DEVELOPMENT AND TAX INCREMENT FINANCING AGREEMENT

THIS DEVELOPMENT AND TAX INCREMENT FINANCING AGREEMENT (the Agreement) is made between the **POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY**, a body corporate and politic organized pursuant to Chapter 163, Florida Statutes (the CRA), with an address of 100 West Atlantic Boulevard, Pompano Beach, Florida 33060 and **CP OLD TOWN SQUARE, LLC.**, with an address of 2125 E. Atlantic Boulevard, Pompano Beach, Florida [33062] (the Developer).

WHEREAS, the NWCRA Plan (the CRA Plan) identifies "Old Town Pompano Beach" as an area for Downtown Redevelopment; and

WHEREAS, one of the objectives the CRA Plan is development of a sustainable commercial area that may include mixed use with commercial and residential; and

WHEREAS, the CRA Plan provides that the CRA may offer incentives to stimulate economic investment in the NWCRA area; and

WHEREAS, Developer owns property located at 212 NE lst Avenue / 101 NE 2nd Street, Pompano Beach, consisting of Folio Numbers: 484235250041; 484235250100; 484235250140; 484235250120; 484235250130; 484235250110; and 484235250150 (the Property); and

WHEREAS, Developer is in the process of obtaining permits from the City of Pompano Beach (the City) for a project to be developed on the Property consisting of approximately 5,000 square feet of commercial uses and approximately 280 residential units (the Project); and

WHEREAS, Developer has made application to the CRA pursuant to the Real Estate Development Accelerator Program (REDA) that allows for a tax incentive for projects over $5 Million Dollars;

WHEREAS, Developer has represented to the CRA that but for the incentives to be provided by the CRA pursuant to this Agreement, the Developer would not undertake development of the Project; and

WHEREAS, at its June 18, 2019 meeting, the CRA approved a term sheet (the Term Sheet) between the CRA and the Developer that contains the general terms and understandings regarding development of the Project by the Developer and payment by the CRA of a percentage of tax increment revenue resulting from development of the Project; and

WHEREAS, at its September 16, 2019 meeting, the CRA amended REDA to allow a ninety-five percent (95%) payment of project tax increment under certain conditions; and

WHEREAS, at its September 16, 2019 meeting, the CRA approved the Developer's REDA application.

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

ARTICLE 1
DEFINITIONS

For all purposes of this Agreement, the following terms shall have the following meanings:

1.1   Agreement means, collectively, this Development and Tax Increment Financing Agreement and all exhibits and attachments hereto, as any of the same may hereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Agreement or by mutual agreement of the Parties.

1.2   Annual Payment Amount has the meaning as set forth in paragraph 5.1 of this Agreement.

1.3   Base Year Payment means the amount of ad valorem real and personal property tax revenue received by the CRA from the taxing authorities in the calendar year 2019.

1.4   Board means the governing body of the CRA.

1.5   Certificate of Occupancy means a Temporary Certificate of Occupancy issued by the City or other appropriate governmental authority for any specific phase of the Project that allows such phase of the Project to be occupied, opened for business and used as contemplated by this Agreement.

1.6   Chair means the chairperson of the governing body of the CRA.

1.7   City means the City of Pompano Beach, Florida.

1.8   Commercially Reasonable Efforts means that level of effort which a prudent business would undertake in circumstances which are the same as or similar to the circumstances referred to or described in this agreement, but without any obligation to incur any unreasonable or unduly burdensome expenses or obligations or any guaranty of completion or results.

1.9   Completion Date means the date on which the construction of the Project is substantially complete and a Certificate of Occupancy has been issued by the appropriate governmental authority such that the Project can be substantially opened for business.

1.10   Construction Commencement Date means the date which is twenty-four (24) months after the Effective Date as defined herein. If the Developer requests an extension of the

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Construction Commencement Date from the CRA prior to the expiration of the Construction Commencement Date, based on specific issues that caused the delay, and the CRA grants such extension (which the CRA must not unreasonably withhold) then the Construction Commencement Date shall be deemed to be the date which is thirty-six (36) months after the Effective Date as defined herein. Specific issues include financial or construction related issues as well as unforeseen conditions due to force majeure.

1.11   CRA means the Pompano Beach Community Redevelopment Agency, a community redevelopment agency created pursuant to Chapter 163, Part III, Florida Statutes, and its successors and/or assigns.

1.12   CRA Sunset Date means December 31, 2040 unless an extension is approved. If an extension of the CRA's life is approved, the CRA Sunset Date shall be the new expiration date of the CRA.

1.13   Developer means CP Old Town Square, LLC, and its successors and/or assigns.

1.14   Effective Date means the date that the Development Agreement is executed by the later of the Developer and the CRA.

1.15   Equity Partner means a corporate entity, individual, or partnership with an equitable ownership interest in the Project or the Developer.

1.16   Event of Default has the meanings described in Articles 9 and 10 of this Agreement.

1.17   Lender means a corporate entity, individual, or partnership that has or will lend funds to the Developer to develop the Project.

1.18   Maximum Payment Amount means a total of Seven Million Eight Hundred Thousand Dollars and 00/00 ($7,800,000).

1.19   Outstanding Maximum Payment Amount means the Maximum Payment Amount minus the aggregate sum of Annual Payment Amounts paid by the CRA to the Developer under this Agreement.

1.20   Plans and Specifications means architectural, engineering, and construction documents constituting the concept documents, preliminary plans and drawings, schematic design documents, design development documents and construction documents for the Project, as may be amended from time to time.

1.21   Project means the mixed-use project, consisting of approximately 5,000 square feet of commercial uses, and approximately 280 residential units approved under City Planning

and Zoning Case No. 17-12000018, as may be amended from time to time, and more particularly described in Article 3.

1.22   Transfer has the meaning as set forth in Article 12 of this Agreement.

ARTICLE 2
EFFECTIVE DATE AND TERMINATION

2.1   This Agreement shall be effective on the date executed by the later of CRA and Developer (Effective Date) and shall terminate upon payment in full of the Maximum Payment Amount, unless sooner terminated pursuant to the terms of this Agreement, and subject to all provisions of this Agreement which specifically survive any such termination of the Agreement.

2.2   In the event of a termination of this Agreement prior to its expiration, the party terminating this Agreement shall provide notice to that effect to the other party and upon receipt of such notice and the expiration of any cure period provided herein, this Agreement shall then be of no force and effect and neither party will be liable to the other for any payments or other obligations other than any payments or obligations required by such early termination.

ARTICLE 3
PROJECT DESCRIPTION

3.1   The Project is a planned 280-unit, Class A, ten-story, luxury rental residential project, located on 1.90 acres of land with a 300 car structured parking garage and on street parking, approximately 5,433 net rentable square feet of ground floor retain, and 5th floor pool and amenity deck that is located in the Old Town area of the City's Downtown Innovation District. The subject site is located approximately three blocks north of Atlantic Boulevard, approximately one block east of Dixie Highway on the southeast corner of NE 1st Avenue and NE 3d Street. The project amenities will include a resort style swimming pool and sun deck, yoga deck, gazebo, clubhouse, state of the art fitness facility, common area WI-FI, and recreational center among other amenities. The property will feature an open space with a feature fountain, gardens, and benches which will provide a gathering place and a focal point on the visible southwest corner of the site. The colonnade is also a covered gathering feature that provides lineal open space for the public along two streets.

3.2   Specific details relating to the Project, project costs, budget and financing are contained in the REDA application attached to this Agreement as Exhibit A and incorporated herein by reference.

ARTICLE 4

DEVELOPER'S OBLIGATIONS

4.1 <u>Permit Approvals:</u> Developer, with the assistance of the CRA, shall use Commercially Reasonable Efforts to obtain or cause to be obtained all permits and approvals, necessary under applicable law, for the design, development, construction, ownership, operation, and use of the Project as described herein, and to commence construction of the Project on or before the Construction Commencement Date, which shall include, when applicable, the timely filing of necessary applications, with permit fees when required, the prosecution of the application to the same extent as used by the party charged with the effort as such party has devoted to the approvals, timely follow through with such amendment and revisions or additions to the documentation required by the application or other process as shall be customary with like kind projects of economic magnitude in the City, and the prompt payment of costs and fees associated therewith.

4.2 <u>Maintenance and Repairs:</u> Upon completion of the Project, Developer, its successors and/or assigns, shall have a continuing obligation to maintain the Project in good repair and provide adequate insurance coverages at its expense, all as set forth in this Agreement. All construction will be done in accordance with necessary approvals and the permitted and approved set of Plans and Specifications by the appropriate governing authority.

ARTICLE 5
CRA'S OBLIGATIONS

5.1 <u>Annual Payment Amount Disbursements:</u> No later than thirty (30) days after the date on which Developer pays its ad valorem property taxes for the Property for each and every year after the Completion Date, and the Developer delivers notice of such payment to the CRA, the CRA shall pay to Developer the Annual Payment Amount (defined below) until 1) the CRA Sunset Date as may be extended; or 2) the Developer has received the Maximum Payment Amount from the CRA, whichever occurs first. If the Annual Payment Amount would exceed an aggregate sum equal to the Maximum Payment Amount, the CRA shall only pay Developer the portion of the Annual Payment Amount that would bring the aggregate sum paid to Developer up to the Maximum Payment Amount. In lieu of the Annual Payment Amount, the CRA may, at its discretion, pay Developer the Outstanding Maximum Payment Amount in a lump sum.

The Annual Payment Amount shall be equal to 95% of the increase, if any, over the Base Year Payment in ad valorem real and personal property tax revenue collected from the taxing authorities on the Property and received by the CRA.

5.2 <u>Covenant to Fund:</u> The CRA shall budget and appropriate legally available funds sufficient to make all such required Annual Payment Amounts for each fiscal year, beginning on the first date immediately following the Completion Date that the Developer pays its ad valorem taxes, subject to the approval as to form and substance by

the CRA's General Counsel, outside counsel, or City/CRA Finance Director. Such obligations to annually appropriate and disburse the Annual Payment Amount are subordinate to senior CRA debt and previously approved CRA projects.

5.3   Limitation on CRA Obligation: Developer acknowledges that the CRA shall have no obligation to pay the Annual Payment Amount if: 1) construction of the Project is not completed according to the terms of this Agreement; or 2) upon completion of construction of the Project, the Developer fails to pay its ad valorem taxes for the Property; or 3) Developer fails to reimburse the CRA pursuant to the requirements of Paragraph 12.11 below.

5.4   Condominium or Time Shares or Condo/Hotel: In the event that Developer, or its successors or assigns, ever attempts to create a condominium or other form of ownership other than rental apartments for the Project, the CRA may terminate the Agreement after written notice to Developer of the CRA's objections to such action. If within ninety (90) days of said notice, if the Developer does not terminate such condominium arrangement, the CRA shall not be obligated to make any payments to the Developer contemplated in this Agreement but not yet paid.

ARTICLE 6
PERMIT PROCESSING

6.1   Special Permit Process: As of the Effective Date, the Project has been approved by the City's Planning and Zoning Board. Developer desires to use an expedited permit process for the processing of all permits and approvals that are necessary to construct the Project. The Developer and the CRA acknowledge that an expedited permit process will be desirable for both the CRA and the Developer in order to expedite the successful construction and completion of the Project. Accordingly, the CRA hereby agrees that, to the extent not otherwise prohibited by the South Florida Building Code or other applicable law, the Developer is qualified to apply for an expedited permit process as a means of fast tracking the review and processing of all permits and approvals that are necessary to construct the Project, including that Developer may submit separate modified Plans and Specifications as to a portion of the Project then being or to be built, including any individual phase. Developer represents to the CRA that it may separately request and that the City may be asked to separately issue the following permits on the various portions of the Project being constructed: (i) demolition, clearing and miscellaneous site work; (ii) pilings; (iii) foundation; (iv) structural framing and exterior cladding (i.e. a shell permit); (v) for mechanical, electrical, plumbing and finish package; and (vi) all other permits and approvals that are necessary for the completion of the construction of that portion of the Project then being or to be built. The CRA will urge the City to issue Certificate(s) of Occupancy for units in the Project on a floor by floor and/or phase by phase basis as such units are substantially completed and ready for occupancy. However, in no event will Developer cause any work to be performed on any

portion of the Project without an approved set of Plans and Specifications for that portion of the Project then being or to be built.

6.2   Moratorium: In the event that the City imposes a moratorium on construction in the City such that construction of the Project is adversely affected, then upon notification to that effect by Developer to the CRA, the CRA shall endeavor to cause the City to exempt the Project from any such moratorium or that the City shall waive any limitations on construction of the Project which would otherwise be imposed by any such moratorium. If the City does not exempt the Project or waive any limitations on construction of the Project, then such moratorium shall be deemed an event of Force Majeure.

ARTICLE 7
PROJECT FINANCING

7.1   Developer: Developer shall use its own funds and funds obtained from Developer's capital providers, if applicable, to design, develop, construct, own, sell, operate and use the Project for the purposes contemplated in this Agreement. The CRA shall not have any claim to any right, title, or interest in and to the Property or the Project and Developer shall be free to arrange other financing in connection with the Property and the Project as Developer may desire, whether using Developer's capital providers or any other source for any such financing.

7.2   Taxes and Other Charges: Developer shall pay and discharge, or cause to be paid and discharged, all taxes, charges, liabilities or claims of any type in excess of $100,000 at any time assessed against or incurred by the Property or the Project.   If Developer disputes any charge, liability or claim, Developer shall give the CRA notice of such dispute and advise the CRA upon its resolution.

ARTICLE 8
DEFAULT BY DEVELOPER

8.1   Event of Default: The occurrence of any one or more of the following and the continuance thereof for the period of time hereinafter provided shall constitute an Event of Default hereunder:

> 8.1.1   The Developer defaults in the performance of any material obligation imposed upon it under the this Agreement or the Developer fails to complete any material item required to be completed by it as provided herein, including constructing the Project substantially in accordance with the final Plans and Specifications, as amended from time to time by the City, and the Developer does not commence to cure such default within thirty (30) days after delivery of such notice of such default from the CRA and diligently pursue such cure to completion thereafter within ninety (90) days after delivery of such notice as to

any default, which by its nature is capable of being cured within such period of time, or within a reasonable period of time as to any default which by its nature is not capable of being cured within such period of time; or

8.1.2 Any statement, representation or warranty made by the Developer in the REDA application, in this Agreement or in any writing now or hereafter furnished in connection herewith shall intentionally be false in any respect which materially affects the rights, duties, or obligations of the CRA hereunder; or

8.1.3 (i) An order or decree is entered by any court of competent jurisdiction adjudicating the Developer bankrupt or insolvent, approving a petition seeking a reorganization or appointing a receiver, trustee or liquidator of the Developer or of all or a substantial part of its assets; or (ii) there is otherwise commenced as to the Developer or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues unstayed for more than sixty (60) days after any stay thereof expires.

8.2   Remedies: Upon the occurrence of any Event of Default by Developer hereunder, the CRA shall have the following rights as its sole and exclusive remedy hereunder: (a) to terminate this Agreement, without cost or liability to Developer; and (b) to stop any disbursements of funds by the CRA hereunder, including the Annual Payment Amount; and (c) to immediately enforce any of its rights under this Agreement.

ARTICLE 9
DEFAULT BY THE CRA

9.1   CRA Event of Default: An Event of Default shall occur if the CRA fails to timely complete any of its obligations under this Agreement.

9.2   Remedies: If at any time there is a default by the CRA which is not cured within any applicable cure period provided herein, Developer shall have all available remedies, including (a) the right to terminate this Agreement; (b) the right to seek from the CRA, specific performance of any payments owed or due and all reasonable costs and expenses incurred by the Developer in connection with failure to make such payments; and (c) to enforce any of its rights under this Agreement.

ARTICLE 10
INSURANCE

Developer and all contractors and subcontractors shall maintain in full force and effect, at their sole cost, the insurance coverage set forth below in a form, content, and amount acceptable to the City's Risk Manager.

10.1   Fire and Extended Coverage: (Builder's Risk Policy) The CRA expects that Developer's project lenders will require the Builder/General Contractor, at their own expense, to provide full theft, windstorm, fire and extended coverage on improvements constructed, and personal property located on the premises, for the benefit of the project lenders, and Developer, as each party's interests may appear, in an amount not less than one hundred percent (100%) of the replacement value of the building and improvements..

10.2   Worker's Compensation: The Developer, Builder/General Contractor and all subcontractors shall provide, carry, maintain and pay for all necessary Workers' Compensation insurance for the benefit of their employees according to the statutory limits.

10.3   Employer's Liability: The Developer, Builder/General Contractor and all subcontractors shall provide, carry, maintain and pay for Employer's Liability Insurance for the benefit of their employees in the amount of One Hundred Thousand Dollars ($100,000.00).

10.4   General Liability Insurance: The Developer, Builder/General Contractor and all subcontractors shall, at their own expense, provide, pay for, and continuously maintain, comprehensive and all inclusive public liability and property damage insurance for the benefit of the CRA and the City, with a policy limit of not less than $200,000 per person/$300,000 per occurrence, combined single limits, which coverage shall include property damage and personal injuries, including death, and shall include the CRA and the City as additional named insureds.

10.5   Business Auto Insurance: The Developer, Builder/General Contractor and all subcontractors shall provide, carry, pay for and continuously maintain business automobile coverage for owned, non-owned and hired vehicles for the benefit of the CRA and the City with a policy limit of not less than $200,000 per person/$300,000 per occurrence and shall include the CRA and City as additional insureds.

10.6   Policies: Whenever, under the provisions of this Agreement, insurance is required of the Developer, the Developer shall promptly provide the following:

    10.7.1   Certificates of Insurance evidencing the required coverage;

    10.7.2   Names and addresses of companies providing coverage;

    10.7.3   Effective and expiration dates of policies; and

    10.7.4 A provision in all policies affording CRA thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

10.7   Collection of Insurance: In the event of destruction of or damage to any of the premises and contents covered by insurance, the funds payable in pursuance of said insurance policies for repair and/or reconstruction shall be used for the purposes of reconstruction or repair according the following priority: first, for all or any portion of the premises; second, for building and improvements; and third, personal property, so damaged or destroyed.

Such reconstruction and repair work shall be done by Developer, the Builder/General Contractor and all subcontractors in strict conformity with the Ordinances of the City and all governmental agencies having jurisdiction. In the event the cost of reconstruction or repair exceeds the amount of funds available from the proceeds of such insurance policy, then such funds shall be used as far as the same will permit in paying the cost of said reconstruction or repair and the Developer shall be responsible for the remaining funds. In the event that the cost of such reconstruction or repair work shall be less than the proceeds derived for such insurance policies, the surplus shall be payable to Developer.

10.8   Insurance Cancellation: Should any of the required insurance policies be canceled before the expiration date or non-renewed, the issuing company will provide thirty (30) days written notice to the certificate holder, the CRA.

10.9   Prior to commencement of construction, Developer shall obtain, or cause each of its construction contractors who are acting as general contractors to obtain, payment and performance bonds, insuring the performance of the completion of the Project, acceptable in all respects to the CRA from a corporate surety authorized to do business in the State of Florida, reasonably acceptable to the CRA, and naming the CRA and the City as dual obligees.

ARTICLE 11
NOTICES AND DEMANDS

11.1   A notice, demand, or other communication under this Agreement by either party to the other shall be given or delivered sufficiently if it is in writing and delivered personally, sent via facsimile or dispatched by registered or certified mail, postage prepaid to the representatives named below or, with respect to either party, is addressed or delivered personally at such other address as that party, from time to time may designate in writing and forward to the other as provided herein.

If to the CRA: Nguyen Tran, NWCRA Director

at: 100 W. Atlantic Boulevard, Suite 276
          Pompano Beach, Florida 33060
          954-545-7769 Phone
          954-786-7836 Fax
          nguyen.tran@copbfl.com

If to Developer: Adam Adache
at: 2125 East Atlantic Blvd,
          Pompano Beach, Fl 33062
          954-566-7400
          aadache@adachere.com

11.2   Any such notice shall be deemed to have been given as of the time of actual delivery or, in the case of mailing, when the same should have been received in due course.

ARTICLE 12
ASSIGNMENT AND TRANSFERS

12.1   Assignment: Developer may not Transfer its rights under this Agreement except as set forth in this Agreement.

12.2   Transfers: For the purposes of this Agreement, a "Transfer" is a sale, assignment, or conveyance of any of the following:

    12.2.1   The Project or any part thereof;

    12.2.2   Any interest in the Project or any part thereof;

    12.2.3   Any interest in the Developer;

    12.2.4   Any series of such Transfers, or any contract or agreement to do any of the same, that have the cumulative effect of a sale; or

    12.2.5   Any other transaction or series of transactions in the nature of a sale.

12.3   Purpose of Restrictions on Transfer: CRA is entering into this Agreement with Developer solely to develop, operate, and manage the Project, and not for speculation in landholding. Developer recognizes that, because of the importance of the Project to the general welfare of the City and its residents, the Developer's qualifications and identity are of particular concern to the community and to the CRA. Developer acknowledges that it is because of the qualifications and identity of Developer that the CRA is entering into this Agreement, and that the CRA is willing to rely on the Developer's covenants to fulfill its obligations under this Agreement.

12.4   Ownership of Developer: Developer represents and warrants that Developer has not made, created or suffered any Transfers as of the date of this Agreement. Upon request by the CRA from time to time throughout the term of this Agreement, Developer will furnish the CRA with a complete statement, subscribed and sworn to by a duly authorized representative of the Developer, setting forth the percentage ownership interest of all members of Developer who hold at least a ten percent (10%) interest in Developer. If the Developer is an entity other than a limited liability company, then the references to membership will be changed to appropriate ownership interests for the entity in question.

12.5   Transfers Not Requiring CRA Consent: During the term of this Agreement only the following Transfers ("Permitted Transfers") will be permitted without the prior written consent of the CRA:

    12.5.1 Foreclosure: Any Transfer directly resulting from the foreclosure of the Property or the granting of a deed in lieu of foreclosure of the Property, or any

Transfer made by the purchaser at the foreclosure sale of the Property, if such purchaser or grantee is the Lender or a nominee of the Lender;

12.5.2 Conveyance to Lender: Any Transfer directly resulting from a conveyance to a Lender of Developer's interest in the Property;

12.5.3 Estate Planning: Any Transfer of all or any portion of any ownership interest in Developer for estate planning purposes, including without limitation, any Transfer into a charitable trust or a blind trust, provided the Transferor maintains control over the interest in Developer being Transferred;

12.5.4 Transfers Among Affiliates: Any Transfer, or series of Transfers, among affiliates of Developer, provided that at all times after such Transfer, either Adam Adache, Daniel Adache, or Anthony Cavo, or a successor individual approved by the CRA, continues to direct the day-to-day management and policies of Developer.

12.5.5 Transfers of Ownership Interests in Developer: Any Transfer, or series of Transfers to an Equity Partner, provided that at all times after such Transfer, either Adam Adache, Daniel Adache, or Anthony Cavo, or a successor individual approved by the CRA, continues to direct the day-to-day management and policies of Developer.

12.5.6 Transfers Resulting from Death or Incapacitation: Any Transfer resulting from the death or incapacity of Adam Adache, Daniel Adache, Anthony Cavo, or from the death or incapacity of a successor individual approved by the CRA to direct the day-to-day management and policies of Developer.

12.6. Transfer Requiring CRA's Consent: For any Transfer of this Agreement other than a Permitted Transfer, Developer shall send the CRA a written Transfer Application requesting approval of the Transfer.

12.6.1 Review and Approval: For any Transfer of this Agreement other than a Permitted Transfer, such Transfer shall only require review and approval by the CRA Executive Director or his or her designee. Such approval by the CRA Executive Director or his or her designee shall not be unreasonably withheld.

12.6.2 Additional Information: Upon request by the CRA, Developer shall submit any additional information reasonably requested by the CRA to evaluate the proposed Transferee.

12.6.3 Process: After the Developer submits the Transfer Application to the CRA, the CRA shall notify the Developer in writing within 30 days after its receipt of the Transfer Application if it approves the Transfer. If the CRA fails to respond to the Transfer Application within 30 days, the Developer shall notify the CRA that it has an additional 30 days to approve or reject the Transfer Application. The CRA may reject a Transfer Application as long as the CRA

provides reasonable justification for why the proposed Transferee is not an acceptable Transferee. Any consent to a Transfer does not waive any of the CRA's rights to consent to a subsequent Transfer.

12.7   Character and Reputation: The proposed Transferee must possess a character, reputation and status equal to or better than the character, reputation and status of the Developer.

12.8   No Convictions or Indictments: The proposed Transferee must not be owned, controlled or run by entities or individuals who have been convicted, or are under indictment at the proposed time of the Transfer, for felonies under the laws of any foreign or United States of America jurisdiction.

12.9   Transfer Conditions: In order for a Transfer of this Agreement to be effective, the following conditions must be satisfied:

> 12.9.1 If the Transfer is not a Permitted Transfer, CRA's prior written consent to the Transfer must be obtained;
>
> 12.9.2 The Transfer must be a Transfer of this entire Agreement;
>
> 12.9.3 CRA must be given written notice of the proposed Transfer together with true and correct copies of the proposed Transfer documents and any other relevant agreements between the parties, current financial statements that demonstrate the creditworthiness and financial stability of the proposed Transferee, if applicable, and any other relevant information about the proposed Transferee at least 30 days prior to the intended effective date of the Transfer; and
>
> 12.9.4 CRA must be provided with a written instrument in recordable form in which the Transferee, for itself and its successors and assigns, and for the benefit of the CRA, expressly assumes all of the obligations of the Developer under this Agreement and agrees to be subject to all conditions and restrictions to which Developer is subject under this Agreement.

12.10 Effectuation of Transfers: No Transfer will be effective unless executed copies of the Transfer documents and any other agreements between the parties to the Transfer are delivered to the CRA within 30 days thereafter.

12.11 CRA Interest Upon Transfer to Third Party: Developer acknowledges that the CRA has legitimate concerns regarding the potential for the Developer to sell the project to a third party in the short term for a windfall and desires to mitigate that possibility. Accordingly, the Developer agrees to reimburse the CRA for monies it has paid to Developer out of the potential profits for a third party sale, utilizing the following formula:

> - In order to be reimbursed, the sale price must exceed $85 million in years 1 through 5 (through 12/31/2025);

- In order to be reimbursed, the sale price must exceed $87.5 million in years 6 through 10 (01/01/2026 through 12/31/2030);

- If a sale occurs after 12/31/2030, the Developer is not obligated to reimburse the City;

- The reimbursement to the CRA shall be based on the actual amount of the Annual Payment Amounts paid to the Developer;

- If a sale occurs prior to 12/31/2025 (years 1 through 5), the Developer shall reimburse the CRA 100% of the Annual Payment Amounts paid to Developer;

- If a sale occurs from 01/01/2026 through 12/31/2030 (years 6 through 10), the Developer shall reimburse the CRA 100% of the Annual Payment Amounts paid to the Developer in years 1 through 5, together with 50% of the Annual Payment Amounts paid to Developer in years 6 through 10;

- This provision shall not operate as a lien or encumbrance on the property. This provision shall, however, operate to prevent any sale of the property to a third party, if the Developer fails to comply with this provision.

- The CRA's obligations to make the Annual Payment Amount shall continue, notwithstanding such a sale, provided Developer has complied with this provision.

- The sale must be to a third party and not sale of a partial interest to an existing member of Developer.

ARTICLE 13
DEVELOPMENT STANDARDS

13.1 Development Standards: CRA and Developer agree that the manner in which the Project is developed, operated, and maintained is important to both the CRA and the Developer by reason of their interest in having a market-rate residential project with dining, shopping and entertainment uses for use by City residents and visitors to the City. Developer agrees to develop, operate and maintain the Project and all other property and equipment located on the Property consistent with the following standards:

13.2 Cleanliness: Developer will keep the Property free of debris and trash at all times. The City will maintain the rights-of-way abutting the Project and the City or CRA-owned

surface parking areas and remove trash on a routine basis, but to the extent that trash or debris accumulates on a daily basis, Developer will remove same.

13.3   No Nuisance; No Waste: Developer will not commit or permit any waste, odor, noise, nuisance, or any activity which violates any regulations of the City.

13.4   No Hazardous Materials: Developer will not permit flammable materials such as gasoline, kerosene, naptha, benzene, explosives or other articles, goods or merchandise of an intrinsically hazardous or dangerous nature to be brought onto the Property, unless such materials are customarily used or required in connection with the contemplated uses of the Property.

13.5   No Fumes: Developer will not permit any noxious odors, acids, vapors or other gases or materials to be discharged from the Project in violation of any applicable governmental requirements.

13.6   No Obstructions: Developer will use reasonable efforts not to obstruct or close off any portions of the Property unless necessary for the safety and protection of the public or the residents of the Project.

13.7   No Loitering; Crowd Control: To the extent within Developer's control, Developer will not permit any large, uncontrolled gatherings of people to occur on the Property, physical altercations, intimidating behavior, or disruptive behavior by visitors to the Property.

ARTICLE 14
DEVELOPER'S INDEMNIFICATION OF CRA AND THE CITY

14.1   The Developer shall protect, defend, indemnify and hold harmless the CRA, the City, their officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges, and other expenses including attorney's fees or liabilities of every kind in connection with or arising directly out of the Project, except for any occurrence arising out of or resulting from intentional torts or gross negligence of the CRA, or the City, their officers, agents and employees.

14.2   The Developer will indemnify and save the CRA and the City or the CRA's and the City's agents harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the Work.

14.3   Without limiting the foregoing, any and all such claims, suits, causes of action, etc., relating to: personal injury; death; damage to property; defects in construction; rehabilitation or restoration of the Project buildings and improvements; actual or alleged infringement of any patent, trademark, copyright, or other tangible or intangible personal or real property right; any actual or alleged violation of any applicable statute, ordinance, administrative order, rule, regulation or decree of any court, are included in the indemnity.

14.4 The Developer further agrees to investigate, handle, respond to, provide defense for, and defend any such claims at Developer's sole expense and agrees to bear all other costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by Developer for of any causes of action the Developer has or may have for breaches or defaults by the CRA under this Agreement.

ARTICLE 15
PUBLIC RECORDS

15.1 Public Records. The CRA is a public agency subject to Chapter 119, Florida Statutes. The Developer shall comply with Florida's Public Records Laws, as amended. Specifically, the Developer shall:

15.1.1 Keep and maintain public records required by the CRA in order to complete the Project. Such public records would include, but not be limited to, all correspondence, emails, texts, etc. between the Developer and CRA, all documents that are needed from the CRA for permitting purposes and any other public records involving the CRA during the construction of the Project and thereafter so long as this Agreement is in effect.

15.1.2 Upon request from the CRA's custodian of public records, provide the CRA with a copy of the 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.

15.1.3 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 term of this Agreement and for such period that survives the expiration of this Agreement, if such records have not been transferred to the CRA.

15.1.4 Upon completion of the Project, transfer, at no cost to the CRA, all public records in possession of the Developer, or keep and maintain public records required by the CRA to complete the Project. If the Developer transfers all public records to the CRA upon completion of the Project, the Developer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Developer keeps and maintains public records upon completion of the Project, the Developer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CRA, upon request from the CRA's custodian of public records in a format that is compatible with the information technology systems of the CRA.

15.1.5 Failure of the Developer to provide all public records to the CRA within a reasonable time may subject Developer to penalties under Section 119.10, Florida Statutes, as amended.

15.2   Pursuant to Chapter 119, Florida Statutes, notice is given as follows:

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CRA CLERK
100 W. Atlantic Blvd., Room 276
Pompano Beach, Florida 33060
(954-786-5535
marsha.carmichael@copbfl.com

ARTICLE 16
NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AND ADA

16.1   There shall be no discrimination in the use and marketing of the Project and Developer, while acting pursuant to this Agreement, shall not discriminate against any worker, employee, patron or member of the public on the basis of race, creed, religion, age, sex, familial status, disability or country of national origin.

16.2   Developer shall not unlawfully discriminate against any person in its activities attendant to the Project and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA), including Titles I and II regarding nondiscrimination on the basis of disability and all applicable regulations, guidelines, and standards. Developer shall also comply with Title I of the ADA regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability.

16.3   Developer's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

16.4 Developer shall take affirmative action to ensure that renters of the units constructed as part of the Project and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

ARTICLE 17
PUBLIC ENTITY CRIMES ACT

By execution of this Agreement and in accordance with Section 287.133, Florida Statutes, Developer certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

ARTICLE 18
NO CONTINGENT FEE

18.1 Developer warrants that it has not employed or retained any company or person, other than a bona fide employee or attorney working solely for 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 Developer any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

18.2 In the event of Developer's breach or violation of this provision, the CRA shall have the right to terminate this Agreement without liability and, at the CRA's sole discretion, to recover the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 19
WAIVER AND MODIFICATION

19.1 Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

19.2 Either party may request changes to modify certain provisions of this Agreement; however, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement. 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.

ARTICLE 20
ABSENCE OF CONFLICTS OF INTEREST

20.1   Developer represents it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance hereunder. Developer further represents no person having any conflicting interest shall be employed or engaged by it for said performance.

20.2   Developer shall promptly notify the CRA in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance that may influence or appear to influence Developer's judgment or quality of services being provided hereunder. Said notification shall identify the prospective business interest or circumstance and the nature of work that Developer intends to undertake and shall request the CRA's opinion as to whether such association, interest or circumstance would, in the opinion of the CRA, constitute a conflict of interest if entered into by Developer.

ARTICLE 21
NO WAIVER OF SOVEREIGN IMMUNITY

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by the CRA or the City.

ARTICLE 22
SEVERABILITY

The invalidity of any provision hereof shall in no way affect or invalidate the remainder of this Agreement.

ARTICLE 23JURISDICTION, VENUE AND WAIVER OF JURY TRIAL

23.1   This Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CRA and Developer submit to the jurisdiction of Florida courts and federal courts located in Florida. In the event of a dispute as to the interpretation or application of or an alleged breach of 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, and that such dispute shall be heard by a judge, not a jury.

23.2   No remedy herein 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 statue or otherwise.

ARTICLE 24
BINDING EFFECT

This Agreement shall be binding upon and enforceable by and against the parties hereto, their personal representatives, heirs, successors, grantees and assigns.

ARTICLE 25
ATTORNEY'S FEES

In the event of any litigation involving the terms and conditions of this Agreement or otherwise relating to the transaction encompassed herein, it is understood and agreed that the prevailing party in such litigation shall be entitled to recover from the non-prevailing party reasonable attorney and paraprofessional fees as well as all out-of-pocket costs and expenses incurred thereby by the prevailing party in such litigation through all appellate levels. Alternate Fee Recovery: A court may award fees that exceed the hourly rate contracted by the CRA if the Developer is ordered to pay attorneys fees and the court finds that the amount of such ordered fees is reasonable.

ARTICLE 26
NO THIRD PARTY BENEFICIARIES

Developer and CRA acknowledge and agree that this Agreement will not create any obligation on the part of Developer, the CRA or the City to third parties. No person not a party to this Agreement will be a third-party beneficiary or acquire any rights hereunder.

ARTICLE 27

20

APPROVALS

27.1   Whenever CRA approval is required for any action under this Agreement, either by the CRA Board or its Contract Administrator, said approvals shall not be unreasonably withheld.

27.2   Provided the CRA does not incur any cost or liability for doing so, the CRA shall cooperate with Developer and timely execute any documents necessary to vacate utility easements and dedicated alleys and/or secure Site Plan approval, connection to all utilities, and all required development permits. Developer acknowledges that the City has the sole discretion, in its regulatory and/or proprietary capacity as a municipal corporation pursuant to Florida law, to approve or disapprove all such applications and requests by Developer.

ARTICLE 28
INDEPENDENT CONTRACTOR

Developer is an independent contractor under this Agreement. In performance of its obligations hereunder, neither Developer nor its agents shall act as officers, employees or agent of the CRA. This Agreement shall not constitute or make the parties a partnership or joint venture.

ARTICLE 29
ENTIRE AGREEMENT AND INTERPRETATION

29.1   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.

29.2   This Agreement shall be interpreted as drafted by both parties hereto equally and each party has had the opportunity to be represented by counsel of their choice. Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CRA 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, and therefore construed against either party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year indicated below.

Signed, Sealed and Witnessed
In the Presence of:

POMPANO BEACH COMMUNITY
REDEVELOPMENT AGENCY

_____

Print Name:_____

By:_____
      Rex Hardin, Chairman

_____

Print Name:_____

By:_____
      Gregory P. Harrison, Executive Director

Date: _____

ATTEST:

_____

Print Name:_____

By:_____
      Marsha Carmichael, Secretary

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by REX HARDIN as Chair, GREGORY P. HARRISON, as Executive Director and MARSHA CARMICHAEL, as Secretary of the Pompano Beach Community Redevelopment Agency, who are personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

22

"DEVELOPER":

CP OLD TOWN SQUARE LLC,
a Florida limited liability company

Signed, Sealed and Witnessed
In the Presence of:

_____

Print Name: Wesley Gammons

_____

Print Name: Ivelisse Sabm

By: _____

Title: _____

Date: 9/12/2019

STATE OF FLORIDA
COUNTY OF BROWARD

I HEREBY CERTIFY, that on this 12th day of September 2019, before me personally appeared ADAM ADACHE who is personally known to me or has produced _____, and he acknowledged that he executed the foregoing instrument as the proper official of CP OLD TOWN SQUARE, LLC, and the same is the act and deed of CP OLD TOWN SQUARE, LLC.

NOTARY'S SEAL:
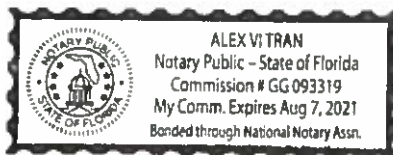
_____
NOTARY PUBLIC, STATE OF FLORIDA
(Signature of Notary Taking Acknowledgement)

_____

(Name of Acknowledger Typed, Printed or Stamped)

_____

Commission Number

23