

## **FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT**

This **FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT** (this "Amendment") is entered into this \_\_\_ day of \_\_\_\_\_, 2018 (the "Effective Date"), between the **CITY OF JACKSONVILLE**, a municipal corporation and a political subdivision of the State of Florida (the "City") and **SOUTHBANK APARTMENT VENTURES, LLC**, a Florida limited liability company ("Company"). All capitalized terms not otherwise defined herein shall have the meaning as set forth in the RDA, as defined below.

### **RECITALS:**

**WHEREAS**, the City and Company have previously entered into that certain Redevelopment Agreement dated May 11, 2017 (the "RDA"), as authorized by DIA Resolution 2017-01-02, to authorize a seventy-five percent (75%), fifteen (15) year Market Rate Multi-Family Housing REV Grant (the "REV Grant") in the up to maximum amount of \$7,880,000 in conjunction with Company's development of an approximately 300 unit residential apartment complex on the Project Parcel; and

**WHEREAS**, upon DDRB approval of the Project, an adjacent property owner appealed the DDRB approval of the Project to the DIA Board, and thereafter appealed the DIA Board denial of the appeal to the City Council, and ultimately thereafter an appeal was made by petition for writ of certiorari with the Circuit Courts of Duval County (the "Appeal"); and

**WHEREAS**, the parties to the Appeal have entered into a settlement agreement that provides, in part, for a reduction in the number of units in the apartment complex comprising a part of the Project from 300 to approximately 185; and

**WHEREAS**, in order for the Project to remain financially feasible, the Company has requested that the DIA amend the terms of the REV Grant to provide for a twenty (20) year term and to reduce the maximum amount of the REV Grant to \$7,810,000, and to amend the Performance Schedule in the RDA due to the passage of time attendant to the Appeal; and

**WHEREAS**, pursuant to the DIA Business Investment and Development Strategy Plan, City Council approval is required for a Market Rate Multi-Family Housing REV Grant for a term in excess of fifteen years; and

**WHEREAS**, the RDA has not been amended previously; and

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

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

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

2. Section 1.1 of the RDA regarding the Project is hereby deleted in its entirety and replaced with the following language:

**“1.1 The Project.”**

The Company proposes to develop a residential apartment complex on its property located at 0 Prudential Avenue, Jacksonville, Florida 32207 as more particularly described on **Exhibit A-1** attached hereto (the “**Project Parcel**”) which will include approximately 180 residential units. The improvements described on **Exhibit B-1** attached hereto (the “**Improvements**”) located or to be located on the Project Parcel and the obligations of the Company under this Agreement are collectively referred to herein as the “**Project**.” The proposed Project includes the construction of a residential apartment complex on the Project Parcel, which is expected to represent an estimated total Capital Investment of \$44,000,000, with a required minimum Capital Investment of \$37,000,000 by the Company.”

3. Section 1.3(d) of the RDA is hereby revised to reflect that the Project will promote and encourage private Capital Investment of \$44,000,000.

4. Paragraph 1.6 of the RDA regarding the Maximum Indebtedness amount is hereby deleted in its entirety and replaced with the following language:

**“1.6 Maximum Indebtedness.”**

The maximum indebtedness of the DIA for all fees, reimbursable items or other cost pursuant to this Agreement shall not exceed the sum of SEVEN MILLION EIGHT HUNDRED TEN THOUSAND AND NO/100 DOLLARS (\$7,810,000.00).”

5. Paragraph 3.1 of the RDA regarding the Performance Schedule is hereby deleted in its entirety and replaced with the following language:

**“3.1 Performance Schedule.”**

The Company shall adhere to the following performance schedule for the Project (the “**Performance Schedule**”).

- (a) Company shall obtain fee simple title to the Project Parcel on or before June 1, 2019.
- (b) Company shall obtain a building permit for vertical construction of the Improvements on or before March 1, 2020.
- (c) Company shall commence vertical construction on or before September 1, 2021.

The Performance Schedule may be extended for up to six (6) months at the sole discretion of the DIA Board.

The DIA and the Company have approved this Performance Schedule. By the execution hereof, and subject to the terms of this Agreement, the Company hereby agrees to undertake and complete the construction and development of the Project in accordance with this Agreement and the Performance Schedule, and to comply with all of the Company's obligations set forth herein."

6. Article 4 of the RDA is hereby deleted in its entirety and replaced with the following language:

**"Article 4.  
REV GRANT**

**4.1 Recapture Enhanced Value Program; Amount.**

The DIA shall make a Market Rate Multifamily Recapture Enhanced Value grant ("REV Grant") to the Company, in a total amount not to exceed \$7,810,000, partially payable beginning in the first year following the completion of construction of the Project, the satisfaction of the conditions below in Section 4.4, and the Project's inclusion on the City's tax rolls at full assessed value (the "Initial Year") and ending twenty (20) years after the Initial Year, but not later than 2041 (the "Final Year"), all as more fully described below in this Article 4.

**4.2 Payments of REV Grant.**

The REV Grant shall be paid by the DIA to the Company by check, in annual installments determined in accordance with Section 4.3, due and payable on or before May 15 of each calendar year, commencing May 15 of the Initial Year and ending May 15 of the Final Year, or when the maximum amount of the REV Grant shall have been paid to the Company, whichever occurs first. The DIA shall have no liability for any REV Grant in excess of the amount stated in Section 4.1 or after payment of the final installment due May 15 of the Final Year, and, except as expressly provided in this Agreement, the REV Grant payments as determined pursuant to Section 4.3 shall not be subject to reduction or repayment.

**4.3 Determination of Annual Installments of REV Grant.**

The amount of each annual installment of the REV Grant shall be the sum which is equal to 75% of the "Annual Project Revenues" (as defined and determined in this Section 4.3) received by the DIA during the twelve (12) month period ended April 1 preceding the due date of such annual installment. For the purposes of this Agreement, "Annual Project Revenues" means the amount of all municipal and county ad valorem taxes, exclusive of any amount from any debt service millage or Business Improvement District ("BID") millage, actually paid by any taxpayer for that tax year (net of any discount pursuant to Section 197.162, Florida Statutes, or any successor provision, actually taken by the taxpayer) during such period with respect to all real property and tangible personal property, comprising the Project, less the amount of all municipal and county ad valorem taxes that would have been levied or imposed on the Project using the assessed value for the Base Year, which for the purpose of this Agreement shall be \$2,615,235.00 exclusive of any debt service millage. The foregoing references to ad valorem taxes shall be deemed to include any other municipal or county taxes, or other municipal or

county fees or charges in the nature of or in lieu of taxes, that may hereafter be levied or imposed on the Company with respect to real property or tangible personal property comprising the Project, in lieu of or in substitution for the aforesaid taxes and which are levied or imposed for general municipal or county purposes or shall be available for the DIA's general fund, but not including stormwater or garbage fees or assessments.

By April 1 of each calendar year, commencing April 1, Initial Year and ending April 1, Final Year, Company shall give written notice to the DIA of the amount of county ad valorem taxes paid during the preceding twelve (12) month period ending April 1, quantified by real property and tangible personal property amounts. If, by April 1 of any year, the Company has failed to give notice of taxes paid during the preceding twelve (12) month period, the Company shall not be eligible for a REV Grant payment for that year. Provided, however, that if the Company provides timely notice in future years, the Company shall be eligible for a REV Grant payment based on the Annual Projected Revenues in such future year's notice.

Except as provided below, within thirty (30) days of receipt of said notice, DIA shall provide Company with a calculation as to the annual REV Grant. If the Company does not give written notice to the DIA of its objection to the DIA's calculation within thirty (30) days after its receipt thereof, the DIA's calculation shall be considered acceptable. Except as provided below, the DIA shall make payment of the REV Grant by the later of May 15th of each calendar year or thirty (30) days after DIA's receipt of notification by the Company that it is in agreement with the DIA's annual calculation. In the event of a disagreement as to the calculation, the DIA shall make payment of the amount not in dispute and the parties shall negotiate in good faith any disputed amount.

The foregoing dates for the DIA to provide the REV Grant calculation and make the REV Grant payment shall be extended if on either of such dates the Company has a pending proceeding before the DIA Value Adjustment Board, Circuit Court, or otherwise that could change the amount of the Annual Project Revenues that Company was obligated to pay for that tax year and upon which the REV Grant payment would be based. In that event, the date that the DIA is required to provide the REV Grant calculation to Company shall be extended until 30 days after the date that Company notifies the DIA that any such proceeding has been finally resolved (including any appeals) and any adjustment to the Annual Project Revenues for that tax year has been made and paid. Such notice shall include (i) a copy of any final order or final judgment or other evidence of the resolution of such proceeding that sets forth any change to the assessed value of the Property upon which the Annual Project Revenues are based for that tax year, and (ii) the amount of the adjusted Annual Project Revenues paid by the Company.

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

As condition precedents to the DIA's obligation to pay Company the REV Grant, Company shall satisfy the following conditions:

- (a) Complete construction of the Improvements in accordance with the Performance Schedule and provide a final certificate of occupancy (or its equivalent as provided by the City) for the Improvements; and

- (b) Demonstrate a minimum Capital Investment of \$37,000,000 in the Improvements by providing the DIA with paid invoices, a real estate closing statement or other satisfactory evidence as reasonably requested and approved by the DIA.
- (c) Submit evidence of payment of all ad valorem taxes on the Project Parcel.

**4.5 Further disclaimer.**

The REV Grant shall not be deemed to constitute a debt, liability, or obligation of the City, DIA or of the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City, DIA or of the State of Florida or any political subdivision thereof, but shall be payable solely from the funds provided therefor in this Article 4. The City or DIA shall not be obligated to pay the REV Grant or any installment thereof except from the non-ad valorem revenues or other legally available funds provided for that purpose, and neither the faith and credit nor the taxing power of the City or DIA or of the State of Florida or any political subdivision thereof is pledged to the payment of the REV Grant or any installment thereof. The Company, or any person, firm or entity claiming by, through or under the Company, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power of the City, DIA or of the State of Florida or any political subdivision thereof for the payment of the REV Grant or any installment of either.”

7. Section 6.1(a) of the RDA regarding the JSEB Program is hereby revised to reflect that the Company shall exercise good faith, in accordance with Municipal Code Ordinance Code Sections 126.608 et. seq., to enter into contracts with City certified JSEBs to provide materials or services in an aggregate amount of not less than \$1,483,900.

8. Section 8.2 of the RDA regarding Specific Defaults is hereby revised to reduce the \$44,000,000 minimum private funding requirement in the Project to \$37,000,000.

9. Sections 10.20(d), (e), and (h) regarding Retention of Records/Audit are hereby revised to reflect that the term “persons duly authorized by the DIA” shall include but not be limited to the City Council auditors.

10. **Exhibit A** of the RDA is hereby deleted in its entirety and replaced with **Exhibit A-1** attached hereto and incorporated herein by this reference.

11. **Exhibit B** of the RDA is hereby deleted in its entirety and replaced with **Exhibit B-1** attached hereto and incorporated herein by this reference.

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

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

**DOWNTOWN INVESTMENT AUTHORITY**

\_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Its: Chief Executive Officer

Form Approved:

\_\_\_\_\_  
Office of General Counsel

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

\_\_\_\_\_  
Director of Finance

WITNESS:

**SOUTHBANK APARTMENT  
VENTURES, LLC**, a Florida limited  
liability company

\_\_\_\_\_  
Name Printed: \_\_\_\_\_

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Name Printed: \_\_\_\_\_

**Exhibit A-1**

**Description of Project Parcel**

That certain parcel of real property located generally at 0 Prudential Drive, Jacksonville, Florida and having R.E. #s of: 0802181-0020, and portions of 080279-0300 and 080279-0210.

**Exhibit B-1**  
**Improvements**

As set forth in the Agreement, the Company will document a minimum Capital Investment of \$37,000,000 in the Project Improvements on the Project Parcel to construct approximately:

1. 185 units of residential rental apartments on the Project Parcel; and
2. 178 new structured parking spaces to support the Project.