

**DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY
SITE DEVELOPMENT ASSISTANCE GRANT AGREEMENT**

THIS AGREEMENT is made this ____ day of July 2018, by and between the **DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic, duly created and operated pursuant to Chapter 163, *Florida Statutes*, hereinafter referred to as "CRA" or "Agency", and Illustrated Properties, LLC, hereinafter referred to as "Grantee."

W I T N E S S E T H:

WHEREAS, it is the policy of the CRA to stimulate and encourage economic growth within the CRA's redevelopment area, pursuant to carrying out its purposes as provided for under Chapter 163, *Florida Statutes*; and

WHEREAS, the CRA has implemented the Site Development Assistance Grant Program ("Program") in order to provide incentive payments to businesses and property owners that expend funds to improve commercial properties located within the Community Redevelopment Area; and

WHEREAS, pursuant to the administration of the Program, the CRA wishes to provide assistance and support for the development of the Grantee's business and/or properties within the CRA's redevelopment area; and

WHEREAS, the CRA has determined that it serves a municipal and public purpose, and is in the public's best interest, pursuant to the CRA's Community Redevelopment Plan to award a grant to the Grantee pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

ARTICLE 1. DEFINITIONS.

1.01. Definitions. The terms defined in this Section 1.01 shall have the following meanings, except as herein otherwise expressly provided:

(a) "Agency" means the Community Redevelopment Agency of the City, as created by a Resolution of the City, adopted by the City Commission, including any amendments thereto, and any successors or assigns thereto.

(b) "City" means the City of Delray Beach, Florida, a Florida municipal corporation, and any successors or assigns thereto.

(c) "Grantee" means Illustrated Properties, LLC, a Florida Limited Liability Company, and any successors and assigns thereof, including any entity, partnership, joint venture, or other person in which Illustrated Properties, LLC is a general partner or principal, but not including any

entity, partnership, joint venture, or other person in which Illustrated Properties, LLC is a general partner or principal which is not undertaking or participating in any development of the Project, or any part thereof.

(d) "Plan" means the community redevelopment plan for the Area, as approved by the City Commission, and any amendments to the Plan.

(e) "Project" means the proposed improvements to be placed on the Property as contemplated by this Agreement, and as described in **Exhibit "A"**.

(f) "Property" and "Project Site" means the tract of land located in the Area in which the Project will be located, as more particularly described and depicted on **Exhibit "A"**.

ARTICLE 2. FINDINGS; INTENT.

2.01. Findings.

(a) The recitals set forth above in the "Whereas" clauses are hereby approved by the parties and incorporated herein.

(b) Grantee meets the eligibility requirements specified in the Program Guidelines

(c) The Plan contemplates redevelopment in the Area for, among other things, offices and ancillary uses.

(d) Grantee intends to develop the Project on the Property.

(e) The Project is consistent with and furthers the provisions of the Plan and the Agency desires to encourage redevelopment of the Property and to encourage Grantee to locate the Project in the Area.

(f) The parties hereto recognize and acknowledge and do mutually find that the financial assistance provided pursuant to this Agreement is an important inducement to the Grantee undertaking the Project in the Area.

2.02. Intent; Cooperation.

(a) It is the intent of the parties hereto to efficiently, effectively and economically cause the successful development of the Project in order to improve the Property, specifically, and the conditions in the Area, in general, as well as implement the Plan and otherwise further the purposes of the Act.

(b) It is further the intent of the parties that the Grantee shall construct, equip, and otherwise complete the Project on the Property by the Completion Date substantially in accordance with the approved Project Site Plan and Concept Plans and Specifications for a commercial use.

(c) The parties mutually recognize and acknowledge that the Agency's obligation to make the payments is subject to the Grantee completing the development of the Project pursuant to the terms of this Agreement.

(d) The parties hereto recognize and acknowledge that the successful development of the Project is dependent upon continued cooperation of the parties hereto, and each agrees that it shall: (i) act in a reasonable manner hereunder, (ii) provide the other party with complete and updated information from time to time, (iii) make its good faith reasonable efforts to ensure that such cooperation is continuous, (iv) the purposes of this Agreement are carried out to the full extent contemplated hereby and (v) the Project is designed, constructed, equipped, completed and operated as provided herein.

ARTICLE 3. GRANTEE'S PERFORMANCE OBLIGATIONS

3.01 Grantee agrees that it will carry out the Project and activities as more specifically set forth in the **Proposed Improvements**, as provided in **Exhibit "A"**, which is attached hereto, and incorporated herein by reference. Grantee agrees that the redevelopment activities contemplated by this Agreement shall be completed within 365 days of the date that this Agreement is executed by the CRA.

3.02 Grantee hereby certifies that it has or will retain adequate staff to oversee execution of its performance obligations under this Agreement, and that execution of each of these performance obligations is consistent with Grantee's mission.

3.03. As a further condition to retaining any Grant funds from the CRA, the Grantee shall provide to the CRA written verification, satisfactory to the CRA, in its sole discretion, compliance by Grantee with all agreed upon Performance Standards as set forth in this Agreement.

ARTICLE 4. PAYMENT PROCEDURES, CONDITIONS

4.01 No grant funds will be dispersed prior to the receipt of a Certificate of Occupancy or the necessary satisfactory inspection notices.

4.02 To receive reimbursement grantees must submit the following:

- a. Detailed work invoice – from the vendor, corresponding to the completed approved reimbursable improvements
- b. Proof of payment – in the form of a cancelled check, or credit card statement
- c. CRA staff may request additional information to accompany reimbursement requests, including, but not limited to, photographs, verification of vendor certifications, building permits, occupational licenses, or other documentation.

4.03 Reimbursement is at the approved grant award rate of forty percent (40%) of the final eligible expenses presented for reimbursement, up to the maximum approved grant award.

4.04 At the Grantee's option, the Grantee may submit an initial reimbursement request for up to Seventy Five percent (75%) of the reimbursement amount prior to the issuance of the temporary certificate of occupancy or certificate of occupancy for the improvements. The remaining balance of the reimbursement amount will be dispersed to Grantee upon submittal of the reimbursement request after the issuance of the final certificate of occupancy. The Grantee may not submit more than two reimbursement requests prior to the issuance of the temporary certificate of occupancy or certificate of occupancy. Reimbursement requests will be processed only for portions of the improvements that have been fully constructed, installed, or completed, provided that there are no active liens or code enforcement violations on the property, and that the completed improvements have been constructed, installed, or completed to the satisfaction of CRA staff, as determined by an on-site inspection. In cases where the Grantee is also the owner of the business operating at the subject Property, the business must also be in operation in order for the CRA to remit final payment of the grant balance.

4.05 The Grant Funds shall not be paid to reimburse Grantee for work performed by a contractor who is the Grantee's immediate family member, or by a company that is owned by the Grantee's immediate family member. "Immediate family member" is spouse, mother, father, step-mother, step-father, child, in-law, step-child, or adopted child.

4.06 If the Grantee fails to comply with any of the provisions of this Agreement, the CRA may withhold, temporarily or permanently, all, or any, unpaid portion of the funds upon giving written notice to the Grantee, and/or terminate this Agreement and the CRA shall have no further funding obligation to the Grantee under this Agreement.

4.07 In the event the Grantee ceases to exist, or ceases or suspends its operation for any reason, any remaining unpaid portion of this Agreement shall be retained by the CRA and the CRA shall have no further funding obligation to Grantee with regard to those unpaid funds. The determination that the Grantee has ceased or suspended its operation shall be made solely by the CRA and Grantee, its successors or assigns in interest, agrees to be bound by the CRA's determination. Such determination shall be provided to the Grantee by the CRA in writing.

ARTICLE 5. MAXIMUM GRANT AMOUNT

5.01 In no event shall the reimbursements made to Grantee pursuant to this Agreement exceed the maximum total grant of Thirty-Seven Thousand One Hundred Twenty-Two and 00/100 Dollars (\$37,122.00).

ARTICLE 6. PERFORMANCE

6.01 The parties expressly agree that time is of the essence with regard to performance as set forth in this Agreement and failure by Grantee to complete performance within a reasonable time as determined by the CRA, shall, at the option of the CRA without liability, in addition to any of the CRA's rights or remedies, relieve the CRA of any obligation under this Agreement.

ARTICLE 7. INDEMNIFICATION

7.01. Indemnification by the Grantee.

(a) For good and valuable consideration herein provided, the receipt of which is hereby acknowledged by the Grantee, the Grantee agrees to indemnify, defend and hold harmless, the Agency, its respective agents, officers, or employees from any and all liabilities, damages, penalties, judgments, claims, demands, costs, losses, expenses or attorneys' fees through appellate proceedings, for personal injury, bodily injury, death or property damage arising out of, or by reason of any act or omission of the Grantee, its agents, employees or contractors arising out of, in connection with or by reason of, the performance of any and all services contemplated by this Agreement, or which are alleged to have arisen out of, in connection with or by reason of, the performance of any and all services contemplated by this Agreement, or which are alleged to have arisen out of, in connection with, or by reason of, the performance of such services. The indemnification shall survive the Agreement's termination.

ARTICLE 8. DEFAULT; TERMINATION.

8.01. Default by Grantee. In the event the Grantee fails to perform or comply with any material provision of this Agreement, the Grantee shall be in default. If an event of default by the Grantee shall occur, the Agency shall provide written notice to the Grantee. If the default shall not be cured by the Grantee within fourteen (14) days after receipt of the written notice from the Agency, or if such event of default is of such nature that it cannot be completely cured within such time period, the Agency may terminate this Agreement.

8.02 Notwithstanding anything to the contrary herein, upon an occurrence and continuance of an Event of Default by Grantee that is not cured within the applicable cure or grace period, Agency's sole remedy under this Agreement shall be to terminate the Agreement. Upon such termination, Agency's obligations to Grantee under this Agreement shall cease, including without limitation its obligation to make any payments to Grantee. In the event of such termination, Grantee's obligations under this Agreement shall cease, excepting only the indemnification as set forth in this Agreement.

8.03 Termination.

(a) The Grantee and the Agency acknowledge and agree that as of the Effective Date certain matters mutually agreed by the parties hereto are essential to the successful development of the Project have not been satisfied or are subject to certain conditions, legal requirements or approvals beyond the control of any of the parties hereto or which cannot be definitely resolved under this Agreement. In recognition of these events or conditions, the parties hereto mutually agree that, provided the appropriate or responsible party therefor diligently and in good faith seeks to the fullest extent of its capabilities to cause such event or condition to occur or be satisfied, the failure of the events or conditions listed in subsection (b) below to occur or be satisfied shall not constitute an event of default by any party under this Article, but may be the basis for a termination of this Agreement.

(b) In addition to any other rights of termination provided elsewhere in this Agreement, this Agreement may be terminated as provided in subsection (c) in the event the appropriate Governmental Authority, upon petition by the Grantee, unduly delays or denies or fails to issue building permits, or approve any other governmental approvals or permits necessary to commence construction of the Project.

(c) Upon the occurrence of an event described in subsection (b), then the Grantee or the Agency may, upon determining that such event cannot reasonably be expected to change in the foreseeable future so as to allow development of the Project, elect to terminate this Agreement by giving a notice to the other party hereto within thirty (30) days of the occurrence of such event or the determination of inability to cause a condition precedent to occur or be satisfied, stating its election to terminate this Agreement as a result thereof, in which case this Agreement shall then terminate.

(d) In the event of a termination pursuant to subsection (c), neither the Grantee nor the Agency shall be obligated or liable one to the other in any way, financially or otherwise, for any claim or matter arising from or as a result of this Agreement or any actions taken by the Grantee and the Agency, or any of them, hereunder or contemplated hereby, and each party shall be responsible for its own costs.

(e) Notwithstanding anything to the contrary contained herein, in the event that any party shall have, but shall not exercise, the right hereunder to terminate this Agreement because of the non-satisfaction of any condition specified herein, and such condition is subsequently satisfied, then the non-satisfaction of such condition shall no longer be the basis for termination of this Agreement.

ARTICLE 9. AVAILABILITY OF FUNDS

9.01. The CRA's obligation to pay under this Agreement is contingent upon having received tax increment funds pursuant to Chapter 163, Part III, Florida Statutes, and that the funds for the Site Development Assistance Program have been budgeted and appropriated by the CRA's

Board of Commissioners.

ARTICLE 10. REMEDIES

10.01. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. 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 shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 11. CIVIL RIGHTS COMPLIANCE

11.01. The Grantee warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

ARTICLE 12. FEES, COSTS

12.01. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled, provided, however, that this clause pertains only to the parties to this Agreement.

ARTICLE 13. MISCELLANEOUS

13.01. Public Purpose. The parties acknowledge and agree that this Agreement satisfies, fulfills and is pursuant to and for a public purpose and municipal purpose and is in the public interest, and is a proper exercise of the Agency's power and authority under the Chapter 163, Part III, Florida Statutes.

13.02. No General Obligation. In no event shall any obligation of the Agency under this Agreement be or constitute a general obligation or indebtedness of the City or the Agency, a pledge of the ad valorem taxing power of the City or the Agency or a general obligation or indebtedness of the City or the Agency within the meaning of the Constitution of the State of Florida or any other applicable laws, but shall be payable solely from legally available revenues and funds. Neither the Grantee nor any other party under or beneficiary of this Agreement shall ever have the right to compel the exercise of the ad valorem taxing power of the City, the Agency or any other governmental entity or taxation in any form on any real or personal property to pay the City's or the Agency's obligations or undertakings hereunder.

13.03. Assignments. This Agreement is not assignable.

13.04. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

13.05. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

13.06. Notices.

(a) All notices, demands, requests for approvals or other communications given by either party to another shall be in writing, and shall be sent by registered or certified mail, postage prepaid, return receipt requested or by overnight courier service, or by hand delivery to the office for each party indicated below and addressed as follows:

For Agency: Jeffrey A. Costello, Executive Director
Delray Beach Community Redevelopment Agency
20 N. Swinton Avenue
Delray Beach, FL 33444
Telephone No. (561) 276-8640
Facsimile No. (561) 276-8558

Copy to: David N. Tolces, Esq.
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Blvd., Suite 200
Fort Lauderdale, FL 33308
Telephone: (561) 276-9400
Facsimile: (954) 771-4923

For Grantee: Marc Hershman
700 E. Atlantic Avenue
Delray Beach, FL 33483

(b) Notices given by courier service or by hand delivery shall be effective upon delivery and notices given by mail shall be effective on the third (3rd) business day after mailing. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it may be changed) shall be deemed to have been an effective delivery as provided in this Section. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other parties and such notices shall be effective upon receipt. Until notice of change of address is received as to any particular party hereto, all other

parties may rely upon the last address given.

13.07. Captions. The article and section headings and captions of this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any article, section, subsection, paragraph or provision hereof.

13.08. Entire Agreement. The CRA and the Grantee agree that this Agreement sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and their respective seals affixed as of the date and year set forth above.

ATTEST:

DELRAY BEACH COMMUNITY
REDEVELOPMENT AGENCY

Jeffrey A. Costello, Executive Director

By: _____
Shelly Petrolia, Chair

ATTEST:

Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, as _____ (name of officer or agent, title of officer or agent), of _____, a Florida _____, on behalf of the _____. He/She is personally known to me or has produced _____ (type of identification) as identification

Notary Public – State of Florida

DNT:dnt

EXHIBIT “A”

PROPOSED IMPROVEMENTS

1. PROJECT DESCRIPTION:

Name of Company/Grantee: Illustrated Properties, LLC

Description of Site Improvements: Interior office improvement project including renovation of walls; doors; floors; cabinetry; HVAC system; and electrical and plumbing improvements.

Location: 700 E. Atlantic Avenue, Delray Beach, FL 33483

Description of Eligible Expenditures: Electrical improvements; plumbing improvements; HVAC system improvements; built-in cabinetry; doors and hardware; glass walls; framing and drywall; flooring; baseboards; interior painting; and all associated labor, materials and permitting fees.

CRA Funding Amount: \$37,122.00

Grantee Contact: Name: Marc Hershman
Address: 700 E. Atlantic Avenue, Delray Beach, FL 33483
Phone Number: (561) 272-4065
e-mail: mhershman@ipre.com