

Redevelopment Agreement

between

The Downtown Investment Authority

and

JWB Real Estate Capital, LLC

REDEVELOPMENT AGREEMENT

This **REDEVELOPMENT AGREEMENT** (this “Agreement”) is made this ___ day of _____, 2021, and made effective as of January 20, 2021 (the “Effective Date”), between the **DOWNTOWN INVESTMENT AUTHORITY**, a community redevelopment agency on behalf of the City of Jacksonville (the “DIA”) and **JWB REAL ESTATE CAPITAL LLC**, a Florida limited liability company (the “Developer”).

Article 1. PRELIMINARY STATEMENTS

1.1 The Project.

The Developer currently owns two parcels of real property improved with historic structures and located respectively at 218 W. Church Street, known generally as the Florida Baptist Convention Building (as defined below, the “Church St. Building”), and 424 N. Hogan Street, known generally as the Federal Reserve Building (as defined below, the “Hogan St. Building”), each in Jacksonville, Florida 32202 (collectively, the “Project Parcel”). The Developer has proposed to make certain improvements to renovate and rehabilitate each of the Church St. Building and Hogan St. 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 Eighteen Million Five Hundred Eleven Thousand Thirty and No/100 Dollars (\$18,511,030.00) by or on behalf of the Developer.

1.2 Authority.

The DIA Board has authorized execution of this Agreement pursuant to DIA Resolution 2021-01-04 (the “Resolution”) and City Council has approved this Agreement pursuant to Ordinance 2021-___-E.

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 EIGHT MILLION SIX HUNDRED TWENTY-FOUR THOUSAND THREE HUNDRED TWENTY-ONE AND NO/100 DOLLARS (\$8,624,321.00).

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 Buildings.

Collectively, the Church St. Building and the Hogan St. Building.

2.2 CCR Loan.

A DPRP Loan that meets the parameters outlined in Revised Exhibit 1 to ordinance 2020-0527, 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 Church St. Building.

That certain building located on the Church St. Parcel that will be redeveloped with the Church St. Improvements in accordance with this Agreement.

2.5 Church St. Improvements.

Those certain improvements to be made by the Developer on the Church St. Parcel, to include twenty-four (24) residential units and a minimum of an aggregate of five thousand three hundred (5,300) square feet of restaurant/retail space on the ground floor and basement level of the Church St. Building, as further described on **Exhibit A** attached hereto and incorporated herein by this reference.

2.6 Church St. Parcel.

That certain real property and improvements thereon located at 218 W. Church Street, Jacksonville, Florida, having R.E. # 073776 0000.

2.7 City.

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

2.8 COA.

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

2.9 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.

2.10 DDRB.

The City of Jacksonville's Downtown Development Review Board.

2.11 DPRP Loan.

A DPRP Loan that meets the parameters outlined in Revised Exhibit 1 to ordinance 2020-0527 as may be which is required in cases where developer equity is less than twenty-five percent (25%) of Total Development Cost determined in underwriting the capital needs of the Project. A Deferred Principal Loan requires principal to be repaid at the earlier of the sale or refinance of the property, or at the tenth anniversary of funding under terms defined further herein. A Deferred Principal Loan also requires interest payments to be made annually at the rate of the Federal Reserve Ten-Year Treasury Note as of the date of closing multiplied by the average monthly balance outstanding in each year, or as otherwise may be approved under terms defined further herein.

2.12 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*.

2.13 DPRP Guidelines.

The Downtown Preservation and Revitalization Program Guidelines (the “DPRP”) as authorized by Ordinance 2020-527-E and incorporated herein by reference as if fully set forth herein.

2.14 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) Historic Preservation Restoration and Rehabilitation Forgivable Loans (each, an “HPRR Loan”); (ii) Code Compliance Renovations Forgivable Loans (each, a “CCR Loan”); and (iii) a Downtown Preservation and Revitalization Program Deferred Principal Loan (each, a “Deferred Principal Loan”) from the City to the Developer with respect to each of the Church St. Building and Hogan St. Building in accordance with the terms and conditions set forth in this Agreement and the DPRP Guidelines.

2.15 DPRP Loan Request.

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

2.16 Historic Preservation Section.

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

2.17 Hogan St. Building.

That certain building located on the Hogan St. Parcel that will be redeveloped with the Hogan St. Improvements in accordance with this Agreement.

2.18 Hogan St. Improvements.

Those certain improvements to be made on the Hogan St. Parcel, inclusive of two (2) restaurant/retail spaces with an aggregate of seven thousand four hundred (7,400) square feet, and two floors of event space consisting of nine thousand (9,000) square feet in the aggregate, which event space may also be utilized as commercial, retail or restaurant space, as further described on **Exhibit B** attached hereto and incorporated herein by this reference.

2.19 Hogan St. Parcel.

That certain real property and improvements thereon located at 424 N. Hogan Street, Jacksonville, Florida, having R.E. # 073777-0000.

2.20 HPRR Loan.

A DPRP Loan that meets the parameters outlined in Revised Exhibit 1 to ordinance 2020-0527, 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.

2.21 Improvements.

Collectively, the Church St. Improvements and Hogan St. Improvements that are incorporated into the Project on the Project Parcel in accordance with this Agreement.

2.22 JHPC.

The City of Jacksonville Historic Preservation Commission.

2.23 Ordinance Code.

The Ordinance Code of the City of Jacksonville.

2.24 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 applicable 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.

2.25 Total Development Costs.

“Total Development Costs” or “TDC” is the cost of the Project Improvements defined as: the costs approved in underwriting for the acquisition of eligible buildings and associated land; the

construction costs as negotiated with a qualified general contractor; and additional soft costs typically eligible for capitalization in development activity of the type set forth in this Agreement. TDC may also include, as applicable, the market value of real property owned by Developer and utilized as part of the Project Parcel, taking into consideration any related debt, at the time of approval by the DIA Board, which related debt shall not have been increased since that time, and shall be exclusive of any developer fees or other costs.

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"):

- (e) The Developer shall Commence Construction of the Improvements with respect to each of the Church St. Building and Hogan St. Building 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 Commencement of Construction date (the "Commencement Date") and provide supporting documentation to that effect.

- (f) The Improvements with respect to each of the Church St. Building and Hogan St. Building shall be Substantially Completed within twenty-four (24) months from 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 three (3) month extension to the Commencement of Construction date pursuant to this Section shall include a three (3) month extension to the Substantial Completion Date, which cumulatively shall be deemed one (1), three (3) 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 composing the Developer is duly authorized to transact business in the State of Florida and has received all necessary permits and authorizations required by appropriate governmental agencies as a condition to doing business in the State of Florida; and
 - (v) the Developer, its business operations, and each person or entity composing the Developer are in compliance with all federal, state, and local laws.
- (b) The 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 each of the Church St. Improvements and Hogan St. Improvements, 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)	DPRP Deferred Principal Loan	TOTAL
Church	\$2,375,479	\$1,922,083	\$1,074,390	\$5,371,953
Hogan	\$1,221,151	\$1,377,743	\$ 653,474	\$3,252,368
TOTAL	\$3,596,630	\$3,299,827	\$1,727,864	\$8,624,321

4.2 Total Development Costs.

In order to be eligible for the maximum amount of the DPRP Loans, the Developer must provide evidence and documentation prior to the applicable DPRP Loan closing sufficient to demonstrate a minimum Total Development Cost in the Project of at least EIGHTEEN MILLION FIVE HUNDRED ELEVEN THOUSAND THIRTY DOLLARS AND NO/100 (\$18,511,030.00), consisting of a minimum of TEN MILLION EIGHT HUNDRED SIXTEEN THOUSAND SIXTY-SIX DOLLARS AND NO/100 (\$10,816,066.00) for the Church St. Improvements and SEVEN MILLION SIX HUNDRED NINETY-FOUR THOUSAND NINE HUNDRED SIXTY FOUR DOLLARS AND NO/100 (\$7,694,964.00) for the Hogan St. Improvements (respectively, the “Minimum Total Development Cost”) as determined by the DIA in its reasonable discretion. In the event the Church St. Improvements and/or the Hogan St. Improvements fall below the applicable Minimum Total Development Cost threshold by ten percent (10%) or less, the maximum amount of the applicable DPRP Loans shall be reduced in accordance with the DPRP Guidelines. In the event the actual Total Development Cost of either the Church St. Improvements or the Hogan St. Improvements as determined by the DIA is more than twenty-five percent (25%) below the respective Minimum Total Development Cost threshold, the Developer shall be ineligible for the applicable DPRP Loans. In the event the Total Development Cost of either the Church Street Improvements or the Hogan St. Improvements fall below the respective Total Development Cost threshold by more than ten percent (10%) but less than twenty-five percent (25%), DIA staff shall perform an underwriting analysis and present to the DIA Board a request for approval of reduced DRPR Loans consistent with the DPRP Guidelines. The DIA Board shall have the authority, without further action by City Council, to approve reduced DRPR Loan amounts provided the reduction in Total Development Cost for the respective improvements does not exceed twenty-five percent (25%).

4.3 Construction of Improvements.

After the Developer obtains all applicable approvals with respect to the Project, the Developer shall construct the Improvements, and shall construct the Church St. Improvements and Hogan St. Improvements in accordance with the terms of this Agreement and applicable COA, the Conditions, and the applicable scope of work as set forth herein for each of the Church St. Improvements and Hogan St. Improvements. The Developer will pay all costs of the Project and Improvements. The Developer shall comply with all applicable requirements of this Agreement and the DPRP Guidelines.

4.4 Conditions to Disbursement of DPRP Loans.

In addition to the conditions precedent set forth in Section 1.5, above, the DIA’s obligation to disburse any portion of a DPRP Loans to the Developer with respect to each of the Church St. Improvements and Hogan St. Improvements is conditioned upon the prior occurrence of each the following conditions precedent with respect to each Loan, and otherwise in accordance with the terms of this Agreement:

- (a) Each of the Church St. Building and Hogan St. Building, as applicable, must have been designated as a local historic landmark by the City Council of Jacksonville, and each building must have received approval for Part 2 of the National Park Service Historic Designation;

(b) The Developer shall submit to the DIA a completed written disbursement request (the “Disbursement Request”) with respect to the Church St. Improvements or the Hogan St. Improvements, as applicable, 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 respective 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;

(c) All property taxes on the Project Parcel must be current and no municipal liens shall be outstanding;

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

(e) 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;

(f) The Developer shall furnish to the DIA with respect to either of the Church St. Building or the Hogan St. Building, as applicable, 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 Church St. Improvements or Hogan St. Improvements, as applicable, 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;

(g) The Developer shall submit to the DIA with respect to either of the Church St. Improvements or the Hogan St. 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;

(h) 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 Minimum Total Development Cost as to the Church St. Improvements and the Hogan St. Improvements, as the same may be reduced consistent with Section 4.2 hereof;

(i) With respect to either of the Church St. Improvements and Hogan St. Improvements, such 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;

(j) Funding may be requested and approved subject to the terms above on any DPRP Loan for one Building so long as the Developer has submitted written documentation and evidence demonstrating that the redevelopment progress on the other related Building is seventy-five percent (75%) complete, at minimum, and that such improvements will be completed within the applicable Performance Schedule, each as determined by the DIA in its reasonable discretion;

(k) With respect to each of the Church St. Improvements and Hogan St. 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 applicable 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 applicable COA from the Jacksonville Historic Preservation Commission; and (e) the applicable scope of work for the Church St. Improvements or Hogan St. Improvements;

(l) 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 or 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;

(m) 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

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

4.5 Loan Amount; Loan Program.

The total of all DPRP Loans to be advanced under this Agreement shall not exceed a maximum aggregate amount as set forth in Section 1.4 hereof. 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). To be eligible for the maximum amount of DPRP Loans authorized under this Agreement, the Developer shall incur not less than the applicable Minimum Total Development Costs with respect to each of the Church St. Improvements and the Hogan St. Improvements. The acquisition cost of the Project Parcel in the amount of TWO MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND NO/100 (\$2,425,000.00) as confirmed by warranty deed or other executed acquisition documentation shall be included towards the required Total Development Costs. The acquisition cost for the Church St. Parcel is SIX HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND NO/100 (\$675,000). The acquisition cost for the Hogan St. Parcel is ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$1,750,000). The term “Eligible Expenses” shall mean those expenses that are (i) found 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. 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 advanced, 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 the January 20, 2021 but prior to execution of this Agreement may be determined to be Eligible Expenses and included toward the required Total Development Cost for the Project.

4.6 DPRP Loan Terms; Loan Documents.

The maturity date of each DPRP Loan advanced 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 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. In addition to the Notes, the Developer shall also execute and deliver all other security agreements, documents, instruments, and certificates required by the DIA under this Agreement or in connection with any DPRP Loan (collectively with the Notes, the “Loan Documents” and each, a “Loan Document”).

Church St. Improvements

Loan component	Amount	Interest rate	Term	Repayment Schedule	Amortization
HPRR Loan	\$2,375,479	0.0%	5 years	None	20%/year
CCR Loan	\$1,922,083	0.0%	5 years	None	20%/year
DPRP Deferred Principal Loan	\$1,074,390	10-year Treasury note at time of closing	10 years	Interest only; balloons at maturity	None- due at maturity

Hogan St. Improvements

Loan component	Amount	Interest rate	Term	Repayment Schedule	Amortization
HPRR Loan	\$1,221,151	0.0%	5 years	None	20%/year
CCR Loan	\$1,377,743	0.0%	5 years	None	20%/year
Deferred Principal Loan	\$653,474	10-year Treasury note at time of closing	10 years	Interest only; balloons at maturity	None- due at maturity

**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.

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 through all DPRP Loan periods.

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 Church St. Building or Hogan St. Building by Developer 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 Compliance Period, provided however that any refinance which does not increase the outstanding principal amount or interest rate shall be permitted without further DIA approval.

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), (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 to the Project, or (iv) any of the Loan Documents (collectively, the “Project Documents”). A default shall also exist if any event occurs or information becomes known which, in the reasonable 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 advance 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 advances for any DPRP Loan;
- (b) In the event all property, business, and income taxes are not timely paid throughout the term of this Agreement, and through all DPRP Loan periods, the DIA will be entitled to withhold all further advances 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, refinances the Project Parcel, or any portion thereof, in such a way as to remove any equity injected prior to closing, or otherwise transfers any portion of the Church St. Building or Hogan St. 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 DPRP 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 HPRR Loan and the CCR Loan with respect to

the portion of the Project Parcel sold (collectively, the “Disbursed Funds”) as follows:

- (i) one hundred percent (100%) of the funds actually disbursed to Developer as part of a DPRP Loan in the one (1) year prior to the Sale;
- (ii) eighty percent (80%) of the funds actually disbursed to Developer as part of a DPRP 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 a DPRP 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 a DPRP 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 a DPRP 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 either 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 funds actually disbursed to the Developer, 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.
- (f) In the event the Developer has completed either the Church Street Improvements or the Hogan St. Improvements and DPRP Loans have been disbursed on such portion

of the Project, but Developer fails to complete the remainder of the Project in accordance with the Performance Schedule, all outstanding DPRP Loans shall become immediately due and payable and all amortization will cease on any outstanding DPRP Loans.

9.3 Performance Schedule Default.

Notwithstanding anything in this Agreement to the contrary, in the event that the Developer fails , to Commence and Substantially Complete the Project 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; 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 in no event shall any of the foregoing excuse any financial liability of a party.

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:

JWB Real Estate Capital, LLC
7563 Philips Highway
Jacksonville, Florida 32256
Attn: Alex Sifakis

With a copy to:

Driver, McAfee, Hawthorne & Diebenow, PLLC
1 Independent Drive, Suite 1200
Jacksonville, Florida 32202
Attn: Steve Diebenow

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.

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:

JWB REAL ESTATE CAPITAL, LLC, a Florida limited liability company

Print Name: _____

By: _____

Name: _____

Its: _____

Print Name: _____

Form Approved:

Office of the General Counsel

GC-#1420247-v6-JWB_Real_Estate_Capital_EDA_(Church_and_Hogan).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 – Description of the Church St. Parcel
- Exhibit B – Description of the Hogan St. Parcel
- Exhibit C – JSEB Reporting Form
- Exhibit D – Request for Loan Disbursement Form

Exhibit A
Church St. Parcel

That certain real property located generally at 51 West Bay Street, Jacksonville, Florida 32202, having a Duval County Tax R.E. Parcel Number of 073776 0000.

Exhibit B
Hogan St. Parcel

That certain real property located generally at 424 North Hogan Street, Jacksonville, Florida, having a Duval County Tax R.E. Parcel Number of 073777 0000.

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: _____ Phase Number: _____

Address: _____ Document Number: _____

_____ Date Submitted: _____

Phone: _____ Tax ID #: _____

Historic Building Name: _____

Historic Building Address: _____

DEVELOPER PAYMENT REQUEST Total documented Project Cost (for this Phase): _____

<u>Type of Eligible Expenditure</u>	<u>Amount of Eligible Expenses Submitted for this Phase</u>	<u>Eligible Percentage</u>	<u>Allowable Amount for this Phase</u>
Exterior Rehabilitation & Restoration _____		x 75%	_____
Interior Restoration _____		x 75%	_____
Interior Rehabilitation _____		x 30%	_____
General Requirements & Overhead _____		x 20%	_____
Code Compliance _____		x 75%	_____

Total Amount Requested in this Phase: _____

- 1 Loan funds received to date (all Phases): _____
- 2 Loan funds previously requested but not yet received: _____

Loan disbursements will be provided only after 100% completion of the Improvements for the applicable Project Phase. 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 for Phase ____ 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 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 work.