and county ad valorem taxes, exclusive of any amount from any debt service millage or Business Improvement District (“BID”) millage, actually paid by any taxpayer for that tax year (net of any discount pursuant to Section 197.162, Florida Statutes, or any successor provision, actually taken by the taxpayer) during such period with respect to all real property and tangible personal property comprising the Project, less the amount of all municipal and county ad valorem taxes that would have been levied or imposed on the Project using the assessed value for the Base Year, which for the purpose of this Agreement shall be \$0.00 exclusive of any debt service millage. The foregoing references to ad valorem taxes shall be deemed to include any other municipal or county taxes, or other municipal or county fees or charges in the nature of or in lieu of taxes, that may hereafter be levied or imposed on the Developer with respect to real property and tangible personal property comprising the Project, in lieu of or in substitution for the aforesaid taxes and which are levied or imposed for general municipal or county purposes or shall be available for the City’s general fund, but not including stormwater or garbage fees or assessments.

By April 1 of each calendar year, commencing April 1, Initial Year and ending April 1, Final Year, Developer shall give written notice to the City of the amount of county ad valorem taxes paid during the preceding twelve (12) month period ending April 1, quantified by real property and tangible personal property amounts. If, by April 1 of any year, the Developer has failed to give notice of taxes paid during the preceding twelve (12) month period, the Developer shall not be eligible for a REV Grant payment for that year. Provided, however, that if the Developer provides timely notice in future years, the Developer shall be eligible for a REV Grant payment based on the Annual Projected Revenues in such future year’s notice.

Except as provided below, within thirty (30) days of receipt of said notice, City shall provide Developer with a calculation as to the annual REV Grant. If the Developer does not give written notice to the City of its objection to the City’s calculation within thirty (30) days after its receipt thereof, the City’s calculation shall be considered acceptable. Except as provided below, the City shall make payment of the REV Grant by the later of May 15th of each calendar year or thirty (30) days after City’s receipt of notification by the Developer that it is in agreement with the City’s annual calculation. In the event of a disagreement as to the calculation, the City shall make payment of the amount not in dispute and the parties shall negotiate in good faith any disputed amount.

The foregoing dates for the City to provide the REV Grant calculation and make the REV Grant payment shall be extended if on either of such dates the Developer has a pending proceeding before the City Value Adjustment Board, Circuit Court, or otherwise that could change the amount of the Annual Project Revenues that Developer was obligated to pay for that tax year and upon which the REV Grant payment would be based. In that event, the date that the City is required to provide the REV Grant calculation to Developer shall be extended until 30 days after the date that Developer notifies the City that any such proceeding has been finally resolved (including any appeals) and any adjustment to the Annual Project Revenues for that tax year has been made and paid. Such notice shall include (i) a copy of any final order or final judgment or other evidence of the resolution of such proceeding that sets forth any

change to the assessed value of the Property upon which the Annual Project Revenues are based for that tax year, and (ii) the amount of the adjusted Annual Project Revenues paid by the Developer.

4.4 **Further disclaimer.**

The REV Grant shall not be deemed to constitute a debt, liability, or obligation of the City, City or of the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City, City or of the State of Florida or any political subdivision thereof, but shall be payable solely from the funds provided therefor in this Article 4. The City shall not be obligated to pay the REV Grant or any installment thereof except from the non-ad valorem revenues or other legally available funds provided for that purpose, and neither the faith and credit nor the taxing power of the City, City or of the State of Florida or any political subdivision thereof is pledged to the payment of the REV Grant or any installment thereof. The Developer, or any person, firm or entity claiming by, through or under the Developer, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power of the City, City or of the State of Florida or any political subdivision thereof for the payment of the REV Grant or any installment of either.

**Article 5.  
THE DEVELOPMENT**

5.1 **Scope of Development.**

- (a) The Developer shall construct or cause the construction of the Improvements on the Project Parcel in substantial compliance with the times set forth in the Performance Schedule and other requirements of this Agreement.
- (b) The Developer shall construct the Project in accordance with all applicable building and permitting codes.

5.2 **Cost of Development.**

Except as otherwise set forth in this Agreement, the Developer shall pay the cost of constructing the Improvements on the Project Parcel and all other Project costs at no cost to the City.

5.3 **Approval by Other Governmental Agencies.**

All of the parties' respective rights and obligations under this Agreement are subject to and conditioned upon approval of the Project and all Project Documents by such other governmental agencies, whether state, local or federal, as have jurisdiction and may be required or entitled to approve them. Notwithstanding any provision of this Agreement to the contrary, the City does not guarantee approval of this Agreement or any aspect of the Project by any government authorities and agencies that are independent of the City.

5.4 **Authority of City to Monitor Compliance.**

During all periods of construction of the Improvements, the CEO of the City, or his or her designee, and the City's Director of Public Works, or designee, shall have the authority to monitor compliance by

the Developer with the provisions of this Agreement and the Project Documents. Insofar as practicable, the City shall coordinate such monitoring and supervising activity with those undertaken by the City so as to minimize duplicate activity. To that end, during the period of construction and with prior notice to the Developer, representatives of the City shall have the right of access to the Project Parcel and to every structure on the Project Parcel during normal business hours.

**5.5 Timing of Completion.**

The construction of the Improvements shall be completed substantially in accordance with the terms of this Agreement and the Performance Schedule.

**5.6 Construction and Operation Management.**

Except as otherwise expressly provided herein, the Developer shall have discretion and control, free from interference, interruption or disturbance, in all matters relating to the management, development, redevelopment, construction and operation of the Project, provided that the same shall, in any event, conform to and comply with the terms and conditions of this Agreement, and all applicable state and local laws, ordinances and regulations (including without limitation, applicable zoning, subdivision, building and fire codes). The Developer's discretion, control and authority with respect thereto shall include, without limitation, the following matters:

- (a) the construction and design of the Project, subject to the express terms and conditions of this Agreement;
- (b) the selection, approval, hiring and discharge of engineers, architects, contractors, subcontractors, professionals and other third parties (collectively the "Vendors") on such terms and conditions as the Developer deems appropriate; provided however, that to the extent that the City furnishes to the Developer the names and identities of Jacksonville-based Vendors, including without limitation Jacksonville-based minority Vendors, and to the extent that Developer has the need to enter into contracts with Vendors outside of persons employed by Developer or companies affiliated with or controlled by Developer or its principals, then Developer agrees to include all such Jacksonville-based Vendors in the process established by Developer for obtaining bids for any of the Improvements;
- (c) the negotiation and execution of contracts, agreements, easements and other documents with third parties, in form and substance satisfactory to Developer; and
- (d) the preparation of such budgets, cost estimates, financial projections, statements, information, and reports as the Developer deems appropriate.

**Article 6.  
JSEB PROGRAM**

**6.1 Jacksonville Small and Emerging Businesses (JSEB) Program.**

The Developer, in further recognition of and consideration for the public funds provided to assist the Developer pursuant to this Agreement, hereby acknowledges the importance of affording to small and



emerging vendors and contractors the full and reasonable opportunity to provide materials and services (“Opportunity”). Therefore, the Developer hereby agrees as follows:

- (a) The Developer shall obtain from the City’s Procurement Division the list of certified Jacksonville Small and Emerging Businesses (“JSEB”), and shall exercise good faith, in accordance with Municipal Ordinance Code Sections 126.608 et seq., to enter into contracts with City certified JSEBs to provide materials or services in an aggregate amount of not less than \$1,500,000 which amount represents 20% of the City’s maximum contribution to the Project with respect to the development activities or operations of the Project over the term of this Agreement.
- (b) The Developer shall submit JSEB report(s) regarding the Developer’s actual use of City certified JSEBs on the Project upon Substantial Completion of the Improvements. The form of the report to be used for the purposes of this section is attached hereto as **Exhibit C** (the “JSEB REPORTING FORM”).

**Article 7.**  
**REPORTING; SITE VISITS**

**7.1 Annual Survey.**

On an annual basis, and prior to March 1 each year this Agreement is in effect or outstanding, the Developer shall submit reports to the OED in its reasonable discretion regarding the status of construction of the Improvements and all other activities affecting the implementation of this Agreement, including a narrative summary of progress on the Project. Samples of the general forms of these reports are attached hereto as **Exhibit D** (the “Annual Survey”); however, the specific data requested may vary from the forms attached.

**7.2 Workforce Housing Unit Report.**

On an annual basis, and prior to March 1, for the term of the Agreement, the Developer shall submit reports to the OED regarding the status of the Workforce Housing Units on the Project Parcel. The annual report shall contain the following information as the end of the immediately preceding calendar year:

- (i) The total number of units constructed, including market rate and Workforce Housing Units, broken down by unit type (e.g. 1-, 2-, and 3-bedroom units);
- (ii) The number of Workforce Housing Units occupied and available for rent, broken down by unit type (e.g. 1-, 2-, and 3-bedroom units);
- (iii) The household income of each of the Workforce Housing Unit renters at the time the rental agreement was entered into, along with the household income of the renter, as reported by such renter to the Developer, for the applicable reporting period. For purposes of clarity, no personally identifying information shall be provided for the applicable renters; and
- (iv) The monthly rental rate for each Workforce Housing Unit within the Project Parcel for the applicable reporting period.

The Developer's obligation to submit such reports shall continue until Developer has complied with the applicable terms of this Agreement concerning the Project, the Improvements, and the REV Grant.

Within thirty (30) days following a request of the City, the Developer shall provide the City with additional documentation and information relating to this Agreement as reasonably requested by the City.

### 7.3 Site Visits.

For so long as City has any payment obligations to Company pursuant to this Agreement, Company shall permit representatives from the City's OED and other designated City personnel, to monitor compliance by Company with the provisions of this Agreement. With prior notice to Developer, representatives of City shall have the right to tour the Project and access Developer's records and employees related to the Project and this Agreement, during normal business hours, provided, however, that Developer shall have the right to have a representative of Developer present during any such inspection.

## **Article 8. DEFAULTS AND REMEDIES**

### 8.1 General.

A default shall consist of the breach of any covenant, agreement, representation, provision, or warranty contained in (i) this Agreement (including, but not limited to, any failure to meet the reporting requirements described herein), (ii) the documents executed in connection with the Agreement and any other agreement between the City and the Developer related to the Project, or (iii) any document provided to the City relating to the Project (collectively, the "Documents"). A default shall also exist if any event occurs or information becomes known which, in the reasonable judgment of the City, makes untrue, incorrect or misleading in any material respect any statement or information contained in any of the documents described in clauses (i) – (iii) above or causes such document to contain an untrue, incorrect or misleading statement of material fact or to omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

If any such default or breach occurs under this Agreement, the City may refuse to pay any portion of the REV Grant and additionally, may at any time or from time to time proceed to protect and enforce all rights available to the City under this Agreement by suit in equity, action at law or by any other appropriate proceeding whether for specific performance of any covenant or agreement contained in this Agreement, or damages, or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations, including, but not limited to, terminating this Agreement. The City shall not act upon a default until it has given the Developer written notice of the default and fifteen (15) business days within which to cure the default; provided, however, that the City may withhold any portion of the REV Grant immediately upon the occurrence of a default and throughout any notice or cure period. However, if any default cannot reasonably be cured within the initial fifteen (15) business days, Developer shall have a total of forty-five (45) days in which to cure such default, so long as Developer has commenced and is diligently proceeding to cure such default within the initial fifteen (15) day period. Notwithstanding the foregoing, Developer shall immediately and automatically be in default, and the City

shall not be required to give Developer any notice or opportunity to cure such default (and thus the City shall immediately be entitled to act upon such default), upon the occurrence of any of the following:

- (a) The entry of a decree or order by a court having jurisdiction in the premises adjudging the Developer or any guarantor (“Guarantor”) of Developer’s obligations hereunder or under the Documents, a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Developer or Guarantor under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, custodian, assignee, or sequestrator (or other similar official) of the Developer or Guarantor or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days; and
- (b) The institution by Developer or Guarantor of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the United States Bankruptcy Code or any other similar applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, custodian, assignee, trustee or sequestrator (or other similar official) of the Developer or Guarantor or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due.

## 8.2 **Specific Defaults.**

Additionally, for any of the specific events of default described in this Section 8.2 below, the parties agree that the City’s damages recoverable from the Developer shall include, but not be limited to, the following:

- (a) In the event reporting requirements are not met in the time period specified in Article 8 of this Agreement, the City will be entitled to withhold any undisbursed amount of the REV Grant until such reporting information is provided; provided, however, if the reporting information is not provided within the same City fiscal year such payment is due, the City shall have no obligation to make the applicable REV Grant payments for such year.
- (b) If, upon Substantial Completion of the Improvements in accordance with this Agreement, the Developer fails to make and demonstrate a Capital Investment in the Project of at least \$65,000,000, the REV Grant will be proportionately reduced. If, upon Substantial Completion of the Improvements in accordance with this Agreement, the Developer fails to make and demonstrate a Capital Investment in the Project of at least \$58,500,000, the REV Grant will be terminated.
- (c) If, during any year of the REV Grant term, the Developer fails to maintain a minimum of ninety (90) Workforce Housing Units, the City will be entitled to withhold the annual installment of the REV Grant for any year during which the target number of units is not met.

**Article 9.**  
**ANTI-SPECULATION AND ASSIGNMENT PROVISIONS**

**9.1 Purpose.**

The Developer represents and agrees that its acquisition of the Project Parcel and undertakings pursuant to this Agreement are for the purpose of developing such parcel pursuant to this Agreement and not for speculation in land holding. The Developer further recognizes, in view of the importance of the development of the Project Parcel to the general health and welfare of the City, that the qualifications, financial strength and identity of the principal shareholders or members and executive officers of the Developer are of particular concern to the City.

**9.2 Assignment; Limitation on Conveyance.**

Developer agrees that, with respect to the Project, until the Substantial Completion of the Improvements, it shall not, without the prior written consent of the City (which consent shall not be unreasonably withheld), assign, transfer or convey (i) the Project Parcel or any portion thereof, (ii) this Agreement or any provision hereof as it relates to the Project, (iii) a controlling interest in the Developer; or (iv) a controlling interest in the Managing Member of the Developer. Notwithstanding the foregoing, at the Closing, the Developer may assign all of its rights and obligations hereunder to any Affiliate of Developer which takes title to the Project Parcel, pursuant to a duly executed assignment and assumption agreement in form and content as acceptable to the City in its sole discretion. If any prohibited assignment, transfer or conveyance is made, the obligation of the City to pay any further amounts of the REV Grant to the Developer shall immediately terminate. After the Substantial Completion of the Improvements, Developer shall not assign, transfer or convey items (i) or (ii) above, without the prior written consent of the City, unless both items are simultaneously conveyed; provided, however, that in such event such assignee shall enter into a duly executed assignment and assumption agreement in form and content as acceptable to the City in its reasonable discretion. In addition, Developer may collaterally assign its rights and obligations pursuant to this Agreement to any lender providing financing for the Improvements and any foreclosure or similar action and subsequent assignment by such lender or its assignees shall constitute a permitted assignment pursuant to this Agreement. In connection with any such collateral assignment and transfers by the lender contemplated herein, City agrees to execute a consent document reasonably acceptable to such lender, and such lender or assignee shall enter into collateral assignment agreement in form and content as reasonably acceptable to City. Notwithstanding anything in this Agreement to the contrary, no assignment, transfer or conveyance, whether or not consented to by the City, shall release Developer from any liability or obligation hereunder unless agreed to in writing by the City.

**Article 10.**  
**GENERAL PROVISIONS**

**10.1 Non-liability of City Officials.**

No member, official or employee of the City shall be personally liable to the Developer or to any Person with whom the Developer shall have entered into any contract, or to any other Person, in the event of any default or breach by the City, or for any amount which may become due to the Developer or any other Person under the terms of this Agreement.

## 10.2 **Force Majeure.**

No party to this Agreement shall be deemed in default hereunder where such a default is based on a delay in performance as a result of war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualty, acts of God, acts of public enemy, epidemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, severe weather and other acts or failures beyond the control or without the control of any party (each, a “Force Majeure Event”); provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay and shall be proximately caused by such Force Majeure Event, and in no event shall any of the foregoing excuse any financial liability of a party.

In the event of any delay or nonperformance resulting from such causes, the party affected shall notify the other in writing within ten (10) calendar days of the Force Majeure Event. Such written notice shall describe the nature, cause, date of commencement, and the anticipated impact of such delay or nonperformance, shall indicate the extent, if any, to which it is anticipated that any delivery or completion dates will be thereby affected, and shall describe the actions reasonably taken to minimize the impact thereof.

## 10.3 **Offset.**

City shall have the right to offset any amount owed by Developer under or in connection with this Agreement against any payments owed by City under this Agreement. Such offsets shall be in addition to any other rights or remedies available under this Agreement and applicable law.

## 10.4 **Notices.**

All notices to be given hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or delivered by an air courier service utilizing return receipts to the parties at the following addresses (or to such other or further addresses as the parties may designate by like notice similarly sent) and such notices shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail if sent by registered or certified mail, or the date actually received if sent by personal delivery or air courier service, except that notice of a change in address shall be effective only upon receipt.

(a) the City:

City of Jacksonville  
Office of Economic Development  
117 West Duval Street, Suite 275  
Jacksonville, Florida 32202  
Attn: \_\_\_\_\_

With a copy to:

City of Jacksonville  
Office of the General Counsel  
City Hall-St. James Building  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202

(b) The Developer:

Avion MF Partners, LLC  
1819 Goodwin St.  
Jacksonville, FL 32204  
Attn: \_\_\_\_\_

10.5 **Time.**

Time is of the essence in the performance by any party of its obligations hereunder.

10.6 **Entire Agreement.**

This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

10.7 **Amendment.**

This Agreement may be amended by the parties hereto only upon the execution of a written amendment or modification signed by the parties. Notwithstanding the foregoing, the Executive Director of the OED is authorized on behalf of the City to approve, in his or her sole discretion, any “technical” changes to this Agreement. Such “technical” changes include without limitation non-material modifications to legal descriptions and surveys, ingress and egress, easements and rights of way, and design standards, as long as such modifications do not involve any increased financial obligation or liability to the City.

10.8 **Waivers.**

Except as otherwise provided herein, all waivers, amendments or modifications of this Agreement must be in writing and signed by all parties. Any failures or delays by any party in insisting upon strict performance of the provisions hereof or asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any other party.

#### 10.9 **Indemnification.**

Developer shall indemnify, hold harmless and defend the City from and against, without limitation, any loss, claim, suit, action, damage, injury, liability, fine, penalty, cost, and expense of whatsoever kind or nature (including without limitation court, investigation and defense costs and reasonable expert and attorneys' fees and costs) related to any suits and actions of any kind brought against the City or other damages or losses incurred or sustained, or claimed to have been incurred or sustained, by any person or persons arising out of or in connection with: (i) any breach of any representation or warranty of Developer contained or provided in connection with this Agreement; (ii) any breach or violation of any covenant or other obligation or duty of Developer under this Agreement or under applicable law; (iii) any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of Developer or those under its control that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to Developer's performance under this Agreement or relating to the Project, except to the extent caused by the sole negligence of the City. Nothing contained in this paragraph shall be construed as a waiver, expansion or alteration of the City's sovereign immunity beyond the limitations stated in Section 768.28, Florida Statutes.

This indemnification shall survive the expiration or termination (for any reason) of this Agreement and remain in full force and effect. The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to this Agreement or otherwise. The term "City" as used in this Section 10.9 shall include all City's members, officers, officials, employees and agents.

#### 10.10 **Severability.**

The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect any other provisions of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

#### 10.11 **Compliance with State and Other Laws.**

In the performance of this Agreement, the Developer must comply with any and all applicable federal, state and local laws, rules and regulations, as the same exist and may be amended from time to time. Such laws, rules and regulations include, but are not limited to, Chapter 119, Florida Statutes (the Public Records Act) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

#### 10.12 **Non-Discrimination Provisions.**

In conformity with the requirements of Section 126.404, *Ordinance Code*, the Developer represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employment relations, throughout the term of this Agreement. The Developer agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Human Rights Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance

with the nondiscrimination provisions of this Chapter 126, Part 4 of the *Ordinance Code*, provided however, that the Developer shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written. The Developer agrees that, if any of its obligations to be provided pursuant to this Agreement are to be performed by a subcontractor, the provisions of this Section 10.12 shall be incorporated into and become a part of the subcontract.

**10.13 Contingent Fees Prohibited.**

In conformity with Section 126.306, *Ordinance Code*, the Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Developer, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Developer, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of these provisions, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**10.14 Ethics.**

The Developer represents that it has reviewed the provisions of the Jacksonville Ethics Code, as codified in Chapter 602, *Ordinance Code*, and the provisions of the Jacksonville Purchasing Code, as codified in Chapter 126, *Ordinance Code*.

**10.15 Conflict of Interest.**

The parties will follow the provisions of Section 126.110, *Ordinance Code* with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with the City, to the extent the parties are aware of the same.

**10.16 Public Entity Crimes Notice.**

In conformity with the requirements of Section 126.104, *Ordinance Code* and Section 287.133, Florida Statutes, the Parties agree as follows:

The parties are aware and understand that a person or affiliate who has been placed on the State of Florida Convicted Vendor List, following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity, in excess of \$35,000.00, for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

**10.17 Survival.**

Any obligations and duties that by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and remain in effect. Without



limiting the foregoing, all obligations for the payment of fees or other sums accruing up to the expiration or termination of this Agreement and all provisions relating to the City's right to conduct an audit shall survive the expiration or termination of this Agreement.

10.18 **Incorporation by Reference.**

All exhibits and other attachments to this Agreement that are referenced in this Agreement are by this reference made a part hereof and are incorporated herein.

10.19 **Order of Precedence.**

In the event of any conflict between or among the provisions of this Agreement and those of any exhibit attached hereto or of any amendment, the priority, in decreasing order of precedence shall be: 1) any fully executed amendment; 2) provisions in this Agreement; and 3) exhibits to this Agreement.

10.20 **Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. Delivery of a counterpart by electronic means shall be valid for all purposes.

10.21 **Independent Contractor.**

In the performance of this Agreement, the Developer will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or association of the City. The Developer and its employees or agents shall be solely responsible for the means, method, technique, sequences and procedures utilized by the Developer in the performance of this Agreement.

10.22 **Retention of Records/Audit**

The Developer agrees:

- (a) To establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by the City under this Agreement.
- (b) To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of six (6) years after completion of the date of final payment by the City under this Agreement. If an audit has been initiated and audit findings have not been resolved at the end of six (6) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement, at no additional cost to the City.
- (c) Upon demand, at no additional cost to the City, to facilitate the duplication and transfer of any records or documents during the required retention period.

- (d) To assure that these records shall be subject at all reasonable times to inspection, review, copying, or audit by personnel duly authorized by the City and its designees, including but not limited to the City Council auditors.
- (e) At all reasonable times for as long as records are maintained, to allow persons duly authorized by the City, including but not limited to the City Council auditors, full access to and the right to examine any of the Developer's contracts and related records and documents, regardless of the form in which kept.
- (f) To ensure that all related party transactions are disclosed to the City.
- (g) To include the aforementioned audit, inspections, investigations and record keeping requirements in all subcontracts and assignments of this Agreement.
- (h) To permit persons duly authorized by the City, including but not limited to the City Council auditors, to inspect and copy any records, papers, documents, facilities, goods and services of the Developer which are relevant to this Agreement, and to interview any employees and subcontractor employees of the Developer to assure the City of the satisfactory performance of the terms and conditions of this Agreement. Following such review, the City will deliver to the Developer a written report of its findings and request for development by the Developer of a corrective action plan where appropriate. The Developer hereby agrees to timely correct all deficiencies identified in the corrective action plan.
- (i) If the result of any audit by the City (or City Council auditors) establishes that the amount of private Capital Investment has been overstated by five percent (5%) or more, the entire expense of the audit shall be borne by the Developer.
- (j) Additional monies due as a result of any audit or annual reconciliation shall be paid within thirty (30) days of date of the City's invoice.
- (k) Should the annual reconciliation or any audit reveal that the Developer has overstated the amount of private Capital Investment, and the Developer does not make restitution within thirty (30) days from the date of receipt of written notice from the City, then, in addition to any other remedies available to the City, the City may terminate this Agreement, solely at its option, by written notice to the Developer.

10.23 **Non-merger.**

None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Project Parcel.

10.24 **Exemption of City.**

Neither this Agreement nor the obligations imposed upon the City hereunder shall be or constitute an indebtedness of the City or City within the meaning of any constitutional, statutory or charter provisions requiring the City or City to levy ad valorem taxes nor a lien upon any properties of the City. Payment or disbursement by the City of any grant amount hereunder is subject to the availability of lawfully

appropriated funds. If funds are not available pursuant to a lawful appropriation thereof, this Agreement shall be void and the City shall have no further obligations hereunder.

**10.25 Parties to Agreement; Successors and Assigns.**

This is an agreement solely between the City and Developer. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any person not a party hereto. This Agreement shall be binding upon Developer and Developer's successors and assigns, and shall inure to the benefit of the City and its successors and assigns. However, Developer shall not assign, transfer or encumber its rights or obligations hereunder or under any document executed in connection herewith, without the prior written consent of the City, which consent may be withheld in the sole discretion of the City. Notwithstanding the foregoing, the City is an intended third-party beneficiary of this Agreement and may rely upon and enforce the provisions of this Agreement.

**10.26 Venue; Applicable Law.**

The rights, obligations and remedies of the parties specified under this Agreement shall be interpreted and governed in all respects by the laws of the State of Florida. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Duval County, Florida, or in the Federal District Court for the Middle District of Florida, Jacksonville Division. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement. Each party shall be responsible for the payment of its own attorneys' fees and costs incurred in connection with the enforcement of the terms of this Agreement.

**10.27 Civil Rights.**

The Developer agrees to comply with all of the terms and requirements of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1968, as amended, and the antidiscrimination provisions of Chapter 126, Part 4, of the City Ordinance Code, and further agrees that in its operation under this Agreement it will not discriminate against anyone on the basis of race, color, age, disability, sex or national origin.

**10.28 Further Assurances.**

Developer will, on request of the City,

- (a) promptly correct any defect, error or omission herein or in any document executed in connection herewith (collectively the "Project Documents");
- (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Project Documents and to identify and subject to the liens of the Project Documents any property intended to be covered thereby, including any renewals, additions, substitutions replacements, or appurtenances to the subject property;
- (c) execute, acknowledge, deliver, procure, file or record any documents or instruments deemed necessary, desirable or proper by the City to protect the liens or the security interest under the Project Documents against the rights or interests of third persons; and

- (d) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Project Documents and this Agreement.

10.29 **Exhibits.**

In the event of a conflict between any provisions of this Agreement and any exhibit attached to or referenced in this Agreement, the provisions of this Agreement shall govern.

10.30 **Construction.**

All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Developer further acknowledges that it has had ample time to review this Agreement and related documents with counsel of its choice. Any doubtful or ambiguous provisions contained herein shall not be construed against the party who drafted the Agreement. Captions and headings in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

10.31 **Further Authorizations.**

The parties acknowledge and agree that the Mayor of the City, or his designee, and the City's Corporation Secretary, or their respective designees, are hereby authorized to execute any and all other contracts and documents and otherwise take all necessary action in connection with this Agreement and the Resolution.

10.32 **Attorney's Fees.**

Each party shall be responsible for its own attorneys' fees and costs in connection with the enforcement of the terms of this Agreement and any legal action related to this Agreement.

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

ATTEST:

CITY OF JACKSONVILLE

By: \_\_\_\_\_  
James R. McCain, Jr.  
Corporation Secretary

By: \_\_\_\_\_  
Lenny Curry, Mayor

WITNESS:

AVION MF PARTNERS, LLC, a Florida limited liability company

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Form Approved:

\_\_\_\_\_  
Office of the General Counsel

GC-#1554363-v3-Avion\_MF\_Partners\_EDA.DOCX

Encumbrance and funding information for internal City use:

Account or PO Number: \_\_\_\_\_

Amount.....**\$7,500,000.00**

This above stated amount is the maximum fixed monetary amount of the foregoing Contract. It shall not be encumbered by the foregoing Contract. It shall be encumbered by one (1) or more subsequently issued purchase order(s) that must reference the foregoing Contract. All financial examinations and funds control checking will be made at the time such purchase order(s) are issued.

In accordance with Section 24.103(e), of the *Jacksonville Ordinance Code*, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Contract; provided however, this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance[s] shall be made by subsequent purchase order[s], as specified in said Contract.

\_\_\_\_\_  
Director of Finance  
City Contract Number: \_\_\_\_\_

LIST OF EXHIBITS

Exhibit A	Project Parcel
Exhibit B	Improvements
Exhibit C	JSEB Reporting Form
Exhibit D	Annual Survey

**Exhibit A**  
**Project Parcel**

That certain real property generally located at 0 Duval Road, north of I-295 and west of Biscayne Boulevard, in Jacksonville, FL 32218, having R.E. #: 019544-0305.



## **Exhibit B**

### **Improvements**

The Improvements will consist of the acquisition of land, property improvements, and building infrastructure to construct an approximately 320-unit apartment community, with a mix of 1-, 2-, and 3-bedroom units. The project will include both market rate and workforce housing units, with ninety-six (96) units to be set aside for workforce housing. The Developer must create and maintain a minimum of ninety (90) workforce housing units to qualify for the REV Grant.



**Exhibit D**

**Annual Survey 2023**

Please complete the form below as it relates to the project for which you received City or State assistance. Should you have any questions, please call (904) 255-5444 or email [OEDFinance@coj.net](mailto:OEDFinance@coj.net). Send completed form to: City of Jacksonville, Office of Economic Development, Attn: Finance and Compliance, 117 West Duval Street, Suite 275, Jacksonville, FL 32202, Email: [OEDFinance@coj.net](mailto:OEDFinance@coj.net).

Developer name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Primary Contact Name: \_\_\_\_\_

Primary Contact Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Signature: \_\_\_\_\_ Reporting Date: \_\_\_\_\_

**As of 12/31/2023:**

**I. CAPITAL INVESTMENT INFORMATION**

Project Land Costs	[3] \$
Project Structure Costs	[4] \$
Project Equipment Costs	[5] \$
Other Costs	[6] \$
Total Project Costs (sum [3] through [6])	\$

**II. ASSESSED PROPERTY VALUE**

Assessed Value of Property on 2023 Duval County Property Tax Bill:	
Real Property	[7] \$
Personal Property	[8] \$
Total of [7] & [8]	\$
Amount of Taxes Paid: \$	Date Taxes Paid:

