

IMPACT FEE CREDIT AGREEMENT

THIS AGREEMENT is made this 11th day of January, 2023, by and between the **CITY OF NORTH MIAMI, FLORIDA** ("City") and **OLETA PARTNERS, LLC** ("Credit Holder").

RECITALS:

- A. Oleta Partners, LLC is the Developer and projected Impact Feepayer of certain lands contained within the SoLe Mia Development ("Project"), as described and approved in Resolution Number R-2012-67, authorizing the execution of a Lease Agreement between the City and Oleta Partners LLC and Resolution R-2013-73 approving the Conditional Use Permit ("CUP") and Conceptual Master Development Plan ("CDMP") including all subsequent amendments to the Lease, CUP and CDMP since that time; and
- B. Pursuant to City of North Miami Code of Ordinances, Chapter 29, Sections 3-1401 through 3-1405 (the "City of North Miami Development Impact Fees Act."), the City requires any person who seeks to develop land within City of North Miami, to pay impact fees, so as to assure that such new development bears a proportional share of the cost of capital expenses necessary, in order to finance public facilities and capital equipment needed to accommodate the demand created by new development within the City of North Miami. In accordance with the City of North Miami Development Impact Fees Act, all new development within the city generates an increased demand for system improvements for police, general government, and water/sewer and that all new residential development within the city also generates an increased demand for parks and recreation facilities, library facilities and transportation.
- C. Chapter 29, Section 3-1410(d) of the City of North Miami Code, allows impact fee credits to be granted for applicants who elect to construct or dedicate all or a portion of a system improvement, or who escrows money with the city for the construction of a system improvement to be granted a credit for such contribution against the impact fees otherwise due for the same type of system improvement. The applicant must, prior to the applicant's construction, dedication or escrow of the system improvement, submit a petition on a form provided by the city, obtain a determination of credit eligibility and the amount of any credit, and enter into a credit agreement with the city.
- D. In accordance with Chapter 29, Section 3-1410(d) of the City of North Miami Code, Oleta Partners, LLC submitted its petition for an impact fee credit determination on September 10, 2018 for the 184 acre Sole Mia project encompassing six (6) parcels for the following amounts: Parks: \$9,154,800.69, Transportation \$10,407,701.95, General Government: \$550,000.00, Water: \$2,185,650.00, Sewer \$1,402,918.00 for a total impact fee credit in the amount of \$23,701,070.64. Petition is attached hereto as Exhibit "A".
- E. On December 18, 2018, the City's Building Official completed his analysis of the petition, and the City Manager advised the Credit Holder that the Project was eligible for the impact fee credits on a pro-rated basis associated with the percentage of construction completed on the total estimated project. As of December 18, 2018, the Credit Holder was eligible

for and was granted a pro-rated impact fee credit in the amount of \$1,153,501.00. Approval letter is attached hereto as Exhibit "B".

F. On April 22, 2019, the City's Public Works Director completed his analysis of the impact fee credits of \$2,185,650.00 for water and \$1,402,918.00 for sewer. On April 25, 2019, the City Manager granted a water and sewer impact fee credit in the amount of \$697,155.488 for the phase of work completed as of that date. Water and Sewer impact fee credit approval letter is attached hereto as Exhibit "C".

G. On May 13, 2022, Oleta Partners, LLC submitted its request for the pro-rated share of impact fee credits attributable to the next completed phase of development Villa Sole under the building permit number: BNR00-2019000010 in the amount of Five Hundred Seventeen Thousand One Hundred Forty Eight and 50/100 Dollars (\$517,148.50). On May 25, 2022, the City Manager reviewed the request and granted the pro-rated share of the impact fees attributable to the relevant phase of the Project subject to the following conditions: 1) Credit Holder is required to post a bond to ensure the conveyance or construction for Impact Fee Credits relating to improvements or facilities not yet constructed as required by City Code of Ordinances Chapter 29, Section 1410(d)(4), and 2) Credit Holder is required to enter into a Credit Agreement as required by Chapter 29, Section 1410(d)(1).

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The above stated Recitals are incorporated herein as Findings of Facts.

2. The City hereby grants Oleta Partners, LLC Impact Fee Credits in the amount of \$23,701,070.64, as shown in the Impact Fee Credit Analysis attached as Exhibit "D." which may be and has been drawn upon by Oleta Partners, LLC, and its affiliates, in accordance with the terms of this Agreement. Impact Fee Credits redeemed to date total One Million Six Hundred Seventy Thousand Six Hundred Forty Nine and 50/100 Dollars (\$1,670,649.50), as itemized in the Impact Fee Credit Analysis attached as Exhibit "D." To date, there are Twenty Two Million Thirty Thousand Four Hundred Twenty One and 14/100 Dollars \$22,030,421.14 in Impact Fee Credits which are eligible for redemption under the terms of this Agreement.

3. Construction of Improvements by Credit Holder. Credit Holder shall commence complete system improvements in accordance with the terms of the Ground Lease and CUP. Upon commencement of the Improvements, Credit Holder agrees to proceed expeditiously with the construction of the Improvements under the terms contained herein. Credit Holder shall award, or cause to be awarded, all contracts for the construction of the Improvements in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Credit Holder shall not be relieved of its obligation to construct the Improvements and cause title to the Improvements to be conveyed to the City even if the Impact Fee Credits are less than the actual cost of the Improvements.

4. Inspection of Completed Improvements. City shall make or shall cause to be made periodic site inspections of Developer's construction work. The Acceptance Date for each Improvement constructed by Developer shall occur not later than twenty (20) days following the earlier to occur of the following:

- (i) the City Engineer's determination that the Improvement is complete;
- (ii) The City Manager's determination that Acceptable Title with respect to the Improvement is available for acceptance;
- (iii) Credit Holder's provision of one (1) set of "as-built" or record drawings or plans for the Improvement, certified and reflecting the condition of the Improvement as constructed; and
- (iv) Credit Holder's provision of such evidence or proof as the City Manager shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the Improvement have been paid and that no claims of liens have been recorded by or on behalf of any such person, firm, or corporation. Alternatively, rather than await the expiration of the time for the recording of claims of liens, Credit Holder may elect to provide a title insurance policy or other security acceptable to the City Manager guaranteeing that no such claims of liens will be recorded or become a lien upon any of the real property required for the Improvement.

5. Conveyance of Acceptable Title to City and/or Bond Requirements. Acceptable Title to all property on, in or over which, the Improvement will be located, shall, prior to and as a condition precedent to the City's acceptance of any Improvement, be conveyed to the City by a separate recorded instrument, and such conveyance of interest being approved by the City as being a sufficient interest therein to permit the City to properly own, operate and maintain such Improvement. Credit Holder agrees to assist the City in obtaining such documents as are required to obtain Acceptable Title. Completion of the transfer of Acceptable Title shall be evidenced by recordation of the acceptance thereof by the City Manager or designee. Pursuant to Section-1410(D)(4), "no impact fee credit shall be paid or provided until any land has been dedicated and conveyed to the City and/or the facilities have been constructed and accepted or alternatively until a bond has been posted to ensure the conveyance and/or construction". Any bond shall be issued by a state surety bond and in a form acceptable to the City Attorney and Risk Manager.

6. Application of Impact Fee Credits. Impact Fee Credits shall be applied at the time of application for building permits or certificates of occupancy in connection with any construction in the Project, to reduce impact fees otherwise due until the Impact Fee Credit is exhausted. At such time as the Impact Fee Credits provided for under the terms of this Agreement have been exhausted, the Credit Holder seeking building permits or certificates of occupancy within the Project shall pay the City the Impact Fees as are then due and payable under the Impact Fee Ordinance in effect at that time. Then, for so long as the total Impact Fee Credits assessed are less than the total Impact Fee Credits authorized by this Agreement, the City shall issue a receipt evidencing full payment of Impact Fees in connection with such Credit Holder's application for a building permit or certificate of occupancy.

7. Issuance of Impact Fee Credits. Credit Holder shall receive Impact Fee Credits based upon the verified Eligible Costs of the Improvement (or accepted portion of the Improvement) as provided for and agreed upon on Exhibit D. If Credit Holder is seeking Impact Fee Credits for Improvements not yet completed or conveyed to the City, Credit Holder shall be required to provide a bond on a form reasonably acceptable to the City Manager and City Attorney for the amount of One Hundred Twenty Percent (120%) of the total Impact Fee Credits being requested for the specific permit application or certificate of occupancy. With each application for permit or certificate of occupancy The City Manager or Building Director shall determine the completeness of the Impact Fee Credit Request and notify the Credit Holder whether any additional information is required. Once the Impact Fee Credit Request is considered complete, the City Manager or Building Director shall provide the Credit Holder with a Letter certifying the approved amount of Credit, within thirty (30) days following receipt of the Credit Request.

8. Assignment of Impact Fee Credits. The Impact Fee Credits shall be transferable or assignable by the Credit Holder and requires that the assignee or transferee benefits from the improvements or contributions generated by the credit, if a notice is provided to the City in writing by Credit Holder .

9. Financial Accounting. On or before January 31 of each year, so long as there remains any Impact Fee Credits Available, Oleta Partners, LLC shall prepare and deliver to the Community Planning & Development Department an annual report setting forth the amount of Impact Fee payments made when applying for building permits and certificates of occupancy within the Project and the remaining balance of Impact Fee Credits. These amounts shall be subject to review and approval by the City as part of the City's annual review and audit of the Impact Fee Credits issued under this Agreement.

10. Annual Review and Audit. The City shall conduct an annual review and audit of performance under this Agreement to determine whether or not there has been demonstrated good faith compliance with the terms of this Agreement and to report the Impact Fee Credits applied toward payment of Impact Fees and the balance of available and unused Impact Fee Credits.

11. Term. This Agreement shall continue in full force and effect until the latter to occur of (i) completion of all improvements, or (ii) the impact fee credits are fully utilized.

12. Notices. Whenever any notice, demand or request is required or permitted hereunder, such notice, demand or request shall be made in writing and shall be personally delivered to the individuals listed below, sent via United States Mail, registered or certified, return receipt requested, addressed to the addresses (and individuals) set forth below or communicated through electronic mail (E-mail) with a Read Receipt. No other form of electronic communications will be deemed Notice:

CITY:

City Manager
City of North Miami
776 N.E. 125th Street
North Miami, FL 33161

With a copy to: City of North Miami
776 N.E. 125 Street
North Miami, FL 33161
Attention: City Attorney

CREDIT HOLDER:

Oleta Partners, LLC
Attn: Daniel Salas, Esq.
2207 SoLe Mia Square Lane
North Miami, FL 33181

14. Indemnification, Insurance, Sovereign Immunity. Credit Holder shall be solely and entirely responsible for its tortious acts and for the tortious acts of its agents, employees, or servants during the performance of this Agreement. Credit Holder shall indemnify and save harmless the City, its agents, employees and officers from and against all liabilities, claims, demands, or actions at law and equity including court costs and attorney's fee, that may be made or brought by anyone for the purposes of enforcing a claim on account of any injury or damage allegedly caused or occurring to any person or property in which was caused in whole or in part by any tortious, wrongful, or intentional acts or omissions of Credit Holder, its agents, or employees during performance under this Agreement. Credit Holder shall provide City with a certificate of coverage identifying the City as both a Named Insured and a Certificate Holder. The foregoing is not intended, and shall not be construed, as a waiver by the City of the benefits of Section 768.8, Florida Statutes.

13. Miscellaneous Provisions.

a. This Agreement shall be constructed and governed in accordance with the laws of the State of Florida. All parties to this Agreement have participated fully in the negotiation and preparation hereof and accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto. All parties agree particularly that his Agreement is bound by the terms of the City of North Miami Development Impact Fees Act and other applicable ordinances. Any and all applicable terms of those Ordinances are to be considered incorporated herein by reference. If there is any inconsistency found between this Agreement and such Ordinances or applicable law, those Ordinances or law shall prevail and be applicable.

b. The Parties agree that City of North Miami Code of Ordinances. Chapter 29, Section 3-410 limits the total amount of impact fee credits given to an amount not to exceed the amount of impact fees budgeted for that system improvement or the amount of the impact fees for the same type of system improvements that are due from the development requesting the credit whichever amount is smaller. The parties further agree that they will not challenge in any judicial proceeding and will accept the interpretation of the City Attorney's Office that the City of North Miami Development Impact Fees Act Impact Fee Credits identified or granted by this Agreement are limited to the amount of Impact Fees which are due or become due within the Development.

c. In construing the Agreement, the singular shall be held to include the plural, and the plural shall include the singular, the use of any gender shall include every other and all gender and captions and paragraph headings shall be disregarded.

d. All of the exhibits attached to this Agreement are incorporated in, and made a part of this Agreement.

e. The Agreement, and any Exhibits and/or addendum made a part hereof constitute the entire Agreement and understanding of the parties and shall not be modified or amended except by written agreement duly executed by the parties hereto.

f. This Agreement is made for the sole benefit and protection of the parties and no other persons shall have any right of action hereunder. This Agreement shall be binding upon the parties and their respective successors and permitted assigns.

g. All covenants, agreements, representation and warranties made herein shall be deemed to have material and relied on by each party to this Agreement.

h. This agreement is recognized as being subject to the laws of Florida and the North Miami Code of Ordinances and therefore all applicable provisions thereof are incorporated herein and if any provision hereof is inconsistent with such provisions, such provision shall apply. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida

i. Oleta Partners, LLC must be a feepayer as referenced in the applicable impact fee ordinance to receive impact fee credits under this ordinance.

j. Nothing in this Agreement shall act to allow an entity to receive impact fees credits for contributions provided by a government entity including, but not limited to, a Community Development District.

k. Nothing in this Agreement shall be deemed to require the City to continue to levy or collect Impact Fees, or, if levied, to levy them for any certain amount.


IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the Effective Date set forth above.


THERESA THERILUS, ESQ.
CITY MANAGER

ATTEST:

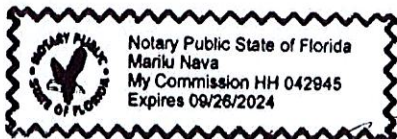

VANESSA JOSEPH, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

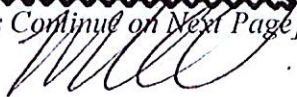

JEFF P. H. CAZEAU
CITY ATTORNEY

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 11th day of January 2023, by Theresa Therilus, as the City Manager of the CITY OF NORTH MIAMI, FLORIDA, a Florida municipal corporation. She (check applicable box) ☒ is personally known to me or ☐ has produced _____ as identification.



[Signatures Continue on Next Page]



WITNESSES:

OLETA PARTNERS LLC

Name: _____

Title: _____

By: _____
_____,
Authorized Signatory

Name: _____

Title: _____