

RESOLUTION 2021-01-06

A RESOLUTION OF THE DOWNTOWN INVESTMENT AUTHORITY (THE "DIA") APPROVING CHANGES TO THE SCOPE OF THE PROJECT IMPROVEMENTS OF THE PREVIOUSLY EXECUTED REDEVELOPMENT AGREEMENT BETWEEN THE CITY AND HP-BDG 200 RIVERSIDE, LLC, DATED MAY 15, 2017 FOR THE 200 RIVERSIDE AVENUE APARTMENTS PROJECT (A/K/A VISTA BROOKLYN), WITH ALL OTHER TERMS AND CONDITIONS OF THE REDEVELOPMENT AGREEMENT REMAINING UNCHANGED; AUTHORIZING THE AWARD OF A SUPPLEMENTAL REV GRANT IN ACCORDANCE WITH THE TERMS ATTACHED HERETO AS EXHIBIT A; AUTHORIZING THE CHIEF EXECUTIVE OFFICER OF THE DIA (THE "CEO") TO FILE LEGISLATION TO ENACT THE MODIFICATIONS TO THE PREVIOUS REDEVELOPMENT AGREEMENT AND APPROVE THE SUPPLEMENTAL REDEVELOPMENT AGREEMENT; AUTHORIZE THE CEO TO EXECUTE ALL DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the DIA approved a Redevelopment Agreement between the City of Jacksonville and Hallmark Partners, Inc. ("Hallmark"), dated July 21, 2015, via DIA Resolution 2014-10-01, for the purpose of providing a REV Grant in connection with the construction by Hallmark of a mixed-use residential apartment complex located at 200 Riverside Ave (the "Project"); and

WHEREAS, pursuant to DIA Resolutions 2016-02-01, and 2016-12-02, and Ordinance 2017-101, the DIA and City Council approved an Amended and Restated Redevelopment Agreement (the "Agreement") between the City of Jacksonville and HP-BDG 200 Riverside LLC ("Developer") authorizing a REV Grant of 62.5% of the incremental increase in the county portion of the ad valorem taxes generated from a required minimum capital investment of \$50,000,000 for a period of twenty years, in a cumulative amount not to exceed \$9,000,000; and

WHEREAS, the Project contemplated by the Agreement consists of a minimum of 295 residential units and a minimum of 12,750 square feet of retail space; and

WHEREAS, the construction of the Project is nearing completion; however, rental of the retail space has suffered significant adverse impacts due to market conditions created by the COVID-19 pandemic, and

WHEREAS, actual development costs for the Project have now exceeded \$80,000,000, well above the \$50,000,000 minimum capital investment contemplated by the Agreement; and

WHEREAS, DIA and Developer wish to see the retail space completed and occupied but acknowledge that previous pro-formas will not be realized in the short term; and

WHEREAS, Hallmark desires to amend the Agreement to clarify that commercial/retail use meeting the allocation of development rights is a permissible use of the retail space; and

WHEREAS, in order to encourage more traditional retail use, and bridge the timing issues presented by the pandemic, the DIA has recommended a Supplemental REV Grant associated with the retail space pursuant to a Supplemental Redevelopment Agreement in accordance with the terms set forth on Exhibit A; and

WHEREAS, The DIA is authorized per Section 55.108 *Economic Development* of the City Ordinance Code, with City Council approval, to utilize the Tax Increment Finance District Trust Funds to foster the redevelopment of the Downtown Northbank Community Redevelopment Area;

NOW THEREFORE BE IT RESOLVED, by the Downtown Investment Authority:

Section 1. The DIA finds that the recitals set forth above are true and correct and are incorporated herein by this reference.

Section 2. The DIA finds that this amended plan of development is consistent with the BID Plan, with particular furtherance of Redevelopment Goal 2.

Section 3. The DIA approves the clarification and amendment of the Amended and Restated Redevelopment Agreement as described on Exhibit A.

Section 4. The DIA approves and recommends that City Council authorize a Supplemental Redevelopment Agreement to provide the Supplemental REV Grant in accordance with the terms of Exhibit A.

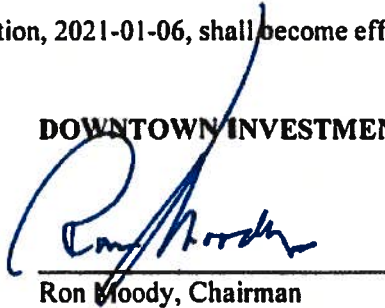
Section 5. The DIA authorizes the CEO to initiate filing legislation with the City Council to enact the changes incorporated within this Resolution 2021-01-06.

Section 6. The Chief Executive Officer is hereby authorized to execute the contracts and documents and otherwise take all necessary action in connection therewith to effectuate the purposes of this Resolution.

Section 75. This Resolution, 2021-01-06, shall become effective on the date it is signed by the Chair of the DIA Board.

WITNESS:

DOWNTOWN INVESTMENT AUTHORITY


Ron Moody, Chairman

1/20/21
Date

VOTE: In Favor: 9 Opposed: 0 Abstained: 0

Exhibit A:

**DIA SUPPLEMENTAL REV GRANT
TERM SHEET
HP-BDG 200 RIVERSIDE, LLC
a/k/a VISTA BROOKLYN APARTMENTS
f/k/a 200 RIVERSIDE APARTMENTS**

Project: Vista Brooklyn Apartments is being constructed under a Redevelopment Agreement (RDA) with an Effective Date of May 15, 2017 (2017 RDA) The 2017 RDA calls for a mixed-use development with not less than 295 residential units and 12,750 square feet of retail space, supported in part by a REV Grant authorized under City Ordinance 2017-101-E with current terms as follows:

| | |
|-------------------------------|---------------|
| Minimum Capital Contribution: | \$50,000,000 |
| Maximum REV Amount: | \$9,000,000 |
| REV Term: | 20 years |
| REV Level: | 62.5% |
| Base year: | 2017 Tax Year |
| Final Year of Funding: | 2041 Tax Year |

Developer/ Applicant: HP-BDG 200 RIVERSIDE, LLC, a joint venture between Hallmark Partners and the Bristol Development Group.

Total Development Costs (revised estimate): \$80,000,000

Request: Supplemental REV Grant in response to COVID 19 impact on retail lease demand and achievable rents. Reduction of required true retail square footage in current RDA to allow commercial office uses.

Supplemental REV Funding: Not more than \$1,556,000 (through the City of Jacksonville Downtown Investment Authority), as follows:

| | |
|-------------|----------------------------------|
| REV Amount: | \$1,556,000 maximum ¹ |
| REV Level: | 12.5% |
| REV Term: | 10 Years |

- 1- The Supplemental REV Grant is based on a calculation that equates to \$120 per square foot of Retail Space.
- 2- The Applicant shall be eligible for Supplemental REV Grant funding only in tax years (Eligible Year) where more than 50% of the Total Space is either leased or made available for lease to bona fide retail businesses as defined further below, and under the terms provided herein.

Supplemental REV Grant funding will be based on the incremental ad valorem property taxes and Tangible Personal Property paid by the Applicant attributable only to municipal and county ad valorem taxes above the established Base year level and does not include taxes paid for the benefit of the Duval County School Board, the St. Johns River Water Management District, Florida Inland Waterways or any other such entity or agency.

Infrastructure: No City of Jacksonville infrastructure improvements are contemplated.

Land: No City of Jacksonville land is committed to the project.

Completion Grant: No City of Jacksonville land is contemplated with this development.

Loans: No other loans, grants, or other funding from the City of Jacksonville are contemplated for this project beyond the \$9,000,000 REV Grant with an Effective Date of May 15, 2017.

Minimum Capital Contribution:

- 1) The minimum total capital contribution through completion to remain eligible for the Supplemental REV Grant is \$80,000,000.

Additional Requirements: As the Supplemental REV Grant is designed to facilitate leasing activity within the designated first floor retail spaces of the project, the following requirements apply:

- 1) Supplemental REV Grant shall be available for actual square footage up to 12,969 square feet of Total Space leased to Retail Tenants who occupy such space. Retail Tenants for these purposes are identified as businesses that sell products on a transactional basis to end consumers, food and beverage establishments, or providers of services targeted towards the general public (other than healthcare, advising, or counseling). Locations should be ground floor, street facing, and designed to attract the general public onto the property. Businesses operating primarily or exclusively on a membership basis, conducting business with customers under term arrangements, or providing goods and services targeted principally to other businesses shall not generally meet this definition, unless approved on a case-by-case basis.
- 2) Of the 12,969 square feet of Total Space to be made available for lease, the Developer may lease up to 50% (6,484 square feet) to commercial users that do not meet the definition for Retail Tenant above but meet the broader definition for commercial/retail to allow for professional services (such as financial, healthcare, advising, or counseling), businesses operating primarily or exclusively on a membership basis, conducting business with customers under term arrangements, or providing goods and services targeted principally to other businesses, (Non-Retail Space). Windows and doors in such space shall exhibit visible light transmittance of a minimum of 60 percent in compliance with Subpart H. - Downtown Overlay Zone and Downtown District Use and Form Regulations, and to allow pedestrians to see into the space. Further, such Non-Retail Space must have an entrance facing the street and allow access by the public that may come onto the property to conduct business. However, Non-Retail Space will not qualify for the Supplemental REV Grant, as defined herein. In the event that Non-Retail Space is leased in the project, the Supplemental REV Grant shall be applicable only to the proportion of the Total Space available or occupied as qualifying Retail Space.
- 3) Payments of the Supplemental REV Grant are applicable only in the first ten (10) Eligible Years following Substantial Completion. To be eligible for payment, the Retail Space shall demonstrate average occupancy of not less than 60% during the applicable Tax Year as supported by monthly rent rolls provided to the DIA.
- 4) To the extent that the Applicant is eligible for a REV Grant payment under 3) above, the calculation for REV Grant payments in any Eligible Year will be determined by multiplying 12.5% by the Annual Project Revenues, consistent with the definition found 2017 RDA, multiplied further by

the proportion of Retail Space to Total Space on an annual basis as supported by monthly rent rolls provided to the DIA.

- 5) All available Retail Space shall be actively promoted for lease under prevailing market terms, using commercially reasonable efforts, at all times. For purposes of this calculation, all space is considered Retail Space unless it is classified as Non-Retail Space as provided under Paragraph 2 above (i.e., all vacant or unoccupied space shall be considered Retail Space for this calculation).
- 6) Property owner shall offer any combination of funding for Tenant Improvement and/or Concessions for bona fide retail users in Retail Space of not less than \$100 per square foot.
- 7) All Leased Space is required to be designed, built out, and maintained at Class A standards, including signage, ceilings, millwork, restrooms, floor coverings, etc.

Performance Schedule:

- 1) The 2017 RDA will be amended to include this Supplemental REV Grant and clarify that the 2017 RDA permits any use as allowed by the Supplemental REV grant in the Retail Space without jeopardizing the REV Grant.
- 2) The Performance Schedule and all other terms and conditions remain unchanged from the 2017 RDA.

This Term Sheet proposal is limited by the following conditions:

There will be additional terms, conditions, rights, responsibilities, warranties, and obligations for both parties which shall be determined in a later negotiated mutually agreeable written contract (or multiple written contracts as is deemed necessary).

**FIRST AMENDMENT TO AMENDED AND RESTATED
REDEVELOPMENT AGREEMENT**

This **FIRST AMENDMENT TO AMENDED AND RESTATED REDEVELOPMENT AGREEMENT** (this "First Amendment") is entered into this ___ day of _____, 2021 (the "Effective Date"), between the **CITY OF JACKSONVILLE**, a municipal corporation and a political subdivision of the State of Florida (the "City") and **HP-BDG 200 RIVERSIDE, LLC**, a Florida limited liability company, or an affiliated company managed by **HP-BDG 200 RIVERSIDE, LLC** (the "Company"). All capitalized terms not otherwise defined herein shall have the meaning as set forth in the RDA, as defined below.

RECITALS:

WHEREAS, the City and Company have previously entered into that certain Amended and Restated Redevelopment Agreement dated May 19, 2017, City Contract number 9174-03 (the "RDA"), as authorized by DIA Resolutions 2014-10-01 and 2016-12-02 and City Ordinance 2017-101, for the purpose of authorizing a sixty-two and one-half (62.5%), twenty (20) year REV Grant (the "REV Grant") in up to the maximum amount of \$9,000,000 in conjunction with Company's development of a mixed use project on the Project Parcel including residential, retail uses and structured parking spaces (the "Project"), all as more particularly described in the RDA; and

WHEREAS, the space on the ground floor of the Project dedicated under the RDA to retail use is required to be a minimum of 12,750 square feet (the "Relevant Space");

WHEREAS, in order for the Project to remain financially feasible, the Company has requested that the DIA amend the terms of the REV Grant to provide that certain commercial uses will be permitted in the Relevant Space in addition to retail uses and also enter into that certain Supplemental Redevelopment Agreement dated of even date herewith between the Company and the City (the "Supplemental RDA") providing for a Supplemental Recaptured Enhanced Value grant pursuant to the terms and conditions contained therein; and

WHEREAS, the RDA has not been amended previously; and

WHEREAS, Company has requested and the DIA has agreed to amend the language of the RDA to amend the terms of the REV Grant to incorporate the foregoing, with all other terms and conditions of the RDA remaining in full force and affect; and

WHEREAS, this First Amendment is authorized by DIA Resolution 2021-01-06 and Ordinance 2021-___-E;

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledge, City and Company hereby covenant and agree as follows:

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

2. **Relevant Space.** The Company agrees that the Relevant Space shall be a minimum of 12,750 square feet, shall be located on the ground floor of the Project and shall have entrances facing Riverside Avenue allowing access by the public to do business. The Company agrees that windows and doors in the Relevant Space shall exhibit visible light transmittance of a minimum of sixty percent (60%) in compliance with Subpart H. - Downtown Overlay Zone and Downtown District Use and Form Regulations and allow pedestrians to see into the Relevant Space.

3. **Permitted Use.** The Company agrees that the Relevant Space shall be leased and occupied exclusively by tenants using the Relevant Space for (i) selling products on a transactional basis to end consumers, (ii) operating a food and/or beverage establishment, (iii) providing services targeted towards the general public or (iv) other retail uses as may be approved on a case-by-case basis by the DIA in its sole discretion (each, a “Retail Use”); provided that, up to fifty percent (50%) of the Relevant Space may be occupied by businesses using the Relevant Space for a Commercial Use. The term “Commercial Use” shall mean (i) providing professional services (such as financial, healthcare, advising, real estate services, or counseling), (ii) operating a business primarily or exclusively on a membership basis, (iii) conducting business with customers under term arrangements, (iv) providing goods and services targeted principally to other businesses, or (v) other commercial uses as may be approved on a case-by-case basis by the DIA in its sole discretion.

4. **Maximum Indebtedness.** The following shall be added to the RDA as Section 1.6:

“1.6 Maximum Indebtedness.

The maximum indebtedness of the City for all fees, reimbursable items or other costs pursuant to this Agreement shall not exceed the sum of NINE MILLION AND NO/100 DOLLARS (\$9,000,000.00).”

5. **Amendment.** Section 9.6 of the RDA regarding amendment of the RDA is hereby deleted in its entirety and replaced with the following:

“9.6 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 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.”

6. **Exhibit B.** The document attached as **Exhibit B** to the RDA is hereby deleted in its entirety and replaced with the **Exhibit B** attached hereto and incorporated herein by this reference.

SAVE AND EXCEPT as expressly amended by this instrument, the provisions, terms and conditions in said RDA shall remain unchanged and shall continue in full force and effect.

ATTEST:

CITY OF JACKSONVILLE, a municipal corporation and a political subdivision of the State of Florida

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry, Mayor
Date: _____

WITNESS: _____

HP-BDG 200 Riverside, LLC, a Florida limited liability company

Print Name: _____

By: **BRISTOL 200 HOLDINGS, LLC**, a Tennessee limited liability company

Print Name: _____

By: _____
Name: _____
Its: _____
Date: _____

FORM APPROVED:

Office of the General Counsel

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IN COMPLIANCE WITH the Ordinance Code of the City of Jacksonville, I do certify that there is or will be an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement in accordance with the terms and conditions thereof and that provision has been made for the payment of monies provided therein to be paid.

Director of Finance

Exhibit B

As set forth in the RDA, as modified by the First Amendment, the Company will document a minimum Capital Investment of \$50,000,000.00 in the Project Improvements on the Project Parcel to construct:

- 1) Approximately 295 units of residential rental apartment units on the Project Parcel;
- 2) A minimum of 12,750 square feet of new space for Retail Use, which may include up to fifty percent (50%) of Commercial Use; and
- 3) At least 450 new structured parking spaces to support the Project.

SUPPLEMENTAL REDEVELOPMENT AGREEMENT

between

City of Jacksonville

and

HP-BDG 200 Riverside, LLC, a Florida limited liability company

Supplemental Redevelopment Agreement

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Exhibits:

Exhibit A - Legal Description of the Project Parcel

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SUPPLEMENTAL REDEVELOPMENT AGREEMENT

THIS SUPPLEMENTAL REDEVELOPMENT AGREEMENT (this “Agreement”) is made this ___ day of _____, 2021 (the “Effective Date”), between the **CITY OF JACKSONVILLE**, a municipal corporation and a political subdivision of the State of Florida (the “City”) and **HP-BDG 200 RIVERSIDE, LLC**, a Florida limited liability company, or an affiliated company managed by **HP-BDG 200 RIVERSIDE, LLC** (the “Company”).

In consideration of the mutual agreements, covenants, representations, and warranties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged by the parties, the parties hereby agree as follows:

Article 1. PRELIMINARY STATEMENTS

1.1 The Project.

The Company has agreed to develop a mixed use project at 200 Riverside Avenue, Jacksonville, Florida 32202, as more particularly described on **Exhibit A** attached hereto (the “Project Parcel”), including the improvements described on **Exhibit B** attached hereto (the “Project Improvements”) pursuant to the terms and conditions of that certain Amended and Restated Redevelopment Agreement dated May 19, 2017 (the “Amended and Restated Redevelopment Agreement”) between the City and the Company, as amended by that certain First Amendment to Amended and Restated Redevelopment Agreement dated _____ between City and Developer (the “First Amendment”) and together with the Amended and Restated Redevelopment Agreement, the “2017 RDA”) and as supplemented by this Agreement. The Project Improvements to be constructed by the Company on the Project Parcel and the obligations of the Company under the 2017 RDA and this Agreement are collectively referred to herein as the “Project”. The Project will represent an estimated total development cost of \$85,000,000.00 with a required minimum Capital Investment of \$80,000,000.00 by the Company. The terms of this Agreement shall not operate to diminish the obligations of the Company under the 2017 RDA or modify any of the terms of the 2017 RDA, all of which shall remain in full force and effect.

1.2 Authority.

The City Council has authorized execution of this Agreement pursuant to City Ordinance _____ (the “Ordinance”).

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) increase capital investment in the Brooklyn and Riverside Avenue District;

- (b) generate significant new ad valorem taxes, including significant new tax revenues for the public school system;
- (c) help meet the overall community goal of business development and growth in Downtown Jacksonville;
- (d) create induced and indirect job effects which will have a positive impact on local small businesses; and
- (e) promote and encourage a minimum private Capital Investment of \$80,000,000.00.

1.4 **Coordination by City.**

The City hereby designates the Chief Executive Officer of the DIA or his or her designee to be the Project Coordinator who will, on behalf of the City, coordinate with the Company 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 Company to coordinate all project related activities and all matters under this Agreement with the designated Project Coordinator, unless otherwise stated herein. Notwithstanding the foregoing or any other statements herein to the contrary, the DIA is an office of the City and has no separate liability under this Agreement.

1.5 **Maximum Indebtedness.**

The maximum indebtedness of the City for all fees, reimbursable items or other costs or amounts pursuant to this Agreement shall not exceed the sum of ONE MILLION FIVE HUNDRED FIFTY-SIX THOUSAND AND NO/100 (\$1,556,000.00).

1.6 **Availability of Funds.**

The City's obligations under this Agreement are contingent upon availability of lawfully appropriated funds for 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 **Base Year.**

The base year for purposes of this Agreement shall be the 2017 tax year.

2.2 **Capital Investment.**

Money invested by a company to purchase items that may normally be capitalized by a company in the normal conduct of its business to 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 **Commercial Space.**

Any portion of the Relevant Space that is being used for a Commercial Use; provided that, the Commercial Space shall in no event exceed, in the aggregate, fifty percent (50%) of the Relevant Space.

2.5 **Commercial Use.**

Commercial Use shall mean (i) providing professional services (such as financial, healthcare, advising, real estate services or counseling), (ii) operating a business primarily or exclusively on a membership basis, (iii) conducting business with customers under term arrangements, (iv) providing goods and services targeted principally to other businesses, or (v) other commercial uses as may be approved on a case-by-case basis by the DIA in its sole discretion.

2.6 **Company.**

HP-BDG 200 Riverside, LLC, a Florida limited liability company.

2.7 **DIA.**

The Downtown Investment Authority and any successor to its duties and authority.

2.8 **Effective Date.**

Shall mean the date that the last party signs this Agreement.

2.9 **Project Documents.**

Shall mean the documents defined in Section 5.1 herein.

2.10 **Project Improvements.**

All of the improvements that are incorporated into the Project on the Project Parcel, as more particularly described on **Exhibit B** attached hereto.

2.11 **Retail Use.**

Retail Use shall mean (i) selling products on a transactional basis to end consumers, (ii) operating a food and/or beverage establishment, or (iii) providing services targeted towards the general public or (iv) other retail uses as may be approved on a case-by-case basis by the DIA in its sole discretion; provided that, Retail Use shall expressly exclude all and any Commercial Use.

Other capitalized terms not defined in this Article shall have the meanings assigned to them elsewhere in this Agreement. Capitalized terms used in this Agreement but not defined in this Agreement shall have the meanings assigned to them in the 2017 RDA.

2.12 **Relevant Space.**

The space located on the ground floor of the Project having entrances facing Riverside Avenue allowing access by the public to do business, which shall be a minimum of 12,750 square feet. The Relevant Space shall be leased and occupied exclusively by third-party tenants using the Relevant Space for Retail Use, provided that, up to fifty percent (50%) of the Relevant Space may be leased and occupied by third-party tenants using the Relevant Space for Commercial Use.

2.13 **Retail Space.**

All and any portion of the Relevant Space that is not Commercial Space.

2.14 **Retail Space Proportionate Share.**

Retail Space Proportionate Share shall mean that fraction, the numerator of which is the total number of square feet of Retail Space that are leased and occupied by a tenant using such space for a Retail Use and the denominator of which is twelve thousand nine hundred sixty-nine (12,969) square feet.

**Article 3.
APPROVALS**

3.1 **Approval of Agreement.**

By the execution hereof, the parties certify as follows:

- (a) Company 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 Company entity;
 - (ii) this Agreement does not violate any of the terms or conditions of such governing documents and this Agreement is binding upon the Company and enforceable against it in accordance with its terms;
 - (iii) the person or persons executing this Agreement on behalf of the Company are duly authorized and fully empowered to execute the same for and on behalf of the Company;
 - (iv) the Company 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 Company, its business operations, and each person or entity composing the Company 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.

SUPPLEMENTAL REV GRANT

4.1 Supplemental Recaptured Enhanced Value Program; Amount.

The City shall make a Supplemental Recaptured Enhanced Value grant (“Supplemental REV Grant”) to the Company, in a total amount not to exceed \$1,556,000.00, partially payable beginning in the first year following the completion of construction of the Project pursuant to the terms and conditions of the 2017 RDA, the satisfaction of the conditions below in Section 4.4, and the Project’s inclusion on the City tax rolls at full assessed value (the “Initial Year”) and ending ten (10) years thereafter, but no later than the 2031 tax year (the “Final Year”), all as more fully described below in this Article 4. Each tax year from and including the Initial Year through the Final Year shall be referred to herein as an “Eligible Year”.

4.2 Payments of Supplemental REV Grant.

The Supplemental REV Grant shall be paid by the City to the Company by check, 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 on May 15 of the Final Year or when the maximum amount of the Supplemental REV Grant shall have been paid to the Company, whichever occurs first. The City shall have no liability for any Supplemental 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 Supplemental 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 Supplemental REV Grant.

The amount of the annual installment of the Supplemental REV Grant with respect to any Eligible Year shall be equal to the product obtained by multiplying (i) 12.5%, by (ii) the Retail Space Proportionate Share for the applicable Eligible Year, by (iii) the “Annual Project Revenues” (as defined and determined in this Section 4.3) received by the City during the twelve (12) month period ended April 1 preceding the due date of such annual installment; provided that, the total sum of all annual installments shall not, in any event, exceed \$1,556,000.00. 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 \$1,125,150 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 Company with respect to real property or 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, Company 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 Company has failed to give notice of taxes paid during the preceding twelve (12) month period, the Company shall not be eligible for a Supplemental REV Grant payment for that year. Provided, however, that if the Company provides timely notice in future years, the Company shall be eligible for a Supplemental REV Grant payment based on the Annual Projected Revenues in such future year's notice. Notwithstanding the foregoing, in the event the Company has paid its ad valorem taxes in a given year, but failed to provide its written notice to the City by April 1, the Company shall have an additional ninety (90) days, until June 30, to provide its written notice and documentation to the City as required hereby, and in such event shall remain eligible for a Supplemental REV Grant for that applicable year as otherwise authorized by this Agreement.

Except as provided below, within thirty (30) days of receipt of said notice, City shall provide Company with a calculation as to the annual Supplemental REV Grant. If the Company 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 Supplemental REV Grant by the later of May 15th of each calendar year or thirty (30) days after City's receipt of notification by the Company 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 Supplemental REV Grant calculation and make the Supplemental REV Grant payment shall be extended if on either of such dates the Company 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 Company was obligated to pay for that tax year and upon which the Supplemental REV Grant payment would be based. In that event, the date that the City is required to provide the Supplemental REV Grant calculation to Company shall be extended until 30 days after the date that Company 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 Company.

4.4 **Conditions Precedent to Supplemental REV Grant.**

As condition precedents to the City's obligation to pay Company the Supplemental REV Grant installment in any Eligible Year, Company shall satisfy the following conditions with respect to each Eligible Year:

- (a) Complete construction of the Project Improvements in accordance with the Performance Schedule and provide a final certificate of occupancy (or its equivalent as provided by the City) for the Project Improvements;
- (b) Demonstrate a minimum Capital Investment of \$80,000,000.00 in the Project Improvements by providing the DIA with paid invoices, a real estate closing statement or other satisfactory evidence as reasonably requested and approved by the DIA;
- (c) The Retail Space shall have an average occupancy of at least 60% by tenants that are using and occupying such space for a Retail Use during the applicable Eligible Year, and Company shall provide supporting or other satisfactory evidence of such use and occupancy as reasonably requested and approved by the DIA, including the delivery of rent rolls by the 15th of each month;
- (d) Company shall provide a calculation of the Retail Space Proportionate Share for the applicable Eligible Year, along with supporting or other satisfactory evidence of such calculation as reasonably requested and approved by the DIA, including monthly rent rolls;
- (e) Company shall have diligently and continuously used commercially reasonable efforts to market all available Retail Space for Retail Use during the applicable Eligible Year, and the Company shall provide supporting or other satisfactory evidence of the same with respect to the applicable Eligible Year as reasonably requested and approved by the DIA;
- (f) Company shall offer a combination of tenant improvement allowances and/or other monetary concessions in an aggregate amount of not less than \$100 per square foot for each tenant leasing any portion of the Relevant Space for a Retail Use;
- (g) All of the leased Relevant Space has been designed, built out and maintained at Class A standards, including, without limitation, signage, ceilings, millwork, restrooms and floor coverings; and
- (h) Company shall have paid all ad valorem taxes on the Project Parcel, and submitted satisfactory evidence of such payment to the DIA.

4.5 **Further disclaimer.**

The Supplemental REV Grant shall not be deemed to constitute a debt, liability, or obligation of the 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 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 Supplemental 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 or of the State of Florida or any political subdivision thereof is pledged to the payment of the Supplemental REV Grant or any installment thereof. The Company, or any person, firm or entity claiming by, through or under the Company, 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 or of the State of Florida or any political subdivision thereof for the payment of the Supplemental REV Grant or any installment of either.

Article 5. DEFAULTS AND REMEDIES

5.1 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 this Agreement and any other agreement between the City and the Company related to the Project, (iii) any document provided to the City relating to the Project, or (iv) the 2017 RDA, as amended from time to time, (collectively, the “Project 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 Supplemental 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 Company written notice of the default and 20 business days within which to cure the default; provided, however, that the City may withhold any portion of the Supplemental 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 20 business days, Company shall have an additional 30 days in which to cure such default, so long as Company has commenced and is diligently proceeding to cure such default within the initial 20-day period. Notwithstanding the foregoing, prior to completion of the Project Improvements, Company shall immediately and automatically be in default, and the City shall not be required to give Company 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 Company or any guarantor (“Guarantor”) of Company’s obligations hereunder or under the Project Documents, a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company 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 Company 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 Company 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 Company 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.

5.2 **Specific Defaults.**

Additionally, for any of the specific events of default described in this Section 5.2 below, the parties agree that the City’s damages recoverable from the Company shall include, but not be limited to, the following:

- (a) If the Company fails to invest at least \$80,000,000.00 of private funding in the Project, the City shall not be obligated to pay any portion of the Supplemental REV Grant to Company.

5.3 **Performance Schedule Default.**

In the event the Company fails to complete the Project in accordance with the Performance Schedule set forth in the 2017 RDA, the City shall not be obligated to pay any portion of the Supplemental REV Grant to Company.

Article 6.
ANTI-SPECULATION AND ASSIGNMENT PROVISIONS

6.1 **Purpose.**

The Company represents and agrees that its undertakings pursuant to this Agreement are for the purpose of developing the Project Parcel pursuant to this Agreement, and not for speculation in land holding. The Company further recognizes, in view of the importance of the development of the Project Parcel to the general health and welfare of the City and that the qualifications,

financial strength and identity of the principal shareholders and executive officers of the Company are of particular concern to the City.

6.2 Assignment; Limitation on Conveyance.

The Company agrees that, until the substantial completion of the Project, it shall not, without the prior written consent of the CEO of the DIA, in his or her reasonable discretion, assign, transfer or convey (i) the Project or any portion thereof, (ii) the Project Parcel or any portion thereof (iii) this Agreement or any provision hereof, or (iv) a controlling interest in the Company. If any such prohibited assignment, transfer or conveyance is made, the obligation of the City to pay any further amounts under the Supplemental REV Grant shall immediately terminate. Company shall provide written notice to the CEO of the DIA of any assignment of the Project, Project Parcel or this Agreement. Company shall provide a draft of the Assignment and Assumption agreement to the City for its review and approval, not to be unreasonably withheld, conditioned or delayed, and such agreement shall provide that the assignee agrees to be bound by, assume and perform all of the covenants, terms and conditions of the Company in connection with this Agreement. Assignment of this Agreement is subject to the review and approval of the CEO of the DIA, not to be unreasonably withheld, conditioned or delayed.

6.3 Lender Authorized Assignment.

Notwithstanding any other provision in this Agreement to the contrary, the City agrees that in the event that the lender for the Project (including HUD, if applicable) ("Lender") approves the Company, or any subsequently approved purchaser as described below, to transfer the Project and the rights under Agreement to a transferee who assumes the loan for the Project, the assignment of the Agreement shall be deemed approved by the City upon receipt of written notice from Lender advising the City of the approved transfer, provided that it is expressly understood and agreed that in order for City's approval to be effective, the approved transferee must expressly assume, by written instrument signed by such transferee, all of the Company's duties and obligations under the Agreement to the extent the same arise and pertain to periods from and after the approved transferee's acquisition of the Project. Upon receipt of said notice and written assumption, the transferee shall succeed to the rights of the Company under the Agreement.

The City further agrees that in the event that a default occurs under the Loan and the Lender forecloses its lien on the Project and a purchaser at such foreclosure sale acquires the Project, so long as such purchaser expressly assumes, by written instrument signed by such transferee, all duties and obligations of the Company under the Agreement, to the extent the same arise and pertain to periods from and after the purchaser's acquisition of the Project, then the assignment of the Agreement to such foreclosure purchaser shall be deemed consummated and approved by the City upon receipt of a written notice of the name of such foreclosure purchaser. Upon receipt of said notice and written assumption, the foreclosure purchaser shall succeed to the rights of the Company under the Agreement.

The City further agrees that in the event that a default occurs under the Loan and the Lender forecloses its lien on the Project and the Lender acquires the Project at the foreclosure sale, then Lender may transfer the Project and so long as the purchaser expressly assumes, by written instrument signed by such purchaser, all duties and obligations of the Company under the

Agreement, to the extent the same arise and pertain to periods from and after the purchaser's acquisition of the Project, the assignment of the Agreement to such purchaser shall be deemed consummated and approved by the City upon receipt of a written notice of the name of such purchaser. Upon receipt of said notice and written assumption, the purchaser shall succeed to the rights of the Company under the Agreement.

If any event of default under the terms of the Agreement shall occur, then and in any such event, the City shall, give written notice of such default(s) ("Notice of Default") to Lender at its address set forth in Section 7.3 hereof, specifying the event of default and the methods of cure, or declaring that a event of default is incurable. During the period of 180 days commencing upon the date the Notice of Default was given to Lender, Lender may: (a) cure any event of default; and/or (b) commence foreclosure proceedings or institute other state or federal procedures to enforce Lender's rights. If the Lender reasonably undertakes to cure any event of default during the applicable cure period and diligently pursues such cure, the City shall grant such further reasonable time as is necessary to complete such cure. If Lender commences foreclosure within such 180 days, then its cure period shall be extended during the period of the foreclosure or other action and for 90 days after the ownership of the Project is assigned to Lender or a purchaser at any foreclosure sale.

Notwithstanding the foregoing, the term of the Supplemental REV Grant shall not extend beyond the Final Year.

Article 7. **GENERAL PROVISIONS**

7.1 Non-liability of City Officials.

No member, official or employee of the City shall be personally liable to the Company or to any Person with whom the Company 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 Company or any other Person under the terms of this Agreement.

7.2 Force Majeure.

Whenever any action is required to be taken pursuant to the provisions contained in this Agreement within a specified period of time, 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, acts of terrorism, 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, ("Force Majeure Event"). Such additional period of time will be provided to the party required to take such action as equals any period of delay resulting from provided, however, no party will be held in breach of any provision contained in this Agreement because of any Force Majeure Event, provided that Party exercises commercially reasonable efforts to resume performance pursuant to the provisions contained in this Agreement as soon as practicable after occurrence of such Force Majeure Event if resumption is a commercially reasonable option. In no event shall any of the foregoing excuse any financial

liability of a party; provided, however, if resumption of the Project is not commercially reasonable, then upon receipt of Company's written notice to the City of the same, the City shall not be obligated to pay any portion of the Supplemental REV Grant.

7.3 **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:

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

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 Company:

HP-BDG 200 Riverside, LLC.
c/o Hallmark Partners, Inc.
6675 Corporate Center Parkway
Jacksonville, FL 32216
Attn: Alex Coley

With a copy to:

Steve Diebenow
Driver, McAfee, Peek & Hawthorne, P.L.
One Independent Drive, Suite 1200
Jacksonville, FL 32202

To the Lender:

7.4 **Time.**

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

7.5 **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.

7.6 **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 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.

7.7 **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.

7.8 **Indemnification.**

Company, including its employees, agents and subcontractors, shall indemnify, hold harmless and defend the City from and against any loss, claim, action, damage, injury, liability, cost, and expense of whatsoever kind or nature (including without limitation attorneys’ fees and costs) related to any demands, 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 any act or omission of Company, its

contractors, subcontractors, agents, officers, employees, representatives, successors or assigns. This indemnification shall survive the termination of this Agreement. The term “City” as used in this Section 7.8 shall include all officers, board members, City Council members, employees, representatives, agents, successors and assigns of the City, as applicable.

7.9 **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.

7.10 **Compliance with State and Other Laws.**

In the performance of this Agreement, the Company 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.

7.11 **Non-Discrimination Provisions.**

In conformity with the requirements of Section 126.404, *Ordinance Code*, prior to hiring any employees, Company represents and agrees that it will adopt and 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 Company 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 Company 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 Company 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 7.11 shall be incorporated into and become a part of the subcontract.

7.12 **Ethics.**

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

7.13 **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.

7.14 **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.

7.15 **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.

7.16 **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.

7.17 **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.

7.18 **Counterparts.**

This Contract 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

7.19 **Independent Contractor.**

In the performance of this Agreement, the Company 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 Company and its employees or agents shall be solely responsible for the means, method, technique, sequences and procedures utilized by the Company in the performance of this Agreement.

7.20 **Retention of Records/Audit**

The Company 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, 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 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, 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 Company'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.
- (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 Company which are relevant to this Agreement, and to interview any employees and subcontractor employees of the Company 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 Company a written report of its findings and request for development by the Company of a corrective action plan where appropriate. The Company hereby agrees to timely correct all deficiencies identified in the corrective action plan.
- (i) 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.
- (j) Should the audit reveal that the Company has overstated the amount of private capital investment, and the Company 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 Company.

7.21 **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.

7.22 **Exemption of City.**

Neither this Agreement nor the obligations imposed upon the City hereunder shall be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provisions requiring the City to levy ad valorem taxes nor a lien upon any properties of the City. Payment or disbursement by the City 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, this Agreement shall be void and the City shall have no further obligations hereunder.

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

This is an agreement solely between the City and Company. 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 Company and Company's successors and assigns, and shall inure to the benefit of the City and its successors and assigns. However, Company 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 shall not be unreasonably withheld.

7.24 **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.

7.25 **Civil Rights.**

The Company 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.

7.26 **Further Assurances.**

Company will, on request of the City,

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

- (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.

7.27 **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.

7.28 **Construction.**

All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Company 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.

7.29 **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 Ordinance.

7.30 **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.

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

ATTEST:

CITY OF JACKSONVILLE, a municipal corporation and a political subdivision of the State of Florida

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry, Mayor
Date: _____

WITNESS: _____

HP-BDG 200 Riverside, LLC, a Florida limited liability company

Print Name: _____

By: BRISTOL 200 HOLDINGS, LLC, a Tennessee limited liability company

Print Name: _____

By: _____
Name: _____
Its: _____
Date: _____

FORM APPROVED:

Office of the General Counsel

GC-#1427666-v6-Redevelopment_Agreement_200_Riverside_(Vista_Brooklyn)_Supplemental_Rev_Grant.docx

IN COMPLIANCE WITH the Ordinance Code of the City of Jacksonville, I do certify that there is or will be an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement in accordance with the terms and conditions thereof and that provision has been made for the payment of monies provided therein to be paid.

Director of Finance

LIST OF EXHIBITS

Exhibit A Legal Description of the Project Parcel

Exhibit B Project Improvements

EXHIBIT A



Order No.: 4516837

EXHIBIT "A"

PARCEL 1

A PORTION OF THE FRANCIS J. ROSS GRANT, SECTION 56, TOWNSHIP 2 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA, ALSO BEING A PART OF THE MILES PRICE MAP OF BROOKLYN, AS RECORDED IN DEED BOOK "P", PAGE 379, OF THE FORMER PUBLIC RECORDS OF SAID DUVAL COUNTY, ALSO BEING A PART OF BROOKLYN AND ITS EXTENSION, AS RECORDED IN DEED BOOK "AJ", PAGES 722, 723, & 724 AND PLAT BOOK 1, PAGE 86 OF SAID FORMER PUBLIC RECORDS OF DUVAL COUNTY, AND A PORTION OF MAY STREET NOW CLOSED AND ABANDONED BY ORDINANCE NUMBER 2007-831-E, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF BLOCK 24 OF THE MILES PRICE MAP OF BROOKLYN, AS RECORDED IN DEED BOOK "P", PAGE 379, OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, (ALSO BEING THE SOUTHEAST CORNER OF BLOCK 24 OF BROOKLYN AND ITS EXTENSION AS RECORDED IN DEED BOOK "AJ", PAGES 722, 723, & 724 AND PLAT BOOK 1, PAGE 86 OF SAID FORMER PUBLIC RECORDS OF DUVAL COUNTY), SAID CORNER ALSO BEING THE INTERSECTION OF THE SOUTHWESTERLY EXISTING RIGHT OF WAY LINE OF DORA STREET, (A 33 FOOT RIGHT OF WAY PER PLAT), WITH THE NORTHWESTERLY EXISTING RIGHT OF WAY LINE OF MAGNOLIA STREET, (A 33 FOOT RIGHT OF WAY PER PLAT); THENCE SOUTH 54°50'07" WEST, ALONG SAID NORTHWESTERLY EXISTING RIGHT OF WAY LINE OF MAGNOLIA STREET, A DISTANCE OF 274.81 FEET; THENCE SOUTH 35°36'34" EAST, 33.00 FEET TO THE SOUTHEASTERLY EXISTING RIGHT OF WAY LINE OF SAID MAGNOLIA STREET; THENCE NORTH 54°50'07" EAST, ALONG LAST SAID LINE, 536.48 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 35°17'35" EAST, 226.56 FEET TO THE CENTERLINE OF FORMER MAY STREET; THENCE NORTH 54°50'51" EAST, ALONG LAST SAID LINE, 265.03 FEET TO THE SOUTHWESTERLY EXISTING RIGHT OF WAY LINE OF JACKSON STREET (A VARIABLE WIDTH RIGHT OF WAY, AS NOW ESTABLISHED); THENCE NORTH 35°35'39" WEST, ALONG LAST SAID LINE, 226.62 FEET TO THE AFORESAID SOUTHEASTERLY EXISTING RIGHT OF WAY LINE OF MAGNOLIA STREET; THENCE SOUTH 54°50'07" WEST, ALONG LAST SAID LINE, 263.83 FEET TO THE POINT OF BEGINNING.

PARCEL 2

A PORTION OF THE FRANCIS J. ROSS GRANT, SECTION 56, TOWNSHIP 2 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA, ALSO BEING A PART OF THE MILES PRICE MAP OF BROOKLYN, AS RECORDED IN DEED BOOK "P", PAGE 379, OF THE FORMER PUBLIC RECORDS OF SAID DUVAL COUNTY, ALSO BEING A PART OF BROOKLYN AND ITS EXTENSION, AS RECORDED IN DEED BOOK "AJ", PAGES 722, 723, & 724 AND PLAT BOOK 1, PAGE 86 OF SAID FORMER PUBLIC RECORDS OF DUVAL COUNTY, AND A PORTION OF MAY STREET NOW CLOSED AND ABANDONED BY ORDINANCE NUMBER 2007-831-E, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF BLOCK 24 OF THE MILES PRICE MAP OF BROOKLYN, AS RECORDED IN DEED BOOK "P", PAGE 379, OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, (ALSO BEING THE SOUTHEAST CORNER OF BLOCK 24 OF BROOKLYN AND ITS EXTENSION AS RECORDED IN DEED BOOK "AJ", PAGES 722, 723, & 724 AND PLAT BOOK 1, PAGE 86 OF SAID FORMER PUBLIC RECORDS OF DUVAL COUNTY), SAID CORNER ALSO BEING THE INTERSECTION OF THE SOUTHWESTERLY EXISTING RIGHT OF WAY LINE OF DORA STREET, (A 33 FOOT RIGHT OF WAY PER PLAT), WITH THE NORTHWESTERLY EXISTING RIGHT OF WAY LINE OF MAGNOLIA STREET, (A 33 FOOT RIGHT OF WAY PER PLAT); THENCE SOUTH 54°50'07" WEST, ALONG SAID NORTHWESTERLY EXISTING RIGHT OF WAY LINE OF MAGNOLIA STREET, A DISTANCE OF 274.81 FEET; THENCE SOUTH 35°36'34" EAST, 33.00 FEET TO THE SOUTHEASTERLY EXISTING RIGHT OF WAY LINE OF SAID MAGNOLIA STREET; THENCE NORTH 54°50'07" EAST, ALONG LAST SAID LINE, 536.48 FEET; THENCE SOUTH 35°17'35" EAST, 226.56 FEET TO THE CENTERLINE OF FORMER MAY STREET AND THE POINT OF BEGINNING; THENCE NORTH 54°50'51" EAST, ALONG LAST SAID LINE, 260.20 FEET TO THE SOUTHWESTERLY EXISTING RIGHT OF WAY

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ALTA Commitment (6/17/06) (with FL Modifications)



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EXHIBIT B

As set forth in the Agreement, the Company will document a minimum Capital Investment of \$80,000,000.00 in the Project Improvements on the Project Parcel to construct:

- 1) Approximately 295 units of residential rental apartment units on the Project Parcel;
- 2) A minimum of 12,750 square feet of new space for Retail Use, which may include up to fifty percent (50%) of Commercial Use; and
- 3) At least 450 new structured parking spaces to support the Project.