

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (“Agreement”) is effective as of the 30th day of October, 2023 by **NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic (“NMCRA”), and **HORIZON AT NOMI, LLC**, a Florida limited liability company (“Borrower”), for the benefit of **BANK HAPOALIM B.M.**, an Israeli bank, as administrative agent (“Agent”).

RECITALS

- A. Simultaneously herewith Borrower is financing the construction of certain improvements on real property located in the County of Miami-Dade, State of Florida, as more particularly described on Exhibit A attached hereto (“Property”).
- B. Borrower has assumed certain obligations under that certain Tax Increment Recapture Incentive and Infrastructure Grant Agreement dated as of **[July 10, 2023]** (“TIF Agreement”) between NMCRA and Borrower, pursuant to which Borrower granted a security interest to NMCRA in the Collateral (as defined in the TIF Agreement) of Borrower (the “TIF Lien”) to secure certain obligations of Borrower to NMCRA.
- C. In connection with the construction of certain improvements on the Property by Borrower, Agent and certain other lenders are making a loan to Borrower in the original principal amount of \$48,000,000.00 (“Loan”) pursuant to a Construction Loan Agreement among Agent, the other lenders party thereto from time to time, and Borrower (as supplemented or amended from time to time, the “Loan Agreement”) and evidenced by a Promissory Note by Borrower to Agent (as supplemented or amended from time to time, the “Note”). The Loan is to be secured by a Mortgage, Assignment, Security Agreement and Fixture Filing that will be recorded among the land records of Miami-Dade County, Florida (as supplemented or amended from time to time, the “Mortgage”) (the Loan Agreement, the Note and the Mortgage, together with all other documents executed with respect to the Loan, are hereinafter collectively referred to as the “Loan Documents”).
- D. As a condition to making the Loan, Agent requires that the liens created by the Loan Documents be in all respects superior to the TIF Lien. Agent will not make the Loan unless NMCRA and Borrower agree to subordinate the TIF Lien.
- E. Borrower and NMCRA hereby agree to subordinate the TIF Lien on and subject to the terms, conditions and requirements set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.
2. **Subordination.** The NMCRA hereby covenants and agrees that the TIF Lien is and will at all times continue to be, subordinate, subject and inferior to the rights of Agent under the Loan Documents and that the TIF Lien is hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens and security interests granted to Agent pursuant to the Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, except with respect to the TIF Lien, the NMCRA may exercise its remedies set forth in the TIF Agreement.
3. **Financing, Encumbrance and Transfer Approval.** NMCRA hereby consents to the financing evidenced by the Mortgage. NMCRA further agrees that any transfer of the Property in connection with foreclosure or deed in lieu thereof will not require NMCRA's consent; *provided, however,* that any such transfer of the Property shall not alter, amend or diminish the rights of the NMCRA and obligations of the Developer set forth in the TIF Documents including, but not limited to the Public Benefits Commitments required by Section 3 of the TIF Agreement.
4. **Agent Notice of Default.** In consideration of NMCRA's agreements contained in this Agreement, Agent agrees that in the event of any default by Borrower under the Loan Documents, NMCRA will be entitled to receive a copy of any notice of default given by Agent to Borrower under the Loan Documents. Neither the giving nor the failure to give a notice to NMCRA pursuant to this Section 4 will affect the validity of any notice given by Agent to the Borrower.
5. **NMCRA Notice of Default.** NMCRA must give Agent a concurrent copy of each notice of default [NOTE: there is no definition a "material notice] given by NMCRA under or with respect to the TIF Agreement, and agrees that Agent, at Agent's sole election, will have the right (but not the obligation) to cure any default by Borrower under the TIF Agreement on its and/or Borrower's behalf subject to the terms and conditions set forth that certain Estoppel Certificate and Agreement dated October ___, 2023. NMCRA hereby represents and warrants that, to the best of its knowledge, there is no current default under the TIF Agreement.
6. **NMCRA's Rights.** Except as set forth in Sections 2 and 7 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrower and/or NMCRA, respectively, under the TIF Agreement; provided that, (A) the TIF Agreement may not be modified, amended, changed or altered by Borrower without

the prior written consent of Agent so long as the Loan is secured by the Property and (B) for so long as the Loan is secured by the Property, notwithstanding the terms of the TIF Agreement to the contrary, neither Borrower nor NMCRA will, without Agent's prior written consent, exercise or seek any right or remedy under the TIF Agreement or available at law or in equity which will or could result in (i) a transfer of possession of the Property or the control, operations or management thereof, (ii) collection or possession of rents or revenues from or with respect to the Property by any party other than Borrower or Agent; (iii) appointment of a receiver for the Property; (iv) application of insurance or condemnation proceeds other than as approved by Agent pursuant to the Loan Documents; or (v) removal or replacement of the existing property manager of the Property.

7. **Foreclosure by Agent.** In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Property by Agent, (a) no consent will be required from NMCRA and (b) Agent will have no indemnification obligations to NMCRA for any period during which Agent does not own or is not in possession of the Property *provided, however,* that any such foreclosure deed in lieu of foreclose, or similar disposition of the Property by Agent shall not alter, amend or diminish the rights of the NMCRA and obligations of the Developer set forth in the TIF Documents including, but not limited to the Public Benefits Commitments required by Section 3 of the TIF Agreement.
8. **Refinancing.** NMCRA agrees that its agreement to subordinate the TIF Lien hereunder will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the indebtedness evidenced by the Loan Documents (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Loan Documents and Agent will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

9. **Miscellaneous Provisions.**

- (a) This Agreement represents the entire understanding and agreement between the parties with regard to the matters addressed herein, and will supersede and cancel any prior agreements with regard to such matters.
- (b) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement, which will include with regard to the NMCRA any permitted successor or assign of the NMCRA under or pursuant to the terms of the TIF Agreement and, with regard to Agent, any subsequent holder of the Note. No other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.
- (c) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.

(d) Each notice, request, demand, consent, approval or other communication (collectively, “**Notices**,” and singly, a “**Notice**”) which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

If to NMCRA:

North Miami Community Redevelopment Agency
735 N.E. 125th Street, Suite 100
North Miami, Florida 33161
Attention: Anna-Bo Emmanuel, Esq.

with a copy to:

Taylor English Doma LLP
2 S Biscayne Boulevard, Suite 2500
Miami, Florida 33131
Attention: Steven W. Zelkowitz, Esq.

If to Agent:

Bank Hapoalim B.M. (“Administrative Agent”)
Commercial Real Estate Financing
1120 Avenue of the Americas
New York, NY 10036
Attention: Ilana Druyan, First Vice President

with a copy to:

Troutman Pepper Hamilton Sanders LLP
401 9th Street NW #1000
Washington, DC 20004
Attention: Richard Pollak, Esq.

If to Borrower:

53 Broadway
Brooklyn, NY 11249
Attention: David Marom,

with a copy to:

Meland Budwick
3200 Southeast Financial Center
200 South Biscayne Road
Miami, FL 33131
Attention: Mark S. Meland, Esq.

Any party, by Notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

- (e) Each of the parties will, whenever and as often as they are requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.
- (f) This Agreement will be governed by the laws of the State of Florida.
- (g) Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (h) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (i) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (j) This Agreement may be assigned at any time by Agent to any subsequent holder of the Note.

- (k) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (l) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (m) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by NMCRA of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year above written.

NMCRA:

**NORTH MIAMI COMMUNITY
REDEVELOPMENT AGENCY,
a public body corporate and politic**

By: 
Anna-Bo Emmanuel, Esq.
Executive Director

Attest:

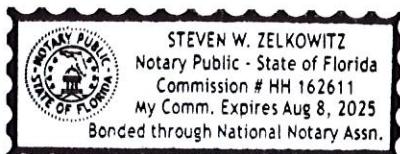
By: 
Vanessa Joseph, Esq.
NMCRA Secretary

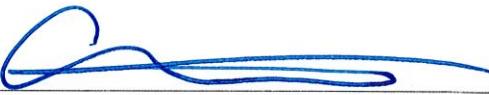
Approved as to form and legal sufficiency:

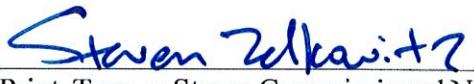
By: 
Taylor English Duma LLP
NMCRA Attorney

State of Florida
County of Miami - Dade

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this day of 23rd October, 2023, by Anna-Bo Emmanuel, Esq., who is personally known to me, as Executive Director for the North Miami Community Redevelopment Agency.




Signature of Notary Public – State of Florida


Print, Type or Stamp Commissioned Name of Notary Public

BORROWER:

HORIZON AT NOMI, LLC, a Florida limited
liability company

By: _____

Name: David Marom

Title: Authorized Member

State of _____
County of _____

The foregoing instrument was acknowledged before me by means of physical presence
or online notarization, this day of _____ October, 2023, by David Marom, who is personally known
to me, as an Authorized Member for Horizon at NOMI, LLC, a Florida limited liability company.

Signature of Notary Public – State of Florida

Print, Type or Stamp Commissioned Name of Notary
Public

AGENT:

BANK HAPOALIM, B.M.

By: _____

Name:

Title:

By: _____

Name:

Title:

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this day of ____ October, 2023, by _____, who is personally known to me, as _____ for Bank Hapoalim B.M.

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this day of ____ October, 2023, by _____, who is personally known to me, as _____ for Bank Hapoalim B.M.

Signature of Notary Public – State of Florida

Print, Type or Stamp Commissioned Name of Notary Public

EXHIBIT A

LEGAL DESCRIPTION