

**DEVELOPMENT AGREEMENT**

**among**

**CITY OF HOLLYWOOD, FLORIDA**

**CITY OF HOLLYWOOD, FLORIDA  
COMMUNITY REDEVELOPMENT AGENCY-DOWNTOWN DISTRICT  
and**

**BTI LAND ACQUISITIONS, LLC.**

**FOR**

**BLOCK 58  
Lots within Block 58 including Lots 1-9 and Lot 24, Hollywood PB 1-21**

**Dated**

**As of November 18, 2020**

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## **AGREEMENT**

THIS DEVELOPMENT AGREEMENT, dated as of this \_\_\_\_ day of November, 2020, among CITY OF HOLLYWOOD, a municipal corporation organized and existing under the laws of the State of Florida, Broward County, Florida ("City"), CITY OF HOLLYWOOD, FLORIDA COMMUNITY REDEVELOPMENT AGENCY - DOWNTOWN DISTRICT, a public instrumentality of the State of Florida, Broward County, Florida ("CRA"), and BTI Land Acquisitions, LLC, a Florida limited liability company, ("BTI").

### **RECITALS:**

WHEREAS, on May 18, 2007, the CRA entered into a Developers Agreement ("Prior Agreement") for the development of sections of Block 58 of the Plat of "Hollywood" as recorded in Plat Book 1, Page 21 ("Property") of the public records of Broward County, Florida, including without limitation Lots 1 through 19 and Lot 24, and WHEREAS, the Developer of the Prior Agreement no longer exists, and the Developers Agreement is null and void and of no further force or effect; and

WHEREAS, the CRA and the City are desirous of entering into a Development Agreement with BTI for the development of Lots 1 through 9 and Lot 24 ("Subject Property"); and

WHEREAS, BTI proposes to develop the residential portion of the Subject Property in accordance with the approved site plan and the minor modifications attached hereto as Exhibit "A" (collectively the "Project"); and

WHEREAS, the Project, once developed, will significantly reduce blight in the CRA, will significantly enhance the City, and will, in turn, bring significant economic redevelopment to the area; and

WHEREAS, this Development Agreement ("Agreement") is entered into between the parties pursuant to Section 163, Florida Statutes, and Section 166, Florida Statutes.

NOW, THEREFORE, it is mutually covenanted and agreed by and between the parties that this Agreement is made upon the terms, covenants and conditions set forth.

## **ARTICLE 1**

### **DEFINITIONS**

For purposes of this Agreement, the terms defined in this Article 1 shall have the following meanings:

"Agreement" is defined as this Development Agreement among BTI, the City, and the CRA.

"Approved Project Plans" is defined as the Plans and Specifications for the BTI Project that have been properly approved by the City of Hollywood.

“BTI Land Acquisitions, LLC” is defined as a Florida limited liability company.

“City” is defined as the City of Hollywood, Florida.

“City Indemnified Party” is defined collectively as City, the CRA and the City's and CRA's respective elected and appointed officials, directors, officers, employees and agents.

“Commencement of Construction” is defined as the commencement of major work (such as pilings or foundations) for construction of the Improvements in accordance with the Approved Project Plans to be performed in connection with the construction of the Project. All preliminary work (including without limitation any environmental remediation, as well as all necessary demolition and obtaining permits and approvals from all necessary governmental agencies) shall not be deemed to be Commencement of Construction.

“Commercial Retail” is defined as commercial improvements to be constructed on the Subject Property pursuant to the Approved Project Plans “Construction Agreements” is defined as all agreements executed in connection with any construction affecting the Subject Property.

“CRA” is defined as the Downtown District of the City of Hollywood, Florida Community Redevelopment Agency, its successor and assigns, in whole or in part.

“Date of Acquisition” is defined as the date that BTI takes title to the Property.

“Default Notice” is defined as set forth in Section 11.1.

“Developer” is defined as BTI LAND ACQUISITIONS, LLC,

“Developer Indemnified Party” is defined collectively as Developer, its directors, officers, shareholders, partners, members, employees and agents.

“Event of Default” or “Default” is defined as set forth in Section 11.1.

“Execution Date” is defined as the latest date that this Agreement is executed by City, CRA and Developer.

“Fast Track Permits and Approvals” is defined as set forth in Article 4.

“Improvements” is defined collectively as the buildings and other improvements, including the Residential Development, the Commercial Retail and Parking Garage to be constructed by BTI on the Subject Property.

“Notice” is defined as set forth within Section 12.1.

“Parking Spaces” means at least the minimum number of parking space(s) required by City Code for each Phase of the Project to be constructed by Developer on the Subject Property to service the Commercial Retail and Residential Development.

“Phase 1 of the Project” is defined as the initial phase of the Project approved by the City for construction in its sole and absolute discretion, consisting of a Residential Development, Commercial Retail and adjacent parking garage on Lots 1 through 9 and Lot 24, as depicted on the Approved Project Plans.

“Plans and Specifications” is defined as the plans and specifications prepared by BTI depicting the Project.

“Project” is defined collectively as the Residential Development, Commercial Retail, and any and all other uses depicted in the Approved Project Plans that are intended by the parties to be developed on the Subject Property as approved by the City. The Project shall not include the Harrison Street lots, which may be the subject of a separate agreement.

“Residential Development” is defined as the residential units and related improvements to be constructed on the Subject Property pursuant to the Approved Project Plans.

“Subject Property” is defined as Lots 1 through 9 and Lot 24 within Block 58 of the Plat of “Hollywood”, as recorded in Plat Book 1 at Page 2 of the public records of Broward County, Florida, together with any and all buildings or other improvements existing thereon. The Project shall not include Lots 16 through 19 generally located on Harrison Street, which may be the subject of a separate agreement.

“Substantial Completion” or “Substantially Complete” is defined as (i) Developer has completed construction of the Project or such Project phase, including the punch list items (but excluding any tenant improvements), in accordance with the Approved Project Plans, Site Plan, Development Approvals, Permits, Applicable laws and this Agreement, (ii) the architect of record has executed an architect’s certificate of completion for the Project and (iii) Developer has obtained the final certificates of occupancy and completion for the Project.

“Tax Increment Financing” or “TIF” is defined as the amount of tax increment revenue actually received annually by CRA pursuant to Chapter 163, Florida Statutes that is attributable to the increased taxable value of the Project, beginning in the year the CRA actually receives tax increment revenue from the Substantially Complete Project.

## ARTICLE 2

### **CONSTRUCTION OF THE RESIDENTIAL DEVELOPMENT & COMMERCIAL RETAIL**

#### **Section 2.1 Land.**

The Project shall be constructed on the Subject Property, which for purposes of this Agreement shall not include the Harrison Street property.

#### **Section 2.2 Construction, Commencement of Construction.**

(a) The Residential Development and Commercial Retail will be comprised of the number of residential units, parking spaces and square feet as described in Article 3.

(b) Developer shall, subject to Section 11.6 apply for a master building permit for Phase 1 of the Project, which application shall contain all of the information necessary for the issuance of the permit within the time frames of the existing approvals and any extension(s) thereof.

(c) Developer shall, subject to Section 11.6, Substantially Complete construction of Phase 1 of the Project within 30 months of the issuance by City and all other governmental entities having jurisdiction over the Project of the last of any required building permits for Phase 1 of the Project.

(d) From the Date of Acquisition to the Commencement of Construction, Developer shall continually keep and maintain all portions of Block 58 owned by the Developer in accordance with City's Code of Ordinances, including but not limited to Chapters 101 and 157, and the City's Zoning and Land Development Regulations, including but not limited to Article 9. Further, upon a third finding by a Special Magistrate of any violation of the City's Code of Ordinances or Zoning and Land Development Regulations, including the above-referenced provisions and for each such finding of violation thereafter, an Event of Default shall exist, if not cured within the time frames set by the Special Magistrate.

### **ARTICLE 3**

#### **PLANS, SPECIFICATIONS AND ENTITLEMENTS**

##### **Section 3.1 Approval of Plans and Specifications.**

(a) Prior to Commencement of Construction, BTI shall prepare and submit to City Plans and Specifications for the Project for the purpose of obtaining building permits pursuant to and in accordance with Section 3.2. Developer will provide as many copies of the Plans and Specifications as necessary for the various departments to review the Plans and Specifications simultaneously (instead of sequentially) to the extent such simultaneous review is not prohibited by the Florida Building Code and other applicable law.

(b) City staff agrees to support and "fast track" any approval processes, including support, when and where applicable, for the processing of any zoning changes, allocation of existing reserve or flex units, vacation of alleyways and/or variances in order for Developer to build the Project as contemplated by this Agreement, all subject to the approval of City Commission or appropriate board within City, where required.

(c) If Developer desires to modify Approved Project Plans and such modifications cannot be handled administratively, Developer shall submit any such modified Plans and Specifications to the City for City's site plan review process and necessary City Commission approvals, appropriate board approvals, and/or administrative staff approvals. Such modified Plans and Specifications shall clearly indicate such modifications in accordance with all City requirements. If the modifications are done solely at the election of the Developer and are not required by City and/or other regulatory agency, then such modified Plans and Specifications shall be submitted to the Department of Development Services for review.

(d) The Residential Development of the Project will be comprised of residential units (at a standard comparable with other similar Hollywood downtown/urban residential apartment projects that are considered to be of high quality based on the appraised value and the assessed value as determined by the Broward County Property Appraiser). The Project, as presently designed has been found to meet this standard.

(e) Developer agrees that while this Agreement remains in effect, no residential unit shall be rented for a term of less than six months unless specifically approved by the City Commission.

### Section 3.2 Compliance with Requirements; Construction Standards.

(a) Notwithstanding anything to the contrary contained herein, the Approved Project Plans shall substantially comply with all applicable governmental requirements. It is BTI's responsibility to assure such compliance.

(b) Construction of the Project shall be carried out pursuant to Approved Project Plans prepared by licensed architects and engineers, with threshold inspections conducted by a licensed architect or professional engineer as required by applicable governmental requirements.

### Section 3.3 Entitlements.

(a) City represents that the present status of the Project is as follows:

- (i) Land use designation as Regional Activity Center ("RAC")
- (ii) Zoning designation as PD-YC-B58
- (iii) Height is authorized per the Approved Project Plans
- (iv) All concurrency requirements for the Project have been met
- (v) City's current Land Use Plan and Comprehensive Plan has sufficient density and/or flex units to allow development of Project
- (vi) While some of the Subject Property contains old structures, none of the Subject Property contains any structure of historical value.

## **ARTICLE 4**

### **FAST TRACK PERMITS AND APPROVALS**

#### Section 4 Fast Track Permits and Approvals.

Without limiting the generality of Article 3, the parties agree that, to the extent not otherwise prohibited by the Florida Building Code or other applicable law, City will "Fast Track Permits and Approvals". Fast Track Permits and Approvals means that Developer may submit separate Plans and Specifications as to a portion of the Project then being built (i.e., the Residential Development, etc.). Under Fast Track Permits and Approvals, Developer may separately request and City shall separately issue the following permits on the various portions of the Project being constructed: (a) demolition; (b) formal life safety review; (c) pilings; (d) foundation; (e) structural framing and exterior cladding (collectively the "shell permit"); (f) interior framing and interior partitioning; (g) full mechanical, electrical, plumbing and finish package; (h) all other permits or approvals necessary for the completion of the construction of that portion of the Project being built.

City will, when and where applicable, also Fast Track the processing of any necessary alleyway vacations for the Project land in connection with the Project.

It is fully understood and agreed that, to the extent not otherwise prohibited by the Florida Building Code or other applicable law, the Department of Development Services may approve Plans and Specifications and/or work for portions of the Project without reviewing or having for review a complete set of Plans and Specifications for the entire Project. However, in no event will Developer cause any work to be performed on any portion of the Project without Approved Project Plans.



## **ARTICLE 5**

### **MISCELLANEOUS CONSTRUCTION PROVISIONS**

#### **Section 5.1 Construction Agreements.**

Developer shall have the full right and authority to enter into any and all Construction Agreements it deems necessary for the development of the Residential Development, Commercial Retail and the improvements thereon. Neither City, nor CRA shall have any right of approval over the Construction Agreements or contractors and subcontractors, and agree not to interfere with same, except to the extent required to carry out its governmental function as regulator of construction functions. All such Construction Agreements shall be the sole responsibility of BTI.

#### **Section 5.2 Construction Period Street Closures.**

City agrees to expedite the review of maintenance of traffic plans to ensure such plans provide for the safe and adequate operation of US-1/Federal Highway and access to the Arts Park at Young Circle. City understands that part of the construction will require the intermittent closure of one half of the right of way of Van Buren Street and one half of the right of way of South 17<sup>th</sup> Avenue. If additional closures or full closures are required it shall be in accordance with an approved MOT Plan, which approval shall not be unreasonably withheld.

## **ARTICLE 6**

### **FINANCING**

#### **Section 6 Developer's Project Financing.**

Developer may obtain such loans as it deems appropriate to finance the Subject Property and for such other necessary purposes.

## **ARTICLE 7**

### **REQUIREMENTS**

#### **Section 7 Requirements of BTI.**

In connection with any construction work, and BTI's performance of its obligations hereunder, BTI shall comply promptly with all requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment (but BTI may seek to obtain an easement in order to cure an encroachment, if permitted by requirements), or involving or requiring any structural changes or additions in or to the Project and regardless of whether such changes or additions are required by reason of any particular use to which the Project, or any part thereof, may be put.

At all times, BTI shall ensure that the Residential Development has on-site management, and if the units comprising the Residential Development are operated as rentals, rents shall be set at Downtown Hollywood market rates or higher, unless market rates are not competitive enough to secure a minimum of eighty percent (80%) occupancy.

BTI represents that it will only perform work for which it possesses all necessary training, licensing

and permits. BTI represents that its performance of all such work will conform to the standard of practice of a professional that has knowledge of the development of downtown/urban residential apartment projects in the state of Florida, and further, the Project and all amenities shall be maintained at a standard comparable with other similar downtown/urban residential apartment projects in Broward County that are considered to be of high quality based on the appraised value and the assessed value as determined by the Broward County Property Appraiser. In the event Developer fails to meet this maintenance standard within 30 days after receipt of written notice from the CRA or City regarding same, the CRA or City may withhold TIF payments as provided under section 10.1(a).

## **ARTICLE 8**

### **REPRESENTATIONS**

#### **Section 8        Representations.**

BTI represents to City and CRA, respectively, that it has not dealt with any broker, finder or like entity in connection with this Agreement or the transactions contemplated and BTI shall, to extent allowed by law, indemnify City and CRA against any claim for brokerage commissions, fees or other compensation by any person alleging to have acted for or dealt with BTI in connection with this Agreement or the contemplated transactions.

## **ARTICLE 9**

### **NO LIABILITY FOR INJURY OR DAMAGE ETC.**

#### **Section 9.1    Non-Liability of City.**

(a)     City Not Liable for Injury or Damage, Etc. Except for cases of willful negligence or misconduct, the City Indemnified Party shall not be liable for, and BTI shall indemnify and hold the City Indemnified Party harmless, from and against any loss, cost, liability, claim, damage, expense (including without limitation reasonable attorneys' fees and costs), penalty or fine incurred in connection with or arising from any injury (whether physical (including without limitation death), economic or otherwise) to BTI or to any other person in, about or concerning the Project or any damage to or loss, by theft or otherwise of any of BTI's property or of the property of any other person in, about or concerning the Project, irrespective of the cause of injury, damage or loss (including without limitation the acts of negligence of any Developer or occupant of the Project or of any City's or occupants of adjacent or neighboring property or caused by any construction work or by operations in construction of any private, public or quasi-public work on the Project).

(b)     Survival. The provisions of this Section 9.1(a) shall survive the expiration of the Term.

#### **Section 9.2    City's Exculpation.**

(a)     Except for issues of monetary default by any City Indemnified Party and except as such liability may be eliminated or reduced by any constitutional, statutory, common law or other protections afforded to public bodies or governments, including but not limited to sovereign immunity statutes, the liability of any City Indemnified Party (including without limitation with respect to any gross negligence or willful misconduct), or of any other person who has at any time acted as a City Indemnified Party hereunder for damages or otherwise, arising out of or in connection with any breach of this Agreement or

any injury (whether physical, including death, economic or otherwise) incurred in connection with this Agreement, shall be limited to BTI's equitable remedies as provided herein, and monetary damages shall be limited to the cash value of all the unpaid incentives provided for within this Agreement, adjusted for inflation from the Effective Date, plus reasonable attorney's fees and costs at all tribunal levels. As used in the preceding sentence, the terms "breach" and "injury" shall include all breaches and injuries arising out of the facts and circumstances resulting in such breach or injury.

(b) Except for conversion, fraud or willful misconduct (and then only to the extent such party acted in its proprietary capacity opposed to its governmental capacity), the City Indemnified Party shall have no liability (personal or otherwise) hereunder, and no property or assets of the City Indemnified Party shall be subject to enforcement procedures for the satisfaction of BTI's remedies hereunder or any other liability of the City's Indemnified Party arising from or in connection with this Agreement or the Project. Nothing contained herein shall be deemed a waiver or limitation of any equitable remedies available to BTI.

(c) Nothing contained in this section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City/CRA's liability as set forth in §768.28, Fla Stat., or of any other constitutional, statutory, common law, or other protections afforded to public bodies or governments.

#### Section 9.3 Developer's Exculpation.

Except for (a) BTI's liability for conversion, willful misconduct or fraud, and (b) liabilities of BTI arising under applicable law when City is acting in or pursuant to its governmental capacity, and except with respect to any rights or remedies for non-monetary relief (including without limitation equitable relief), the liability of BTI under this Agreement and with respect to the Project for damages or other monetary amounts shall be limited to BTI's interest in the Project, and no other property or assets of BTI or any BTI Indemnified Party shall be subject to levy of execution or enforcement procedure for the satisfaction of City's remedies hereunder or any other liability of BTI arising from or in connection with this Agreement or the Project. Nothing contained herein shall be deemed a waiver of limitation or any equitable remedies available to City. The liability of BTI to City for monetary damages shall be limited to the value of any incentives received by BTI from City, adjusted for inflation from the Effective Date, plus reasonable attorney's fees and costs at all tribunal levels.

## **ARTICLE 10**

### **CITY/CRA INCENTIVES**

#### Section 10.1 Contribution for Project Acquisition and Development Costs.

- (a) In recognition of the increased acquisition and development costs associated with the Subject Property as well as financial and market risks associated with the development of the proposed Project, the parties agree that BTI shall receive an amount equivalent to 95% of the new TIF generated by the completed Project, as compared to the previous year's unimproved land value, in the form of an annual reimbursement through September 30, 2025. From the period beginning October 1, 2025 through September 30, 2030 the parties agree that BTI shall receive annually an amount equal to 95% of what the City's portion of the TIF, generated from the completed Project would be if the TIF was still being paid to the CRA plus an annual payment of \$280,000 (Two Hundred Eighty Thousand Dollars and Zero Cents) or an amount equal to 95% of what

Broward County's portion of the TIF, generated from the completed Project, would be if the TIF was still being paid to the CRA, whichever is less. The TIF reimbursements and annual payments shall not extend beyond September 30, 2030.

- (b) After the Project has been completed and recorded in the tax rolls, the CRA shall provide an annual payment to BTI, within 30 days following the receipt by the CRA, and each subsequent receipt by the CRA, of the new TIF revenue generated from the completed Project, as compared to the previous year's unimproved land value, in an amount equal to 95% of the annual TIF through September 30, 2025. From October 1, 2025 through September 30, 2030, the CRA shall provide an annual payment to BTI, within 30 days following the receipt by the City of ad valorem taxes attributable to the Project, an amount equal to 95% of what the City's portion of the TIF generated from the completed Project would be if the TIF was still being paid to the CRA plus an annual payment of \$280,000 (Two Hundred Eighty Thousand Dollars and Zero Cents) or an amount equal to 95% of what Broward County's portion of the TIF, generated by the completed Project, would be if the TIF was still being paid to the CRA, whichever is less. No payments withheld as a result of the provisions in Section 11.2 shall be due to BTI by reason of an eventual cure of any default, and all such payments shall be retained by the CRA or City, unless such default is cured in accordance with Section 11.1 at which point such withheld payments shall be immediately due. In the unlikely event that the CRA is not renewed, such payment shall be the responsibility of the City.
- (c) City and CRA agree that all obligations for payment to BTI under this section may be assigned and/or pledged by BTI to Permitted Successors and/or Permitted Assignees per Section 15.8. City and CRA further agree to provide all required information and to otherwise cooperate with BTI in its efforts to secure bonds, or other similar financial instruments, based upon the payment obligations of CRA and City to BTI or its Permitted Successors or Permitted Assignees.
- (d) If the Project is not substantially completed by December 31, 2024, any obligation by either the CRA or City to provide a reimbursement of TIF or other incentive payments to BTI ceases and this Agreement shall be deemed to be terminated and of no further force or effect.

## **ARTICLE 11**

### **EVENTS OF DEFAULT, REMEDIES, ETC.**

#### **Section 11.1 Events of Default.**

Each of the following events shall be an "Event of Default" hereunder:

- (a) If BTI admits, in writing, that it is generally unable to pay its debts as such become due;
- (b) If BTI makes an assignment for the benefit of creditors;
- (c) If BTI files a voluntary petition under Title 11 of the United States Code, or if BTI files a petition or an answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal Bankruptcy Code or any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of BTI of all or any substantial part of

its properties, or of all or any part of BTI's interest in the Project, and the foregoing are not stayed or dismissed within 150 days after such filing or other action; or

(d) If, within 180 days after the commencement of a proceeding against BTI seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal Bankruptcy Code or any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within 180 days after the appointment, without the consent or acquiescence of BTI, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of BTI, of all or any substantial part of its properties, or of all or any part of BTI's interest in the Project or Subject Property, such appointment has not been vacated or stayed on appeal or otherwise, or if, within 180 days after the expiration of any such stay, such appointment has not been vacated; or

(e) If CRA fails to make any payments required by Article 10 when due hereunder, and such failure continues for a period of 30 days after written notice is given by BTI that the same is past due; or

(f) If a party to this Agreement shall default in the observance or performance of any term, covenant or condition of this Agreement on such party's part to be observed or performed and such party shall fail to remedy such Default within 30 days after written notice by another party of such Default ("Default Notice"). If, however, such a Default is of such a nature that it cannot reasonably be remedied within 30 days (but is otherwise susceptible to cure), the defaulting party shall have such additional time as is reasonable under the circumstances so long as they diligently pursue curing the Default.

#### Section 11.2 Enforcement of Performance; Damages; and Termination.

If an Event of Default occurs, subject to the rights of a recognized mortgagee, the non-defaulting party may elect to: (a) enforce performance or observance by the defaulting party of the applicable provisions of this Agreement, or (b) when BTI is the defaulting party, CRA may withhold payment of a portion of the TIF equal to  $X/365 \times$  the Project Tax Increment for the year of the default, or the first year when a TIF is due thereafter, where "X" is the number of days the default remained uncured beyond the cure period as established in Section 11.1.

#### Section 11.3 Strict Performance.

No failure by City Indemnified Party or BTI Indemnified Party to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of another party's Default or Event of Default shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by any party, and no Default by any party shall be waived, altered or modified except by a written instrument executed by the other parties. No waiver of any Default or Event of Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in force and effect with respect to any other then existing or subsequent Default.

#### Section 11.4 Right to Enjoin Defaults.

In the event of BTI's Default or Event of Default, City and/or CRA shall be entitled to seek to enjoin the Default or Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent City's and/or CRA's remedies are expressly limited by the terms hereof. In the event of any Default by City or CRA of any term, covenant

or condition under this Agreement, BTI shall be entitled to seek to enjoin the Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent BTI's remedies are expressly limited by the terms hereof. Each right and remedy of City, CRA and BTI provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise except to the extent City's and/or CRA's remedies and BTI's remedies are expressly limited by the terms hereof, and the exercise or beginning of the exercise by City, CRA or BTI of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by City, CRA or BTI of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent City's and/or CRA's remedies and BTI's remedies are expressly limited by the terms hereof.

#### Section 11.5 Remedies Under Bankruptcy and Insolvency Codes.

If an order for relief is entered or if any stay of proceeding or other act becomes effective against BTI in any proceeding which is commenced by or against BTI, under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against BTI seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, City and/or CRA shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Agreement.

#### Section 11.6 Force Majeure.

Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement to the extent and for so long as such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to fire, floods, embargoes, war, acts of war (whether war be declared or not), acts of terrorism, pandemics (to the extent that such delays from pandemics result in the unavailability or delay of governmental authorities to grant Approvals or to perform inspection and/or the unavailability or delay of design professionals, engineers, contractors or laborers) insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority, except for the City of Hollywood or the City of Hollywood Community Redevelopment Agency if not under a State of Emergency, or the other party. Events of Force Majeure shall extend the period for the performance of the obligations for a period equal to the period(s) of any such delay(s).

#### Section 11.7 Final Termination.

Upon completion of the conditions contained in Section 10, this Agreement shall be deemed to be terminated and of no further force or effect.

### **ARTICLE 12**

#### **NOTICES, CONSENTS AND APPROVALS**

##### Section 12.1 Service of Notices and Other Communications.

(a) In Writing. Whenever it is provided that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other (or any recognized mortgagee), or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Project, each such notice, demand, request, consent, approval or other communication (referred to in this Section 12.1 as a "Notice") shall be in writing (whether or not so indicated elsewhere in this Agreement) and shall be effective for any purpose only if given or served by certified or registered U.S. Mail, postage prepaid, return receipt requested, personal delivery with a signed receipt or a recognized national courier service, addressed as follows or to such other address as a party may provide in writing to the other party:

if to City:	City of Hollywood 2600 Hollywood Boulevard Hollywood, Florida 33020
with a copy to:	City Attorney City of Hollywood 2600 Hollywood Boulevard Hollywood, Florida 33020
if to CRA:	Executive Director Hollywood Community Redevelopment Agency 1948 Harrison Street Hollywood, FL 33020
with a copy to:	CRA General Counsel City of Hollywood 2600 Hollywood Boulevard Hollywood, Florida 33020
if to Developer:	Noah Breakstone BTI Land Acquisitions, LLC 401 East Las Olas Blvd., Suite 1870 Ft. Lauderdale, FL, 33301
with a copy to:	Saul, Ewing, Arnstein & Lehr Attention: Keith Poliakoff, Esq. 200 East Las Olas Blvd, Suite 1000 Fort Lauderdale, FL 33301

Any such Notice may be given, in the manner provided in this Section 12, (i) on either party's behalf by its attorneys designated by such party by notice hereunder, and (ii) at BTI's request, on its behalf by any recognized mortgagee designated in such request.

(b) Effectiveness. Every Notice shall be effective on the date actually received as indicated on the receipt or on the date delivery is refused by the recipient.

(c) References. All references in this Agreement to the "date" of Notice shall mean the effective date as provided in the preceding subsection (b).

#### Section 12.2. Consents and Approvals.

All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting by a party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any other act unless provided for elsewhere in this Agreement. Wherever consent or approval is required by either party within this Agreement, such consent or approval shall not be unreasonably withheld.

## **ARTICLE 13**

### **CERTIFICATES BY CITY AND DEVELOPER**

#### **Section 13.1 Certificate of Developer.**

BTI shall, within 15 days after request by City for reasonable purposes, execute, acknowledge and deliver to City, or any other person specified by City, a written statement (which may be relied upon by such Person) (a) certifying that this Agreement is unmodified and in full force and effect (or if there are modifications, that this Agreement as modified, is in full force and effect and stating such modifications) (and, if so requested, that the annexed copy of this Agreement is a true, correct and complete copy of this Agreement), and (b) stating (i) whether BTI has given City written notice of any Default, or any event that, with the giving of notice or the passage of time, or both, would constitute a Default by City in the performance of any covenant, agreement, obligation or condition contained in this Agreement, which Default or event has not been cured, and (ii) whether, to the actual knowledge of BTI (but without independent inquiry), City is in default in performance of any covenant, agreement, obligation or condition contained in this Agreement, and, if so, specifying in detail each such Default or Event of Default.

#### **Section 13.2 Certificate of City.**

City shall, within 15 days after requested by BTI for reasonable purposes, execute, acknowledge and deliver to BTI, or such other person specified by BTI, a written statement (which may be relied upon by such Person) (a) certifying that this Agreement is unmodified and in full force and effect (or if there are modifications, that this Agreement, as modified, is in full force and effect and stating such modifications) (and, if so requested, that the annexed copy of this Agreement is a true, correct and complete copy of this Agreement), and (b) stating (i) whether a Default or Event Default has occurred or whether City has given BTI notice of any event that, with the giving of notice or the passage of time, or both, would constitute an Event of Default, which Default or Event of Default has not been cured, and (ii) whether, to the actual knowledge of City (but without independent inquiry), BTI is in default in the performance of any covenant, agreement, obligation or condition contained in this Agreement, and, if so, specifying, in detail, each such Default or Event of Default.

## **ARTICLE 14**

### **HAZARDOUS MATERIALS**

#### **Section 14.1 Definition.**

For the purposes of this Agreement, the term shall have the following definition:



“Hazardous Materials” shall mean (i) petroleum and its constituents; (ii) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (iii) any substance, gas, material or chemical which is or may hereafter be defined as or included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants or contaminants," "solid wastes" or words of similar import under any Requirement including the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9061, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and Florida Statutes, Chapters 376 and 403; and (iv) any other chemical, material, gas or substance, the exposure to or release of which is regulated by any governmental or quasi-governmental entity having jurisdiction over the Subject Property or the operations thereon.

#### Section 14.2 Use of Hazardous Materials.

BTI shall not cause nor permit any Hazardous Materials to be brought on, kept, or used in or about the Project except as reasonably necessary to BTI's business.

#### Section 14.3 Notices.

If BTI or City or CRA receives an Environmental Complaint, independently or by notice from any governmental authority having jurisdiction over the Project, including the EPA, or with respect to any litigation regarding Environmental Conditions at or about the Project, then such party shall give prompt oral and written notice of same to the other parties detailing all relevant facts and circumstances.

### **ARTICLE 15**

#### **MISCELLANEOUS**

#### Section 15.1 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to principles of conflict of laws, including without limitation Section 163, Florida Statutes, Section 166, Florida Statutes, and all applicable provisions of the City of Hollywood's codes and ordinances.

This Agreement shall also be governed by and construed in accordance with all CRA policies.

#### Section 15.2 References.

(a) Captions. The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

(b) Table of Contents. The Table of Contents is for the purpose of convenience of reference only, and is not to be construed in any way as part of this Agreement.

(c) Reference to City and BTI. The use of the neutral pronoun in any reference to City/CRA or BTI shall be deemed to include any individual City/CRA or BTI, and the use of the words "successors and assigns" or "successors or assigns" of City/CRA or BTI shall be deemed to include the heirs, legal representatives and assigns of any individual of City/CRA or BTI.

(d) City's and CRA's Governmental Capacity. Nothing in this Agreement or in the parties' acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of CRA or City in the discharge of its police or governmental power.

(e) Reference to "herein", "hereunder", etc. All references in this Agreement to the terms "herein", "hereunder" and words of similar import shall refer to this Agreement, as distinguished from the paragraph, Section or Article within which such term is located.

### Section 15.3 Entire Agreement.

(a) Entire Agreement. This Agreement, together with the exhibits and attachments, contains all of the promises, agreements, conditions, inducements and understandings among City/CRA and BTI concerning the Project and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such attachments or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously by the parties. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall represent one instrument.

(b) Waiver, Modification, etc. No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by City, CRA and BTI. No waiver of any Default or Event of Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default or Event of Default thereof.

(c) Effect of Other Transactions. No sublease or mortgage, whether executed simultaneously with this Agreement or otherwise, and whether or not consented to by City, CRA, shall be deemed to modify this Agreement in any respect, and in the event of an inconsistency or conflict between this Agreement and any such instrument, this Agreement shall control.

### Section 15.4 Invalidity of Certain Provisions.

If any provision of this Agreement or the application thereof to any person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

### Section 15.5 Remedies Cumulative.

Each right and remedy of either party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms at this Agreement), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise, except as otherwise expressly limited by the terms of this Agreement, shall not preclude the

simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise except as otherwise expressly limited by the terms of this Agreement.

Section 15.6 Performance at Each Party's Sole Cost and Expense.

Unless otherwise expressly provided in this Agreement, when any party exercises any of its rights or renders or performs any of its obligations, such party shall do so at its sole cost and expense.

Section 15.7 Agreement Negotiated by All Parties.

The parties recognize and acknowledge that they all participated with the assistance of respective counsel in negotiation and preparation of this Agreement, and neither party shall have any negative inference or presumption raised against it for having drafted the Agreement.

Section 15.8 Successors and Assigns

(a) Successors

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, City, CRA and BTI and, except as otherwise provided, their respective Permitted Successors and Permitted Assignees and, upon BTI acquiring fee simple title to any portion of the parcels comprising the Subject Property, shall be construed as covenants running with the Subject Property.

(b) Restrictions on Transfer.

BTI represents and agrees for itself and its Permitted Successors and Permitted Assignees (except as so authorized by the provisions of this Agreement) that it shall not transfer BTI's interest in the Subject Property or any portion thereof and/or this Agreement, or suffer to be made or created, any total or partial assignment, sale, transfer, or encumbrance of this Agreement (excluding a collateral assignment of this Agreement in connection with any financing for the Project) (collectively known as "Transfer") in any other mode or form or with respect to this Agreement without first obtaining the prior written approval of the City, which approval the City may withhold in its reasonable discretion. Such Transfer shall be permitted as of right, without City approval, if BTI maintains management over the Project and such Transfer is made to an affiliate of BTI. For purposes of this Agreement, an affiliate shall mean any other entity where BTI maintains an ownership interest, directly or indirectly. Notwithstanding anything contained within this Agreement to the contrary, any Transfer shall be permitted as of right, without City approval, if the Project has received its certificate of occupancy. In all other situations, the City, in its determination of whether to approve a Transfer, shall be entitled to require as conditions to granting any such prior approval that:

- (i) Any Permitted Successors and/or Permitted Assignee to BTI shall have the business experience and reputation, development track record and sufficient financial capacity to carry out the obligations under this Agreement, as determined in the reasonable discretion of the City. If Permitted Successor or Permitted Assignees is an entity, proof of existence and good standing from the state of origination as well as Florida shall be required.
- (ii) Any Permitted Successor or Permitted Assignee to the Developer, by instrument in writing satisfactory to the City, in its reasonable discretion, and in recordable

form, shall, for itself and its successors and assigns, expressly assume all of the obligations of the successor Developer under this Agreement with respect to the interest assigned and shall agree to abide by and be subject to all of the terms, conditions, obligations, reservations and restrictions to which the transferor Developer is subject. As part of the Transfer, BTI and Permitted Successor or Permitted Assignee shall deliver an assignment and assumption agreement ("Assignment Agreement") in a form and substance satisfactory to the City and its legal counsel, which shall contain an indemnification and hold harmless provision by BTI in favor of the City and the successor to BTI for any liabilities and obligations as BTI under this Agreement prior to the date of the Assignment Agreement.

(iii) There shall be submitted to the City for review all instruments and other legal documents reasonably necessary to review compliance with this section. A copy of the instruments and other legal documents, including the Assignment Agreement, shall be provided the City for review and approval at least 30 days prior to being executed by BTI and the Permitted Successor to BTI. The City agrees to diligently proceed with and complete its review and approval as soon as possible, but in no event sooner than 30 days after receipt of such instruments and documents, and no later than 45 days after receipt of such instruments and documents.

(iv) In connection with any proposed Transfer, BTI shall pay the City the actual costs of time and materials incurred by the City in conjunction with the City review and prior written approval of any Assignment Agreement under this Agreement, including instruments and other legal documents, which costs shall not exceed \$25,000, which amount shall be paid in advance with a reconciliation to be made after review and approval of any Assignment Agreement (the "Transfer Review Fee"). The payment of the Transfer Review Fee by BTI shall be a prerequisite to the City obligation to review any proposed Transfer and Assignment Agreement.

#### Section 15.9 Recording of Agreement.

CRA shall cause a memorandum of this Agreement to be recorded in the Public Records of Broward County, Florida, promptly after (i) the execution and delivery of this Agreement, and (ii) BTI having acquired fee simple title to the parcels comprising the Subject Property and CRA shall pay the recording costs in connection therewith.

#### Section 15.10 Non-liability of Officials and Employees.

No member, officer, director, stockholder, partner, elected or appointed official or employee of City, CRA or BTI shall be personally liable to BTI, City or CRA, as the case may be, or any Permitted Successor in interest, in the event of any default or breach by a party or for any amount or obligation which may become due to the other party or Permitted Successor under the terms of this Agreement, and any and all such personal liability, either at common law or in equity or by constitution or statute, and any and all such rights and claims against every such person or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

#### Section 15.11 Conflict of Interest.

BTI represents and warrants that, to the best of its knowledge, no member, official or employee of City or CRA has any direct or indirect financial interest in this Agreement, nor has participated in any decision relating to this Agreement that is prohibited by law. BTI represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of City or CRA has received any payment or other consideration for the making of this Agreement, directly or indirectly from BTI. BTI represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys providing services to BTI. BTI acknowledges that City and CRA is relying upon the foregoing representations and warranties in entering into this Agreement and would not enter into this Agreement absent the same.

#### Section 15.12 No Partnership.

The parties acknowledge that it is not their intention under this Agreement to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, or agency relationship for the purpose of developing the Project, or for any other purpose whatsoever. Accordingly, nothing in this Agreement or the other documents executed by the parties with respect to the Project shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, or agency relationship of any kind or nature whatsoever between the parties. The provisions of this section shall survive termination of the Agreement.

#### Section 15.13 Time Periods.

Any time periods in this Agreement of less than 30 days shall be deemed to be computed based on business days (regardless of whether any such time period is already designated as being computed based on business days). In addition, any time period which shall end on a day other than a business day shall be deemed to extend to the next business day.

#### Section 15.14 Time of Essence.

Time is of the essence under this Agreement.

#### Section 15.15 No Third Party Beneficiaries.

Nothing in this Agreement shall confer upon any person, other than the parties hereto and their respective Permitted Successors, nominees, affiliated entities and Permitted Assignees, any rights or remedies under or by reason of this Agreement, provided that a recognized mortgagee or its designee shall be a third party beneficiary to the extent such recognized mortgagee or such designee is granted rights hereunder. Furthermore, this Agreement shall only be deemed to constitute a covenant running with the land as to the Subject Property or any portion of the Subject Property acquired by Developer by fee simple title.

**EXECUTION**

IN WITNESS WHEREOF, City, CRA and BTI, intending to be legally bound, have executed this Agreement as of the day and year first above written.

**CITY OF HOLLYWOOD:**

By: \_\_\_\_\_  
Patricia A. Cerny, MMC  
City Clerk

By: \_\_\_\_\_  
Josh Levy  
Mayor

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY for the use and reliance  
of the City of Hollywood, Florida only.

By: \_\_\_\_\_  
Douglas R. Gonzales, City Attorney

STATE OF FLORIDA            )  
                                          ) ss:  
COUNTY OF BROWARD    )

The foregoing instrument was acknowledged before me by means of \_\_\_\_\_ physical appearance or \_\_\_\_\_ on line notarization, this \_\_\_\_ day of November, 2020, by Josh Levy, as Mayor of the CITY OF HOLLYWOOD. He is personally known to me.

\_\_\_\_\_  
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT  
PRINT NAME OF ACKNOWLEDGER:  
TITLE:  
COMMISSION NUMBER:  
COMMISSION EXPIRES:

CITY OF HOLLYWOOD, FLORIDA COMMUNITY  
REDEVELOPMENT AGENCY.

By: \_\_\_\_\_  
Jorge Camejo  
Executive Director

ATTEST:

By: \_\_\_\_\_  
PHYLLIS LEWIS  
BOARD SECRETARY

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
for the use and reliance of the City of Hollywood, Florida  
Community Redevelopment Agency, only.

By: \_\_\_\_\_  
Douglas R. Gonzales  
General Counsel

STATE OF FLORIDA COUNTY  
OF BROWARD

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_ on line notarization, this \_\_\_\_ day of November, 2020, by Jorge Camejo, as Executive Director of the City of Hollywood Community Redevelopment Agency.  
He is personally known to me.

\_\_\_\_\_  
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT PRINT  
NAME OF ACKNOWLEDGER:  
TITLE:  
COMMISSION NUMBER:  
COMMISSION EXPIRES:

BTI Land Acquisition, LLC

By: \_\_\_\_\_  
Print Name      Noah Breakstone  
Title             Managing Member

STATE OF FLORIDA COUNTY  
OF BROWARD

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_ on line notarization, this \_\_\_\_ day of August 2020, by Noah Breakstone as Managing Member of BTI Land Acquisition, LLC. He is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT  
PRINT NAME OF ACKNOWLEDGER:  
TITLE:  
COMMISSION NUMBER:  
COMMISSION EXPIRES: