

CONTRIBUTION IN AID OF CONSTRUCTION AGREEMENT

THIS CONTRIBUTION IN AID OF CONSTRUCTION AGREEMENT

(“Contribution Agreement”) is made this 13th day of October 2021, by and between:

CITY OF POMPANO BEACH, a Florida municipal corporation, with offices located at 100 W. Atlantic Boulevard, 4th Floor, Pompano Beach, Florida 33060 (“CITY”),

and

1621 S DIXIE HWY LLC, a Florida limited liability company with offices located at 933 S. Congress Avenue, Delray Beach, Florida 33445 (“DEVELOPER”);

collectively referred to as “the Parties.”

WITNESSETH:

WHEREAS, DEVELOPER is the owner of real property located at 1621 S. Dixie Highway, Pompano Beach, Florida, more particularly described as Folio Nos. 494211000170, - 494211000180 and 494211000190 (“Property”); and

WHEREAS, DEVELOPER submitted a major site plan application to CITY to construct two mixed use buildings (one 8-story building with 168 dwelling units and one 6-story building with 60 dwelling units and 8,962 sq. ft. of commercial space) and a 1-story amenity building, along with associated parking areas, residential amenities and landscaping, which was assigned Planning and Zoning No. 19-12000043 and later approved by the Planning and Zoning Board on June 24, 2020 (“Aviara East Pompano Project”); and

WHEREAS, the Aviara East Pompano Project, as designed, will increase the CITY’s service area wastewater flow by approximately twenty five percent (25%) and require the CITY to upgrade its attendant facilities, including Lift Station 92, to accommodate the excess flow; and

WHEREAS, CITY, to facilitate the excess wastewater flow created by the Aviara East Pompano Project, has agreed to engage design professionals and contractors to design and install a new Lift Station and related facilities (“Lift Station”), thereby providing adequate wastewater capacity for the development;

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and conditions, the parties agree as follows:

1. CITY COMMITMENTS.

A. CITY agrees to engage the necessary design professional and contractor to design and construct or install a new Lift Station and related facilities at or near Lift Station 92 (located on SW 13th Court, west of Dixie Highway, in Pompano Beach) (“City Construction Project”). The Parties acknowledge prior discussions regarding the excess wastewater flows from the Aviara East Pompano Project. As a result of these prior discussions, and the DEVELOPER’s assurances regarding its contribution, the CITY engaged the services of a design professional to design the City Construction Project. Following the execution of this Agreement, the full and complete payment of the agreed contribution described below, and the completion of the design phase, the CITY will issue a Notice to Proceed to the contractor to commence construction and installation of the new Lift Station and related facilities. The design and construction phases should be completed no later than December 1, 2022. The CITY shall have sole responsibility to maintain the Lift Station.

B. The Parties further acknowledge that Broward County requires the DEVELOPER to provide evidence or confirmation of the existing sanitary sewer system’s adequate capacity to receive flows from the Aviara East Pompano Project and that the CITY execute the DEVELOPER’s Application to Construct a Wastewater Collection/Transmission

System acknowledging such capacity. The CITY agrees to execute the DEVELOPER's Application confirming such capacity following DEVELOPER's full and complete payment of its contribution, defined below.

2. DEVELOPER OBLIGATIONS.

A. DEVELOPER agrees to contribute One Hundred Ninety-Three Thousand Six Hundred Seventy-Eight Dollars and Seventy-Five Cents (\$193,678.75) ("Developer's Contribution") to the City's Construction Project, payable immediately following full and complete execution of this Agreement. Full and complete execution of this Agreement shall occur on the date last signed by all parties. The Parties acknowledge and agree that the Developer's Contribution represents twenty-five percent (25%) of the total estimated design and construction costs of the City's Construction Project.

B. The Parties further acknowledge and agree that the total design and construction costs of the City's Construction Project are estimated to be approximately Seven Hundred Seventy-Four Thousand Seven Hundred Fifteen Dollars (\$774,715.00), of which the DEVELOPER is responsible for a pro rata share of 25% based upon its anticipated impact on the CITY's sanitary sewer system. If the actual costs result in a lesser contribution requirement from the DEVELOPER, the CITY will refund the excess payment to the DEVELOPER no later than thirty (30) calendar days from the CITY's notice of such overpayment. If, however, the actual costs result in a greater contribution requirement from the DEVELOPER, the DEVELOPER understands and agrees to make the requisite contribution payment to the CITY no later than thirty (30) calendar days from the CITY's notice of such underpayment.

C. Following the CITY's determination of the actual total design and construction costs of the City's Construction Project, and notice to the DEVELOPER of its need

to make a greater contribution to the City's Construction Project as described in this Paragraph, should the DEVELOPER fail to make timely payment, the CITY may record a lien against the DEVELOPER or its successor in interest in the amount of the requisite contribution. Such remedy shall not limit the CITY from taking other legal action to recover any and all costs incurred in CITY's Construction Project on DEVELOPER's behalf.

D. The DEVELOPER remains solely responsible for all development costs associated with the Aviara East Pompano Project, including connections to the CITY's sanitary sewer system and any other CITY utility systems. Nothing in this Agreement is intended to reallocate responsibility for Aviara East Pompano Project's development.

3. INDEMNIFICATION.

DEVELOPER shall indemnify, defend and hold harmless the CITY and its officials, agents and employees from and against any and all claims, losses, suit actions, damages, liabilities, expenditures, or causes of action, including attorney fees, of any kind arising from DEVELOPER's breach and or any negligent or wrongful act or omission in connection with this Agreement by DEVELOPER, its officers, employees, affiliates or agents.

4. AMENDMENTS.

No modification, amendment or alteration of the terms or conditions contained in this Agreement shall be effective unless contained in a written document executed by the parties, with the same formality and of equal dignity.

5. NONWAIVER.

Failure of the CITY to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right contained in this Agreement, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain

in full force and effect. None of the conditions, covenants or provisions of this Agreement shall be waived or modified except by the parties in writing.

6. TERMINATION.

A. It is expressly understood by the parties that CITY may terminate this Agreement, where payment of the estimated DEVELOPER's Contribution is not received within five (5) calendar days of this Agreement's full and complete execution as set forth in Paragraph 2 above.

B. Notwithstanding the above subparagraph, any breach or default of any of the covenants, duties, or terms of this Agreement, other than payment of the DEVELOPER's Contribution, shall be cause for termination, if such breach or default remains uncured for more than thirty (30) days after written notice from the non-defaulting party to the defaulting party, or such longer period as may be reasonably required under the circumstances as long as the defaulting party commences the cure of such breach or default prior to the expiration of such thirty (30) day period and diligently pursues the cure of the breach or default to completion. Any such notice of default shall describe in reasonable detail the alleged breach or default.

7. NOTICES.

Whenever it is provided that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing and forwarded (i) upon the parties' mutual written consent, via trackable email that provides delivery/read receipts or (ii) postage prepaid via certified U.S. mail or other trackable common carrier such as FedEx or UPS, and forwarded to the representative and mailing address set forth below until changed by written notice in accordance with this Paragraph and a contemporaneous copy sent to the

designated email that provides the delivery method and tracking number. Addresses of the parties are as follows:

FOR CITY: City Manager
City of Pompano Beach
Post Office Box 1300
Pompano Beach, Florida 33061

COPY TO: City Attorney
City of Pompano Beach
Post Office Box 2083
Pompano Beach, Florida 33061

FOR DEVELOPER: Maher Hanna
933 S. Congress Avenue
Delray Beach, Florida 33445

8. GOVERNING LAW AND VENUE; WAIVER OF JURY TRIAL

A. The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and DEVELOPER submit to the jurisdiction of state and federal courts located in Florida with respect to claims under this Agreement. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

B. No remedy in this Agreement conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise, but the DEVELOPER and the CITY waive all rights to sue or collect from the other any damages other than direct damages and they expressly waive benefit of the bargain, punitive, special, exemplary, treble or consequential damages.

C. By entering into this Agreement, the Parties expressly waive any rights either party may have to a trial by jury of any litigation related to this agreement. If a party fails

to withdraw a request for a jury trial in a lawsuit arising out of this Agreement after written notice by the other party of violation of this section, the party making the request for jury trial shall be liable for the reasonable attorneys' fees and costs of the other party in contesting the request for jury trial, and such amounts shall be awarded by the court in adjudicating the motion.

9. NO THIRD PARTY BENEFICIARIES.

The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intends to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this Agreement. Nothing in this Agreement shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

10. CONTINUITY.

This Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

11. PUBLIC RECORDS.

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The DEVELOPER shall comply with Florida's Public Records Law, as amended. Specifically, DEVELOPER shall:

(1) Keep and maintain public records required by the CITY in order to perform the service.

(2) Upon request from the CITY's custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a

reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the DEVELOPER does not transfer the records to the CITY.

B. Failure of the DEVELOPER to provide the above described public records to the CITY within a reasonable time may subject DEVELOPER to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
954-786-4611
RecordsCustodian@copbfl.com**

12. FORCE MAJEURE.

A. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God, or act or order of

governmental instrumentality, failure of technical facilities, interruption or delay of transportation service, epidemic, pandemic, or public health emergency or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of force Majeure.

B. If either party is unable to perform or is delayed in performing any obligations under this Agreement because of any event of force majeure including an event that prevents the use or ability to use the Property for its intended purpose to the benefit of the public, such inability to perform or delay shall be excused and payment for such use suspended until such time as the event ends or as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure, to the extent and in the form as mutually agreed by the Parties.

C. In order to be entitled to the benefit of this Paragraph, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure, where possible. The parties agree that, as to this Paragraph, time is of the essence.

13. ENTIRE AGREEMENT AND INTERPRETATION.

A. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

B. Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and DEVELOPER and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of one party, and therefore construed against either party.

C. It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

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IN WITNESS WHEREOF, the parties have set their hands and seals the day and year written below.

"CITY":

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Dated: _____

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

MARK E. BERMAN, CITY ATTORNEY

"DEVELOPER":

Witnesses:

1621 S DIXIE HWY LLC, a Florida limited liability company, by and through its Authorized Member

[Signature]

AVIARA FLORIDA, INC., a Florida corporation, by its President

Print Name: Katherine Lozada

FARHAT REALTY & INVESTMENTS INC., a Florida corporation

[Signature]

By: *[Signature]*
FAICAL FARHAT, President

Print Name: KRISTOFER DAVIS

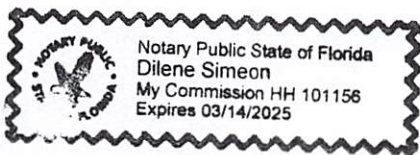
Dated: 10/13/2021

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 13th day of October, 2021, by FAICAL FARHAT, President of FARHAT REALTY & INVESTMENTS INC., President of AVIARA FLORIDA, INC., an Authorized Member of 1621 S DIXIE HWY LLC, a Florida limited company, on behalf of the respective company, who is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA



(Name of Acknowledger Typed, Printed or Stamped)

Commission Number