

Redevelopment Agreement

between

The Downtown Investment Authority

and

525 BEAVER, LLC

REDEVELOPMENT AGREEMENT

This **REDEVELOPMENT AGREEMENT** (this “Agreement”) is made this ___ day of _____, 2023 (the “Effective Date”), between the **DOWNTOWN INVESTMENT AUTHORITY**, a community redevelopment agency on behalf of the City of Jacksonville (the “DIA”) and **525 BEAVER, LLC**, a Florida limited liability company (the “Developer”).

Article 1. PRELIMINARY STATEMENTS

1.1 The Project.

The Developer currently owns certain real property improved with a historic two-story building commonly known as the Hillman-Pratt and Walton Funeral Home Building (the “Building”) and located at 525 W. Beaver Street, Jacksonville, Florida 32202, Duval County Tax R.E. Parcel Number 074645-0000 (the “Project Parcel”) as depicted on **Exhibit A** attached hereto. The Developer has proposed to make certain improvements to renovate and rehabilitate the Building on the Project Parcel (as defined below, collectively, the “Improvements”) (together with the Developer’s obligations under this Agreement, the “Project”). The Project is expected to represent an estimated Total Development Cost of FOUR MILLION NINE HUNDRED EIGHTY-SIX THOUSAND EIGHT HUNDRED EIGHTY-FOUR AND NO/100 DOLLARS (\$4,986,884.00) by or on behalf of the Developer.

1.2 Authority.

The DIA Board has authorized execution of this Agreement pursuant to DIA Resolution 2022-09-04 dated September 21, 2022 (the “Resolution”) and City Council has approved this Agreement pursuant to Ordinance 2023-____-E (the “Ordinance”).

1.3 Coordination by DIA.

The DIA hereby designates the Chief Executive Officer of the DIA (the “CEO”) to be the initial Project Coordinator who will, on behalf of the DIA, 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. The CEO may designate another representative to serve as Project Coordinator and will provide notice thereof to Developer in accordance with the notice provisions 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.

1.4 Maximum Indebtedness.

The maximum indebtedness of the DIA for all loans, fees, reimbursable items or other costs pursuant to this Agreement shall not exceed the sum of ONE MILLION TWO HUNDRED FIFTY-ONE THOUSAND FOUR HUNDRED THIRTY AND NO/100 DOLLARS (\$1,251,430.00).

1.5 Availability of Funds.

The DIA’s obligations under this Agreement are contingent and expressly conditioned upon available and lawfully appropriated funds to the Project and this Agreement.

**Article 2.
DEFINITIONS**

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

2.1 Budget. The construction budget reviewed and approved by the DIA in the total amount of THREE MILLION EIGHT HUNDRED FIFTY-THREE THOUSAND THREE HUNDRED FIFTY-SEVEN AND NO/100 DOLLARS (\$3,853,357.00) (the “Total Budget Amount”), which includes Construction Costs to be incurred in each of the funding categories (each, a “Funding Category”) and in the minimum amounts (each a “Funding Category Minimum”) set forth in the table below:

Funding Category	Funding Category Minimum
Interior Rehabilitation	\$784,703
Interior Restoration	\$174,611
Exterior	\$187,750
Code Compliance	\$905,000
General Requirements/Other	\$327,496
N/A*	\$1,473,797
Total Budget Amount:	\$3,853,357

*The category “N/A” is not a Funding Category and is not required to be met as a Funding Category Minimum for reimbursement of other categories under the DPRP. Further, there will be no reimbursement for expenditures categorized as “N/A” in the construction budget.

2.2 CCR Loan.

A DPRP Loan that meets the parameters outlined for a CCR Forgivable Loan in the DPRP Guidelines, underwritten to provide funding support up to seventy-five percent (75%) of eligible costs associated with improving the mechanical systems, providing ADA compliance, environmental remediation, to address life safety issues, or other code related expenditures related to redevelopment of the Property as may be determined eligible by DIA. A CCR Loan does not have an interest payment requirement and the forgivable term for the principal amount is five years when used in conjunction with an HPRR Loan, and otherwise is forgivable over ten years when not used in conjunction with an HPRR Loan.

2.3 CEO.

The Chief Executive Officer of the DIA.

2.4 City.

The City of Jacksonville, Florida, a municipal corporation and a political subdivision of the State of Florida.

2.5 COA.

Certificate of Appropriateness issued by the JHPC or Historic Preservation Section.

2.6 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 submits documentation in form and substance acceptable to the DIA that it (i) has obtained all federal, state or local permits and approvals as required for the Completion of the Improvements or otherwise as necessary for the demolition of the existing improvements and construction of the Improvements, (ii) has obtained and closed on all necessary funding for the construction and Completion of the Project, and (iii) has begun physical, material construction (e.g., site demolition, land clearing, utility installation, or such other evidence of commencement of construction as may be approved by the DIA in its reasonable discretion) of the Improvements on an ongoing basis.

2.7 Construction Costs.

The costs incurred by Developer to construct the Improvements as set forth in the Budget including the cost of labor, materials, general liability insurance, permits, contingencies, construction management fees, general conditions and general requirements.

2.8 DDRB.

The City of Jacksonville's Downtown Development Review Board.

2.9 DIA Board.

The community redevelopment area board, and the governing body of the DIA created by ordinance to manage Downtown economic development, as the same shall be from time to time constituted, charged with the duty of governing the DIA CRA and such other duties as set forth in Chapter 55, *Ordinance Code*.

2.10 DPRP Guidelines.

The Downtown Preservation and Revitalization Program Guidelines (the "DPRP") as authorized by Revised Exhibit 1 to Ordinance 2020-527-E and incorporated herein by reference as if fully set forth herein.

2.11 DPRP Loan.

One or more loans authorized by this Agreement and funded as authorized by and pursuant to the DPRP Guidelines, which may include (i) a HPRR Loan; and (ii) a CCR Loan from the City to the Developer with respect to the Building in accordance with the terms and conditions set forth in this Agreement and the DPRP Guidelines.

2.12 DPRP Loan Request.

An application by the Developer to the DIA requesting a DPRP Loan pursuant to the terms of this Agreement for the Building, specifying with particularity the scope of work proposed for the Building, the estimated Total Development Costs for the Building, and the requested DPRP Loan amount, and otherwise in form and substance consistent with this Agreement and the DPRP Guidelines.

2.13 Historic Preservation Section.

The Historic Preservation Section of the City of Jacksonville Planning and Development Department.

2.14 HPRR Loan.

A DPRP Loan that meets the parameters outlined for a HPRR Forgivable Loan in the DPRP Guidelines, underwritten to provide funding support up to:

- (a) seventy-five percent (75%) of eligible costs for the restoration or rehabilitation of the building exterior;
- (b) seventy-five percent (75%) of eligible costs for the restoration of historic features on the building interior;
- (c) thirty percent (30%) of eligible costs for the rehabilitation of the building interior; and
- (d) twenty percent (20%) of eligible costs for general requirements and overhead of the general contractor.

To be eligible for funding, all work must be reviewed and approved by the Planning and Development Department for consistency with the United States Secretary of Interior Standards and applicable design guidelines during application processing and for verification upon completion and request for funding under terms defined further herein. Such review may be conditional on further review and approvals by the State Historic Preservation Office and/or the National Park Service, as applicable.

2.15 Improvements.

Those certain improvements to be made by the Developer on the Building and the Project Parcel, to include the necessary rehabilitation and restoration activity to the real property and a

minimum of seven thousand three hundred (7,300) square feet of net leasable residential space, not less than twelve (12) residential units, and a minimum of one thousand three hundred (1,300) square feet of net leasable commercial/retail space for tenants, as further described on **Exhibit B** attached hereto and incorporated herein by this reference that are incorporated into the Project on the Project Parcel in accordance with this Agreement.

2.16 JHPC.

The City of Jacksonville Historic Preservation Commission.

2.17 Ordinance Code.

The Ordinance Code of the City of Jacksonville.

2.18 Plans and Specifications.

Those certain plans and specifications finally approved in writing by the Historic Planning Section of the Planning and Development Department, the Downtown Development Review Board, and/or the DIA.

2.19 Substantial Completion.

“Substantially Completed”, “Substantial Completion” or “Completion” means that all permits have been finalized, a certificate of substantial completion has been issued by the contractor and verified by the architect of record, if any, and the Improvements are available for use in accordance with their intended purpose; and a temporary certificate of occupancy has been issued subject only to commercially reasonable punch list items, completion of tenant improvements and similar items.

2.20 Total Development Costs.

“Total Development Costs” or “TDC” includes the following costs incurred with regard to the Improvements as determined by the DIA: (i) the costs approved in underwriting for the acquisition of the Building and associated land, which may include, as applicable, the market value of real property owned by Developer and utilized as part of the Project Parcel, taking into consideration the amount of debt at the time of approval by the DIA Board; (ii) the construction costs as negotiated with a qualified general contractor; and (iii) additional soft costs typically eligible for capitalization in development activity of the type set forth in this Agreement. For the avoidance of doubt, Total Development Costs shall include the Construction Costs. Notwithstanding the foregoing, Total Development Costs may not include any of the following: fees to Developer or any owner of the Project Parcel, holding costs, tangible personal property costs (e.g., IT, furniture, fixtures and equipment), marketing costs, third party costs for risk management, and loan fees.

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 DIA have jointly established the following dates for the performance of each party's respective obligations with respect to the construction of the Improvements (herein called the "Performance Schedule"):

- (a) The Developer shall Commence Construction of the Improvements in accordance with the terms and conditions set forth in this Agreement within six (6) months of the Effective Date of this Agreement. Developer shall provide written notice to City within five (5) days of the actual date that Construction of the Improvements was Commenced (the "Commencement Date") and provide supporting documentation to that effect.
- (b) The Improvements shall be Substantially Completed within eighteen (18) months after the Commencement Date, in accordance with the terms and conditions of this Agreement.

The Developer hereby agrees to undertake and complete the Project in accordance with this Agreement and the Performance Schedule, and to comply with all of its obligations set forth herein. The CEO shall have the authority to extend the Performance Schedule for up to six (6) months for good cause shown by the Developer, in the CEO's sole discretion. For purposes of clarity, the grant of a six (6) month extension to the Commencement of Construction date pursuant to this Section shall include a six (6) month extension to the Substantial Completion Date, which cumulatively shall be deemed one (1), six (6) month extension.

3.2 Approval of Agreement.

By the execution hereof, the parties certify as follows:

- (a) The 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 with an ownership interest in 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 with an ownership interest in the Developer are in compliance with all federal, state, and local laws.
- (b) The DIA certifies that the execution and delivery hereof is binding upon the DIA to the extent provided herein and enforceable against it in accordance with its terms.

Article 4.

DOWNTOWN HISTORIC PRESERVATION AND REVITALIZATION PROGRAM

4.1 Downtown Preservation and Revitalization Program Loans.

Pursuant to Section 55.303, *Ordinance Code*, the DIA is authorized to award applicants DPRP Loans, subject to City Council approval. Developer has applied with the Historic Preservation Section of the Planning and Development Department (the “Historic Preservation Section”) and the DIA for DPRP Loans as set forth in this Agreement and has been approved for the DPRP Loans listed below subject to the conditions as set forth in this Agreement. The DPRP Loans, as to the Building, are subject to the scope of work set forth in the COA and any conditions contained therein (the “COA Conditions” and together with any other conditions imposed by the DIA, DDRB and/or other City departments, the “Conditions”).

Historic Preservation, Restoration, and Rehabilitation Forgivable Loan (HPRR)	Code Compliance Forgivable Loan (CCR)	TOTAL
\$572,680	\$678,750	\$1,251,430

4.2 Total Development Costs; Minimum Expenditures.

In order to be eligible for the maximum amount of the DPRP Loans, prior to the applicable DPRP Loan closing, the Developer must provide evidence and documentation, sufficient to demonstrate to the DIA in its sole but reasonable discretion, the following: (i) a total equity capital contribution of at least ONE MILLION EIGHT HUNDRED EIGHTY-SIX THOUSAND SEVEN HUNDRED FIFTY-NINE AND NO/100 DOLLARS (\$1,886,759.00) (the “Required Equity”); (ii) Total Development Costs incurred of at least FOUR MILLION NINE HUNDRED EIGHTY-SIX THOUSAND EIGHT HUNDRED EIGHTY-FOUR AND NO/100 DOLLARS (\$4,986,884.00) (the “Minimum Total Development Costs”); (iii) total Construction Costs incurred of at least the Total Budget Amount (the “Minimum Total Construction Costs”), and (iv) Construction Costs incurred of at least the Funding Category Minimum with respect to each respective Funding Category.

Notwithstanding the foregoing, the required Minimum Total Development Costs may be reduced by the DIA in its sole and absolute discretion by a maximum of ten percent (10%) overall without affecting Developer's eligibility for the approved DPRP Loans. In addition, the required Minimum Total Construction Costs may be reduced by the DIA in its sole and absolute discretion by a maximum of ten percent (10%) with respect to any Funding Category Minimum; provided that, in such event there shall be a pro rata reduction in each of the related DPRP Loans. The DIA Board shall have the authority, without further action by City Council, to approve reduced DPRP Loan amounts provided the Total Development Costs incurred are not less than FOUR MILLION FOUR HUNDRED EIGHTY-EIGHT THOUSAND ONE HUNDRED SIXTY AND NO/100 DOLLARS (\$4,488,160.00), including Construction Costs incurred in the Funding Categories of not less than TWO MILLION ONE HUNDRED FORTY-ONE THOUSAND SIX HUNDRED FOUR AND NO/100 DOLLARS (\$2,141,604.00).

Notwithstanding anything in this Agreement to the contrary, (1) in the event the Total Development Costs incurred are less than FOUR MILLION FOUR HUNDRED EIGHTY-EIGHT THOUSAND ONE HUNDRED SIXTY AND NO/100 DOLLARS (\$4,488,160.00) or the Construction Costs incurred in the Funding Categories are less than TWO MILLION ONE HUNDRED FORTY-ONE THOUSAND SIX HUNDRED FOUR AND NO/100 DOLLARS (\$2,141,604.00), each as determined by the DIA, the Developer shall be ineligible for any DPRP Loans, and (2) in the event the Construction Costs incurred within any Funding Category are less than ninety percent (90%) of the applicable Funding Category Minimum then Developer shall be ineligible for any DPRP Loan with respect to such Funding Category Minimum.

4.3 Construction of Improvements.

After the Developer obtains all applicable approvals with respect to the Project, the Developer shall construct the Improvements in accordance with the terms of this Agreement and COA, the Conditions, the Plans and Specifications, and the scope of work as set forth herein for the Improvements. The Developer will pay all costs of the Project and Improvements. The Developer shall comply with all requirements of this Agreement and the DPRP Guidelines. The Plans and Specifications shall not be materially modified without the prior written approval of the CEO.

4.4 Disbursement Request.

After Substantial Completion of the Project, the Developer shall submit to the DIA a completed written disbursement request (the "Disbursement Request") with respect to the Improvements in accordance with the terms and conditions set forth in this Agreement, on the Disbursement Request Form attached hereto as **Exhibit D**. In the Disbursement Request, the Developer shall certify and describe in detail reasonably acceptable to the DIA (a) the cost of the labor that has been performed and the materials that have been incorporated into the Building, and (b) the amount actually paid by the Developer for such labor and materials. The Developer shall attach to the Disbursement Request such invoices, receipts, cancelled checks (or evidence that payment has cleared the Developer's banking account), and other documents required by the DIA evidencing that the costs and expenses were actually incurred and paid for by the Developer and were expended on and pertain to the Project. The Disbursement Request shall constitute a

representation and warranty by the Developer to the DIA that (a) the work performed and the materials supplied are in accordance with the terms of this Agreement and COA, the Conditions, the Plans and Specifications, and the scope of work as set forth herein for the Improvements, (b) the work and materials for which payment is requested have been physically incorporated into the Project, (c) the value is as stated, (d) the work and materials conform with all applicable rules and regulations of the public authorities having jurisdiction, (e) payment for the items described in such Disbursement Request has been made by the Developer, (f) such Disbursement Request is consistent with this Agreement, and (g) no default or event which, with the giving of notice or the passage of time, or both, would constitute a default has occurred and is continuing.

4.5 Conditions to Disbursement of DPRP Loans.

(a) General Conditions. Notwithstanding anything to the contrary in this Agreement, the DIA shall have no obligation to make any disbursement of a DPRP Loan (a) unless the DIA is satisfied, in its sole and absolute discretion, that each and every condition precedent to the making of such disbursement set forth in this Agreement and the Loan Documents has been satisfied or (b) if a default or an event which, with the giving of notice or the passage of time, or both, would constitute a default, has occurred or is continuing.

(b) Additional Conditions. In addition to the conditions precedent set forth in Section 1.5, above, the DIA's obligation to disburse any portion of a DPRP Loan to the Developer is conditioned upon the prior occurrence of each of the following conditions precedent with respect to each Loan, and otherwise in accordance with the terms of this Agreement:

(i) The Building must have been designated as a local historic landmark by the City Council of Jacksonville and, if applicable, must have received final approval from the National Park Service as shown on the Part 3 approval provided for the project.

(ii) The Developer shall submit to the DIA a completed Disbursement Request in accordance with the terms and conditions set forth in this Agreement;

(iii) All property taxes on the Project Parcel must be current and paid by the Developer and no municipal liens shall be outstanding;

(iv) The Building shall be in compliance with all applicable state and local laws, ordinances and regulations and the Developer must be utilizing the Building in accordance with the DPRP Guidelines and this Agreement;

(v) No default with respect to the Developer's obligations under this Agreement or an event which, with the giving of notice or the passage of time, or both, would constitute a default with respect to Developer's obligations under this Agreement, has occurred or is continuing;

(vi) The Developer shall furnish to the DIA with respect to the Building, in accordance with the terms and conditions set forth in this Agreement, a certificate of occupancy or its equivalent and such other permits and/or certificates (including a certificate of substantial completion issued by the contractor and certified by the architect of record) as shall be required to establish to the DIA's satisfaction that the Improvements have been Substantially Completed

in accordance with the terms of this Agreement and are not subject to any material violations or uncorrected conditions noted or filed in any City department;

(vii) The Developer shall submit to the DIA with respect to the Improvements, a proper contractor's final affidavit and full and complete releases of liens from each contractor, subcontractor and supplier, and such other proof satisfactory to the DIA in its reasonable discretion, confirming that final payment has been made for all materials supplied and labor furnished in connection with the Project or that, in the event of a dispute in any amount owed, such amount is properly bonded off pursuant to Florida law so that it will not become a lien on the Project Parcel;

(viii) Prior to submission of a Disbursement Request, the Developer shall provide evidence and documentation sufficient to demonstrate to the DIA, in its reasonable discretion, satisfaction of the Required Equity, the Minimum Total Development Costs, the Minimum Total Construction Costs, and the Construction Costs incurred with respect to each Funding Category in the amount of the respective Funding Category Minimum, as each of the same may be reduced consistent with Section 4.2 hereof;

(ix) The Improvements shall have been Substantially Completed in all respects in accordance with the terms and conditions of this Agreement, as verified by a final inspection report satisfactory to the DIA, certifying that the Improvements have been constructed in a good and workmanlike manner and are in satisfactory condition. In the event the DIA determines that there is a deficiency with the Improvements the DIA reserves the right to require that an escrow be established in an amount satisfactory to the DIA to remedy such deficiency;

(x) With respect to the Improvements and in accordance with the terms and conditions set forth in this Agreement and the DPRP Guidelines, the Developer must submit to a "post-work" inspection by the Historic Preservation Section or consultant to examine the Developer's compliance with previously approved Permits, the COAs, the Conditions, and all Historic Preservation Section interpretations issued to the Developer. The Historic Preservation Section shall have completed this "post-work" inspection and be satisfied that the Developer has met the obligations of this Agreement in accordance with the following criteria, as applicable: (a) United States Department of Interior Standards for Historic Preservation; (b) United States Department of Interior Standards for Rehabilitation; (c) the COA from the Jacksonville Historic Preservation Commission; and (e) the scope of work for the Improvements;

(xi) The Developer shall take all action necessary to have any mechanic's and materialmen's liens, judgment liens or other liens or encumbrances filed against the Project Parcel (other than any consensual mortgage) released or transferred to bond within thirty (30) days of the date the Developer receives notice of the filing of such liens or encumbrances. If any such lien or encumbrance is filed, the DIA shall have received a copy of the recorded release. The DIA shall not be obligated to disburse any of the DPRP Loan funds to the Developer if, in the reasonable opinion of the DIA, any such disbursement on the Project or Project Parcel would be subject to a mechanic's or materialmen's lien or any other lien or encumbrance other than inchoate construction liens. The Developer shall be fully and solely responsible for compliance in all respects whatsoever with the applicable mechanic's and materialmen's lien laws;

(xii) The Developer shall have provided to the DIA, in form and substance reasonably satisfactory to the DIA, any such other document, instrument, information, agreement or certificate the DIA may reasonably require related to the construction or completion of the Improvements, and all Loan Documents shall have been executed and delivered by the Developer; and

(xiii) All other conditions and requirements under the DPRP Guidelines have been satisfied as determined by the DIA in its sole but reasonable discretion.

4.6 Loan Amount; Loan Program.

The total of all DPRP Loans to be disbursed under this Agreement shall not exceed the lesser of (i) the maximum aggregate amount as set forth in Section 1.4 hereof, and (ii) the Eligible Expenses. No DPRP Loan may exceed the limits set forth in the DPRP Guidelines, including with respect to Total Development Costs (as defined in the DPRP Guidelines and Section 1.1 above). The term “Eligible Expenses” shall mean those expenses that are (i) within Total Development Costs as approved by the DIA, (ii) actually incurred by the Developer to construct Improvements meeting the standard criteria used by the DIA and the Historic Preservation Section in determining eligible improvements or otherwise eligible hereunder, and (iii) eligible for the applicable DPRP Loans pursuant to the terms and conditions of this Agreement, the DPRP Guidelines, the COA and the Conditions. All Eligible Expenses shall be determined by the Historic Preservation Section and the DIA in its reasonable discretion consistent with the standard criteria typically used by the DIA and the Historic Preservation Section in connection with such determinations. Upon such a determination of Eligible Expenses for the Project, subject to the compliance with all of the conditions precedent in Section 1.5 and Section 4.4, above, including, without limitation, paid invoices matching the applicable scope of work, a contractor’s affidavit, mechanics’ lien releases and other evidence (including without limitation site inspections and other inspection reports) that may be required in the reasonable discretion of the City or DIA, the applicable DPRP Loans with respect to the Eligible Expenses incurred in the Project will be disbursed, subject to adjustment as set forth in Section 4.2 hereof. For purposes of clarity, notwithstanding anything contained in this Agreement to the contrary, eligible costs incurred in pursuing the Improvements incurred after September 21, 2022 but prior to execution of this Agreement may be determined by the DIA in its sole authority to be Eligible Expenses and included toward the required Total Development Cost for the Project.

4.7 DPRP Loan Terms; Loan Documents.

The maturity date of each DPRP Loan disbursed hereunder shall be as set forth elsewhere in this Agreement and as set forth in the applicable loan documents, in accordance with the DPRP Guidelines. For so long as there is no uncured default under this Agreement or any Loan Document, each HPRR Loan and CCR Loan shall be forgiven at the rate of twenty percent (20%) per annum, in accordance with the DPRP Guidelines. These terms shall be more fully set forth in the promissory notes to be executed and delivered by the Developer in connection with each DPRP Loan (the “Notes”) and the related loan documents. The Notes shall be secured by a mortgage pledging and granting to the City a lien and mortgage on, and security interest in, the

Property to secure the payment of the loans evidenced by the Notes, interest thereon, and fees and expenses related thereto, in accordance with the Resolution. In addition to the Notes, the Developer shall also execute and deliver all other mortgages, security agreements, documents, instruments, and certificates required by the DIA in its sole discretion under this Agreement or in connection with any DPRP Loan (collectively with the Notes, the “Loan Documents” and each, a “Loan Document”).

Loan component	Amount	Interest rate	Term	Repayment Schedule	Amortization
HPRR Loan	\$572,680	0.0%	5 years	None	20%/year
CCR Loan	\$678,750	0.0%	5 years	None	20%/year

**Article 5.
LIMITATION OF LIABILITY**

5.1 No Warranty by City or DIA.

Nothing contained in this Agreement or any other document attached hereto or contemplated hereby shall constitute or create any duty on or warranty by City or the DIA regarding: (a) the accuracy or reasonableness of the Project budgets; (b) the feasibility or quality of the construction documents for the Project; (c) the proper application by the Developer of the DPRP Loans; (d) the quality or condition of the work; or (e) the competence or qualifications of any third party furnishing services, labor or materials in connection with the construction of the Project. The Developer acknowledges that it has not relied and will not rely upon any experience, awareness or expertise of the City or DIA, or any City or DIA inspector, regarding the aforesaid matters.

5.2 Further Disclaimer.

The DPRP Loans shall not be deemed to constitute a debt, liability, or obligation of the City, DIA 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, DIA or of the State of Florida or any political subdivision thereof, but shall be payable solely from the funds provided therefor, respectively, in Article 4 and Article 5 of this Agreement. The DIA shall not be obligated to pay any DPRP Loan or any installment of the foregoing 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, DIA or of the State of Florida or any political subdivision thereof is pledged to the payment of the DPRP Loans or any installment of the foregoing. The Developer, and 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, DIA or of the State of Florida or any political subdivision thereof for the payment of the DPRP Loans or any installment of the foregoing.

Article 6.
THE DEVELOPMENT

6.1 Scope of Development.

Subject to the terms and conditions of this Agreement, the Developer shall construct and develop or cause to be constructed and developed, in substantial compliance with the times set forth in the Performance Schedule, all Improvements which the Developer is obligated to construct and develop with respect to the Project under this Agreement. The Developer shall construct all Improvements in accordance with all applicable laws and building and permitting codes.

6.2 Cost of Development.

Except as otherwise set forth in this Agreement, the Developer shall pay the cost of constructing and developing the Improvements at no cost to the DIA.

6.3 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 DIA does not guarantee approval of this Agreement or any aspect of the Project by any government authorities and agencies that are independent of the DIA.

6.4 Authority of DIA to Monitor Compliance.

During all periods of design and construction, the Project Coordinator or his or her 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 Project Coordinator 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 a minimum of twenty-four (24) hours' prior written notice to the Developer, representatives of the City and Project Coordinator or his or her designee shall have the right of access to the Project Parcel and to every structure on the Project Parcel during normal construction hours.

6.5 Timing of Completion.

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

6.6 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;
- (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 7.
JSEB PROGRAM**

7.1 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. 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 Sections 126.608 et seq., *Ordinance Code*, to enter into contracts with City certified JSEBs to provide materials or services in an aggregate amount of not less than twenty percent (20%) of the DIA's maximum potential contribution to the Project as requested from time to time with respect to the development activities or operations of the Project over the term of this Agreement; and
- (b) The Developer shall submit JSEB report(s) regarding the Developer's actual use of City certified JSEBs on the Project, (i) on the date of any request for DIA funds which are payable prior to the Completion of Construction, (ii) upon Completion of Construction. 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 8.
LOAN PERIOD; REPORTING; SITE VISITS

8.1 Taxes.

All property, business, and income taxes must be maintained in current status (subject to extensions permitted pursuant to applicable law) throughout the term of this Agreement, and until all outstanding obligations with respect to each of the DPRP Loans have been paid in full or forgiven, as applicable, (the “DPRP Loan Period”).

8.2 Reporting.

On an annual basis, and prior to March 1 each year this Agreement is in effect, the Developer shall submit reports to the DIA regarding all activities affecting the implementation of this Agreement, including a narrative summary of progress on the Project. Developer shall also submit to the DIA its notice of ad valorem taxes paid with respect to the Project Parcel contemporaneously with such payment.

The Developer’s obligation to submit such reports shall continue until the Developer has complied with all of the terms of this Agreement concerning the construction and Substantial Completion of the Project and during the term of each outstanding DPRP Loan. Within thirty (30) days following the receipt of a request of the DIA, the Developer shall provide the DIA with additional information reasonably requested by the DIA.

8.3 Site Visits.

After Substantial Completion and for so long as City or DIA has any payment obligations to Developer pursuant to this Agreement, Developer shall permit representatives from the City and DIA and other designated City/DIA personnel, to monitor compliance by Developer with the provisions of this Agreement. Once per calendar year, with a minimum twenty-four (24) hours’ prior notice to Developer, the Project Coordinator, or his or her designee, shall have the right to tour non-public portions of the Project and access Developer’s relevant business records 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. Public portions of the Project, such as restaurants and retail spaces open to the public, may be visited without notice during normal operating hours of the respective businesses.

8.4 Transfer or Refinance During DPRP Loan Period.

DIA reserves the right in its discretion to approve any sale or disposition or change in controlling interest of the ownership entity of the Building or the Project Parcel during the DPRP Loan Period. If DIA fails to respond to a request for approval of a sale or disposition or change in ownership within twenty (20) business days, DIA shall be deemed to have waived such approval right. DIA further reserves the right to approve any refinance of the senior debt during the DPRP Loan Period.

Article 9.
DEFAULTS AND REMEDIES

9.1 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 subject to the notice and cure period contained below), (ii) any documents executed by Developer in connection with this Agreement, (iii) any document provided to the DIA in connection with the underwriting and approval of the Project, (iv) any of the Loan Documents (collectively, the “Project Documents”), or (v) a default of the Borrower under any other agreement or transaction between the Borrower and the City of Jacksonville or the DIA. A default shall also exist if any event occurs or information becomes known which, in the reasonable, good faith judgment of the DIA, makes untrue, incorrect or misleading in any material respect any statement or information contained in any of the documents described in clauses (i) – (iv) 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 DIA may refuse to disburse any further funds under this Agreement, including pursuant to any DPRP Loan and additionally, may at any time or from time to time proceed to protect and enforce all rights available to the DIA 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 DIA 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 DIA may withhold any and all funds, including pursuant to any DPRP Loan 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’s time to cure the default shall be extended during such time that Developer is diligently pursuing such cure provided that such time period shall not exceed ninety (90) days, so long as Developer has commenced and is diligently proceeding to cure such default within the initial fifteen (15) business day period.

Notwithstanding the foregoing, Developer shall immediately and automatically be in default, and the DIA shall not be required to give Developer any notice or opportunity to cure such default (and thus the DIA 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 a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Developer 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 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 ninety (90) consecutive days;

- (b) The institution by Developer 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 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;
- (c) Payment defaults, or other defaults that trigger legal actions against the Applicant that endanger the lien position of the City, shall also be a default on the subject facilities provided that such defaults are not cured within ten (10) days; and
- (d) Payment defaults, bankruptcy filings, or other material defaults during the DPRP Loan Period (subject in each case to any grace periods or notice and cure periods provided in this Agreement or any Project Documents) will trigger the right for the City of Jacksonville to accelerate all amounts funded and outstanding under any or all programs at such time plus a 20% penalty of any amounts amortized or prepaid prior to that date.

9.2 Specific Defaults.

Additionally, for any of the specific events of default described in this Section 9.2 below, the parties agree that the DIA'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 this Agreement, and such failure is not cured within thirty (30) days of the date such report is required to be submitted, the DIA will be entitled to withhold all further disbursements for any DPRP Loan until such reporting requirements are met to the satisfaction of the DIA;
- (b) In the event all property, business, and income taxes are not timely paid by the Developer throughout the term of this Agreement, and through all DPRP Loan Periods, the DIA will be entitled to withhold all further disbursements for any DPRP Loan and all amortization or forgiveness on any outstanding DPRP Loans will cease until all taxes are brought current;
- (c) In the event the Developer restructures its ownership interest in the Developer entity, sells (including, without limitation, a capital lease), refinances the Project

Parcel, or any portion thereof, in such a way as to remove any equity injected prior to closing as required in Section 4.2, or otherwise transfers any portion of the Building, the Project Parcel or any interest in the Developer entity (collectively, the “Sale”) during the five (5) year period immediately following the date of disbursement of any HPRR Loan or CCR Loan, the Developer shall pay to the DIA at closing of the Sale all or a portion, as applicable, of the total amount of funds disbursed under each HPRR Loan and CCR Loan with respect to the portion of the Project Parcel sold as follows:

- (i) one hundred percent (100%) of the funds actually disbursed to Developer as part of any HPRR Loan or CCR Loan in the one (1) year prior to the Sale;
- (ii) eighty percent (80%) of the funds actually disbursed to Developer as part of any HPRR Loan or CCR Loan, between the date that is one (1) year prior to the Sale and the date that is two (2) years prior to the Sale;
- (iii) sixty percent (60%) of the funds actually disbursed to Developer as part of any HPRR Loan or CCR Loan between the date that is two (2) years prior to the Sale and the date that is three (3) years prior to the Sale;
- (iv) forty percent (40%) of the funds actually disbursed to Developer as part of any HPRR Loan or CCR Loan between the date that is three (3) years prior to the Sale and the date that is four (4) years prior to the Sale; and
- (v) twenty percent (20%) of the funds actually disbursed to Developer as part of any HPRR Loan or CCR Loan between the date that is four (4) years prior to the Sale and the date that is five (5) years prior to the Sale.

In addition, if such Sale involves only a portion of the Project Parcel, all DPRP Loans outstanding with respect to the remainder of the Project Parcel may, in DIA’s discretion, become immediately due and payable and all amortization will cease on any outstanding DPRP Loans.

- (d) In the event the Developer or any lessee, transferee or assignee of the Developer uses the Project or the Building for any use not contemplated by this Agreement or the DPRP Guidelines at any time on or before the fifth (5th) anniversary of the last date of any disbursement of funds to the Developer, such use has not been approved by the DIA Board, and such use continues for thirty (30) days after written notice from DIA to Developer of such violation, the full amount of the Disbursed Funds, together with all accrued but unpaid interest thereon, shall immediately become due and payable to the DIA by the Developer. However, if

any unapproved use was not authorized or permitted by Developer or its agents and cannot reasonably be cured within the initial thirty (30) days, Developer's time to cure the default shall be extended during such time that Developer is diligently pursuing such cure, so long as Developer has commenced and is diligently proceeding to cure unapproved use within the initial thirty (30) day period;

- (e) The maximum combined repayment due under this Section 9.2 shall not exceed the total amount of the Disbursed Funds actually paid to the Developer under this Agreement, together with all accrued but unpaid interest thereon. The term "Disbursed Funds" shall mean all funds disbursed under all and any DPRP Loan.

9.3 Performance Schedule Default.

Notwithstanding anything in this Agreement to the contrary, subject in all events to Section 10.2 of this Agreement, in the event that the Developer fails to Commence and Substantially Complete the Improvements in accordance with the Performance Schedule, the Developer shall be deemed to have forfeited and waived its right to, and the DIA shall not be obligated to pay, any further amounts under this Agreement or any DPRP Loan.

Article 10. GENERAL PROVISIONS

10.1 Non-liability of DIA Officials.

No member, official or employee of the DIA 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 DIA, 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 fifteen (15) 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.

DIA shall have the right to offset any amount owed by Developer under or in connection with this Agreement against any payments owed by DIA 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 DIA:

Downtown Investment Authority
117 West Duval Street, Suite 310
Jacksonville, Florida 32202
Attn: Chief Executive Officer

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:

525 Beaver, LLC
1710 Main Street North
Jacksonville, Florida 32206
Attn: Eric Adler

With a copy to:

Driver, McAfee, Hawthorne & Diebenow, PLLC
One Independent Drive, Suite 1200
Jacksonville, Florida 32202
Attn: Cyndy Trimmer

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 Chief Executive Officer of the DIA is authorized on behalf of the DIA 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 DIA.

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.

The Developer shall indemnify, hold harmless and defend the DIA 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 DIA 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 the Developer contained or provided in connection with this Agreement; (ii) any breach or violation of any covenant or other obligation or duty of the Developer under this Agreement or under applicable law; (iii) any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the 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 the Developer's performance under this Agreement or relating to the Project, except to the extent caused by the sole negligence of the DIA. Nothing contained in this paragraph shall be construed as a waiver, expansion or alteration of the DIA'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 "DIA" as used in this Section 10.9 shall include all DIA'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 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 DIA 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 DIA, 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 Thirty-Five Thousand Dollars (\$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 DIA'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 DIA. 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 all funds provided by the DIA under this Agreement;
- (b) To retain all 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 DIA under this Agreement, including auditable records pertaining to jobs filled by third-party employers. If an audit has been initiated and audit findings have not been resolved at the end of such six (6) year period, 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 DIA. Any audit of the Developer pursuant to the terms of this Section 10.22 shall not be performed by an auditing firm that is paid on a contingency basis;

- (c) Upon demand, at no additional cost to the DIA, to facilitate the duplication and transfer of any records or documents pertinent to this Agreement during the required retention period;
- (d) To assure that these records pertinent to this Agreement including any of the Developer's contracts and related records and documents, regardless of the form in which kept shall be subject at all reasonable times to inspection, review, copying, or audit by personnel duly authorized by the DIA, including but not limited to the City Council auditors;
- (e) To ensure that all related party transactions are disclosed to the DIA;
- (f) To include the aforementioned audit, inspections, investigations and record keeping requirements in all subcontracts and assignments of this Agreement;
- (g) To permit persons duly authorized by the DIA, 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 DIA of the satisfactory performance of the terms and conditions of this Agreement. Following such review, the DIA 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;
- (h) If the result of any audit by the City or DIA establishes that the amount of its Total Development Cost has been overstated by five percent (5%) or more, the entire expense of the audit shall be borne by the Developer;
- (i) Additional monies due as a result of any audit or annual reconciliation shall be paid within thirty (30) days of date of the DIA's invoice; and
- (j) Should any audit reveal that the Developer has overstated the amount of its Total Development Cost, and the Developer does not make restitution within thirty (30) days from the date of receipt of written notice from the DIA, then, in addition to any other remedies available to the DIA, the DIA 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 DIA.

Neither this Agreement nor the obligations imposed upon the DIA hereunder shall be or constitute an indebtedness of the DIA within the meaning of any constitutional, statutory or charter provisions requiring the DIA to levy ad valorem taxes nor a lien upon any properties of the DIA. Payment or disbursement by the DIA of any loan or grant amount hereunder is subject to the availability of lawfully appropriated funds. If funds are not available pursuant to a lawful appropriation thereof by the City Council and/or the DIA Board as applicable, this Agreement shall be void and the DIA shall have no further obligations hereunder.

10.25 Parties to Agreement; Successors and Assigns.

This is an agreement solely between the DIA and the 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 the Developer and the Developer's permitted successors and assigns, and shall inure to the benefit of the DIA 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 including, without limitation, any and all Project Documents, without the prior written consent of the DIA, which consent may be withheld in the sole discretion of the DIA. Notwithstanding the foregoing, in the event any proposed assignee has both development experience, and maintains a net worth equivalent to or greater than that of Developer, consent to assignment shall not be unreasonably withheld.

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 *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 DIA,

- (a) promptly correct any defect, error or omission herein or in any document executed in connection herewith or any other Project Document;

- (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts deemed necessary by the DIA to carry out the purposes of the Project Documents; and
- (c) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts reasonably deemed necessary, desirable or proper by the DIA to carry out the purposes of the Project Documents and this Agreement.

10.29 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.

10.30 Further Authorizations.

The parties acknowledge and agree that the Chief Executive Officer of the DIA is 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.

10.31 Estoppel Certificate.

On twenty (20) days written request from the other party, either party shall execute and deliver to the other party an estoppel letter stating that this Agreement is: (i) unmodified and in full force and effect, or in full force and effect as modified, and stating the modification; (ii) the amount of DPRP Loans actually paid to Developer and the remaining portion of DPRP Loans for which Developer remains eligible; and (iii) that there are not, to that party's actual knowledge, any uncured defaults, or events which with the passage of time would become a default, on the part of the other party, or specifying existing defaults.

10.32 Attorney's Fees.

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

10.33 Termination.

Notwithstanding anything contained to the contrary in this Agreement, following any termination of this Agreement by either party hereto pursuant to any right to terminate this Agreement contemplated hereunder, neither party shall owe any further obligation to the other party under this Agreement. Subject to the terms of this Agreement, this Agreement shall expire upon the amortization and repayment, as applicable, of all outstanding principal and interest under the Notes, together with all unpaid fees, costs, charges and other amounts due under the Loan Documents described herein.

[Signature Pages to Follow.]

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

DOWNTOWN INVESTMENT AUTHORITY

By: _____
Name Printed: Lori N. Boyer
Its: Chief Executive Officer

WITNESS:

525 BEAVER, LLC, a Florida limited liability company

Print Name: _____

By: _____
Name: _____
Its: _____

Print Name: _____

Form Approved (as to DIA only):

Office of the General Counsel

GC-#1540893-v5-525_Beaver__LLC_RDA.doc

Encumbrance and funding information for internal DIA use:

Account..... _____

Amount.....\$ _____

In accordance with Section 24.103(e), of the *Ordinance Code* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; *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 check request[s], as specified in said Contract.

Director of Finance

City Contract # _____

Contract Encumbrance Data Sheet follows immediately.

LIST OF EXHIBITS

Exhibit A – Project Parcel

Exhibit B – Description of the Improvements

Exhibit C – JSEB Reporting Form

Exhibit D – Request for Loan Disbursement Form

**Exhibit A
Project Parcel**

525 W. Beaver Street, Jacksonville, Florida RE# 074645-0000

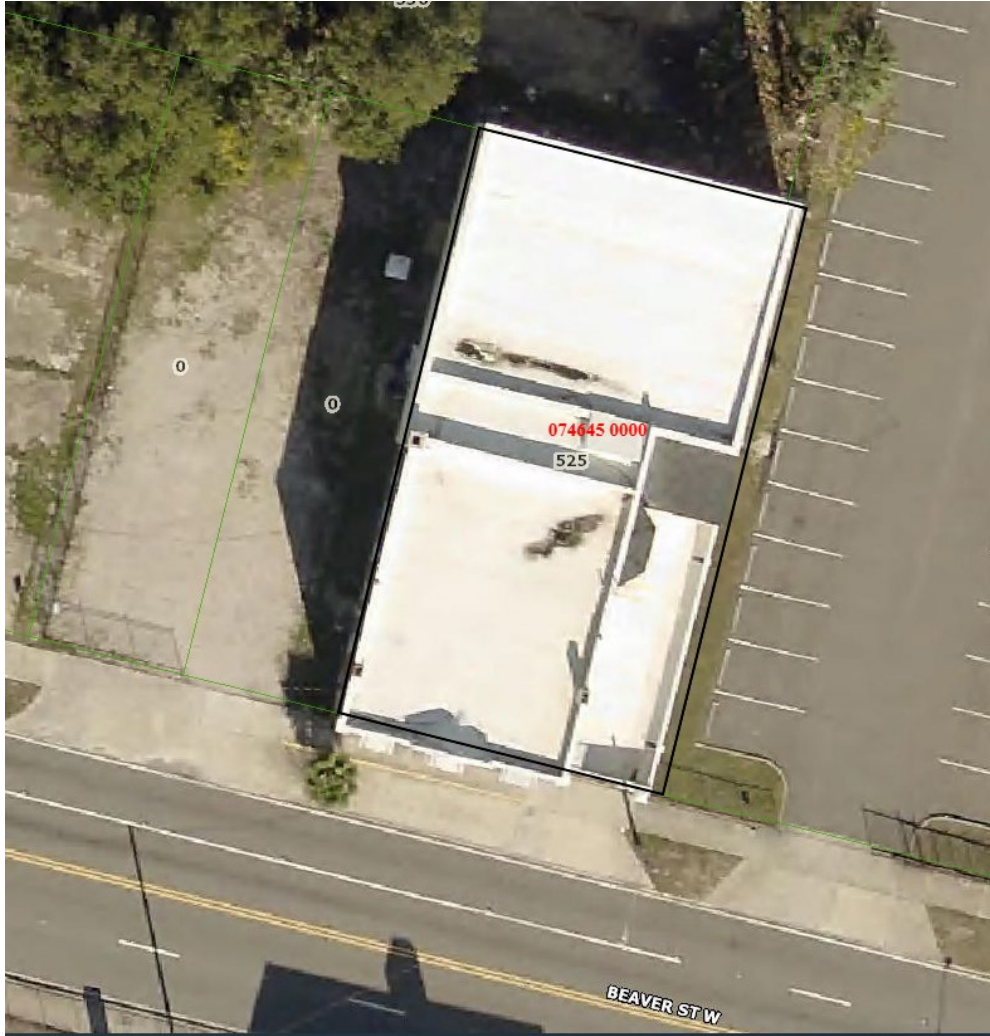


Exhibit B Improvements

The Improvements shall consist of all necessary rehabilitation and restoration activity related to the Building as submitted in applications to the State Historic Preservation Office and/or the National Park Service (as applicable), and to the Historic Preservation Commission. Renovations include, but are not limited to, window replacement, roof repairs, providing for ADA accessibility as required, fire alarm, sprinkler system, exterior repairs, and paint.

**Exhibit C
JSEB Reporting Form**

Business:
 Goal: \$
 Contact: _____
 Date: _____

Date Contract Awarded	Contractor Name	Ethnicity (1)	Scope of Work (2)	Contract Amount	Amount Paid to Date	% of Work Completed to Date
		(1) AA – African American	(2) Examples: Masonry			
		HANA – Hispanic, Asian, Native American	Painting			
		WBE – Women	Site Clearing			
		C - Caucasian	Electrical			

EXHIBIT D

REQUEST FOR LOAN DISBURSEMENT FORM

Developer Name: _____ Phone: _____
 Street Address: _____ Date Submitted: _____
 City, State and Zip: _____ Tax ID #: _____
 Historic Building Name: _____
 Historic Bldg. Address: _____

DEVELOPER PAYMENT REQUEST

A Construction Costs Funding Category	B Funding Category Minimum	C Actual Costs	D Lesser of Columns B or C	E % of FCM	F Eligible %	G Allowable Loan
Exterior Restoration & Rehabilitation			\$0.00		75%	
Interior Restoration			\$0.00		75%	
Interior Rehabilitation General Requirements and Overhead			\$0.00		30%	
Code Compliance			\$0.00		75%	
Subtotal			\$0.00			
Deferred Principal Loan						
TOTAL						

Loan disbursements will be provided only after 100% completion of the improvements for the applicable project. Once such improvements are 100% complete, a final inspection by the Historic Preservation Section must be performed.

Developer:

I hereby request an inspection to receive a final loan disbursement in the amount of: _____

I certify that I have satisfactorily completed the necessary work to justify this request and that all bills incurred for labor used and materials furnished in making said repairs and improvements have been paid in full to this date.

Attached is a description of the work completed, the amount of payment requested by work item and such invoices, receipts, cancelled checks, (or evidence of payment has cleared Developer's banking account), and other documents required by the DIA evidencing that costs and expenses were actually incurred and paid for by the Developer and were expended on and pertain to the work.

DIA USE ONLY	Developer's Signature
Approvals	
Director of Downtown Development _____	Date: _____
Contract Compliance Manager _____	Date: _____