POMPANO BEACH DOWNTOWN PUBLIC PRIVATE DEVELOPMENT AGREEMENT

BY AND AMONG

RP POMPANO, LLC

AND

CITY OF POMPANO BEACH, FLORIDA

AND

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

_____, 2024

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POMPANO BEACH DOWNTOWN PUBLIC PRIVATE DEVELOPMENT AGREEMENT

THIS POMPANO BEACH DOWNTOWN PUBLIC PRIVATE DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of the _____ day of _____, 2024 (the "**Commencement Date**") by and among the CITY OF POMPANO BEACH, FLORIDA ("**City**"), RP POMPANO, LLC, a Florida limited liability company ("**Developer**"), and POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY ("**CRA"**) (the City, Developer, and CRA each a "**Party**", and collectively, the "**Parties**")**.**

RECITALS:

A. WHEREAS, City and CRA own certain real property (the "**Initial Property**") within the heart of downtown in the City of Pompano Beach, Florida, comprising of approximately forty-three (43) acres as more particularly depicted in **Exhibit A** of this Agreement. City and CRA have determined that the Initial Property's current use no longer adequately serves the needs of the residents of Pompano Beach, Florida, and that opportunities exist to improve community services while maximizing the potential use and value of the Initial Property and other property that may be acquired by the CRA pursuant to this Agreement as outlined in **Exhibit A-1** attached hereto (the "**Additional Property**," and collectively with the Initial Property, the "**Property**").

B. WHEREAS, the City and CRA desire to create a vibrant and pedestrian friendly, mixed-use downtown development on the Property emphasizing and embodying "live, work, play" elements by integrating a variety of daytime and night-time economic uses, civic uses, and dense residential uses, all in accordance with the CRA's Northwest District community redevelopment plan as adopted in accordance with § 163.330, *et seq*, Florida Statutes (the "**CRA Plan**").

C. WHEREAS, on or about August 31, 2022, City published Invitation to Negotiation No. C-18-22 (the "**ITN**"), seeking, among other things, proposals for the redevelopment of the Property into a mixed use development, including a new City Hall, all in accordance with the CRA Plan (the "**Master Project**").

D. WHEREAS, in connection with the ITN, a selection committee of the City and CRA recommended Developer as the exclusive Master Project developer. At a joint public meeting on October 12, 2023, the City and the CRA directed representatives of the City and CRA to negotiate the terms by which the Master Project will be developed.

E. WHEREAS, the Parties desire for Developer to be responsible for (i) the delivery of the site work, horizontal infrastructure, and other infrastructure improvements required to render the Property ready for the vertical development, which may include parking improvements consisting of a parking structure with up to three hundred (300) public parking spaces to support such future development (the "**Master Infrastructure Project**"), (ii) the acquisition of the Additional Property to be included as part of the Master Project; (iii) the development and construction of certain civic buildings for use by the City and/or other governmental agencies ("**Civic Buildings**"), and (iv) the development of private uses on the Property as part of the Master

Project and/or the sale of developable parcels within the Property to other qualified developers for the development of private uses as part of the Master Project (the "**Private Developments**").

F. WHEREAS, the Parties have finalized negotiations for the development, construction, and ownership of the Master Infrastructure Project, the Civic Buildings, and the Private Developments, as well as the acquisition of Additional Property and the sale of certain parcels of the Property for Private Developments, and this Agreement, together with one or more Build to Suit Lease Agreements and other definitive agreements to be executed in accordance with this Agreement (as more particularly set forth herein) (collectively, the "**Project Documents**"), memorialize the terms and conditions governing the Parties' respective rights and obligations in connection therewith.

TERMS OF AGREEMENT:

NOW, THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Agreement is made upon the terms, covenants and conditions hereinafter set forth.

ARTICLE 1
DEFINITIONS

For all purposes of this Agreement the terms defined in this **Article 1** shall have the following meanings and the other provisions of this **Article 1** shall apply:

"Additional Property" has the meaning provided in **Recital A** hereof.

"Affiliate" or **"Affiliates"** means, with respect to the Developer, any Person that is not a Prohibited Person, who directly or indirectly, is controlled by the Key Persons, *and* for which the Key Persons, directly or indirectly, collectively own at least ten percent (10%) of the equity interests in such Person. For purposes hereof, the term **"controlled by"** shall mean the day to day operational management decisions of a Person.

"**Anti-Money Laundering Laws**" means the USA Patriot Act of 2001, the Bank Secrecy Act, as amended through the date hereof, Executive Order 13324 - Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended through the date hereof, and other federal laws and regulations and executive orders administered by OFAC which prohibit, among other things, the engagement in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals (such individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanction and embargo programs), and such additional laws and programs administered by OFAC which prohibit dealing with individuals or entities in certain countries regardless of whether such individuals or entities appear on any of the OFAC lists.

"**Architect**" means the qualified, licensed design professional selected by the Developer as part of the procurement process, and retained by Developer pursuant to a written agreement, to furnish architectural and design services required relating to the Master Project.

"**Acquisition Period**" has the meaning set forth in **Section 3.3**.

"Buildable Development Site" means a portion of the Property that has been prepared in accordance with this Agreement (including, but not limited to, completion of the Master Infrastructure Project with respect to such portion of the Property and any applicable rezoning or platting) for vertical construction of a Private Development by an Affiliate of Developer or third-party purchaser.

"Building Lot" shall mean any parcel of land, including any airspace and/or subsurface rights, or any parcel consisting solely of an airspace estate, that is part of the RD Property.

"Building Lot Improvement" shall mean every structure and all appurtenances thereto of every kind and type and any other man-made or man-caused physical change upon, over, across, above or under a Building Lot or part thereof.

"Build to Suit Lease Agreement" has the meaning provided in **Section 2.1**.

"Business Day" or **"business day"** means a day other than Saturday, Sunday or a day on which banking institutions in the State of Florida are authorized or obligated by law or executive order to be closed.

"Cap" has the meaning provided in **Section 5.2**.

"CBRE" means CBRE, Inc., the real estate consultant firm engaged by CRA in connection with the ITN.

"**Change Order**" means a written instrument approved by CRA and one or more of the Developer, Architect, General Contractor, Other Contractors and Consultants, either pursuant to this Agreement or another contract, that modifies the County BTS Development Project and the scope of services performed by the General Contractor, Other Contractors and/or Consultants for the Master Project (but without invalidating said Agreement or other contract).

"City" means City of Pompano Beach, Florida, a political subdivision of the State of Florida.

"City Commission" means the elected governing body of the City established in accordance with the City Charter.

"City Contract Administrator" means the City Manager or the person which the City Manager may appoint from time to time in such capacity upon written notice to Developer.

"City Default Notice" has the meaning provided in **Section 17.1.**

"**City Delays**" means delays resulting from the City's failure, in its proprietary capacity, to timely fund or approve any amounts owed or required in connection with this Agreement and/or timely perform its obligations under this Agreement, except to the extent such delays are primarily caused by Developer.

"City Indemnified Parties" means, collectively, the City and CRA (and any successor of City or CRA), and their respective elected and appointed officials, directors, officials, officers, shareholders, members, employees, successors, assigns, and agents.

"City Hall Project" means the development of the new City Hall Building in accordance with this Agreement.

"Civic Buildings" has the meaning provided in **Recital E** hereof.

"Civic Building Projects" means Developer's design, permitting, construction and ownership of one or more governmental and civic facilities and buildings to be leased and operated by City and/or CRA pursuant to either: (i) the terms of a Build to Suit Lease Agreement (if City and/or CRA elect, at their sole discretion, for the Developer to providing the financing for such project); and/or (ii) this Agreement in accordance with the procedures applicable to the County BTS Development Project (if City and/or CRA elect, at their sole discretion, to obtain separate financing for such project or if Developer is not able to obtain financing on terms agreeable to City and CRA pursuant to the terms of the applicable Build to Suit Lease Agreement), which facilities and buildings may include (1) the City Hall Project, (2) a new municipal parking garage, (3) a new building for the E. Pat Larkins Civic Center, and (4) any mutually agreed upon additional facilities to the extent such additional facilities are authorized by a resolution of the City Commission, provided, however, that the Parties may, upon mutual agreement, include the County Health Facility as a Civic Building Project pursuant to this Agreement, without further approval by the City Commission.

"Commence Construction" or **"Commencement of Construction"** means the actual, visible commencement of major work (such as excavation) after the filing of a Notice of Commencement for construction of the Improvements for the Master Infrastructure Project and/or County BTS Development Project in accordance with the Plans and Specifications and/or the County BTS Plans and Specifications, as applicable. Promptly after Commencement of the Master Infrastructure Project and/or County BTS Development Project, Developer and CRA shall enter into an agreement in the form set forth on **Exhibit F** acknowledging the RD Construction Commencement Date and/or the County BTS Construction Commencement Date, as applicable. Any and all Predevelopment Work and preliminary site work (including, without limitation, any environmental remediation, ceremonial groundbreakings, clearing) shall not be deemed to be Commencement of Construction.

"Commencement Date" has the meaning provided in the preamble of this Agreement.

"Conditions Precedent" has the meaning provided in **Section 2.13.**

"Construction" or **"Construction of the Project"** means the construction of the Master Project.

"Construction Agreement(s)" means, collectively, any General Contractor's agreement, Architect's agreement, engineers' agreements, consultant agreements or any other agreements for the provision of labor, materials or supplies entered into with respect to the Construction of the Master Infrastructure Project and/or County BTS Development Project, as the same may be amended or otherwise modified from time to time.

"Construction Work" means any construction work performed under any provision of this Agreement and/or the Construction Agreements with respect to the Construction of the Master Infrastructure Project and/or County BTS Development Project.

"**Consultants**" means, collectively, all Persons or entities (other than City, CRA, Developer, the Architect, the General Contractor and their employees) that contract with, and are paid by or charge a fee to perform any duties or services (including any Services) relating to Master Project or County BTS Development Project design, development, demolition, or construction.

"Contractor" means any contractor, subcontractor, supplier, vendor or materialman supplying services or goods in connection with the Construction of the Master Infrastructure Project and/or County BTS Development Project.

"County Agreement" shall have the meaning set forth in **Section 2.11(a).**

"**County BTS Construction Budget**" means the sum of the hard costs and soft costs allotted for the construction and development of the County BTS Development Project, as the same may be revised in accordance with the provisions hereof.

"**County BTS Construction Documents**" means collectively all County BTS Plans and Specifications, County BTS Construction Drawings, Construction Agreements and the Change Orders for the County BTS Development Project.

"County BTS Construction Drawings" means the drawings, including schematic drawings, design development drawings, and construction drawings, prepared by the Developer, the General Contractor, the Architect, or one or more Consultants and approved by CRA for the completion of the County BTS Development Project and any changes, modifications, or supplements thereto.

"County BTS CPM" has the meaning set forth in **Section 2.11(e).**

"County BTS CPM Schedule" has the meaning set forth in **Section 2.11(e).**

"County BTS Development Project" means the development of the County Health Facility in the event applicable and CRA elects not to develop such building pursuant to a Build to Suit Lease Agreement.

"County BTS Plans and Specifications" means the final plans and specifications for the BTS Development Project as established in accordance with **Article 2,** as the same may be modified from time to time in accordance with the provisions of **Section 2.11** hereof.

"County BTS Project Documents" has the meaning set forth in **Section 2.11(d).**

"County Health Facility" means the replacement of the existing health facility located at 205 N.W. 6th Avenue, Pompano Beach, Florida, to be constructed for Broward County as a County BTS Development Project or Civic Building Project at a new location in accordance with this Agreement, but only to the extent that the City and CRA enter into the County Agreement for the development of such facility.

"CPM" has the meaning provided in **Section 2.14(a)**.

"CPM Schedule" has the meaning provided in **Section 2.14(a)**.

"CRA" means the POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY established under the laws of the State of Florida.

"CRA Board" means the governing body of the CRA established in accordance with § 163.330, *et seq*, Florida Statutes.

"CRA Commencement Conditions" shall have the meaning set forth in **Section 2.13**.

"CRA Defaults" shall have the meaning as set forth in **Section 17.1**.

"**CRA Delays**" means delays resulting from the CRA's failure, in its proprietary capacity, to timely fund or approve any amounts owed or required in connection with this Agreement and/or timely perform its obligations under this Agreement, except to the extent such delays are primarily caused by Developer.

"CRA Plan" shall have the meaning provided in **Recital B** of this Agreement.

"**CRA Termination Date**" shall mean December 31, 2049 or as otherwise modified in accordance with Section 163.330, *et seq*, Florida Statutes.

"Critical Delay" shall have the meaning set forth in **Section 2.6(b).**

"Deadlock Decisions" or **"Deadlocked Decision"** has the meaning provided in **Section 4.3**.

"Deadlock Notice" has the meaning provided in **Section 4.3**.

"**Default"** means any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Agreement) constitute, an Event of Default.

"Developer" means RP Pompano, LLC and its respective successors and assigns authorized or approved in accordance with this Agreement.

"**Developer Commencement Conditions"** shall have the meaning set forth in **Section 2.13**.

"**Developer Defaults"** shall have the meaning set forth in **Section 17.1**.

"Developer Default Notice" shall have the meaning set forth in **Section 17.1(h)**.

"Developer Indemnified Parties" means Developer and its directors, officers, shareholders, employees, successors, assigns, subtenants, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, joint venturers, members, partners of a partnership constituting a partner of Developer, trustees, partners, principals, invitees and Affiliates.

"Development Budget" has the meaning provided in **Section 2.7,** and includes the County BTS Construction Budget**.**

"Economic Force Majeure" means widely recognized economic or political conditions or events that materially impair access to debt or equity markets by developers of projects in the United States similar to the Private Developments, such as, but not limited to, a major recession or liquidity crisis.

"Escrow Agent" has the meaning provided in **Section 16.4(a)**.

"Event of Default" has the meaning provided in **Section 17.1.**

"Final Completion" shall occur when the Architect of record issues a certificate of completion of the Master Infrastructure Project and/or the County BTS Development Project, as the case may be, and all construction related costs and expenses in connection with the Master Infrastructure Project and/or County BTS Development Project, as the case may be, are fully paid.

"General Contractor(s)" means the duly licensed contractor(s) engaged by Developer for the Construction of the Master Infrastructure Project and/or County BTS Development Project.

"GLA" means gross leasable area calculated based on the gross leasable area that such parcel is entitled for development based on its permitted use at the time of purchase. The computation of GLA shall not include any mezzanines, patio areas, outdoor seating areas, common areas or basements. Permitted Uses which are not entitled based on gross leasable area shall be appropriately converted for equivalency.

"GLA Milestone" has the meaning provided in **Section 2.6(b).**

"Governmental Approvals" means any and all governmental approvals from all applicable Governmental Authorities required for the development and Construction of the Master Project, with all appeal periods as provided by law with respect thereto having expired with no appeal or adverse suit having been filed, or if filed, having been rejected or terminated finally and conclusively in favor of the Master Project.

"Governmental Authority" means the United States of America, the State of Florida, the City of Pompano Beach, Florida (in its governmental as opposed to proprietary capacity), the Pompano Beach Community Redevelopment Agency, the County of Broward, Florida and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over or under the Master Project or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Master Project, or any vault in or under the Master Project, or airspace over the Master Project.

"Improvement(s)" means all roads, utilities, water management systems, signalization, sewer and potable water systems, signage, walkways and other improvements and appurtenances of every kind and description owned by City (or CRA, as the case may be) now existing or hereafter erected, constructed, or placed upon the RD Property (whether temporary or permanent), and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

"Initial Property" has the meaning provided in **Recital A** hereof.

"ITN" has the meaning provided in **Recital B** hereof.

"Key Persons" means Patrick Leonard and Phil Mays.

"Lease Affordability Cap" shall mean $12,928,578 per year unless modified by a resolution of the City Commission or CRA Board.

"Lease Conditions" shall mean the following conditions, each of which must be satisfied prior to the execution of a Build to Suit Lease: (1) City has prepared and confirmed the program for the applicable Civic Building Project and delivered same to Developer; (2) Developer has prepared, and the City and CRA have approved, a preliminary conceptual site layout for the applicable Civic Building Project; (3) City has provided the Maximum Rent for the applicable Civic Building Project; (4) based on the Maximum Rent for the applicable Civic Building Project provided by the City, Developer has prepared, and the City and CRA have approved, a development budget and the Maximum Rent for the applicable Civic Building Project; (5) Developer has prepared, and the City and CRA have approved, a legal description for the property to be leased to the Developer for the development of the applicable Civic Building Project; (6) Developer has provided the City and CRA non-binding letters of interest from a qualified lender interested in providing Developer with the financing required for the developing of the applicable Civic Building Project; and (7) the Parties have completed negotiations with respect to the final form of the Build to Suit Lease for the applicable Civic Building Project.

"Major Delay" has the meaning provided in **Section 2.6(b).**

"**Major City/CRA Delays**" has the meaning provided in Section 17.3(b).

"Master Infrastructure Project" has the meaning provided in **Recital E,** but shall exclude Civic Building Projects and County BTS Development Project.

"Master Plan" has the meaning provided in **Section 2.4**.

"Master Project" means the County BTS Development Project together with any portion of the RD Property consisting of a mixed use development with multifamily, office, retail and hotel uses and associated common areas, including without limitation, this Master Infrastructure Project, but excluding Civic Building Projects to the extent such projects are developed pursuant to a Build to Suit Lease Agreement.

"Master Project Costs" means all costs and expenses incurred in connection with the delivery of Buildable Development Sites in accordance with this Agreement, together with all costs and expenses incurred for Predevelopment Work, the Master Infrastructure Project, the acquisition of the Additional Property and the County BTS Development Project.

"Master Project Schedule" is the estimate schedule for the development of the Master Project, as set forth in **Exhibit B-3**, as may be modified in accordance with this Agreement.

"**Material City Change**" means any change to the Master Plan, Development Budget, or Project Overview, or any other change or amendment to the Master Project in accordance with this agreement that (a) requires an expenditure in excess of the Cap, (b) requires that the City guaranty any obligations of the Developer or CRA not expressly contemplated by this Agreement or the City's resolution authorizing its execution of this Agreement, or that otherwise imposes upon the City additional liability not expressly contemplated by this Agreement or said resolution, or (c) imposes any new obligation on the CRA beyond the CRA Termination Date that, by operation of law, would become a new obligation of the City after such date.

"**Material CRA Change**" means any change to the Master Plan, Development Budget, or Project Overview, or any other change or amendment to the Master Project in accordance with this agreement that (a) requires an expenditure in excess of the Cap, (b) requires that the CRA guaranty any obligations of the Developer or City not expressly contemplated by this Agreement or the CRA's resolution authorizing its execution of this Agreement, or that otherwise imposes upon the CRA additional liability not expressly contemplated by this Agreement or said resolution, or (c) in inconsistent with the CRA Plan.

"Material Subcontract" means a subcontract for the provisions of goods or services in connection with the Master Infrastructure Project or County BTS Development Project with a contract price that is reasonably expected to exceed $200,000.

"Maximum Rent" means, with respect to a Build to Suit Lease, the greatest amount of base rent that can be charged to the City or CRA, as tenant, in the first lease year for which a full rent payment is due (after the application of any deferred or graduated rent payment periods).

"Milestones" has the meaning provided in **Section 2.6(b)**.

"Milestone Dates" has the meaning provided in **Section 2.6(b)**.

"Minor Decisions" has the meaning provided in **Section 4.1**.

"Minor Delay" has the meaning provided in **Section 2.6(b).**

"Monthly Development Fee" has the meaning provided in **Schedule 1.**

"Net Land Sales Proceeds" has the meaning provided in **Section 16.3.**

"**Non-Material Construction Agreement"** means a Construction Agreement with a total contract price that is reasonably expected to be less than $50,000.

"Notice" has the meaning provided in **Section 18.1(a).**

"**OFAC**" means the United States Department of Treasury, Office of Foreign Assets Control.

"**Option"** has the meaning provided in **Section 16.4(a).**

"Option Deposit" has the meaning provided in **Section 16.4(a).**

"Option Effective Date" has the meaning provided in **Section 16.4(b)**.

"Option Notice" has the meaning provided in **Section 16.4(a).**

"Option Purchase Contract" has the meaning provided in **Section 16.4(b).**

"Option Term" has the meaning provided in **Section 16.4(a).**

"Permits and Approvals" shall mean any and all permits and approvals required to be issued by Governmental Authorities in connection with the Construction of the Master Infrastructure Project and/or County BTS Development Project, including, without limitation, the City of Pompano Beach, Florida building permits, land development permits and any utility access agreements with all applicable utility companies.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated association or other entity; any Federal, state, county or municipal government or any bureau, department, political subdivision or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Phase" shall have the meaning set forth in **Section 2.9** hereof.

"Plans and Specifications" means the final plans and specifications for the Master Infrastructure Project as established in accordance with **Article 2,** as the same may be modified from time to time in accordance with the provisions of **Section 2.9** hereof.

"Plans and Specifications NTP" shall have the meaning set forth in **Section 2.9** hereof.

"Predevelopment Work" means all work in connection with the due diligence, Master Plan, Rezoning and Governmental Approval activities for the Master Infrastructure Project and/or County BTS Development Project.

"Prohibited Person" means a country, territory, Person, individual or entity (i) listed on, included within or associated with any of the countries, territories, individuals or entities referred to on OFAC's List of Specially Designated Nationals and Blocked Persons or any other prohibited person lists maintained by governmental authorities, or otherwise included within or associated with any of the countries, territories, individuals or entities referred to in or prohibited by OFAC or any other Anti-Money Laundering Laws, (ii) which is obligated or has any interest to pay, donate, transfer or otherwise assign any property, money, goods, services, or other benefits from any of its assets, directly or indirectly, to any countries, territories, individuals or entities on or associated with anyone on such list or in such laws, (iii) which appears on the convicted vendor list maintained by the State of Florida pursuant to Section 287.133, Florida Statutes, (iv) which appears on any scrutinized company list maintained by the State of Florida pursuant to Section 287.135, Florida Statutes, or is otherwise prohibited from entering into a contract with a local governmental entity pursuant to Section 287.135, Florida Statutes, or (v) which has been debarred by the State of Florida, any political subdivision thereof, or any municipality, special district, or other governmental agency located within the State of Florida.

"Project Development Fee" shall have the meaning set forth in **Section 2.8** hereof.

"Project Documents" shall have the meaning set forth in **Recital F** hereof.

"Project Information" shall have the meaning set forth in **Section 23.16** hereof.

"**Project Overview**" has the meaning provided in **Section 2.3.**

"Property" has the meaning provided in **Recital A** hereof.

"RD Property" has the meaning provided in **Section 3.1** of this Agreement.

"RD Construction Commencement Date" has the meaning provided in **Section 2.15.**

"Referee" has the meaning provided in **Section 4.3(a)(ii)**.

"Requirements" has the meaning provided in **Section 12.1(b).**

"Services" has the meaning provided in **Section 10.1.**

"Submittals" has the meaning provided in **Section 2.2.**

"Substantial Completion" or **"Substantially Completed"** means, with respect to the Master Infrastructure Project (or applicable portion thereof for which a site permit has been issued) or the County BTS Development Project, as the case may be, that (1) it shall have been substantially completed in accordance with the Plans and Specifications (or applicable portion thereof for which a site permit has been issued) or County BTS Plans and Specifications, as certified by the Architect or engineer of record, as applicable, and (2) all of the Improvements therein shall have been issued temporary certificate(s) of occupancy, certificate(s) of completion, or their functional equivalent, or with respect to the payment of Performance Payments under Section 5.5(d), "Substantial Completion" or "Substantially Completed" shall mean substantial completion of infrastructure required to create and sell applicable Building Development Site(s) as evidenced by the issuance of a certificate of completion, pad certification or its functional equivalent.

"Term" has the meaning set forth in **Section 2.6**.

"Tolling Period" has the meaning set forth in **Section 5.2(f)**.

"Unavoidable Delay" means an unanticipated delay in the performance of a term, condition, obligation or requirement of this Agreement to the extent that such delay is directly caused by an event beyond the control of the Party obligated to perform, including without limitation strikes, lockouts, acts of God (such as hurricanes, tornadoes, and similar events), pandemics, inability to obtain labor or materials or reasonable substitutes, war, enemy action, civil commotion, fire, casualty, catastrophic weather conditions, a court or arbitration order which causes a delay (unless resulting from disputes between or among the Party alleging an Unavoidable Delay, present or former employees, officers, members, partners or shareholders of such alleging Party or Affiliates (or present or former employees, officers, partners, members or shareholders of such Affiliates) of such alleging party), delays caused by Contractors or Consultants which are reasonably outside the control of the Party claiming an Unavoidable Delay (such as, but not limited

to, the filing by a Contractor of bankruptcy proceedings), delays in procuring Governmental Approvals (but only to the extent that the Party required to obtain the Governmental Approval demonstrates to the reasonable satisfaction of the other Party that (A) such Party timely performed every material task required of the applicant to obtain the applicable Governmental Approval and (B) the time required to obtain the applicable Governmental Approval is outside the typical time for issuance of the applicable approval by the applicable Governmental Authority). In no event shall (i) any party's financial condition or inability to fund or obtain funding or financing constitute an "Unavoidable Delay" with respect to such Party and (ii) any delay arising from a Party's (or its Affiliate's) Default under any Project Document shall not constitute an "Unavoidable Delay" with respect to such Party's obligations hereunder.

ARTICLE 2
SCOPE OF MASTER PROJECT, PREDEVELOPMENT WORK AND TERM

Section 2.1 Scope of Master Project.

The Master Project will consist of a mixed-use development on the Property in accordance with the CRA Plan, and which will be developed in multiple phases. The Master Project will be governed by two (2) types of agreements: (i) this Agreement, governing the overall development of the Master Project, including without limitation the development of the Master Infrastructure Project, the development of County BTS Development Project and the marketing and sale of portions of the Property to Affiliates or to third parties for Private Development; and (ii) one or more ground leases with build to suit sublease agreements (each such ground lease and associated sublease a "**Build to Suit Lease Agreement**"), in the form attached hereto as **Exhibit G**, governing the Civic Building Projects. It is the intent of the Parties that the Build to Suit Lease Agreements shall govern the development of the Civic Building Projects, and that this Agreement shall not be construed to impose duplicative or overlapping obligations with respect to the development of the Civic Building Projects. To effectuate this intent, the term "Master Project," as used in this Agreement with respect to obligations addressed in a Build to Suit Lease Agreement or where the context may otherwise dictate, shall be construed to exclude any of the Civic Building Projects developed pursuant to a Build to Suit Lease Agreement. Notwithstanding the foregoing, in the event that any of the Civic Building Projects initially subject to a Build to Suit Lease Agreement are ultimately financed by the City and developed pursuant to this Agreement in lieu of a Build to Suit Lease Agreement, the development of such projects shall be governed by this Agreement in the same manner as the County BTS Development Project, and in such event, the rights and obligations of the Parties in connection with the terms County BTS Construction Budget, County BTS Construction Documents, County BTS Construction Drawings, County BTS CPM, County BTS CPM Schedule, County BTS Development Project, County BTS Plans and Specifications, and County BTS Project Documents shall apply to each respective Civic Building Project , as the context may dictate (provided, however, that any provisions related to the County Agreement or approval rights of Broward County shall not apply to such projects).

Section 2.2 Governmental Approvals and Rezoning of the Property.

(a) Developer shall use commercially reasonable efforts to obtain all Governmental Approvals, as and when necessary for the development of the Master Project in

accordance with the Master Plan and the Master Project Schedule, including without limitation the following approvals:

i. Rezoning and/or obtaining required zoning changes with respect to the Property, including, without limitation, obtaining any applicable text amendments (the "**Rezoning**") and, if applicable, entering into a development agreement(s) with the City of Pompano Beach, Florida (in its governmental capacity), that permits the construction, development and operation of the Property in accordance with the Master Plan;

ii. Concurrent approvals for transportation and non-transportation public services, such as potable water and sewer, for the Master Plan;

iii. Storm water management approvals;

iv. Platting, re-platting, and/or subdivision approvals; and

v. Building permits for the Master Infrastructure Project and/or County BTS Development Project.

(b) City and CRA agree to timely cooperate with Developer in connection with Developer's preparation and filing of all application(s) for the Governmental Approvals, and with Developer's actions to obtain such approvals and with all other aspects of the Governmental Approvals. In furtherance and not in limitation thereof, where required by Governmental Authorities and/or requested by Developer, City or CRA shall: (i) execute, within five (5) Business Days of receipt, any necessary agreements, applications, authorizations or submissions requiring the consent or joinder of the record owner of the RD Property, provided that Developer delivers to City or CRA (as applicable) complete copies of all instruments required for execution, together with copies of all supporting documents to be included in the submission, at least ten (10) Business Days in advance of the date Developer intends to submit to the Governmental Authority; and (ii) concurrent with the execution of this Agreement, provide written authorization, in the form required by the appropriate Governmental Authorities and otherwise reasonably acceptable to City or CRA (as applicable), empowering Developer to act as City or CRA's agent before such Governmental Authorities for the purpose of obtaining any such Governmental Approval. In the event that any Governmental Authorities require different or additional authorization forms for the Governmental Approvals, City or CRA shall execute and return such forms within five (5) Business Days of receipt of such forms from Developer. Prior to the filing of an application to any Governmental Agency for a Governmental Approval or any addition or modification of such application, which shall include zoning conditions imposed as part of the Rezoning review process, Developer shall provide to City or CRA (as applicable) notice and copies of the application, including plans, specifications, and other submittals and zoning conditions (collectively, the "**Submittals**") regarding such Governmental Approvals for review and approval. To the extent required, neither City nor CRA shall unreasonably withhold, condition or delay its consent to the filing of the Submittals for the Governmental Approvals, and provided that Submittals are (i)

recommended by the City Contract Administrator and (ii) are consistent with the Project Overview, such Submittals shall be approved.

Section 2.3 Master Project Development Overview.

(a) Attached hereto as **Exhibit B-1** is the Master Project Overview, which provides a strategy and parameters agreed upon by all Parties for scope of design, Construction, and development of the Master Project (the "**Project Overview**").

(b) Unless as otherwise specified in this Agreement, if Developer desires to modify any portion of the Project Overview, Developer shall submit such modifications to the City Contract Administrator for approval in accordance with **Section 4.2** of this Agreement. Such modified Project Overview shall clearly indicate, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such modified Project Overview, all such proposed modifications to the Project Overview. Notwithstanding the foregoing, in the event that proposed modifications to the Project Overview are expected to cause an increase in the aggregate Development Budget (as opposed to an increase in a line item within the Development Budget that does not result in an increase in the aggregate budget amount), such modification to the Project Overview shall require the CRA's and Developer's express written consent; provided, however, that if any such proposed increase in the Development Budget is structured in a manner such that the increase will be borne by only one Party, with no additional liability to the other, then only that Party's express written consent shall be required.

(c) Notwithstanding anything in this agreement to the contrary, no Material CRA Change shall be permitted unless and until authorized by a duly adopted resolution of the CRA Board, and no Material City Change shall be permitted unless and until authorized by duly adopted resolution of the City Commission.

Section 2.4 Master Plan

(a) Attached hereto as **Exhibit B-2** is the Master Project's master plan which provides a concept plan agreed upon by all Parties for conceptual rezoning, uses, and development of the Master Project (the "**Master Plan**").

(b) Unless as otherwise specified in this Agreement, if Developer desires to modify any portion of the Master Plan, Developer shall submit such modifications consistent with the Project Overview to the City Contract Administrator for approval in accordance with **Section 4.2** of this Agreement. Such modified Master Plan shall clearly indicate, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such modified Master Plan, all such proposed modifications to the Master Plan. Notwithstanding the foregoing, in the event that proposed modifications to the Master Plan are expected to cause an increase in the aggregate Development Budget (as opposed to an increase in a line item within the Development Budget that does not result in an increase in the aggregate budget amount), such modification to the Master Plan shall require the CRA's and Developer's express written consent; provided, however, if any such proposed increase in the Development Budget is structured in a manner such that the increase will be borne by only one Party, with no additional liability to the other, then only that Party's express written consent shall be required.

(c) To the extent that City's approval as a Party to this Agreement and not in connection with any Governmental Approval of the Master Plan or any modification of the Master Plan is required, City hereby delegates such approval authority to the extent permitted by Florida law to CRA.

Section 2.5 Master Infrastructure Project and Civic Buildings.

(a) Developer shall execute all Construction Agreements approved by the Developer and City Contract Administrator to complete the Predevelopment Work in accordance with this **Article 2**. Once approved by the City Contract Administrator, Developer is hereby authorized to execute all Construction Agreements approved by Developer and City Contract Administrator to complete the Master Infrastructure Project in accordance this Agreement. CRA shall execute all documents, resolutions and entity authorizations reasonably requested by Developer to confirm Developer's authority to sign such Construction Agreement with respect to the RD Property owned by CRA.

(b) Within fifteen (15) days after satisfaction of the Lease Conditions, City, CRA and Developer shall execute the Build to Suit Lease Agreements pertaining to the Civic Building Projects; provided, however, that the Parties shall not execute a Build to Suit Lease Agreement for a Civic Building Project until each of the Lease Conditions has been achieved for the applicable Civic Building Project. In the event that the Lease Conditions are not achieved within ninety (90) days after the Commencement Date, the Parties shall, each acting in good faith and with as much expediency as is practicable, endeavor to complete the Lease Conditions within an additional thirty (30) days, or such other period mutually agreed by the Parties, each acting in good faith. Any disagreement between the Parties with respect to the Lease Conditions at the end of such extension period shall be resolved as a Deadlocked Decision in accordance with **Section 4.3** herein, provided, however, that the City Contract Administrator's election to obtain separate financing and reject the Developer's proposed financing terms, at its sole discretion, shall not be subject to resolution under **Section 4.3** herein. Notwithstanding the foregoing or anything in this Agreement to the contrary, the City and CRA shall not execute any Build to Suit Lease Agreement to the extent that the Maximum Rent payable by the City or CRA under such Build to Suit Lease Agreement, in combination with the Maximum Rent payable by the City or City under any other Build to Suit Lease Agreements previously executed or proposed to be executed, would exceed the Lease Affordability Cap, without the prior approval of the City Commission or CRA Board, as applicable.

(c) The Parties acknowledge and agree that due to the long-range nature of the Civic Building Projects and the inherent fluctuations associated with market conditions, the City and CRA each reserve the right, at their sole discretion, to obtain separate financing for any or all of the Civic Building Projects, or to not proceed with construction of a Civic Building Project if the City and/or CRA are unable to obtain financing (either from Developer through a Build to Suit Lease Agreement or otherwise) on terms agreeable to City and/or CRA. Any Developer-proposed financing for each Civic Building Project shall be subject to the City Contract Administrator's written approval of the indicative terms and conditions proposed by Developer's lender for the financing of each applicable Civic Building Project (which indicative terms shall, unless otherwise determined by the City Contract Administrator, include, at a minimum, a thirty (30) year amortization schedule, a sample rent schedule reflecting deferred rent in the first year and

graduated rent in the second through fourth year, and yield maintenance terms in connection with the exercise of any purchase option). The City Contract Administrator's approval or rejection of the Developer's proposed indicative terms for the financing of a Civic Building Project may be withheld or denied at the City Contract Administrator's sole discretion. In the event that Developer is not able to obtain financing on terms agreeable to City and CRA pursuant to the terms of the applicable Build to Suit Lease Agreement and City and/or CRA elect to obtain separate financing for an applicable Civic Building Project (subject to approval of any such separate financing by the City Commission or CRA Board, as applicable), the applicable Build to Suit Lease Agreement shall be terminated and the Parties shall negotiate an amendment to this Agreement to provide for the Developer to construct the Civic Building Project in the same manner as provided herein for the County BTS Development Project, and any such amendment shall provide for Developer to receive: (i) reimbursement for all pre-development expenses incurred and paid by Developer pursuant to the approved project budget for the Civic Building Project, (ii) a Project Development Fee for the Civic Building Project calculated in accordance with the terms set forth in **Schedule 1** of this Agreement, and (iii) a Performance Payment as provided in **Section 5.5** of this Agreement. In the event that City and/or CRA are unable to obtain financing (either from Developer through a Build to Suit Lease Agreement or otherwise) on terms agreeable to City and/or CRA, and thereby elect to not proceed with the construction of a Civic Building Project, the applicable Build to Suit Lease Agreements shall be terminated and Developer shall be entitled to receive, as sole compensation for the pre-development services provided by Developer in connection with the Civic Building Project, reimbursement for all pre-development expenses incurred and paid by Developer as of the date of termination thereof, pursuant to the approved project budget for the Civic Building Project (and for the avoidance of doubt, in such event, Developer shall not be eligible for any Performance Payment associated with the construction of the applicable Civic Building Project pursuant to **Section 5.5(e)** of this Agreement, but shall remain eligible for any Performance Payments associated with the Master Infrastructure Project pursuant to **Section 5.5(d)** of this Agreement.

(d) The Parties further acknowledge and agree that as of the Commencement Date of this Agreement, the Build to Suit Lease Agreement for the Civic Building Projects will generally be in the form as set forth in **Exhibit "I"**, and shall be subject to modification prior to execution as provided in this Agreement or **Exhibit "I"** (it being understood that the Parties will act in good faith and fair dealing). Material amendments to this Agreement shall require approval of the City Commission and CRA Board, and material amendments to the Build to Suit Lease Agreements shall require approval, as applicable, of the CRA Board (for material amendments to the form of the ground lease) and the City Commission (for material amendments to the form of sublease agreement). For the avoidance of doubt, amendments that are not material amendments, and that may be negotiated and agreed by the Parties in writing, without further approval by the City Commission or CRA Board, as applicable, include, but are not limited to, the following:

i. Amendments that conform the Build to Suit Lease Agreement to this Agreement or the Master Plan, as such may be amended pursuant to the terms of this Agreement, including, but not limited to, the incorporation of an agreed legal description for each Civic Building Project, the incorporation of easement agreements and other agreements which may be required for the Civic Building Project;

ii. Amendments to this Agreement which may be required if the City elects, at its sole discretion, to obtain separate financing for a Civic Building Project and thereby not proceed with a Build to Suit Lease Agreement for such Civic Building Project, provided the terms for the construction of the applicable Civic Building Project are substantially similar to the terms set forth in this Agreement for the County BTS Development Project;

iii. Amendments to the Build to Suit Lease Agreements to incorporate reasonable and customary market lender protections, based on the financing required for each Civic Building Project, and the CRA's reasonable and customary requirements for and limitations upon such protections;

iv. Amendments that are required to preserve any applicable tax exemption available to the City and/or CRA due to their status as governmental entities (including, without limitation, the exemption from ad valorem taxation for each of the Civic Building Projects, or the exemption from payment of sales, use or excise taxes enjoyed by the City and CRA, respectively);

v. Amendments that are required to conform insurance provisions to the City's self-insurance program, or that are required to address any legal opinion provided by the City's and/or CRA's bond counsel; and

vi. Amendments that correct scrivener's errors, resolve internal inconsistencies, or otherwise manifest the intent of the Parties as of the Commencement Date of this Agreement.

Any such non-material amendment must be approved in writing by the City Contractor Administrator on behalf of the City or CRA, as applicable. Notwithstanding the foregoing, and for the avoidance of doubt, any amendment to a Build to Suit Lease Agreement that, in the aggregate, has a material and adverse effect on the quality or scale of the Civic Building Project to be developed or which causes the Cap or the Lease Affordability Cap to be exceeded, shall require the prior approval of the City Commission or CRA Board, as applicable.

(e) Notwithstanding any provision of this Agreement to the contrary, the design concept for each of the Civic Building Projects (including narratives and conceptual renderings depicting the layout, architectural style, and design elements of the building exterior, interior spaces, common areas, and landscaping) shall be subject to the prior approval of the City Commission, and all plans and specifications for each Civic Building Project shall be based upon such approved design concept.

Section 2.6 Term; Extension; Delays.

(a) Unless extended and/or sooner terminated as provided for herein, this Agreement shall terminate twenty (20) years from the date hereof (the "**Term**").

(b) Subject to Unavoidable Delays, City Delays and CRA Delays, Developer agrees to use commercially reasonable efforts to timely adhere to the timelines set forth in the Master Project Schedule attached hereto at **Exhibit B-3**. The Parties acknowledge and agree that due to the long range nature of this Master Project, the Master Project Schedule is subject to change upon the mutual agreement of the Developer and City Contract Administrator or as otherwise provided in this Agreement. Developer agrees to update the Master Project Schedule from time to time, or upon the request of the CRA, to reflect changes in circumstances and actual conditions of the Master Project. The Developer shall provide the City Contract Administrator e-mail notice of any proposed change to the Master Project Schedule. If no objection to the request is received by Developer within twenty (20) Business Days subsequent to the date of the e-mail notice, the changes shall be deemed approved by the City and CRA, but only to the extent that aggregate delays caused by all changes do not extend any individual Milestone Date (defined below) by more than six (6) months (each such a delay of less than six months in the aggregate, a "**Minor Delay**"). If the CRA timely objects to a Minor Delay, such dispute shall be deemed a Deadlocked Decision subject to the terms of **Section 4.3** of this Agreement. The Master Project Schedule establishes certain milestone dates ("**Milestone Dates**") by which accompanying milestones ("**Milestones**") shall be satisfied, including Milestones for the sale, by cumulative GLA sold, of Buildable Development Sites ("**GLA Milestones**"). If, as of a Milestone Date (as extended by Unavoidable Delays, City Delays or CRA Delays), such Milestone has not been satisfied, the City Contract Administrator may require Developer to take corrective measures, at the sole expense of Developer, necessary to expedite the progress of completion, including: (i) causing Contractors to work additional shifts or overtime; (ii) supplying additional labor, equipment, and facilities; and (iii) other similar corrective measures. If a Milestone is not satisfied within six (6) months of a Milestone Date (other than as a result of an Unavoidable Delay, City Delay or CRA Delay), then such delay (a "**Major Delay**") shall not initially be deemed a default under this Agreement, but City and CRA shall be entitled to deduct, from the Monthly Development Fee or Performance Payment otherwise due to Developer, as compensation to City and CRA for their anticipated damages associated with the delay in achievement of a Milestone (and not as a penalty), a liquidated amount assessed daily until the Milestone is satisfied, in the amount of One Thousand Dollars ($1,000.00) per day, until the Milestone is satisfied; provided, however, that if the Milestone is not satisfied within twelve (12) months of a Milestone Date (other than as a result of Unavoidable Delay, City Delay, or CRA Delay), then after such twelve (12) month period the City and CRA shall be entitled to deduct a liquidated amount assessed daily until the Milestone is satisfied, in the amount of Two Thousand, Three Hundred Sixty Dollars ($2,360.00), until the Milestone is satisfied. If a Milestone is not satisfied within twenty-four (24) months of a Milestone Date (other than as a result of an Unavoidable Delay, City Delay or CRA Delay), then such delay (a "**Critical Delay**") shall be an event of default under this Agreement. Notwithstanding the foregoing, if a GLA Milestone is not achieved by the applicable Milestone Date (other than as a result of an Unavoidable Delay, Economic Force Majeure, City Delay, or CRA Delay), then such delay shall be, subject to the notice and cure provisions set forth in Section 17.1(a) of this Agreement, an event of default unless the CRA, in its sole discretion, elects to extend such date.

Section 2.7 Budget and Change Orders.

(a) Developer previously submitted to the City and CRA, and the City and CRA have approved, a pre-construction and development budget for the Predevelopment Work, the Master Infrastructure Project and the acquisition of Additional Property (collectively, the

"Development Budget"), attached hereto as **Exhibit B-4.** The Parties acknowledge and agree that due to the long range nature of this Master Project, the Development Budget is only a preliminary estimate of the anticipated Master Project Costs. The actual Master Project Costs may fluctuate depending upon the Project Overview, Master Plan, the Plans and Specifications, the actual condition of the RD Property and its suitability for the Master Project, market conditions and other factors beyond the control of the Parties. Developer agrees to provide the City Contract Administrator periodic, but not less than quarterly, updates to the Development Budget throughout the Term of this Agreement for review and approval by the City Contract Administrator. The Development Budget, as amended, shall include projections of fees and costs which are anticipated to be incurred in the existing and upcoming fiscal year of the City's and CRA's respective budgets. Notwithstanding anything in this Agreement to the contrary: (i) neither the CRA nor the City shall be required to fund any fees or costs that are not contemplated by and within the approved Development Budget; (ii) no Material CRA Change shall be permitted unless and until authorized by a duly adopted resolution of the CRA Board; and (iii) no Material City Change shall be permitted unless and until authorized by duly adopted resolution of the City Commission.

(b) Once the Plans and Specifications are final, City or CRA shall send written notice to Developer of any requests to change the final Plans and Specifications (a "**Change Request**"), and Developer shall use commercially reasonable efforts to respond to such Change Request in writing within twenty (20) Business Days after receipt thereof (a "**Change Response**"). The Change Response shall set forth, without limitation and as appropriate (i) Developer's or Contractor's detailed description of any costs (including, without limitation, increased holding costs, design costs, or construction costs) that may be incurred because of such Change Request, including documentation supporting said costs, and (ii) Developer's or Contractor's reasonable estimate of any likely delays in Milestones as a result of such Change Request, and the cost impact of such delay. No later than ten (10) Business Days following receipt of a Change Response, City or CRA, as applicable, shall diligently notify Developer in writing of whether it still desires to proceed with such Change Request. If City or CRA, as applicable, has decided to proceed with the Change Request, such notice shall be deemed the Change Order. Upon execution of a Change Order, the Change Request shall become a part of the Plans and Specifications. City's or CRA's failure to timely provide Developer such written notice shall be deemed an election not to proceed with the Change Request. City and CRA shall be solely responsible for the additional costs of any Change Orders that cause the Approved Project Budget to be exceeded, and for the additional costs associated with delays resulting from such Change Order as set forth in the Change Order. All Milestone Dates affected by the Change Order, as detailed in the Change Response, shall automatically be extended as needed due to any Change Order.

Section 2.8 Development Fee and Expenses.

In partial consideration of the Services performed by Developer in connection with the Predevelopment Work and Master Project, the Developer shall be paid a fee (**"Project Development Fee")** as set forth in **Schedule 1** of this Agreement. In addition to the foregoing, Developer shall be entitled to reimbursement for certain Master Project Costs which are to be incurred and paid directly by the Developer pursuant to the Development Budget (e.g., permit fees). Requests for reimbursement shall be submitted to the City Contract Administrator for approval in the same manner as provided for other Payment Requests pursuant to **Section 5.3** of this Agreement. For avoidance of doubt, Project Development Fees shall be payable to Developer

for the County BTS Development Project and each Civic Building Project, which fees shall be included as a soft cost in the approved budget for each such project, provided however, for any Civic Building Project or project for the construction of the County Health Facility which is financed pursuant to a Build to Suit Lease Agreement, the Project Development Fee will be paid from loan proceeds.

Section 2.9 Plans and Specifications of Master Infrastructure Project.

(a) **Approval and Modification of Plans and Specifications.** No later than the initial (concept plans) plans and specifications target date, as set forth in the Master Project Schedule, Developer shall prepare and submit to the City Contract Administrator preliminary draft of Plans and Specifications for the Master Infrastructure Project in conformity with the Project Overview and Master Plan (including, without limitation, making commercially reasonable efforts to design the Master Infrastructure Project in a manner so that the Development Budget for the Master Infrastructure Project will not be exceeded). Notwithstanding the foregoing, the City Contract Administrator may, in his or her reasonable discretion, determine that sufficient Additional Property has been acquired to commence either the entire Master Infrastructure Project or a portion of the Master Infrastructure Project for a designated portion of the Property (such designated portion, a "**Phase**") and direct the Developer by written notice to commence the preparation of the Plans and Specifications for the Master Infrastructure Project or applicable Phase (such notice, the "**Plans and Specifications NTP**"), and the Developer shall be required to prepare and submit the preliminary draft of the Plans and Specifications for the Master Infrastructure Project or applicable Phase identified in the Plans and Specifications NTP within six (6) months of the date thereof. Within fifteen (15) Business Days of its receipt of the draft Plans and Specifications, the City Contract Administrator shall notify Developer, in writing, whether it approves or disapproves of the draft Plans and Specifications. If the City Contract Administrator disapproves the draft Plans and Specifications, the Developer shall, within 30 days after the date of the disapproval (unless a longer period is authorized by the City Contract Administrator), provide the City Contract Administrator updated, draft Plans and Specifications clearly indicating, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such updated, draft Plans and Specifications, all such proposed updates to the draft Plans and Specifications consistent with the City Contract Administrator's input. If, after the providing updated, draft Plans and Specifications to the City Contract Administrator, the City Contract Administrator is unable to approve the draft Plans and Specifications due to a Deadlock Decision, resolution of the matter shall proceed under **Section 4.3**.

(b) Unless as otherwise specified in this Agreement, if Developer desires to modify the Plans and Specifications, Developer shall submit such modifications to the City Contract Administrator consistent with the Project Overview. Such modified Plans and Specifications shall clearly indicate, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such modified Plans and Specifications, all such proposed modifications to the Plans and Specifications. Notwithstanding the foregoing, in the event that proposed modifications to the Plans and Specifications are expected to cause an increase in the aggregate Development Budget (as opposed to an increase in a line item within the Development Budget that does not result in an increase in the aggregate budget amount), such modification to the Plans and Specifications shall require the CRA's and City's express

written consent (which consent shall not require approval by the CRA Board or City Commission so long as the overall Development Budget remains within the Cap); provided, however, if any increase in the Development Budget is structured in a manner such that the increase will be borne by only one Party, with no additional liability to the other Party, then only that Party's express written consent shall be required. Notwithstanding anything to the contrary contained herein, neither the CRA nor City shall object to any modifications to the Plans and Specifications which are necessitated by Requirements or as a result of a drafting, coordination, mechanical or technical error in the Plans and Specifications, unless such modifications materially deviate from the Master Plan or result in an increase in the aggregate Development Budget beyond the Cap (except to the extent that the increase is not borne by a Party in accordance with the preceding sentence).

Section 2.10 Compliance with Requirements; Construction Standards.

(a) Notwithstanding anything to the contrary contained herein, the Plans and Specifications shall comply with all applicable Requirements. The CRA's approval in accordance with this Article of any Plans and Specifications shall be deemed to be a determination by the City Contract Administrator that the Plans and Specifications so approved are in substantial conformity with the Project Overview, but shall not be, and shall not be construed as being, or relied upon as, a determination by the City or the CRA that such Plans and Specifications comply with other applicable Requirements, including, without limitation, any Requirements providing for the review and approval of the Plans and Specifications by any Governmental Authority (in its governmental capacity as opposed to its proprietary capacity).

(b) Construction of the Master Infrastructure Project shall be carried out pursuant to Plans and Specifications prepared by licensed Architects, engineers and Contractors, with controlled inspections conducted by a licensed Architect or professional engineer as required by applicable Requirements.

Section 2.11 Terms Specific to County BTS Development Project.

(a) Except to the extent set forth herein or otherwise in conflict with the terms of this **Section 2.11**, all terms and conditions of this Agreement shall apply to the County BTS Development Project. For the avoidance of doubt, the Parties acknowledge and agree that Broward County is the intended beneficiary of the County BTS Development Project, and all obligations related to the County BTS Development Project are subject to the City and/or CRA entering into an agreement with Broward County for the development of the County BTS Development Project ("**County Agreement**"), and that the review of the City and/or CRA of the County BTS Plans and Specifications and the County BTS Project Documents in accordance with this Agreement shall be subject to the review and approval of Broward County pursuant to the requirements of the County Agreement. For the avoidance of doubt, the CRA and/or City shall have no liability to Developer for any delays caused by Broward County, but any such delays shall constitute Unavoidable Delays.

(b) No later than the County BTS Plans and Specifications Initial Submission Date, as set forth in the Master Project Schedule, Developer shall prepare and submit to the City Contract Administrator preliminary County BTS Plans and Specifications for the County BTS Development Project in conformity with the Project Overview and Master Plan (including, without

limitation, making commercially reasonable efforts to design the County BTS Development Project in a manner so that the Development Budget for the County BTS Development Project will not be exceeded). Within thirty (30) Business Days of its receipt of the County BTS Plans and Specifications (or any such longer period set forth in the County Agreement), the City Contract Administrator shall notify Developer, in writing, whether it approves or disapproves of the County BTS Plans and Specifications. The City Contract Administrator shall also exercise good-faith, diligent efforts to endeavor to obtain comments from Broward County on the preliminary County BTS Plans and Specifications, and will notify Developer of any such comments received from Broward County, if any. If the City Contract Administrator disapproves the County BTS Plans and Specifications, the Developer shall, within 30 days after the date of the disapproval (unless a longer period is authorized by the City Contract Administrator acting in good faith), provide the City Contract Administrator updated County BTS Plans and Specifications clearly indicating, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such updated County BTS Plans and Specifications, all such proposed updates to the County BTS Plans and Specifications consistent with the City Contract Administrator's input. If, after the providing updated County BTS Plans and Specifications to the City Contract Administrator, the City Contract Administrator is unable to approve the County BTS Plans and Specifications due to a Deadlock Decision, resolution of the matter shall proceed under **Section 4.3**; provided, however, that if the City Contract Administrator disapproves the County BTS Plans and Specifications because the County BTS Plans and Specifications are not approved by Broward County or otherwise do not comply with the County Agreement, then such disapproval shall not be deemed to be a Deadlock Decision, provided, however, that to the extent the Developer has received comments from Broward County, Developer shall be required to continue to revise and resubmit the County BTS Plans and Specifications until they meet the requirements of Broward County and delays resulting from County's failure to timely respond constitute Unavoidable Delays.

(c) Unless as otherwise specified in this Agreement, if Developer desires to modify the County BTS Plans and Specifications, Developer shall submit such modifications to the City Contract Administrator. Such modified County BTS Plans and Specifications shall clearly indicate, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such modified County BTS Plans and Specifications, all such proposed modifications to the County BTS Plans and Specifications. Notwithstanding the foregoing, in the event that proposed modifications to the County BTS Plans and Specifications are expected to cause an increase in the aggregate Development Budget (as opposed to an increase in a line item within the Development Budget that does not result in an increase in the aggregate budget amount), such modification to the County BTS Plans and Specifications shall require the CRA's and City's express written consent (which consent shall be subject to an administrative determination so long as the overall Development Budget remains within the Cap); provided, however, if any increase in the Development Budget is structured in a manner such that the increase will be borne by only one Party, with no additional liability to the other Party, then only that Party's express written consent shall be required. Notwithstanding anything to the contrary contained herein, neither the CRA nor City shall object to any modifications to the County BTS Plans and Specifications which are necessitated by Requirements or as a result of a drafting, coordination, mechanical or technical error in the Plans and Specifications, unless such modifications materially deviate from the Master Plan, are requested by Broward County or otherwise required by the County Agreement, or result in an increase in the aggregate

Development Budget beyond the Cap (except to the extent that the increase is not borne by a Party in accordance with the preceding sentence).

(d) Within one hundred and twenty (120) days following approval of the County BTS Plans and Specifications (or as otherwise required by the County Agreement), Developer, in collaboration with CRA, shall prepare (or have prepared) and submit to the CRA the County BTS Construction Documents, County BTS Development Budget, and County BTS Project Schedule (collectively, the "**County BTS Project Documents**", or individually, a "**County BTS Project Document**"). Within thirty (30) Business Days of its receipt of a County BTS Project Document (or such longer period provided by the County Agreement), the City Contract Administrator shall notify Developer, in writing, whether it approves or disapproves of the County BTS Project Document. The City Contract Administrator shall also exercise good-faith, diligent efforts to endeavor to obtain comments from Broward County on any County BTS Project Document, and will notify Developer of any such comments received from Broward County, if any. If the City Contract Administrator disapproves of the County BTS Project Documents, then City Contract Administrator's disapproval must describe, with specificity, the basis for such disapproval, in which case Developer shall cause the County BTS Project Documents to be modified in accordance with such comments and resubmitted to the City Contract Administrator for approval; provided, however, that if the City Contract Administrator disapproves the County BTS Project Document because the County BTS Project Document is not approved by Broward County or otherwise does not comply with the County Agreement, then the City Contractor Administrator shall not be required to provide any additional specificity regarding the basis of the disapproval. The City Contract Administrator shall review each modified County BTS Project Documents within twenty (20) Business Days of its receipt of the document solely for the purpose of confirming that the prior comments were incorporated into the County BTS Project Documents. The City Contract Administrator's failure to timely approve or disapprove a County BTS Project Document shall be deemed a CRA Delay. In the event that the City Contract Administrator disapproves the County BTS Project Documents because the County BTS Project Documents are not approved by Broward County or otherwise do not comply with the County Agreement, then such disapproval shall not be deemed to be a Deadlock Decision, provided, however, that to the extent the Developer has received comments from Broward County, Developer shall be required to continue to revise and resubmit the County BTS Project Documents until they meet the requirements of Broward County, and delays resulting from County's failure to respond shall constitute Unavoidable Delays.

(e) Prior to the Commencement of Construction of the County BTS Development Project, Developer shall provide to City Contract Administrator a construction schedule for each stage of the County BTS Development Project, which schedule shall be prepared using the critical path method ("**County BTS CPM**"; such schedule, as it shall be amended from time to time in accordance with the Construction Agreements, shall be referred to as the **"County BTS CPM Schedule"),** including a County BTS CPM network diagram, for use in scheduling and controlling the Construction. The County BTS CPM Schedule shall, at a minimum, show:

i. the early and late start and stop times for each major construction activity;

ii. all "critical path" activities and their duration;

iii. the sequencing of all procurement, approval, delivery and work activities;

iv. manpower levels;

v. late order dates for all long lead time materials and equipment; and

vi. critical Developer and CRA decision dates.

(f) Developer shall promptly provide to City Contract Administrator informational copies of the County BTS CPM Schedule as early as possible prior to the Commencement of Construction of the County BTS Development Project. The County BTS CPM Schedule shall (1) be revised by Developer whenever there is a material variance in the progress of the Construction from the then current County BTS CPM Schedule and otherwise at appropriate intervals, and (2) provide for expeditious and practicable execution of the Construction. Developer shall notify the City Contract Administrator of any deviation from the County BTS CPM Schedule which, in Developer's good faith determination, is likely to cause a material delay in the Substantial Completion of the County BTS Development Project (as shown on the current County BTS CPM Schedule).

(g) Neither the County BTS CPM Schedule nor any revision thereto in accordance with this **Section 2.11** shall authorize any delay from the deadlines set forth in the Master Project Schedule unless such delay is authorized in accordance with the approved Construction Agreement, results from an Unavoidable Delay, City Delay, CRA Delay or is otherwise permitted in accordance with Section 2.6(b) of this Agreement.

(h) Developer shall, subject to Unavoidable Delays, City Delays, CRA Delays and delays in the satisfaction of the Funding Condition Precedent, use commercially reasonable efforts to (a) satisfy all Developer Commencement Conditions and cause Commencement of Construction of the County BTS Development Project to begin on or the "**County BTS Construction Commencement Date**" set forth in the Master Project Schedule and (b) thereafter use commercially reasonable efforts to continue to prosecute Construction of the County BTS Development Project with diligence and continuity to completion in accordance with the Master Project Schedule. Promptly after Commencement of the County BTS Development Project, the Developer and the City Contract Administrator shall enter into an agreement in the form set forth on **Exhibit C** acknowledging the County BTS Construction Commencement Date.

(i) Substantial Completion of the County BTS Development Project shall be accomplished in a diligent manner in accordance with the Master Project Schedule and Final Completion of the Construction of the County BTS Development Project shall be accomplished in a diligent manner thereafter, in each case in a good and workmanlike manner, in substantial accordance with the County BTS Plans and Specifications, and in accordance with all applicable Requirements.

(j) Within ninety (90) days after Substantial Completion of Construction of the County BTS Development Project, Developer shall furnish CRA with the following:

i. a certification of the Architect that it has examined the County BTS Plans and Specifications and that, in its professional judgment, after diligent inquiry, Construction of the County BTS Development Project has been Substantially Completed in accordance with the County BTS Plans and Specifications applicable thereto and, as constructed, the Improvements comply with all applicable Requirements;

ii. lien waivers in form and substance reasonably satisfactory to CRA from each Contractor retained by or on behalf of City or CRA in connection with the Construction of the County BTS Development Project, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the Construction of the County BTS Development Project;

iii. a complete set of "as built" plans and a survey showing the Improvement(s) for which the Construction of the County BTS Development Project has been completed. CRA and City shall have an unrestricted license to use such "as built" plans and survey for any purpose related to the County BTS Development Project without paying any additional cost or compensation therefor, subject to copyright and similar rights of the Architect to prohibit use of designs for purposes unrelated to the County BTS Development Project, as such rights exist in law or may appear in the Architect's contract, and subject to applicable public records laws. The foregoing requirement with respect to "as built" plans shall be satisfied by Developer furnishing to the CRA a complete set of County BTS Plans and Specifications, with all addenda thereto and change orders in respect thereof, marked to show all changes, additions, deletions and selections made during the course of the Construction of the County BTS Development Project.

Section 2.12 Procurement and Assignment of Contracts; Mandatory Terms.

(a) The Architects, professional engineers, landscape architects, and registered surveyors and mappers hired by Developer to provide professional services to the Master Infrastructure Project, the County BTS Development Project or any Civic Building Project constructed under this Agreement, as contemplated in Section 287.055, Florida Statutes (the "**CCNA**"), shall be competitively selected by Developer in accordance with the CCNA, including, without limitation, the requirement that Developer publicly advertise any procurement of professional services; that Developer rank responding firms based solely upon qualifications, and not price; and that Developer attempt to negotiate final terms and conditions with the most qualified firm, all accordance with the CCNA (provided, however, that if the City Contract Administrator and Developer mutually agree, in writing, that a statutory exemption to the CCNA exists and/or the CCNA otherwise does not apply to a proposed scope of services, the Developer shall select the provider performing such scope of services pursuant to customary commercial practices). The construction contractor for the Master Infrastructure Project and/or County BTS

Development Project shall be selected by Developer in accordance with Section 255.20, Florida Statutes, utilizing any of the public, competitive procurement methods authorized by that statute; or, in the event, that Developer elects to utilize a design-build delivery method for the Master Infrastructure Project and/or the County BTS Development Project, Developer shall select the design-build contractor in accordance with the two-phased competitive procurement method set forth in the CCNA. Pursuant to Section 287.05701, Florida Statutes, when procuring contractors for the Master Infrastructure Project and/or the County BTS Development Project, Developer shall not request documentation of, or consider, the social, ideological or political interests of a proposer when determining if a proposer is a responsible proposer, nor will Developer give preference to a proposer based on the proposer's social, ideological or political interests. Notwithstanding anything in this Agreement to the contrary, Developer shall not enter into any contract with a Contractor that is a Prohibited Person or that does not meet the requirements of Section 23.18 of this Agreement. Unless required by applicable Florida Statute, Developer is not subject to Sections 32.39 through 32.48 of the Pompano Beach, Florida Code of Ordinances or the Protest Procedure in the General Services Procedures Manual (or any other requirement in such Manual not required by statute) of the City or CRA. Except as provided herein with respect to the contractors and professional service providers subject to Section 255.20 and 287.055, Florida Statutes, all other consultants, service providers, subcontractors, vendors and suppliers performing work on the Master Infrastructure Project and/or County BTS Development Project shall be selected by Developer pursuant to customary commercial practices.

(b) All Construction Agreements and other contracts for the design and construction of the Master Infrastructure Project and/or the County BTS Development Project shall be assignable to the CRA at its election upon an Event of Default. All Construction Agreements for construction of the Master Infrastructure Project and/or the County BTS Development Project shall include retainage of five percent (5%) from each progress payment and a guaranteed maximum price ("**GMP**") for the completion of all Construction Work required by the contract, and such GMP shall be approved by the CRA and incorporated into the Development Budget prior to execution of such contract by the Developer. Developer will procure and maintain and require the General Contractor and any other Contractor performing or furnishing any work related to the design, engineering and construction of the Master Infrastructure Project and/or County BTS Development Project to possess all registrations, certifications, licenses and other authorizations necessary under applicable Requirements to perform work or services related to the Master Infrastructure Project and/or the County BTS Development Project and to procure and maintain the policies of insurance required hereunder.

(c) All Construction Agreements and Material Subcontracts (at any tier) shall:

(i) require the Contractor to carry out its scope of work in accordance with this Agreement, any applicable Governmental Approvals, applicable Law, and the approved Plans and Specifications;

(ii) include a covenant to maintain all licenses required by applicable Law;

(iii) set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the Agreement and in accordance with good industry practice;

(iv) include an agreement by the Contractor to participate in any dispute resolution proceedings pursuant to the Agreement, if such participation is requested by either the Developer or CRA;

(v) provide that the Contractor shall have no right to suspend or demobilize unless and until it delivers to CRA written notice of Developer's breach or default, and provide a reasonable opportunity for CRA, at its option, to cure such breach or default (it being understood that CRA shall in no event incur any liability to such Contractor under its Construction Agreement in connection with the exercise by CRA of such cure rights);

(vi) require the Contractor to participate in meetings between Developer and CRA concerning matters pertaining to such Contractor, its work or the coordination of its work with other contractors on and around the Property;

(vii) without cost to CRA, permit assignment to CRA (or its designee) of all of the Developer's rights under the Construction Agreement, contingent only upon delivery of written request from CRA following termination of the Agreement, allowing CRA to assume the benefit of Developer's rights with liability only for those remaining obligations of Developer accruing after the date of assumption, such assignment to include the benefit of all Contractor warranties, indemnities, guarantees and professional responsibility;

(viii) provide that any acceptance of assignment of the Construction Agreement by CRA (or its designee) shall not operate to make the assignee responsible or liable for any breach of such Construction Agreement by the Developer;

(ix) include a covenant acknowledging that CRA (directly or through a designee) is entitled to exercise step-in rights with respect to the Construction Agreement, upon written notice to Developer and Contractor stating that an Event of Default by Developer exists under Agreement that has not been cured by Developer within the applicable cure period set forth herein or in the Agreement (and stating the specific Event of Default) and CRA is exercising its step-in rights under this provision, but without any necessity for a consent or approval from the Developer or the Contractor or the need for Contractor to make a determination whether CRA validly exercised its step-in rights, and include a waiver and release by the

Developer of any claim or cause of action against the Contractor arising out of or relating to its recognition of the CRA's rights in reliance on any such written notice from the CRA, provided that the foregoing shall not waive Developer's rights against CRA should CRA exercise the step-in rights when it did not have the right to do so;

(x) include a covenant, expressly stated to survive termination of the Construction Agreement, to promptly execute and deliver to CRA a new contract between the Contractor and CRA (or its designee) on the same terms and conditions as the Construction Agreement, if (i) the Construction Agreement is rejected by the Developer in bankruptcy or is terminated by the Developer and (ii) CRA delivers written request for such new contract within sixty (60) days following termination of the Construction Agreement;

(xi) include the CRA and its officers, employees, agents and instrumentalities as indemnitees, with direct right of enforcement during the existence of an Event of Default, in any indemnity given by the Contractor under its Construction Agreement;

(xii) include an acknowledgement that the Contractor has no right or claim to any lien or encumbrance upon the Property for failure of the other contracting party to pay amounts due the Contractor, and a waiver of any such right or claim that may exist under applicable law or in equity; and

(xiii) provide that any purported amendment to the Construction Agreement, including but not limited to with respect to any of the foregoing matters, without the prior written consent of CRA shall be null and void; and

(xiv) include the provisions set forth in Sections 23.17 and 23.18 of this Agreement as obligations of the contractor to both the Developer and to the CRA.

(d) Prior to executing any Construction Agreement, Developer shall submit such agreement to the City Contract Administrator for his or her review and approval, which approval shall be limited to confirming that such Construction Agreement conforms to the Plans and Specifications, Project Overview, and any other requirements of this Agreement or applicable law and shall be communicated to Developer in writing within twenty (20) Business Days (with any delay in responding past the twenty (20) Business Day timeframe constituting a CRA Delay).

(i) If the City Contract Administrator disapproves any Construction Agreement, the City Contract Administrator shall provide a detailed explanation of all reasons for such disapproval, and the Developer shall, within fifteen (15) days after the date of the disapproval (unless a longer period is authorized by the City Contract Administrator acting in good faith),

endeavor to negotiate modifications to the agreement to conform to the City Contract Administrator's reasons for such disapproval. If, after such fifteen (15) day period, the Developer and City Contract Administrator are unable to agree upon the form of agreement, such determination shall be deemed a Deadlock Decision subject to resolution under **Section 4.3.**

(ii) With respect to any Non-Material Construction Agreement, the City Contract Administrator shall, within five (5) Business Days of receipt thereof, either approve or disapprove the Non-Material Construction Agreement. If the City Contract Administrator fails to approve or reject the submission within five (5) Business Days of receipt thereof, the Non-Material Construction Agreement shall be deemed approved.

Section 2.13 Conditions Precedent to Commencement of Construction of the Master Infrastructure Project and/or County BTS Development Project.

Commencement of Construction of the Master Infrastructure Project and/or County BTS Development Project shall not commence unless and until:

(a) City shall have conveyed those portions of its RD Property to the CRA, in accordance with **Section 3.1** of this Agreement, which Developer has identified as being required to Commence Construction of the Master Infrastructure Project (or applicable Phase thereof) and/or County BTS Development Project;

(b) CRA shall, at no later than the deadline set forth in **Section 5.2(b)**, provide Developer reasonable proof of its procurement of all funds necessary to timely pay expenses required to complete the Master Infrastructure Project and/or County BTS Development Project in accordance with the Construction Agreements and applicable payment obligations and procedures set forth elsewhere in this Agreement (the "**Funding Condition Precedent**");

(c) Developer shall have obtained and delivered to the CRA copies of all Permits and Approvals required to Commence Construction;

(d) Developer shall have obtained and delivered to CRA original certificates of the policies of insurance required to be carried pursuant to the provisions of **Article 6** of this Agreement;

(e) Following satisfaction of the Funding Condition Precedent, Developer shall have executed applicable Construction Agreements required for Construction for the Master Infrastructure Project and/or County BTS Development Project, each in accordance with the requirements set forth in **Section 2.11;** and

(f) Developer shall have delivered and recorded in the public records of Broward County, Florida, a payment and performance bond meeting the requirements of Section 255.05, Florida Statutes, and naming the City and CRA as a dual obligee, in the amount of the contract price for the construction of the Master Infrastructure Project and/or County BTS Development Project, to secure payment and performance of all labor, services, materials, equipment, supplies, work and items to design, construct, equip, complete and warranty the Master

Infrastructure Project and/or County BTS Development Project in accordance with the construction contracts and this Agreement.

Paragraphs (a) and (b) to this Section 2.13 shall collectively be defined as "**CRA Commencement Conditions**"; Paragraphs (c) through (f) to this **Section 2.13** shall collectively be defined as "**Developer Commencement Conditions**"; and Paragraphs (a) and (f) to this **Section 2.13** shall collectively be defined as the "**Conditions Precedent**."

Section 2.14 Master Infrastructure Project Construction Schedule.

(a) Prior to the Commencement of Construction of the Master Infrastructure Project (or applicable Phase thereof), Developer shall provide to City Contract Administrator a construction schedule for each stage of the Master Infrastructure Project or Phase, which schedule shall be prepared using the critical path method ("**CPM**"; such schedule, as it shall be amended from time to time in accordance with the Construction Agreements, shall be referred to as the **"CPM Schedule"),** including a CPM network diagram, for use in scheduling and controlling the Construction. The CPM Schedule shall, at a minimum, show:

(i) the early and late start and stop times for each major construction activity;

(ii) all "critical path" activities and their duration;

(iii) the sequencing of all procurement, approval, delivery and work activities;

(iv) manpower levels;

(v) late order dates for all long lead time materials and equipment; and

(vi) critical Developer and CRA decision dates.

(b) Developer shall promptly provide to City Contract Administrator informational copies of the CPM Schedule as early as possible prior to the Commencement of Construction of the Master Infrastructure Project. The CPM Schedule shall (1) be revised by Developer whenever there is a material variance in the progress of the Construction from the then current CPM Schedule and otherwise at appropriate intervals, and (2) provide for expeditious and practicable execution of the Construction. Developer shall notify the City Contract Administrator of any deviation from the CPM Schedule which, in Developer's good faith determination, is likely to cause a material delay in the Substantial Completion of the Master Infrastructure Project (as shown on the current CPM Schedule).

(c) Neither the CPM Schedule nor any revision thereto in accordance with this **Section 2.14** shall authorize any delay from the deadlines set forth in the Master Project Schedule unless such delay is authorized in accordance with the approved Construction Agreement, results from an Unavoidable Delay, City Delay, CRA Delay or is otherwise permitted in accordance with Section 2.6(b) of this Agreement.

Section 2.15 Commencement and Completion of Construction of the Master Infrastructure Project.

Developer shall, subject to Unavoidable Delays, City Delays, CRA Delays and delays in the satisfaction of the Funding Condition Precedent, use commercially reasonable efforts to (a) satisfy all Developer Commencement Conditions and cause Commencement of Construction of the Master Infrastructure Project or applicable Phase to begin on or the "**RD Construction Commencement Date**" set forth in the Master Project Schedule and (b) thereafter use commercially reasonable efforts to continue to prosecute Construction of the Master Infrastructure Project with diligence and continuity to completion in accordance with the Master Project Schedule. Promptly after Commencement of the Master Infrastructure Project, the City, Developer, and CRA shall enter into an agreement in the form set forth on **Exhibit F** acknowledging the RD Construction Commencement Date.

Section 2.16 Completion of Construction of the Master Infrastructure Project.

(a) Substantial Completion of the Master Infrastructure Project (or Phases thereof as applicable) shall be accomplished in a diligent manner in accordance with the Master Project Schedule and Final Completion of the Construction of the Master Infrastructure Project (or portions thereof as applicable) shall be accomplished in a diligent manner thereafter, in each case in a good and workmanlike manner, in substantial accordance with the Plans and Specifications, and in accordance with all applicable Requirements.

(b) Within ninety (90) days after Substantial Completion of Construction of the Master Infrastructure Project (or Phases thereof as applicable), Developer shall furnish CRA with the following:

(i) a certification of the Architect that it has examined the Plans and Specifications and that, in its professional judgment, after diligent inquiry, Construction of the Master Infrastructure Project has been Substantially Completed in accordance with the Plans and Specifications applicable thereto and, as constructed, the Improvements comply with all applicable Requirements;

(ii) lien waivers in form and substance reasonably satisfactory to CRA from each Contractor retained by or on behalf of City or CRA in connection with the Construction of the Master Infrastructure Project, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the Construction of the Master Infrastructure Project;

(iii) a complete set of "as built" plans and a survey showing the Improvement(s) for which the Construction of the Master Infrastructure Project has been completed. CRA and City shall have an unrestricted license to use such "as built" plans and survey for any purpose related to the Master Infrastructure Project without paying any additional cost or compensation therefor, subject to

copyright and similar rights of the Architect to prohibit use of designs for purposes unrelated to the Master Infrastructure Project, as such rights exist in law or may appear in the Architect's contract, and subject to applicable public records laws. The foregoing requirement with respect to "as built" plans shall be satisfied by Developer furnishing to the CRA a complete set of Plans and Specifications, with all addenda thereto and change orders in respect thereof, marked to show all changes, additions, deletions and selections made during the course of the Construction of the Master Infrastructure Project.

ARTICLE 3
OWNERSHIP OF RD PROPERTY

Section 3.1 Existing Title to the Property and Related Improvements.

As of the Commencement Date, City and CRA warrant and represent to Developer that they are the sole, fee simple owners of the Property and all related Improvements contained therein. Following the Commencement Date, Developer will obtain a survey of those portions of the Property which will used for the Master Project (including those portions to be used for each Civic Building Project and County BTS Development Project) (the "**RD Property**") and a title commitment ("**Commitment**"), issued by a national title insurance company ("**Title Company**") based on the 2006 ALTA form (with Florida modification), together with legible copies of all recorded documents evidencing title exceptions raised in "Schedule B" of such Title Commitment. The Commitment will commit Title Company to insure title to the RD Property subject only to exceptions approved by Developer ("**Permitted Encumbrances**"). Developer shall notify City and CRA of any matters disclosed on the survey or in the Commitment objectionable to Developer. City and/or CRA, as applicable, shall utilize commercially reasonable efforts to remove such survey and title objections affecting their respective properties identified by Developer prior to City conveying its Property to CRA; provided, however, that: (i) the City or CRA shall not be required to expend any City or CRA funds to remove such survey or title objections unless such expenditures are contemplated by the approved Development Budget; and (ii) City and CRA acknowledge that any survey or title objections which are not cured may affect the scope and viability of the Master Project, in which case, the Parties shall meet to identify mutually acceptable alternatives to modify or limit the scope of the Master Plan and/or Master Infrastructure Project servicing the Master Plan to accommodate the applicable title or survey objection. In the event the Parties cannot agree on a means of modifying or limiting the scope of the Master Plan and/or Infrastructure servicing the Master Plan to accommodate the applicable title or survey objection, such dispute shall be deemed a Deadlocked Decision and shall be resolved pursuant to the referee process set forth in **Section 4.3** of this Agreement. Within ninety (90) days after receiving a written request from Developer that the City's RD Property (or a portion thereof) is required to further Construction of the Master Infrastructure Project and/or County BTS Development Project, City shall convey by warranty deed to CRA fee simple title to its portion of the RD Property to be used for the Master Project. The Parties hereby acknowledge that no such request shall be effective with respect to those portions of the RD Property which are currently used for governmental purposes and/or are otherwise encumbered until such time that the Civic Buildings developed to replace such uses are completed and ready for occupancy in accordance with the applicable Build

to Suit Lease and/or until such time as such other encumbrances are removed. Upon such conveyance, CRA shall receive from Title Company a 2006 ALTA form (with Florida modification) policy of title insurance ("**Title Policy**") in an amount as reasonably determined by the Developer and the CRA insuring fee simple title to the RD Property in CRA, subject only to Permitted Encumbrances, together with such applicable endorsements as may be reasonably requested by Developer (e.g., survey, access, contiguity, owner's comprehensive, etc.). The cost of the Title Policy shall be included in the Development Budget as a cost of the CRA.

Section 3.2 Recording; Memorandum of Development Agreement.

Within thirty (30) days after the Parties' execution of this Agreement, the Developer shall record in the public records of Broward County, Florida, either a copy of this Agreement or a memorandum of this Agreement in a form agreed-upon by the Parties, each acting reasonably and in good faith, in order to place all Persons on constructive notice of this Master Project and Party's rights and obligations pursuant to the terms of this Agreement.

Section 3.3 Addition of Lands to RD Property.

Within twelve (12) months of the Commencement Date (the "**Acquisition Period**"), Developer will utilize commercially reasonable efforts to acquire certain Additional Properties within the geographic boundaries set forth in **Exhibit A-1**. Upon mutual agreement of the Parties, the CRA may assist Developer in the acquisition of any specific Additional Properties identified by Developer. The CRA may, in its sole discretion, elect to extend the foregoing acquisition period by up to six (6) months. During such Acquisition Period, Developer (and/or, if agreed by the Parties with respect to any specific Additional Properties, the CRA) shall utilize commercially reasonable efforts to negotiate term sheets or letters of intent for those Additional Properties, which may be accomplished through cash purchases, exchange transactions involving the conveyance of any of the CRA-owned property listed in **Exhibit A-2** of this Agreement (provided the City Contract Administrator determines, at his or her sole discretion, that the exchange transaction is necessary to secure the strategic acquisition of the Additional Properties, in the best interest of the Master Project) or through other lawful means so long as the purchase does not result in any monetary liens remaining on the property being purchased, and upon execution of the applicable term sheet or letter of intent, CRA will use commercially reasonable efforts to negotiate the applicable purchase or exchange contracts on a form acceptable to the CRA. At CRA's request, Developer shall reasonably assist CRA with the negotiation of the applicable contracts. Once purchase or exchange contracts are executed, Developer will oversee all aspects of said acquisitions, including without limitation, due diligence, seller/purchase interface and legal work, and CRA shall fund said acquisitions. At the closing of each parcel, the lands will be acquired by the CRA and deemed part of the RD Property, and CRA shall receive from Title Company a Title Policy in the amount of the purchase price insuring fee simple title to such lands in CRA, subject only to Permitted Encumbrances, together with such applicable endorsements as may be reasonably requested by Developer or the CRA (e.g., survey, access, contiguity, owner's comprehensive, etc.). The cost of the Title Policy shall be included in the Development Budget as a cost of the CRA.

ARTICLE 4
DEVELOPER MANAGEMENT DECISIONS; ADMINISTRATION OF AGREEMENT; DEADLOCK RESOLUTION

Section 4.1 Minor Decisions.

Developer will have the unilateral right to make Minor Decisions relating to the development, marketing and leasing of the Master Project. For purpose of this Agreement, "Minor Decisions" are development decisions which are in keeping with and reasonably required by the Project Overview, and are within the Development Budget and consistent with the overall Master Plan.

Section 4.2 Administration of Agreement.

(a) With the exception of Minor Decisions, Developer shall obtain the approval of the City Contract Administrator for all other decisions concerning the development, marketing and sale of the Master Project unless such decisions constitute a Material City Change or a Material CRA Change, in which case such approval must be authorized by a duly adopted resolution of the City Commission and/or CRA Board, as applicable.

(b) Except as otherwise set forth in this Agreement, the City Contract Administrator shall have the right, power and authority to approve all things which are necessary, proper, or advisable to oversee the design, budgeting, engineering, Construction, development and sale of the Master Project, without the necessity of seeking the approval of the CRA Board.

(c) Not less than on a quarterly basis, Developer and the City Contract Administrator shall meet to discuss and confer on the status of the Master Project. An overview and summary of any new Minor Decisions made by Developer shall be included in each quarterly meeting. Notwithstanding the foregoing, CRA may, upon written notice to Developer, require, on a prospective basis, that Developer obtain the approval of the City Contract Administrator for any types of Minor Decisions that CRA determines, in its reasonable discretion, requires CRA input, provided such notice shall have no effect on any Minor Decisions made by Developer prior to the date of such notice, and any delays resulting from Developer being required to obtain the City Contract Administrator's approval shall be deemed CRA Delay with respect to Developer's obligations to carry out any work resulting from such Minor Decisions.

(d) At the request of City and/or CRA, Developer will present Master Project updates to the City Commission and the CRA Board on a semi-annual basis to advise of the status of the Master Project and any updates to the scope, Project Overview and Development Budget.

Section 4.3 Contract Administration Deadlock.

(a) In the event that Developer, CRA and/or City deadlock over any decision with respect to the Master Project which, pursuant to the terms of this Agreement, must be approved by the CRA or the City (a "**Deadlocked Decision**"), any Party may cause such decision to be finally made and binding upon the Master Project and the Parties through the following process:

i. By notice to all other Parties (a "**Deadlock Notice**"), the requesting Party may request that the other Parties (or any one of them) meet to discuss and attempt to resolve the Deadlocked Decision, in which event the applicable Parties shall meet (in person, by telephone conference, or video conference) within five (5) Business Days of the date of the Deadlock Notice to attempt to resolve the Deadlocked Decision;

ii. If the Deadlocked Decision is not resolved as described in **Section 4.3(a)(i)**, any Party may, upon written notice to the other Parties, demand that the Deadlocked Decision be submitted to a third party referee (the "**Referee**") who is pre-selected annually by mutual agreement of the Parties no later than January 31st of each calendar year. In the event of a Deadlocked Decision, each Party may present to the Referee his/her position with respect to the Deadlocked Decision and the Referee shall act as a tie-breaker and make a decision consistent with the best interests of the Master Project. If the Parties cannot agree on a Referee, then the Developer and the City Contract Administrator shall each appoint one (1) Referee and those two (2) Referees shall appoint a third (3rd) Referee, who shall collectively resolve all Deadlocked Decisions during the calendar year in which they are appointed. The three (3) Referees shall hear each Party's respective positions on the Deadlocked Decision and shall resolve the Deadlocked Decision in the best interests of the Master Project by a two-thirds or greater vote of the selected Referees.

iii. Each Party which is subject to the Deadlocked Decision process shall bear its proportionate share of all costs charged by the Referee(s). Each Referee shall be a person who has not previously acted in any capacity for Developer or CRA and who also has at least five (5) years' experience with large scale mixed use commercial real estate projects.

iv. The Parties acknowledge and agree that time is of the essence regarding the resolution of a Deadlocked Decision. If any Party shall fail to timely meet, in person, telephonically, by video conference or otherwise, in accordance with the time frames required pursuant to this **Section 4.3** resulting in a failure to obtain a quorum to attempt to resolve the Deadlocked Decision, any Party, upon notice to the other Party, may immediately escalate the Deadlocked Decision to the referee process for attempted resolution.

ARTICLE 5
MASTER PROJECT COSTS AND DISBURSEMENT PROCEDURES

Section 5.1 Payment of Master Project Costs.

Developer shall not undertake any obligation or incur or pay any liability or expense on behalf of the Master Project except as provided for in the Project Documents. Except as expressly set forth in this Agreement, Developer shall have no authority, without the approval of City Contract Administrator, to incur expenses and/or liabilities in excess of the amounts set forth in the Development Budget. Subject to the foregoing, and except as otherwise expressly provided in this Agreement, (i) City and CRA shall promptly provide all funds necessary to complete the Master Project in accordance with the payment obligations and procedures set forth elsewhere in this Agreement and all other Project Documents; and (ii) Developer shall not be obligated to make any advance to or for the account of City or CRA or to pay any liability or expense incurred on behalf of the Master Project other than out of funds provided by City or CRA, as the case may be.

Section 5.2 Payment Obligations.

(a) CRA agrees to pay for the Master Project Costs, which may be funded through a blend of government funds, incremental tax financing, bond financing or other funding source provided that such funding sources shall not require that the RD Property be pledged as collateral. NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION CONTAINED ANYWHERE IN THIS AGREEMENT OR OTHERWISE, ALL PARTIES AGREE THAT NEITHER THE DEVELOPMENT BUDGET NOR THE MASTER PROJECT COSTS SHALL AT ANY TIME EXCEED ONE HUNDRED TWELVE MILLION AND SEVEN HUNDRED FIFTY THOUSAND DOLLARS ($112,750,000.00) (THE **"CAP**") WITHOUT PRIOR WRITTEN APPROVAL OF CITY AND CRA, AND NEITHER CRA NOR CITY SHALL BE LIABLE UNDER **SECTION 5.2** IN EXCESS OF THE CAP UNLESS OTHERWISE AGREED TO IN WRITING BY THE CITY OR CRA. As of the Commencement Date, the Cap does not include costs and expenses pertaining to the County BTS Development Project or any Civic Building Project developed under this Agreement.

(b) CRA shall secure all funding sources required for the Master Project within ninety (90) days following the City Contract Administrator's approval of the Construction Agreement with the Contractor providing the guaranteed maximum price for the construction of the Master Infrastructure Project (and the County BTS Development Project, if applicable). In the event the Development Budget is expected to exceed the Cap and the City and/or CRA do not approve an increase of the Cap to accommodate the difference, the Parties shall meet to identify mutually acceptable alternatives to bring the Development Budget within the Cap, including without limitation, modifying or limiting the scope of the Master Plan and/or Infrastructure servicing the Master Plan. Upon request by the CRA, Developer shall value engineer any designated portions of the Master Plan in order to bring the Development Budget within the Cap. Notwithstanding anything contained herein to the contrary, Developer shall not be required to reduce its Project Development Fee or Developer's distribution of sales proceeds pursuant to **Section 16.3** of this Agreement in order to bring the Development Budget within the Cap. In the event the Parties cannot agree on a means of bringing the Development Budget within the Cap, such dispute shall be deemed a Deadlocked Decision and shall be resolved pursuant to the referee process set forth in **Section 4.3** of this Agreement.

(c) CRA represents and warrants to Developer that, for the Term, its obligation to make payments under this Agreement, during its fiscal year, shall constitute a current expense and shall not in any way be construed to be a debt in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by a governmental entity. THE PAYMENTS DUE HEREUNDER ARE TO BE MADE ONLY FROM AVAILABLE REVENUES APPROPRIATED FOR SUCH PURPOSE AND NEITHER THE CITY, CRA, THE STATE, NOR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY ANY SUMS DUE UNDER THIS AGREEMENT FROM SOURCES OTHER THAN APPROPRIATED REVENUES, AND THE FAITH AND CREDIT OF NEITHER THE CITY, CRA NOR THE STATE NOR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF IS PLEDGED FOR PAYMENT OF SUCH SUMS DUE HEREUNDER AND THE OBLIGATIONS ARISING HEREUNDER DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY, CRA OR THE STATE OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION.

(d) Subject to CRA's right of non-appropriation pursuant to Section 5.2(c) and applicable laws, CRA hereby covenants that it will cause all payments coming due in the following fiscal year to be included in its annual budget in accordance with applicable laws. CRA agrees to take such action as may be necessary to include all such payments due hereunder in its annual budget. During the Term, CRA will furnish to Developer a copy of the adopted annual Budget as soon as available.

(e) CRA hereby agrees that, within three (3) Business Days after the adoption or approval of a final annual Budget which does not include the full amount of the payments coming due in the following fiscal year under this Agreement, it will give notice of that fact to Developer.

(f) Notwithstanding anything else contained herein, the failure of CRA to meet its payment obligations under Section 5.2(a) due to the lack of appropriation of funds shall not be an Event of Default. However, should CRA at any time during the Term fail to meet its payment obligations under Section 5.2(a) and to the extent permitted by the laws of the State of Florida, Developer shall be entitled to: (i) relief from its obligations under this Agreement until such time as CRA fulfills its respective obligations under Section 5.2; (ii) within thirty (30) days after written notice by Developer, the payment by CRA to Developer of: (x) any unpaid Project Development Fees plus (y) all amounts then owed to Developer under this Agreement; (iii) an automatic tolling of the Term of this Agreement, on a year-for-year basis, for up to ten (10) years (the "**Tolling Period"**) from the year in which the CRA fail(s) to meet its obligations under Section 5.2(a) until such time that the CRA does fund such obligations; (iv) Developer's continued and unaltered entitlement to all rights conferred upon Developer under this Agreement until the earlier of (x) such time as CRA fully meets its respective obligations under Section 5.2(a) or (y) the expiration of the Tolling Period; plus (v) in the event that CRA fails to meet its funding obligations within one year of the commencement of the Tolling Period, Developer's right, in its sole and absolute discretion, to terminate this Agreement at any time during the Tolling Period upon written notice to City and CRA. In the event CRA fulfills its obligations under Section 5.2(a) during the Tolling Period, then the Term shall recommence. In the event that the CRA does not fulfill its obligations under Section 5.2(a) prior to the end of the Tolling Period (i.e., within ten years from the time that the CRA failed to meet its funding obligations), then this Agreement shall automatically terminate.

Such termination shall be deemed a termination resulting from a CRA Default, and Developer shall retain the right to pursue all monetary damages available at law and in equity resulting therefrom, all of which shall survive the termination of this Agreement.

(g) Notwithstanding anything to the contrary herein, the CRA's obligations hereunder or pursuant hereto that are to be paid or otherwise funded from Master Project tax increment financing or any other tax increment revenues deposited in the redevelopment trust fund established by the CRA (collectively, the "Pledged Revenues") are expressly made junior and subordinate in all respects as to the lien on such Pledged Revenues in favor of the bonds of the CRA heretofore and hereafter issued with a lien on such Pledged Revenues, including, without limitation, all such bonds issued pursuant to Resolution No. 2022-20 adopted by the CRA on June 28, 2022, as same may be supplemented and amended. No provision hereof shall be construed or interpreted as creating a pledge of the CRA's and/or City's full faith, credit or taxing power or indebtedness within the meaning of any State of Florida constitutional debt limitation or a general obligation of the CRA and/or City.

Section 5.3 Payments

Developer shall make a request ("**Payment Request**") for payments within the Development Budget and reasonably anticipated to become due during the next calendar quarter ("**Quarterly Payments**"). Such Payment Requests shall include, at a minimum, a listing by Development Budget line item of anticipated payments, payment amounts requested, the name of each payee, amount of withheld retainage (if any), and the net payment amount to each payee, along with information regarding the actual amounts spent to date, actual amounts paid to date, and available funds remaining within each Development Budget line item. All Payment Requests must be approved by the City Contract Administrator, which approval shall not be unreasonably withheld, conditioned or delayed. Within ten (10) Business Days of approval by the City Contract Administrator, CRA shall deliver to Developer funds applicable to the Payment Request. Developer will then pay all payees which are the subject of such Payment Requests.

Section 5.4 CBRE Fees

Developer shall pay to CBRE the sum of $1,090,000 within ten (10) Business Days after the Commencement Date of this Agreement (the "**Initial CBRE Fee**"). Developer shall pay to CBRE the additional sum of $1,400,000 upon the closing of the financing for the construction of the City Hall Project (the "**Additional CBRE Fee**"), if, as and when such closing occurs (for the avoidance of doubt, in the event such closing does not occur, Developer shall not be obligated to pay the Additional CBRE Fee). The Initial CBRE Fee shall be included as part of the soft costs within the Development Budget for the Master Project. The Additional CBRE Fee shall be included as part of the soft costs within the approved project budget for the City Hall Project and paid from the applicable loan proceeds.

Section 5.5 Performance Payments

Subject to the terms and conditions of this Section 5.5, Developer shall be entitled to receive certain performance payments contingent upon the Developer's completion of the specified deliverables set forth in this Section (each, a "**Performance Payment**"). The Performance Payments shall be calculated, and shall become due and payable, as follows:

(a) If the Developer provides the financing for any of the Civic Building Project(s) pursuant to a Build to Suit Lease Agreement, the Performance Payment for each such project shall be calculated based on an amount equal to fifteen percent (15%) of the total soft and hard costs actually expended in connection with the applicable Civic Building Project, provided, however, that the costs of furniture, fixtures and equipment for the Civic Building Project, and the costs of financing the Civic Building Project, shall be excluded from the calculation of the total costs of the Civic Building Project and the Performance Payment provided herein.

(b) If the Developer does not provide the financing for a Civic Building Project and the City obtains separate financing therefor, the Performance Payment for such Project shall be calculated based on an amount equal to twelve and three-quarters percent (12.75%) of the total soft and hard costs actually expended in connection with applicable Civic Building Project, provided, however, that the costs of furniture, fixtures and equipment for the Civic Building Project, and costs of financing the Civic Building Project, shall be excluded from the calculation of the total costs of the Civic Building Project and the Performance Payment provided herein.

(c) For the avoidance of doubt, the total costs for the County BTS Development Project shall not be included as part of the calculation of the Performance Payment, unless the County BTS Development Project is constructed pursuant to a Build to Suit Lease Agreement, as opposed to through the County BTS Development Project contemplated by this Agreement, in which case, the Performance Payment payable for the County BTS Development Project shall be calculated as set forth in subsection 5.5(a) above.

(d) Developer shall be entitled to two-thirds (2/3rds) of the Performance Payments (together with all interest earned from any applicable escrow account to which such funds are deposited pursuant to the applicable Build to Suit Lease Agreement and associated financing documents) contingent upon achieving Substantial Completion of the Master Infrastructure Project (including the preparation of the Buildable Development Sites). As the Master Infrastructure Project may be completed in phases, this two-thirds (2/3rds) portion of the Performance Payments shall be paid to Developer as follows: fifty percent (50%) of the foregoing Performance Payment set forth in this Section 5.5(d) shall be paid upon Substantial Completion of those portions of the Master Infrastructure Project required to sell not less than 1,600,000 GLA, and the remaining fifty percent (50%) of the foregoing Performance Payment set forth in this Section 5.5(d) shall be paid upon Substantial Completion of those portions of the Master Infrastructure Project required to sell not less than another 1,600,000 (for a total of 3,200,000) GLA.

(e) Developer shall be entitled to one-third (1/3rd) of the Performance Payments (together with all interest earned from any applicable escrow account to which such funds are deposited pursuant to the applicable Build to Suit Lease Agreement and associated financing documents), contingent upon achieving timely Substantial Completion of the Civic Building Projects, with the foregoing Performance Payments set forth in this Section 5.5(e) paid to Developer proportionately as Substantial Completion is achieved for each Civic Building Project.

(f) The Performance Payments shall be included as part of the approved project budget for the Civic Building Projects, and financed as part of the applicable construction loan or other funding obtained for the construction of the Civic Building Projects.

Section 5.6 Grant Funding for the Master Infrastructure Project.

Upon request of the City Contract Administrator, Developer agrees to cooperate and assist City with its efforts to apply for or obtain any federal, state or county grant funding (the "Grant Funding") for the Master Infrastructure Project, including, without limitation, the preparation and submission to the City of any data or other information available to the Developer regarding any aspect of the Master Development Project which may support City's applications for Grant Funding. If the City obtains Grant Funding for any aspect of the development or construction of the Master Infrastructure Project, Developer agrees to update the Development Budget accordingly, and shall cause for updated Plans and Specifications to be prepared, as necessary to incorporate all applicable Grant Funding requirements as part of the Master Infrastructure Project. All Construction Agreements shall require the Contractor to adhere to Grant Funding requirements, if any, with the costs and changes associated therewith to be addressed via execution of a Change Order with the Contractor.

ARTICLE 6
INSURANCE; WARRANTY

Section 6.1 Insurance Coverage

(a) Developer shall ensure that all insurance coverages to be obtained and maintained by the various parties to the Construction Agreements shall be obtained and maintained in accordance with the terms of the pertinent Construction Agreements. Developer shall maintain certificates of insurance from all parties to all Construction Agreements procured enumerating, among other things, the waivers in favor of, and insured status of, CRA and City as required herein. Notwithstanding anything contained herein to the contrary, Developer shall have the right to rely on a duly issued certificate of insurance as proof of insurance coverage maintained by a party to a Construction Agreement, without being required obtain copies or otherwise review the underlying insurance policies.

(b) Developer shall cause City and CRA to be named as an insured or additional insured, as appropriate, in connection with any and all insurance policies provided for by Developer under **Section 6.1(a)** and, upon CRA's or City's request, shall deliver or cause to be delivered to CRA and/or City evidence of said insurance coverages in the form of appropriate certificates of insurance. Developer shall provide City and CRA written notice at least thirty (30) days prior to the cancellation, material change or non-renewal of any such insurance policy. Certificates evidencing timely renewal of all such insurance policies shall be provided to CRA and City by Developer promptly upon receipt by the applicable insured.

(c) Developer will maintain, at its sole cost and expense, the following insurance coverages throughout the Term of this Agreement:

(i) Commercial general liability insurance with limits of at least $2,000,000 per occurrence. $2,000,000 personal and advertising injury coverage, and

$5,000,000 in the aggregate, $4 million products and completed operations coverage in the aggregate, in force for ten (10) years after Substantial Completion;

(ii) Worker's compensation and employer's liability insurance covering Developer's employees that perform services under this Agreement in an amount no less than statutory requirements as required by Chapter 440, Florida Statutes and in addition thereto, the policy(ies) must include Employer's liability with minimum limits of $1,000,000 each accident/bodily injury by disease each employee;

(iii) Automobile liability insurance covering owned, hired, and non-owned vehicles, with a minimum of at least $1,000,000 per occurrence combined single limit for bodily injury and property damage liability.

(d) Developer shall cause all Contractors to maintain the following insurance coverages through Final Completion of Construction of such Contractors' respective Construction Agreements (to the extent applicable):

(i) Professional Liability or Errors & Omissions insurance in the name of the Developer or licensed design professional providing architectural and/or engineering, project design, construction supervision, administration, surveying, testing, engineering and any other related professional qualifications or functions required by the project in an amount not less than $2,000,000 per claim and $2,000,000 in the aggregate for Developer; $5 million per claim and $5 million in the aggregate for Architect, the structural engineer consultants, and the MEP consultants (for mechanical, electrical and plumbing disciplines); and $2,000,000 per claim and $2,000,000 in the aggregate for all other design consultants;

(ii) Completed Value Builders' Risk Insurance on an "all risk" basis in an amount not less than one hundred (100%) percent of the completed value of the project. Coverage shall remain in place until Final Completion of construction has determined by CRA. The policy shall be in the name of CRA.

(iii) Pollution Liability insurance, in an amount not less than $10,000,000 covering third party claims, remediation expenses, and legal defense expenses arising from on-site and off-site loss, or expense or claim related to the release or threatened release of hazardous materials that result in contamination or degradation of the environment and surrounding ecosystems, and/or cause injury to humans and their economic interest; provided, however, that Contractors with a total contract value of less than $1,000,000 shall be required to maintain Pollution Liability insurance, in an amount not less than $5,000,000 per pollution condition and $5 million in the aggregate.

(iv) Umbrella Liability Insurance in an amount not less than $10,000,000 per occurrence, and $10,000,000 Products and Completed Operations coverage, in the aggregate; provided, however, that Contractors with a total contract value of less than $1,000,000 shall be required to maintain Umbrella Liability insurance, in an amount not less than $5,000,000 per occurrence and $5 million in the aggregate.

City and CRA shall be named as additional insureds on Developer's and Contractor's insurance policies except Worker's Compensation and Automobile Liability and shall deliver or cause to be delivered to CRA and/or City evidence of said insurance coverages in the form of appropriate certificates of insurance. All insurance shall be obtained from companies with a rating of A or better, and no less than "Class VII" as to financial strength, by A.M. Best. The CRA reserves the right, upon reasonable notice to Developer, to request and examine the policies of insurance (including, but not limited to, policies, binders, amendments, exclusions or riders, etc.).

Section 6.2 Construction Warranties

Contemporaneously with Substantial Completion of the Master Infrastructure Project (or portions thereof as applicable) and the County BTS Development Project, as applicable, Developer shall assign to, or cause CRA to be added as an express benefited party on, and shall provide CRA with a copy of, the construction warranties provided by the General Contractor or any other Contractor for such Improvements, together with any and all other assignable warranties or guaranties of workmanship or materials provided to Developer by any subcontractor, manufacturer, supplier or installer of any element or system in such Improvements (collectively, the "**Construction Warranties**"). The Construction Warranties for the Master Infrastructure Project and/or County BTS Development Project shall include warranties from all Contractors for the Master Infrastructure Project and/or County BTS Development Project in form, content and coverage (in terms of scope and term of years) as approved by the City Contract Administrator, which shall require the Contractor to correct all Construction Work found by the City to be defective in material and workmanship or not in conformance with the Plans and Specifications for a period of one (1) year following Final Completion of Construction of such Contractors' respective Construction Agreements, or for such longer periods of time as may be set forth with respect to specific warranties contained in the Plans and Specifications, as well as any damage resulting from defective design, materials, equipment or workmanship which develop during Construction or during the one (1) year warranty period. To the extent the Construction Warranties are assigned by Developer to CRA, the Construction Warranties shall nevertheless remain jointly enforceable by both Parties. Developer and/or CRA shall provide the General Contractor and any other Contractors for the Master Infrastructure Project and/or County BTS Development Project with access to the relevant Property at no charge in order to perform any remedial work covered by a warranty; provided, however, that (i) prior to commencing any remedial work, all such Contractors shall be required to comply with the insurance, bonding, and other pre-construction requirements of this Agreement, and (ii) all such Contractors shall use commercially reasonable efforts to mitigate impacts to operations of the relevant Improvements during its repair of defects (and the Construction Agreements for such Contractors shall require compliance with the foregoing requirements).

ARTICLE 7
DAMAGE, DESTRUCTION AND RESTORATION

If the RD Property is damaged or destroyed in whole or in part by fire or other casualty, this Agreement shall not terminate, be forfeited or be affected in any manner, by reason of any damage to, or total or partial destruction of, or untenantability of the Master Project or any part thereof resulting from such damage or destruction.

ARTICLE 8
CONDEMNATION

If all or any portion of the Master Project is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among City, Developer, CRA and those authorized to exercise such right, then compensation recovered from such condemnation shall be distributed in accordance with **Section 16.3**.

ARTICLE 9
CONDITION OF PROPERTY

Prior to the Commencement of Construction, City and CRA, as applicable, shall make commercially reasonable efforts to ensure that the Property is not materially altered from the condition of the Property at the Commencement Date, excepting changes to the Property necessary for the Commencement of Construction.

ARTICLE 10
DEVELOPER'S OBLIGATIONS

Section 10.1 Developer Services.

Developer shall act as CRA and City's exclusive representative and development manager for the Master Project during the Term of this Agreement. In connection therewith, Developer hereby agrees to act on behalf of the Master Project to manage and implement the Project Overview, including coordination and management of all development, decision, and construction of improvements required for the delivery Master Infrastructure Project and/or County BTS Development Project and the preparation and sale of Buildable Development Sites, each in accordance with the Master Project Schedule, the terms of this Agreement, and all Requirements and any other applicable laws and ordinances ("**Services**") and, if applicable, develop the County BTS Development Project and develop all Civic Buildings in accordance with the terms of their respective Build to Suit Lease Agreements. In connection with the Services, Developer covenants with City and CRA to render quality service in keeping with the status of the Master Project as a quality redevelopment project, to act with care and diligence in the performance of its responsibilities under this Agreement, to use commercially reasonable efforts, skill and judgment in furthering the interests of City and CRA with respect to the Master Project, to assist in the efficient business administration and supervision of, coordinate specified activities of, and cooperate with, all Architects, Contractors, suppliers, subcontractors, and consultants in connection therewith, to consult with the City Contract Administrator as to specified aspects of the Master Project, to keep the City Contract Administrator generally informed at all times as to the status and progress of the Master Project and to perform its responsibilities in an expeditious

and economical manner. Notwithstanding the foregoing, the CRA and City shall each have the right to utilize an in-house or third-party owner's representative or other project monitor to monitor the design and construction of the Master Project.

Section 10.2 Developer Staffing.

Without limiting the effect of **Section 10.1** above: (i) Developer acknowledges and agrees that CRA and City shall receive the substantial and concerted efforts of Developer in connection with the development of the Master Project; and (ii) recognizing that the quality of the Master Project and the timely completion thereof are of critical importance to City and CRA, Developer shall staff the Master Project with whatever staffing is necessary or appropriate to perform its Services, with such staffing to be paid for from the Project Development Fee and/or the Performance Payments pursuant to Section 5.5 hereof, and not as a part of the Development Budget. All persons employed by Developer in connection with the Services will be Developer's employees or independent contractors, and will not be the employees or agents of City or CRA, and neither City nor CRA shall have any liability, responsibility, or authority regarding them. Developer is solely responsible for the salaries of its employees and any employee benefits to which they may claim to be entitled, or any remuneration to Developer's independent contractors. Developer will fully comply with all applicable laws and regulations relating to worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer-employee related laws.

Section 10.3 Exclusions from Developer Services.

Notwithstanding anything contained herein to the contrary, the Services performed by Developer under this Agreement shall not include, or be deemed to include, any activities of a Contractor, Architect, design professional, engineer, broker or other Person requiring applicable licensure pursuant to laws of Florida.

ARTICLE 11
WASTE

The Parties shall not commit, and shall use all commercially reasonable efforts to prevent waste, damage or injury to the Property or Master Project.

ARTICLE 12
REQUIREMENTS

Section 12.1 Requirements.

(a) Obligation to Comply. In connection with Developer's performance of its obligations hereunder, Developer shall comply with all Requirements. No consent to, approval of or acquiescence in any plans or actions of Developer by City, in its proprietary capacity as City, or City's designee shall be relied upon or construed as being a determination that such are in compliance with the Requirements.

(b) Definition.

"Requirements" means:

(i) any and all laws, constitutions, rules, regulations, orders, ordinances, charters, statutes, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over a Person and/or the Property and/or the Master Project or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Property or any vault in, or under the Property (including without limitation, any of the foregoing relating to handicapped access or parking, the Building Code of the City of Pompano Beach, Florida and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions);

(ii) the temporary and/or permanent certificate or certificates of occupancy issued for the Master Project as then in force;

(iii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Developer under this Agreement.

ARTICLE 13
LIENS

Section 13.1 Developer Creation of Liens.

The right, title and interest of CRA in the RD Property shall not be subject to Liens for any activities conducted by Developer or any contractor, laborer or materialman or other Persons providing any labor, services, materials, supplies or equipment relating to the Master Project or any building, structure or improvement on the Property, including without limitation the Master Infrastructure Project and/or County BTS Development Project. Nothing contained in this Agreement shall be deemed or construed to constitute the consent or request of CRA, express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for construction, repair or alteration of the Master Project or any part thereof, nor as giving Developer, any lender or other party any right to record any Lien, mortgage or other encumbrance against CRA's interest in the RD Property or any part thereof. Developer shall assure that CRA's fee interest in the Property and interest in the Improvements is maintained free of any lien or claim by any third party providing any labor, services, work, materials, rights or items in connection with the development of the Master Project, including research and survey activities, demolition work and Construction Work; and Developer shall be afforded thirty (30) days following notice within which to resolve, pay or bond any asserted liens against CRA's fee interest in the Property arising out of the development or construction of the Master Project.

Section 13.2 City and CRA Creation of Liens.

Neither City nor CRA shall create, cause to be created, or suffer or permit to exist (1) any lien, encumbrance upon this Agreement, the Master Project, or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to **Section 17.1(a),** (2) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Developer.

ARTICLE 14
REPRESENTATIONS AND WARRANTIES

Section 14.1 Developer Representations and Warranties.

Developer represents and warrants to City and CRA, as of the Commencement Date, as follows:

(i) Developer is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Florida and has all requisite power and authority and all necessary licenses and permits to carry on its business as it is now being conducted and as it is currently proposed to be conducted;

(ii) To the best of its knowledge, there are no actions, suits, proceedings, inquiries, or investigations pending or, to the knowledge of the Developer, threatened against or affecting the Developer in any court or by or before any governmental authority or arbitration board or tribunal that involve the likelihood of materially and adversely affecting the properties, business, prospects, profits, operations, or condition (financial or otherwise) of the Developer, the ability of the Developer to perform its obligations hereunder, or the transactions contemplated hereby; or that, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument to which the Developer is a party and that is used or contemplated for use in the consummation of the transactions contemplated hereby, nor is the Developer aware of any facts or circumstances currently existing that would form the basis for any such action, suit, or proceeding. The Developer is not in default with respect to any judgment, order, writ, injunction, decree, demand, rule, or regulation of any court, governmental authority, or arbitration board or tribunal. All tax returns (federal, state, and local) required to be filed by or on behalf of the Developer have been duly filed (or an extension timely filed), and all taxes, assessments, and other governmental charges shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Developer in good faith, have been paid or adequate reserves have been made for the payment thereof;

(iii) The execution and delivery by the Developer of this Agreement, the consummation of the transactions herein contemplated, and the fulfillment of or the compliance with all of the provisions hereof and thereof (i) are within the power, legal right, and authority of the Developer, (ii) are legal and will not conflict with or constitute on the part of the Developer a violation of or a breach of or a default under, or result in the creation or imposition of any lien, charge, restriction, or encumbrance upon any property of the Developer under the provisions of, any charter instrument; bylaw; operating

agreement; indenture; mortgage; deed of trust; pledge, note, lease, loan, or installment sale agreement; contract; or other agreement or instrument to which the Developer is a party or by which the Developer or its properties are otherwise subject or bound, or, to its knowledge, any license, law, statute, rule, regulation, judgment, order, writ, injunction, decree, or demand of any court or governmental agency or body having jurisdiction over the Developer or any of its activities or properties, and (iii) have been duly authorized by all necessary and appropriate action on the part of the Developer. This Agreement is the valid, legal, binding, and enforceable obligation of the Developer except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar debtor relief laws from time to time in effect that affect the enforcement of creditors' rights in general and the availability of equitable remedies and, in the case of indemnification obligations, public policy. The officer or officers of the Developer executing this Agreement are duly and properly in office and are fully authorized and empowered to execute the same for and on behalf of the Developer;

(iv) Neither the Developer nor any of its business or properties, nor any relationship between the Developer and any other Person, nor any circumstance in connection with the execution, delivery, and performance by the Developer of its obligations under this Agreement is such as to require the consent, approval, permission, order, license, or authorization of, or the filing, registration, or qualification with, any governmental authority on the part of the Developer in connection with the execution, delivery, and performance of this Agreement or the consummation of any transaction herein contemplated, except as shall have been obtained or made and as are in full force and effect, except as are not currently obtainable.

(v) To the knowledge of the Developer, the Developer is not in default or violation in any material respect under any charter instrument, bylaw, operating agreement, or other agreement or instrument to which it is a party or by which it may be bound. For purposes of this subsection (v), a default or violation shall be deemed "material" if it would adversely affect the ability of the Developer to perform its obligations hereunder.

(vi) Neither Developer nor any partner, member, or stockholder of Developer is, and no legal or beneficial interest in a partner, member, or stockholder of Developer is or will be held, directly or indirectly, by a Person or entity that appears on a list of individuals and/or entities for which transactions are prohibited by the US Treasury Office of Foreign Assets Control or any similar list

maintained by any other Governmental Authority, with respect to which entering into transactions with such Person or entity would violate the USA Patriot Act or regulations or any Presidential Executive Order or any other similar applicable law, ordinance, order, rule, or regulation.

(vii) To the knowledge of the Developer, the Developer is not in violation of any laws, ordinances, or governmental rules or regulations to which it is subject and has not failed to obtain any licenses, permits, franchises, or other governmental authorizations (that are currently obtainable) necessary to the ownership of its properties or to the conduct of its business, which violation or failure to obtain might materially and adversely affect the properties, business, prospects, profits, or condition (financial or otherwise) of the Developer.

(viii) Developer is not a Prohibited Person.

(ix) In accordance with Section 287.133(2)(a), Florida Statutes, Developer warrants that it is not on the convicted vendor list for a public entity crime committed in the past 36 months.

(x) In accordance with Section 287.135, Florida Statutes, Developer warrants that it is not (A) on the Scrutinized Companies that Boycott Israel List, (B) engaged in a boycott of Israel, (C) on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or (D) is engaged in business operations in Cuba or Syria.

Section 14.2 City Representations and Warranties.

City represents and warrants to Developer, as of the Commencement Date, as follows:

(i) City is a public body corporate and politic and a political subdivision of the State of Florida. City has all requisite power and authority to execute, deliver and perform this Agreement, and is the sole owner of those portions of the Property designated as being owned by City in this Agreement.

(ii) To the best of its knowledge, there are no actions, suits, proceedings, inquiries, or investigations pending or, to the knowledge of the City, threatened against or affecting City in any court or by or before any governmental authority or arbitration board or tribunal that involve the likelihood of materially and adversely affecting the ability of City to perform its obligations hereunder, or the transactions contemplated hereby; or that would adversely affect the validity or enforceability of this Agreement.

(iii) The execution and delivery by the City of this Agreement, the consummation of the transactions herein contemplated, and the fulfillment of or the compliance with all of the provisions hereof and thereof (i) are within the power, legal right, and authority of the City, and (ii) have been duly authorized by all necessary and appropriate corporate action on the part of the City. This Agreement is the valid, legal, binding, and enforceable obligation of the City except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar debtor relief laws from time to time in effect that affect the enforcement of creditors' rights in general and the availability of equitable remedies.

Section 14.3 CRA Representations and Warranties.

CRA represents and warrants to Developer, as of the Commencement Date, as follows:

(i) CRA is a public body corporate and politic and a political subdivision of the State of Florida. CRA has all requisite power and authority to execute, deliver and perform this Agreement, and is the sole owner of those portions of the Property designated as being owned by CRA in this Agreement.

(ii) To the best of its knowledge, there are no actions, suits, proceedings, inquiries, or investigations pending or, to the knowledge of CRA, threatened against or affecting CRA in any court or by or before any governmental authority or arbitration board or tribunal that involve the likelihood of materially and adversely affecting the ability of CRA to perform its obligations hereunder, or the transactions contemplated hereby; or that would adversely affect the validity or enforceability of this Agreement.

(iii) The execution and delivery by CRA of this Agreement, the consummation of the transactions herein contemplated, and the fulfillment of or the compliance with all of the provisions hereof and thereof (i) are within the power, legal right, and authority of CRA, (ii) have been duly authorized by all necessary and appropriate corporate action on the part of the CRA; and (iii) are consistent with the CRA Plan. This Agreement is the valid, legal, binding, and enforceable obligation of CRA except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar debtor relief laws from time to time in effect that affect the enforcement of creditors' rights in general and the availability of equitable remedies.

ARTICLE 15
INDEMNIFICATION

Section 15.1 Indemnification by Developer.

Developer does hereby agree to and shall indemnify and hold harmless City Indemnified Parties from and against any and all liabilities, losses, costs, damages and expenses (including reasonable attorney's fees) arising, resulting, sustained or incurred, or which can or may arise, result, be sustained or incurred, by the City Indemnified Parties to the extent caused by the failure by Developer or any of the Developer Indemnified Parties to perform under this Agreement or any Project Document, or by the gross negligence or willful misconduct of Developer or any of the Developer Indemnified Parties. The terms of this indemnity shall survive the expiration or earlier termination of this Agreement.

Section 15.2 Indemnification by City and CRA.

To the extent permitted by applicable law, City and CRA do hereby agree to and shall indemnify and hold harmless Developer Indemnified Parties from and against any and all liabilities, losses, costs, damages and expenses (including reasonable attorney's fees) arising, resulting, sustained or incurred, or which can or may arise, result, be sustained or incurred, by the Developer Indemnified Parties to the extent caused by City's or CRA's failure to perform under this Agreement or any Project Document, or, subject to the maximum liability limit set forth in Section 768.28, Florida Statutes, City Indemnified Parties' gross negligence or willful misconduct. The terms of this indemnity shall survive the expiration or earlier termination of this Agreement.

ARTICLE 16
SALE OF RD PROPERTY; REIMBURSEMENT TO DEVELOPER

Section 16.1 Overall Principles Governing the Sale of RD Property.

The parties acknowledge and agree that the RD Property is intended to be developed and sold in a manner that maximizes the overall value for the Master Project as a mixed use development, as demonstrated by Developer. Accordingly, Developer shall have the right, in its reasonable discretion, to designate the use of individual parcels within the Master Project pursuant to the Master Plan, and CRA and City acknowledge that the highest and best use of the overall Master Project (and not necessarily the highest and best use of each individual parcel) shall be the applicable standard for purposes of executing the Master Plan, selling parcels within the Master Project and maximizing value for the Master Project. For the avoidance of doubt, only Buildable Development Sites may be sold pursuant to this Article 16, and no portion of the RD Property or Property utilized for the County BTS Development Project or any Civic Building Project may be conveyed to Developer or any third party.

Section 16.2 Sale of RD Property.

(a) Developer is solely responsible for negotiating the sale of Buildable Development Sites on behalf of CRA. Prior to finalizing the terms of the sale of any parcel, Developer shall present a prospective letter of intent or term sheet to the City Contract Administrator, along with a detailed written recommendation from the Developer or its broker, explaining why the Developer and/or broker believes the proposed purchase price is fair and

reasonable and/or why proceeding with the transaction is in the best interest of the Master Project. If the letter of intent or term sheet is (i) approved by the City Contract Administrator; and (ii) consistent with the Project Overview, then CRA shall execute such letter of intent or term sheet. Developer shall then proceed with the negotiation of a purchase contract for such RD Property on behalf of the CRA. The City Contract Administrator shall provide his or her written approval or rejection of a prospective letter of intent, term sheet, or purchase contract no later than ten (10) Business Days from receipt of a written request for approval from Developer, which request shall include, at a minimum, a description of any other offers solicited or received by Developer for such property and an explanation of why Developer, in its good faith business judgment, believes that the proposed sale is in the best interest of the Master Project. The City Contract Administrator shall act in good faith in evaluating all requests. Any rejection of a proposed letter of intent, term sheet, or purchase contract by the City Contract Administrator shall be accompanied by a written explanation of all reasons for rejecting the prospective sale. If the City Contract Administrator fails to either approve or reject a prospective letter of intent or term sheet within ten (10) Business Days of receipt thereof, Developer shall deliver to the City and CRA a second request for approval of the letter of intent or term sheet, with all of the information required pursuant to this Section 16.2(a) (the "Second Request"), with the Second Request for approval of the letter of intent or term sheet subject to the following additional requirements:

(i) the envelope in which such Second Request for approval is transmitted must conspicuously bear the legend set forth below in capital letters and in a type size not less than that provided below:

FAILURE TO RESPOND TO THIS SECOND REQUEST FOR APPROVAL WITHIN THE FIVE (5) BUSINESS DAY PERIOD PROVIDED IN THE DEVELOPMENT AGREEMENT BY AND AMONG THE CITY, CRA AND RP POMPANO, LLC SHALL CONSTITUTE AUTOMATIC APPROVAL OF THE LETTER OF INTENT OR TERM SHEET FOR THE SALE OF CRA PROPERTY DESCRIBED HEREIN, PURSUANT TO SECTION 16.2(A) OF THE DEVELOPMENT AGREEMENT.

(ii) the Second Request must be delivered to the City and CRA in the manner provided in the Notice requirements set forth in Section 18.1 herein (and the addressees listed therein), and must also be delivered to the City Contract Administrator and any other additional person as may be designated by the CRA from time to time (with the name and address information for any such addressee memorialized in an amendment to this Agreement).

If the Second Request is transmitted in accordance with Section 18.1 of this Agreement and all of the requirements of this Section 16.2(a)(i) and (ii), and City and CRA fail to timely respond to the Second Request within five (5) Business Days of receipt thereof, such failure to timely provide written notice of approval or rejection of the prospective letter of intent or term sheet shall be deemed an approval of the sale.

(b) In connection with any sale of RD Property for Private Development, all purchase contracts (including, without limitation, Option Purchase Contracts pursuant to Section 16.4 below) must contain provisions requiring the granting deed to contain the following development restrictions: (A) unless otherwise approved by the CRA, the property's use must be

limited for a period of thirty (30) years to the permitted use(s) set forth in the purchase contract, as approved by the City Contract Administrator; (B) vertical construction related to the approved Private Development must commence on the property within twenty-four (24) months of the CRA's sale of the property or, at CRA's discretion, CRA shall have the right to repurchase the property at the same purchase price sold by the CRA; and (C) unless otherwise approved by the City Contract Administrator, the ownership and use of the property shall either not be exempt from the obligation to pay ad valorem taxes or subject to a payment in lieu of taxes agreement in a form acceptable to the CRA entered into with the CRA prior to or simultaneously with the closing of the sale (collectively, the "**Development Restrictions**").

(c) CRA and City each acknowledge and agree that it shall not transfer title to any portion of the Property or RD Property unilaterally or independent of the process set forth in **Article 3** and this **Article 16**. Developer acknowledges and agrees that it shall not have the right to enter into a letter of intent, term sheet or purchase contract, as agent for or on behalf of the CRA, in connection with the sale of any portion of the RD Property.

(d) The parties acknowledge and agree that, subject to Developer's Option, it is the intent of all Parties to this Agreement that the RD Property will be sold to third parties, which may include an Affiliate of Developer, provided, however, that, except for RD Property purchased pursuant to the Developer's Option, any sale of RD Property to an Affiliate of Developer shall be subject to approval by the City Contract Administrator at his or her sole discretion. In the event that all portions of the RD Property have not been sold prior to the expiration of the Term of this Agreement and provided that Developer has not terminated this Agreement pursuant to its terms, then this Agreement, as it relates to the sale of the RD Property, shall remain in effect and continue to be binding on all parties until the earlier of (i) such time as all of the RD Property is sold as contemplated by this **Article 16**; or (ii) ten (10) years beyond the expiration of the Term.

(e) Part III of Chapter 692 Sections 692.201 – 692.205, Florida Statutes, 2023, in part, limits and regulates the sale, purchase and ownership of certain Florida properties by certain buyers who are associated with a "foreign country of concern", namely: the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic. Prior to the sale of conveyance of any RD Property for Private Development, Developer shall confirm that the purchaser of said RD Property complies with the requirements of Chapter 692, Florida Statutes, which confirmation shall be accomplished through a signed Affidavit from such purchaser which complies with the requirements of the Act.

Section 16.3 Distribution of Sales Proceeds for RD Property.

In connection with the sale of parcels within the RD Property, all sales proceeds, after the payment of customary closing costs and broker's fees paid by seller, including, without limitation, sales proceeds from Developer's exercise of any Option pursuant to Section 16.4 of this Agreement (the "**Net Land Sales Proceeds**"), shall be distributed to CRA/City and Developer in accordance with the waterfall split set forth in **Exhibit E**.

To be free from any doubt, for United States federal income tax purposes, all distributions of the Net Land Sales Proceeds to Developer under this **Section 16.3** shall be considered and treated as "carried interest" pursuant to the Internal Revenue Code Section 1061 and it is the intent of the parties that these distributions qualify for capital gains tax rates to the extent permitted by applicable law.

Section 16.4 Developer Option to Purchase RD Property.

(a) Notwithstanding anything contained in this Agreement to the contrary, from the period beginning on the Commencement Date and ending sixty (60) months following the deadline for completion of Construction of the Master Infrastructure Project, as may be extended by Unavoidable Delays, City Delays and CRA Delays (the "**Option Term**"), Developer shall have the option to purchase, through an Affiliate and in all cases subject to the Development Restrictions, one or more parcels of the RD Property, but no more than 1 million square feet of GLA, from CRA (the "**Option**") at a price equal to the Fair Market Value of the subject parcel(s), with such Option being exercisable at various and multiple times during the Option Term for as many parcels as Developer may elect to purchase. However, upon the CRA's entry into a purchase contract for a portion of the RD Property in accordance with the terms of Section 16.2 in this Agreement, the Option for such portion of the RD Property shall be automatically deemed waived. Developer shall exercise the Option by giving the City Contract Administrator written notice (the "**Option Notice**") of its intention to do so during the Option Period. Developer shall, within five (5) days of delivery of the Option Notice, transfer an amount equal to five percent (5%) of the purchase price in immediately available U.S. funds ("**Option Deposit**") made payable to Shutts & Bowen LLP as "**Escrow Agent**". For purposes of this **Section 18.4(a)**,

(b) For purposes of this **Section 16.4**, the Fair Market Value shall be determined by Developer and the City Contract Administrator promptly after Developer has delivered the Option Notice. The "**Fair Market Value**" shall be determined on the basis of and shall mean the aggregate amount which would be obtainable, in an arm's length transaction between an informed and willing buyer and an informed and willing seller, under no compulsion to sell, for the purchase of fee simple title to the property based on the intended use of the property as will be permitted under the applicable purchase contract and the property's existing zoning classification at the time of the Option Notice and as affected by all encumbrances affecting the property at the time of valuation (with the exception of any monetary liens to be satisfied at closing). For the purposes of determining Fair Market Value, the following procedure shall apply:

(i) Developer shall, along with the Option Notice, deliver to the City Contract Administrator an appraisal of the Fair Market Value of the applicable parcel(s) which is/are the subject of the Option Notice ("**Developer's Value**") determined by an independent, MAI certified, real estate appraiser with at least ten (10) years' experience in appraising commercial property in the area in which the property is located. Developer shall bear the costs charged by Developer's appraiser.

(ii) City Contract Administrator shall have thirty (30) days to accept or reject Developer's Value as the Fair Market Value. If City

Contract Administrator accepts Developer's Value as the Fair Market Value, then Developer's Value shall be the Fair Market Value. If City Contract Administrator fails to accept or reject Developer's Value within such thirty (30) day period, then City Contract Administrator shall be deemed not to have accepted Developer's Value.

(iii) If City Contract Administrator does not accept Developer's Value as the Fair Market Value, then within sixty (60) days after receipt by City Contract Administrator of the Option Notice, City Contract Administrator shall deliver to Developer a statement of City Contract Administrator's determination of Fair Market Value ("**City Contract Administrator's Value**"), as determined by an independent, MAI certified, real estate appraiser with at least ten (10) years' experience in appraising commercial property in the area in which the property is located, together with a copy of the appraisal. CRA shall bear the costs charged by City Contract Administrator's appraiser. If CRA does not deliver City Contract Administrator's Value within such sixty (60) day period, , Developer's Value shall be the Fair Market Value. Developer and CRA Contract Administrator shall have a period of twenty (20) days after CRA provides Developer with the City Contract Administrator's Value in order to attempt to mutually agree on the Fair Market Value. If Developer and CRA Contract Administrator mutually agree on the Fair Market Value, then the agreed value shall be the Fair Market Value for purposes of this Section 16.4 If Developer and CRA Contract Administrator are not able to reach agreement on the Fair Market Value within such twenty (20) day period, then, if two appraisers are appointed by the Parties as stated in this Section, they shall meet promptly and attempt to appraise and reasonably set the Fair Market Value in accordance with the requirements set forth in this Section. If they are unable to agree within twenty (20) days after the second appraiser has been appointed (the "**Impasse Date**"), the two appraisers shall select a third appraiser ("**Third Appraiser**"), meeting the qualifications stated in this Section, within fifteen (15) days after the Impasse Date. If the two appraisers cannot reach consensus on the Third Appraiser within fifteen (15) days after the Impasse Date, the Third Appraiser shall be selected by each appraiser writing the names of three appraisers meeting the qualifications stated in this Section on individual pieces of 2" x 2" papers (with each paper containing only one name), placing each name into a sealed container and an independent third party blindly selecting one of the six choices from the container. The appraiser selected from the container shall be the Third Appraiser. Each of the Parties shall bear one-half of the cost of appointing the Third

Appraiser, and of paying the Third Appraiser's fees. If the Third Appraiser has not been selected and formally engaged within thirty (30) days after the Impasse Date, then the Third Appraiser selection process set forth above shall be repeated until such time as a Third Appraiser willing to participate is engaged. Within thirty (30) days after the selection and formal engagement of the Third Appraiser, the Third Appraiser shall appraise the property and attempt to reach consensus with one or both of the other appraisers. The Third Appraiser's Value shall not be greater than the higher of City Contract Administrator's Value and Developer's Value nor lower than the lesser of City Contract Administrator's Value and Developer's Value. If two of the three appraisers can agree on the Fair Market Value, it shall be established accordingly. If two of the three appraisers are not able to reach a consensus within the stipulated period of time, the three appraisals of same shall be added together and their total divided by three. The resulting quotient shall be the Fair Market Value. If, however, the low appraisal and/or the high appraisal are more than ten percent (10%) lower or higher than the middle appraisal, the low appraisal and/or the high appraisal (as applicable) shall be disregarded. If only one appraisal is disregarded, the remaining two appraisals shall be added together and their total divided by two. The resulting quotient shall be the Fair Market Value.

(c) Once the Fair Market Value is established and provided to Developer and City Contract Administrator, Developer shall have fifteen (15) days to provide written notice to City Contract Administrator of Developer's election to either: (i) proceed with the Option, in which case such written notice shall be accompanied by a purchase contract to include the purchase terms and the terms pursuant to which the Escrow Agent shall hold the Option Deposit, in substantially the form of **Exhibit D** to this Agreement (the "**Option Purchase Contract**"); or (ii) rescind the Option Notice, in which case, Developer shall reimburse CRA for all appraisal costs incurred in connection with the Option Notice. Developer's failure to timely provide such written notice shall be deemed an election to rescind the Option Notice. If the Option is exercised by Developer as provided in this Section, then Developer's Affiliate and CRA, as buyer and seller, respectively, without the necessity of any further action on behalf of either of them, shall be bound by and shall perform the obligations set forth in Option Purchase Contract. The "**Option Effective Date**" of the Option Purchase Contract shall be the date that the purchase price for the property is established in accordance with this Section.

ARTICLE 17
EVENTS OF DEFAULT, LIMITATIONS, REMEDIES, NON-APPROPRIATION

Section 17.1 Event of Default

Each of the following events shall be an **"Event of Default"** hereunder:

(a) if Developer shall Default in the observance or performance of any term, covenant or condition of this Agreement on Developer's part to be observed or performed and, if no other cure period is expressly provided for herein, Developer shall fail to remedy such Default within thirty (30) days after written notice by City or CRA of such Default (the **"City Default Notice"**), provided that if such Default is of such a nature that it cannot reasonably be remedied within thirty (30) days, Developer's time to remedy the Default shall automatically be further extended for an additional period not to exceed ninety (90) days so long as Developer commences reasonable efforts to remedy such Default within the initial thirty (30) day cure period and thereafter diligently prosecutes to completion all such steps necessary to remedy the same;

(b) if Developer makes an assignment for the benefit of creditors; or

(c) if Developer files a voluntary petition under Title 11 of the United States Code, or if Developer files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal Bankruptcy Code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, of all or any substantial part of its properties, and the foregoing are not stayed or dismissed within one ninety (90) days after such filing or other action;

(d) if either or both Key Persons cease to be responsible for the day to day management of the Master Project, and Developer is unable to, within ninety (90) days, provide documentation satisfactory to the CRA and City, in their reasonable discretion, substantiating the qualifications, capacity, and responsibility of Developer's proposed replacement Key Person(s), and that such replacement(s) will not result in a material negative consequence or impact on the Master Project or the delivery of the Services under this Agreement;

(e) if Developer abandons the Master Project and fails to recommence the diligent pursuit of the completion of the Master Project within thirty (30) days after written notice of the CRA or City of such abandonment;

(f) if Developer or either Key Person becomes a Prohibited Person, and Developer is unable to, within ninety (90) days, provide documentation satisfactory to the CRA and City, in their reasonable discretion, substantiating the qualifications, capacity, and responsibility of Developer's proposed replacement Key Person(s) that is not a Prohibited Person, and that such replacement(s) will not result in a material negative consequence or impact on the Master Project or the delivery of the Services under this Agreement;

(g) if there is a Critical Delay in the performance of any Milestone in the Master Project Schedule which remains uncured at the time City and/or CRA exercise its remedies under this Agreement.

Subsections (a) through (g) are collectively referred to as "**Developer Defaults**".

(h) if City or CRA shall Default in the observance or performance of any term, covenant or condition of this Agreement on City's or CRA's part to be observed or performed, and, if no other cure period is expressly provided for herein, City or CRA (as applicable) shall fail to remedy such Default within thirty (30) days after notice by Developer of such Default (the **"Developer Default Notice"**), provided that if such Default is of such a nature that it cannot reasonably be remedied within thirty (30) days, City's or CRA's time to remedy the Default shall automatically be further extended so long as City or CRA commences reasonable efforts to remedy such Default within the initial thirty (30) day cure period and thereafter diligently prosecutes to completion all such steps necessary to remedy the same.

(i) if City or CRA files a voluntary petition under Title 9 of the United States Code, or if City or CRA files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal Bankruptcy Code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of City or CRA, of all or any substantial part of its properties, and the foregoing are not stayed or dismissed within one hundred fifty (150) days after such filing or other action.

(j) if a default by City or CRA has occurred beyond any applicable notice and grace periods of any material obligation under a Project Document.

Subsections (h) through (j) shall constitute a default by City or CRA, and shall collectively referred to as "**CRA Defaults**".

Section 17.2 Unavoidable Delays.

The times for performance set forth in this Agreement shall be extended to the extent performance is delayed by Unavoidable Delay, except as otherwise expressly set forth in this Agreement. In connection with an Unavoidable Delay extending a Party's performance obligations under this Agreement, such Party shall use reasonable good faith efforts to notify the other Party not later than twenty (20) days after the Party has reasonably determined that such event constitutes an Unavoidable Delay. Failure to timely provide the written notice required by the preceding sentence will result in such Party only being entitled to claim the benefit of such Unavoidable Delay with respect to any days that occur after such Party notifies the other of the Unavoidable Delay.

Section 17.3 City Delays and CRA Delays.

(a) In the event of a City Delay and/or CRA Delay, Developer shall be entitled to (A) an extension of Developer's obligation to timely perform under this Agreement

equal to one (1) day for each day up to thirty (30) days of delay, and (B) thereafter, an extension of Developer's obligation to timely perform under this Agreement equal to one and one-half (1.5) days for each day in excess of thirty (30) days of City Delay or CRA Delay. For the avoidance of doubt, if Developer's ability to perform is delayed by a concurrent City Delay and CRA Delay (for example, where consent of both the City and the CRA is required, and both consents are delays), Developer shall be entitled to only one (1) day of delay for each such day of concurrent delay (and one and one-half (1.5) days for each day in excess of thirty (30) days).

(b) If a Milestone Date (as extended by Unavoidable Delays) is not satisfied as a direct result of six (6) months, in the aggregate, of CRA Delays and/or City Delays related to one or more tasks required to achieve such Milestone, and such failure to achieve the Milestone Date (i) is not due to any concurrent delay on the part of Developer and/or its Contractors; and (ii) could not have been avoided or remedied through the exercise of commercially reasonable efforts, then such delay (a "Major City/CRA Delays") shall not be deemed a default under this Agreement, but Developer shall be entitled to receive from the City or CRA, in addition to the extensions of time as provided in Section 17.3, and as compensation to Developer for its anticipated damages associated with the Major City/CRA Delays (and not as a penalty), a liquidated amount assessed daily, in the amount of One Thousand Dollars ($1,000.00) per day, commencing from and after the six (6) months of aggregate City Delays and/or CRA Delays, until the Milestone is satisfied or the applicable CRA Delay and/or City Delay no longer exists, whichever is earlier; provided, however, that if the Milestone is not satisfied within twelve (12) months of a Milestone Date due to Major City/CRA Delays, then after such twelve (12) month period the Developer shall be entitled to receive a liquidated amount assessed daily until the Milestone is satisfied, in the amount of Two Thousand, Three Hundred Sixty Dollars ($2,360.00), until the Milestone is satisfied or the applicable CRA Delay and/or City Delay no longer exists, whichever is earlier.

(c) Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 17.3 shall not apply to any event of non-appropriation by the City or CRA (or any Tolling Period resulting therefrom). Any such event of non-appropriation shall not be deemed a City Delay or CRA Delay, and shall be exclusively resolved as provided in Article 5 of this Agreement.

Section 17.4 Limitations and Remedies.

(a) In the event of a Developer Default, CRA or City (i) may, but shall be under no obligation to, perform the obligation of Developer, the breach of which gave rise to such Event of Default, without waiving or releasing Developer from any of its obligations contained herein, and (ii) may seek to enjoin the Developer Default and (iii) shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise and (iv) terminate this Agreement. Notwithstanding the foregoing or anything in this Agreement to the contrary, in the event of a *bona fide* emergency relating to death, bodily injury to property damage (as determined by the City or CRA in their reasonable discretion), the CRA or City may exercise the right

provided in clause (i), above, in the event that Developer fails to perform any obligation of Developer under this Agreement that, with notice and the passage of time would become a Developer Default, without regard for the notice and cure periods otherwise provided by this Agreement.

(b) In the event of a CRA Default, Developer (i) may, but shall be under no obligation to, perform the obligation of CRA or City, the breach of which gave rise to such Event of Default, without waiving or releasing CRA or City from any of its obligations contained herein, provided that Developer shall exercise such right only in the event of a *bona fide* emergency or after five (5) Business Days' notice and (ii) may seek to enjoin the CRA Default and (iii) shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise and (iv) terminate this Agreement. Notwithstanding anything contained in this Agreement to the contrary, City and CRA hereby stipulate and acknowledge that there will not be an adequate remedy at law available to Developer for City's failure to convey the Property to the CRA, City's or CRA's failure to comply with all rights and obligations relating to the Option and/or failure by City or CRA to convey all RD Property in accordance with the terms of this Agreement, and therefore, in addition all other remedies available to Developer at law and in equity, Developer shall have the right to injunctive relief and specific performance, in connection with such default(s) by City and/or CRA, as applicable.

(c) In addition to the remedies set forth above, should there be a Developer Default under **Section 13.1** and Developer fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, providing the underlying tax is an obligation of Developer by law or by a provision of this Agreement) to be discharged of record**,** City or CRA may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings and any amount paid by City or CRA in performing Developer's obligations to discharge such liens, including all costs and expenses incurred thereby in connection therewith, shall be reimbursed to City or CRA (as applicable) within thirty (30) days of demand.

(d) In addition to the remedies set forth above, should there be a CRA Default under **Section 17**and CRA fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, providing the underlying tax is an obligation of CRA or City by law or by a provision of this Agreement) to be discharged of record, Developer may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings and any amount paid by Developer in performing CRA's or City's obligations to discharge such liens, including all costs and expenses incurred thereby in connection therewith, shall be reimbursed to Developer by City or CRA (as applicable) within thirty (30) days of demand.

ARTICLE 18
NOTICES, CONSENTS AND APPROVALS

Section 18.1 Service of Notices and Other Communications.

(a) <u>In Writing.</u> Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any

notice, demand, request, consent, approval or other communication with respect hereto or to the Master Project, each such notice, demand, request, consent, approval or other communication (referred to in this **Section 18.1** as a **"Notice")** shall be in writing (whether or not so indicated elsewhere in this Agreement) and shall be effective for any purpose only if given or served by (i) certified or registered U.S. Mail, postage prepaid, return receipt requested, (ii) personal delivery with a signed receipt (iii) a recognized national courier service or (iv) electronic transmission (facsimile or email) provided that the original also is sent via overnight courier or United States Mail, whereby delivery is deemed to have occurred at the end of the Business Day on which electronic transmission is completed, addressed as follows:

If to Developer: RP Pompano, LLC
309 East Paces Ferry Road NE
Suite 825
Atlanta, GA 30305
Attn: Patrick Leonard
Email: patrick.leonard@rocapoint.com

With a copy to: Shutts & Bowen LLP
4301 W. Boy Scout Blvd
Suite 300
Tampa, Florida 33607
Attention: Tirso M. Carreja, Jr.
Email: TCarreja@shutts.com

If to City: City of Pompano Beach, Florida
Office of the City Manager
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Attention: Gregory P. Harrison, City Manager
Email: Greg.Harrison@copbfl.com

and

City of Pompano Beach, Florida
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Attention: Suzette Sibble, Assistant City Manager /
City Contract Administrator
Email: Suzette.Sibble@copbfl.com

With a copy to:	City of Pompano Beach, Florida Office of the City Attorney 100 West Atlantic Boulevard Pompano Beach, Florida 33060 Attention: Mark Berman, City Attorney Email: Mark.Berman@copbfl.com
If to CRA:	Pompano Beach Community Redevelopment Agency 501 Dr. Martin Luther King Jr. Boulevard Suite 1 Pompano Beach, Florida 33060 Attention: Nguyen Tran, CRA Director Email: Nguyen.Tran@copbfl.com
With a copy to:	Claudia M. McKenna, Esq. 4464 Coconut Rd Lake Worth, FL 33461-4520 Attention: Claudia McKenna, Esq., CRA Attorney Email: cmcmunilaw@gmail.com

Any Notice may be given, in the manner provided in this **Section 18.1,** on either party's behalf by its attorneys designated by such party by Notice hereunder.

(b) Every Notice shall be effective on the date actually received, as indicated on the receipt therefor or on the date delivery thereof is refused by the recipient thereof.

(c) All references in this Agreement to the **"date"** of Notice shall mean the effective date, as provided in the preceding subsection (b).

Section 18.2 Consents and Approvals.

(a) All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting by a Party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a Party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the Party whose consent was required of its right to require such consent or approval for any other act.

(b) Consents and approvals which may be given by a Party under this Agreement shall not (whether or not so indicated elsewhere in this Agreement) be unreasonably withheld or conditioned by such Party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving Party shall, together with notice of such disapproval, submit to the requesting Party a written statement setting forth with specificity its reasons for such disapproval.

(c) If, pursuant to the terms of this Agreement, any consent or approval by City, CRA or Developer is alleged to have been unreasonably withheld, conditioned or delayed, then any dispute as to whether such consent or approval has been unreasonably withheld, conditioned or delayed shall be settled in accordance with **Exhibit C**.

(d) Except as specifically provided herein, no fees or charges of any kind or amount shall be required by any Party hereto as a condition of the grant of any consent or approval which may be required under this Agreement (provided that the foregoing shall not be deemed in any way to limit City acting in its governmental, as distinct from its proprietary, capacity from charging governmental fees on a nondiscriminatory basis).

ARTICLE 19
FINANCIAL REPORTS AND RECORDS

Section 19.1 Books and Records; Audit Rights.

Developer shall at all times during the Term of this Agreement keep and maintain (separate from any of Developer's other books, records and accounts), accurate and complete records pertaining to the construction of the Master Project and such other matters referenced in this Agreement. City, CRA and their representatives shall have, during normal business hours and upon reasonable advance notice, access to the books and records of Developer pertaining to the Master Project for the purpose of examination and audit (but not copying), including books of account properly reflecting the construction of the Master Project.

ARTICLE 20
EQUAL OPPORTUNITY AND OPPORTUNITIES FOR INCLUSION

Section 20.1 Equal Opportunity.

Developer shall be an equal opportunity employer, and shall not engage in any unlawful discrimination against any Person because of race, creed, national origin, sex, age, disability, marital status or sexual orientation.

Section 20.2 Opportunities for Inclusion and Outreach.

(a) Developer intends to utilize commercially reasonable, good faith efforts to cooperate with the City to identify and promote potential contracting opportunities for the design and construction of the Master Project for businesses located within the City, which efforts shall include (i) causing Developer's General Contractors and those Consultants engaged pursuant to the CCNA to cooperate with the City and CRA with respect to the subcontracting needs for the design and construction of the Master Project (in order to notify contractors and consultants who have registered with the City of potential subcontracting opportunities), (ii) causing Developer's Contractors to use commercially reasonable efforts to solicit bids/quotes from any subcontractors located within the City as such subcontractors' contact information is shared by the City with Developer, and (iii) cooperating with the City who shall establish a webpage and social media campaign for the advertisement of subcontracting needs for the Construction of the Project.

(b) Developer intends to utilize commercially reasonable, good faith efforts to cooperate with the City to identify and promote potential employment opportunities for the

construction of the Master Project for residents of the City, which efforts shall include (i) prior to Commencement of Construction, cooperating with the City to publicly advertise and host a minimum of one job fair at the E. Pat Larkins Center, and at least one job fair at Emma Lou Center (or other facility designed by the City or CRA), (ii) causing Developer's contractors and subcontractors to cooperate with the City and CRA with respect to the advertisement of any skilled or unskilled positions needed for the construction of the Master Project, and (iii) to cooperate with the City who will establish a webpage and social media campaign for the advertisement of local employment needs for the Construction of the Master Project.

(c) Developer intends to utilize commercially reasonable, good faith efforts to cooperate with the City to identify and promote potential opportunities for retail and other businesses located within the City to operate within the Master Project, which efforts shall include (i) cooperating with the City to inform potential purchasers of the RD Property of this preference, and encouraging development proposals that include retail spaces set aside for local businesses. Developer further agrees to cooperate with the City to hold a minimum of one job fair at the E. Pat Larkins Center, and at least one job fair at Emma Lou Center (or other facility designed by the City or CRA), to facilitate the promotion of potential employment opportunities within the Master Project.

(d) Beginning after the first (1^{st}) anniversary of the Commencement Date and continuing each year thereafter until the end of the tenth (10^{th}) anniversary of the Commencement Date, Developer agrees to cooperate with the City, County, State and non-profit partners to facilitate at least one (1) community meeting per year at the E. Pat Larkins Center and one (1) community meeting at the Emma Lou Center, to advise community stakeholders of opportunities for participation within the Master Project (i.e. small business participation, programs available for assistance, credit repair, business development, and the like).

(e) Developer acknowledges that ongoing community engagement during design and construction is an essential component of a successful public-private development and shall utilize commercially reasonable, good faith efforts to engage with the residents of the City, which efforts shall include (i) hosting, in coordination with the CRA, one (1) publicly advertised community meeting at the E. Pat Larkins Center to share the concept designs for the new E. Pat Larkins Center and City Hall Project, and at least one (1) publicly advertised community meeting at the Pompano Beach Cultural Center to update residents and stakeholders on the progress of the Master Project, (ii) recording and considering, in a good-faith manner, any feedback received at such public meetings, (iii) cooperating with the City who will establish a website and social media campaign for the distribution of information on the development of the Master Project and the Master Plan, and (iv) cooperating with City in establishing and monitoring an e-mail address for individuals to provide feedback with respect to the Master Project.

(f) Notwithstanding anything contained in this Agreement to the contrary, this Section 20.2 shall not give rise to a Default or Event of Default by Developer under this Agreement.

ARTICLE 21
LIMITATION OF LIABILITY

Except for a Party's obligations with respect to indemnifications granted under this Agreement, no party shall be liable to the other, or any of their respective agents, representatives,

or employees for any incidental, punitive, or consequential damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

ARTICLE 22
HAZARDOUS MATERIALS

Section 22.1 General Provision.

To the extent permitted by applicable law, CRA and City shall indemnify and hold harmless Developer from all claims resulting from the violation of any applicable laws governing the protection of the environment or employee health and safety or a release of any regulated substance to the environment except to the extent resulting from the activities of Developer. The Parties recognize that Developer is only managing the development of the Master Project on behalf of CRA and City, and that Developer shall not be responsible for any environmental condition or issue except to the extent resulting from Developer's specific activities and responsibilities. CRA and City shall be responsible for all costs and expenses associated with any and all remediation of the Property which is required to obtain Governmental Approvals and/or develop the Master Project in accordance with the Master Plan. CRA and City agree to execute, after review, all properly completed waste manifests or other documents required for proper disposal of any environmental test results or remediation activities in connection with the Property. City's and CRA's obligation to sign any properly completed waste manifests or other documents required for proper disposal survives this Agreement so long as those items that require disposal were generated pursuant to this Agreement. Notwithstanding anything contained herein to the contrary, to the extent that CRA and/or City are not permitted to indemnify Developer under applicable law, Developer shall be entitled to a reimbursement for the monetary equivalent of any liabilities, losses, costs, damages and expenses (including reasonable attorney's fees) actually incurred by Developer that would otherwise have been covered by this **Section 22.1** pursuant to **Section 15.2**.

Section 22.2 Survival.

The provisions of this **Article 22** shall survive the expiration or sooner termination of this Agreement.

ARTICLE 23
MISCELLANEOUS

Section 23.1 Governing Law; Jurisdiction; Registered Agent in Florida.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to principles of conflicts of law. The parties hereby agree that any suit, action, or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort, or otherwise, shall be resolved in accordance with **Exhibit C**.

Section 23.2 Waiver, Release and Assumption of Obligations.

(a) Neither City's nor CRA's payment or performance of obligations of the Developer pursuant to the provisions of this Agreement, shall be, nor be deemed to constitute,

City's or CRA's assumption of Developer's obligations to pay or perform any of Developer's past, present or future obligations hereunder.

(b) Developer's payment or performance of obligations of the City pursuant to the provisions of this Agreement, shall not be, nor be deemed to constitute, Developer's assumption of City's or CRA's obligations to pay or perform any past, present or future obligations hereunder.

Section 23.3 Strict Performance.

No failure by a Party to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such Party by reason of the other Party's Default or an Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by a Party, and no Default by a Party, shall be waived, altered or modified except by a written instrument executed by the other Parties. No waiver of any Default or Event of Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default. A Party's compliance with any request or demand made by another Party shall not be deemed a waiver of such Party's right to contest the validity of such request or demand.

Section 23.4 Action Upon Termination.

Upon the termination of this Agreement, Developer shall promptly (a) deliver to CRA all agreements, records, plans and specifications, permits and other Governmental Approvals, contracts, unpaid bills, and all other records, papers, documents and keys which relate to the Master Project which are in Developer's possession or control, and (b) furnish all such information and take all such action as CRA shall reasonably require (including, without limitation, cooperating with any new developer) to effectuate an orderly and systematic transfer of Developer's duties and obligations under this Agreement to a new entity designated by CRA. Developer shall deliver to CRA a final accounting of the Master Project up to and including the effective date of the termination within fifteen (15) days after such effective date of termination.

Section 23.5 References.

(a) The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

(b) The use herein of the neuter pronoun in any reference to CRA, City or Developer shall be deemed to include any individual CRA, City or Developer.

(c) Developer agrees that any act or omission in connection with this Agreement by the City (acting in its proprietary capacity as a Party to this Agreement) is not to waive, impair, or otherwise limit the City's authority (acting in its regulatory capacity as a

Governmental Authority) in the discharge of its police or governmental powers, or its sovereign immunity under applicable law.

(d) All references in this Agreement to the terms **"herein", "hereunder"** and words of similar import shall refer to this Agreement, as distinguished from the paragraph, Section or Article within which such term is located.

Section 23.6 Entire Agreement, etc.

(a) This Agreement and all Project Documents, together with all attachments thereto, contains all of the promises, agreements, conditions, inducements and understandings among City, CRA and Developer concerning the development and Construction of the Master Project and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between or among them other than as expressly set forth herein and in such attachments thereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto. Notwithstanding anything to the contrary set forth in this Agreement, the terms of this Agreement shall supersede the terms of the ITN and Developer's proposal in response thereto. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall represent one instrument.

(b) No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by City, CRA and Developer. No waiver of any Default or Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default or default thereof.

Section 23.7 Invalidity of Certain Provisions.

If any provision of this Agreement or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 23.8 Remedies Cumulative.

Each right and remedy of any Party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a Party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at

law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement).

Section 23.9 Performance at Each Party's Sole Cost and Expense.

Unless otherwise expressly provided in this Agreement or as set forth in the Development Budget, when either Party exercises any of its rights, or renders or performs any of its obligations hereunder, such Party shall do so at its sole cost and expense.

Section 23.10 Assignment; Successors and Assigns.

Developer may not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of CRA and City, which consent may be withheld in their sole and absolute discretion. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Developer of any of its obligations hereunder. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, City, CRA and Developer, and, except as otherwise provided herein, their respective successors and permitted assigns. Notwithstanding the foregoing, Developer may assign an Option to an Affiliate of Developer upon prior written notice to CRA, which notice shall include sufficient documentation for CRA to reasonably verify that the transferee meets the definition of Affiliate and other applicable requirements of this Agreement, including without limitation the requirements of Section **23.18** of this Agreement and is not a Prohibited Person.

Section 23.11 Corporate Obligations; General Credit

It is expressly understood that this Agreement and obligations issued hereunder are solely corporate obligations, and, that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, elected or appointed officials (including, without limitation, the Chairman and members of the City Council and the members of any other governing body of City or CRA) or employees, as such, of the City, CRA or Developer, or of any successor corporation, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, director, elected or appointed officials (including, without limitation, the Chairman and members of the City Council and the members of any other governing body of City or CRA) or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

Section 23.12 Partnership Disclaimer.

The parties hereby acknowledge that it is not their intention to create by this Agreement a state law partnership, joint venture, tenancy-in-common, joint tenancy or agency relationship for the purpose of developing the Master Project. The provisions of this Section shall survive expiration of this Agreement.

Section 23.13 Time Periods.

Any time periods in this Agreement of less than thirty (30) days shall be deemed to be computed based on Business Days (regardless of whether any such time period is already designated as being computed based on Business Days). In addition, any time period which shall end on a day other than a Business Day shall be deemed to extend to the next Business Day.

Section 23.14 No Third Party Rights.

Nothing in this Agreement, express or implied, shall confer upon any Person, other than the Parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

Section 23.15 Further Assurances.

Each party agrees to do such things, perform such acts and make, execute, acknowledge, and deliver such documents as may be reasonably necessary and customary to carry out the intent and purposes of this Agreement, so long as any of the foregoing do not materially increase any party's obligations hereunder or materially decrease any party's rights hereunder.

Section 23.16 Ownership of Information and Materials

(a) On or prior to the termination or upon written request by CRA or City during the Term, the Developer shall deliver to CRA all originals of written data and information generated by or for the Developer in connection with the Master Project (collectively, the "**Project Information**"); provided, however, the Developer shall, for the purposes of the Developer's post-termination obligations and dispute resolution, be permitted to retain copies of the Project Information.

(b) All Project Information, including, without limitation, the following, are the CRA's property:

(a) data and information supplied to the Developer by the Contractors or agents;

(b) all drawings, plans, logs, photographs, books, records, contracts, agreements, documents, and writings in the Developer's possession or control relating to the Services or the Master Project;

(c) plans, specifications, and drawings (including as-built construction drawings) for the Master Project or any other element of the Master Project;

(d) names, logos, trademarks, words, symbols or marks that have been or may be used to identify the Master Project; and

(e) any data collected as a result of facility-management technology (i.e., "smart building" technology) used in the Improvements to the fullest extent of applicable law.

(c) The CRA may use that data and information that is neither proprietary, protected by attorney/client privilege or other applicable privilege, or constitutes a trade secret of Developer, without further compensation to the Developer or any consultant and their respective contractors, subcontractors, subconsultants, agents, employees and those supplying labor, equipment, or material by or through them to the Master Project.

(d) The Developer may use that data and information in marketing its services to other owners or governmental agencies.

(e) The Developer may identify itself as the developer of the Master Project on any sign, advertisement, promotional publication, commercial, or other dissemination of any information about the Master Project.

Section 23.17 Public Records

In accordance with Section 119.0701, Florida Statutes, Developer shall:

(a) Keep and maintain public records required by the CRA and/or City to perform the service;

(b) Upon request from the CRA's and/or City's custodian of public records, provide the CRA and/or City 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;

(c) 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 (i) the duration of the term of this Agreement and (ii) following completion of its obligations under the terms of this Agreement if Developer does not transfer the records to the public agency; and

(d) Upon completion of its obligations under the terms of this Agreement, transfer, at no cost, to the CRA and City all public records in its possession or keep and maintain public records required by the CRA and/or City to perform the service. If Developer transfers all public records to the CRA and City upon completion of its obligations under the terms of this Agreement, it shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Developer keeps and maintains public records upon completion of its obligations under the terms of this Agreement, it shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CRA and City, upon request from the applicable public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

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: (954) 786-4611, KERVIN.ALFRED@COPBFL.COM, CITY

CLERK, 100 WEST ATLANTIC BLVD., SECOND FLOOR, POMPANO BEACH, FL 33060.

Section 23.18 Additional Requirements

(a) **E-Verify**. By entering into this Agreement, Developer and its contractors and subcontractors are jointly and severally obligated to comply with the provisions of Section 448.095, Florida Statutes, as amended, titled "Employment Eligibility." Developer affirms that (a) it has registered and uses the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees of Developer; (b) it has required all contractors and subcontractors to this Agreement (or otherwise hired by Developer in connection with the performance of this Agreement) to register and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor; (c) it has an affidavit from all contractors and subcontractors attesting that the contractor or subcontractor does not employ, contract with, or subcontract with, unauthorized aliens; and (d) it shall maintain copies of any such affidavits for duration of the Agreement. If City or CRA has a good faith belief that Developer has knowingly violated Section 448.09(1), Florida Statutes, then City or CRA shall terminate this Agreement in accordance with Section 448.095(5)(c), Florida Statutes. In the event of such termination, Developer agrees and acknowledges that it may not be awarded a public contract for at least one (1) year from the date of such termination and that Developer shall be liable for any additional costs incurred by City or CRA because of such termination. In addition, if City or CRA has a good faith belief that a contractor or subcontractor has knowingly violated any provisions of Sections 448.09(1) or 448.095, Florida Statutes, but Developer has otherwise complied with its requirements under those statutes, then Developer agrees that it shall terminate its contract with the contractor or subcontractor upon receipt of notice from CRA or City of such violation by contractor or subcontractor in accordance with Section 448.095(5)(c), Florida Statutes. Any challenge to termination under this provision must be filed in the Circuit or County Court by CRA, City, Developer, or contractor or subcontractor no later than twenty (20) calendar days after the date of contract termination. Public and private employers must enroll in the E-Verify System (http://www.uscis.gov/e-verify) and retain the I-9 Forms for inspection.

(b) **Foreign County of Concern.** By entering into this Agreement, Developer affirms that it is not in violation of Section 287.138, Florida Statutes, titled Contracting with Entities of Foreign Countries of Concern Prohibited. The Developer further affirms that it is not giving a government of a foreign country of concern, as listed in Section 287.138, Florida Statutes, access to an individual's personal identifying information if: a) the Developer is owned by a government of a foreign country of concern; b) the government of a foreign country of concern has a controlling interest in the Developer; or c) the Developer is organized under the laws of or has its principal place of business in a foreign country of concern as is set forth in Section 287.138(2)(a)-(c), Florida Statutes. Developer shall require that each of its contractors and subcontractors affirm compliance with this paragraph and Section 287.138, Florida Statutes.

(c) **Public Entity Crime**. Developer further warrants it will neither knowingly utilize the services of, nor contract with, any supplier, subcontractor, or consultant in excess of $10,000 in connection with the performance of any services in connection with the Master Project

for a period of 36 months from the date of such party being placed on the convicted vendor list, and Developer shall require that each of its suppliers, contractors, subcontractors, or consultants affirm that it has not been convicted of a Public Entity Crime, as defined by Section 287.133, Florida Statutes, prior to entering into any such contract.

(d) **Scrutinized Companies**. By entering into this Agreement, Developer affirms that it is not on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or is engaged in business operations in Cuba or Syria, in each case as defined in Section 287.135, Florida Statutes, and Developer shall require that each of its suppliers, contractors, subcontractors, or consultants affirm that it complies with the foregoing prior to entering into any such contract.

Section 23.19 City and CRA as Sovereign

(a) Notwithstanding and prevailing over any contrary provision in this Agreement, it is expressly understood that the City and City Commission, acting as a Governmental Authority and as the governing body of the City, and CRA and CRA Board, acting as a Governmental Authority and as the governing body of the CRA, each retain all of their sovereign prerogatives and rights as public entities of the State of Florida and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature. The City shall not by virtue of this Agreement be obligated to grant any approvals of applications for building, zoning, planning, improving, equipping, or development under present or future laws and ordinances of whatever nature.

(b) Any City or CRA covenant or obligation that may be contained in this Agreement shall not bind the City Commission, any City of Pompano Beach zoning or planning board, or any other City of Pompano Beach, local, federal or state department, authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the applicable Governmental Authority in the exercise of its police power; and the City and CRA shall be released by Developer from any liability, responsibility, claims, consequential or other damages, or losses to Developer or to any third parties resulting from denial, withholding, or revocation (in whole or in part) of any zoning or other changes, variances, permits, waivers, amendments, or approvals of any kind or nature.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, City, CRA and Developer have each duly executed this Agreement to be effective as of the Commencement Date.

Witnesses:

CITY OF POMPANO BEACH

_____
(Signature)

By:_____
Rex Hardin, Mayor

_____
(Print Name)

_____
Witness Address

_____
Witness City, State, Zip

_____
(Signature)

By:_____
Gregory P. Harrison, City Manager

_____
(Print Name)

_____
Witness Address

_____
Witness City, State, Zip

Attest:

_____ (SEAL)
Kervin Alfred, City Clerk

Approved As To Form:

_____
Mark E. Berman, City Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me, by means of □ physical presence or □ online notarization, this ____ day of _____, 20___, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **KERVIN ALFRED** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

Witnesses:

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

By:_____
Rex Hardin, Chairperson

_____
(Signature)

_____
(Print Name)

_____
Witness Address

_____
Witness City, State, Zip

By:_____
Gregory P. Harrison, Executive Director

_____
(Signature)

_____
(Print Name)

_____
Witness Address

_____
Witness City, State, Zip

Attest:

_____ (SEAL)
Kervin Alfred, Secretary

Approved As To Form:

_____
Claudia M. McKenna, CRA Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me, by means of □ physical presence or □ online notarization, this ____ day of _____, 20___, by **REX HARDIN** as Chairperson, **GREGORY P. HARRISON** as Executive Director and **KERVIN ALFRED** as Secretary of the Pompano Beach Community Redevelopment Agency, Florida, who are personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

Witnesses:

RP POMPANO, LLC,
a Florida limited liability company

(Signature)

By:_____
Phillip J. Mays, Authorized Manager

(Print Name)

Witness Address

Witness City, State, Zip

(Signature)

(Print Name)

Witness Address

Witness City, State, Zip

Witnesses:

By:_____
Patrick Leonard, Authorized Manager

(Signature)

(Print Name)

Witness Address

Witness City, State, Zip

(Signature)

(Print Name)

Witness Address

Witness City, State, Zip

STATE OF _____
COUNTY OF _____

The foregoing instruments were acknowledged before me, by means of □ physical presence or □ online notarization, this ____ day of _____, 20___, by **PHILLIP J. MAYS** as Authorized Manager, of **RP POMPANO, LLC**, Florida Limited Liability Company, who are personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

STATE OF _____
COUNTY OF _____

The foregoing instruments were acknowledged before me, by means of □ physical presence or □ online notarization, this ____ day of _____, 20___, by **PATRICK LEONARD** as Authorized Manager, of **RP POMPANO, LLC**, Florida Limited Liability Company, who are personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

EXHIBIT A
PROPERTY

EXHIBIT A-1
BOUNDARY FOR POTENTIAL ADDITIONAL REDEVELOPMENT LANDS

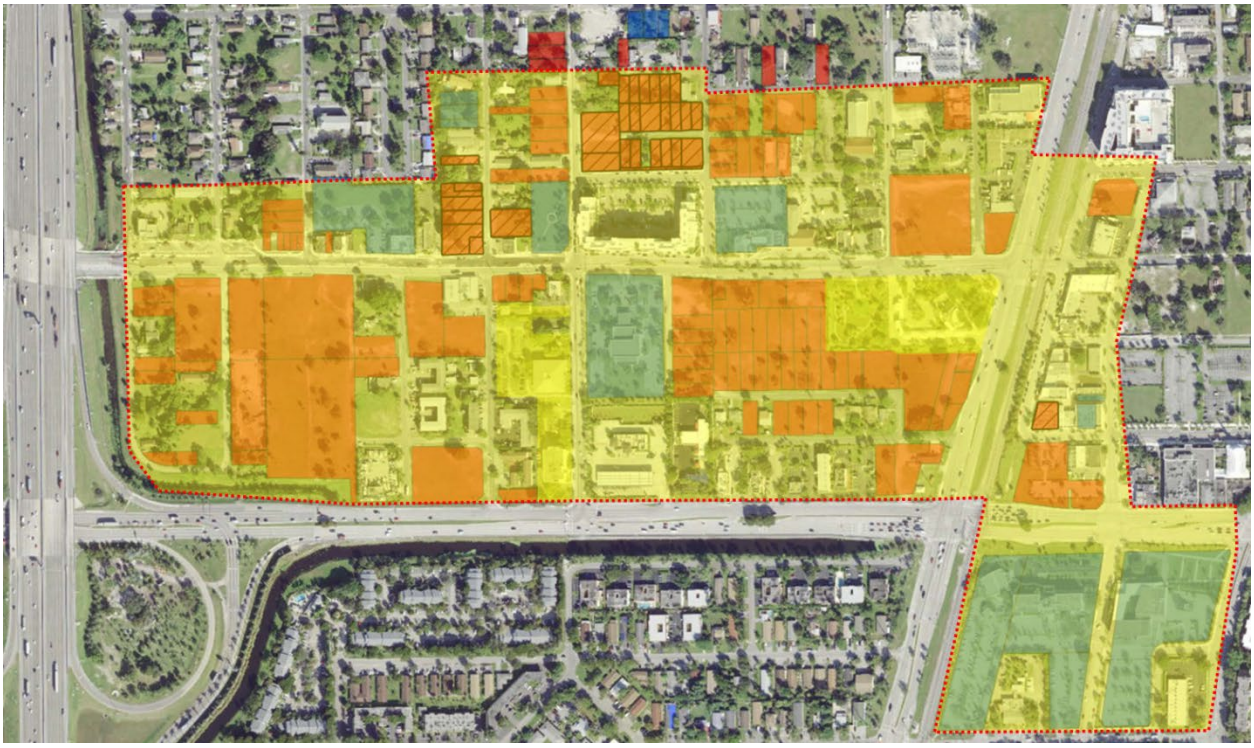


EXHIBIT A-2
SCHEDULE OF CRA PROPERTIES
AVAILABLE FOR EXCHANGE TRANSACTIONS

FOLIO	STREET ADDRESS	ZONING
484235190180	NW 4 CT	TO/DPOD
484235190210	408 NW 4 CT	TO/DPOD
484235190220	407 NW 4 AVE	TO/DPOD
484235190230	401 NW 4 CT	TO/DPOD
484235190240	NW 4 CT	TO/DPOD
484235190250	409 NW 4 CT	TO/DPOD
484235190260	413 NW 4 CT	TO/DPOD
484235190270	NW 4 CT	TO/DPOD
484235190330	NW 5 ST	TO/DPOD
484235190510	NW 4 CT	TO/DPOD
484235190190	424 NW 4 CT	TO/DPOD
484235190200	416 NW 4 CT	TO/DPOD
484235190201	412 NW 4 CT	TO/DPOD
484235190280	425 NW 4 CT	TO/DPOD
484235190281	429 NW 4 CT	TO/DPOD
484235190300	428 NW 5 ST	TO/DPOD
484235190310	424 NW 5 ST	TO/DPOD
484235190320	420 NW 5 ST	TO/DPOD
484235190350	410 NW 5 ST	TO/DPOD
484235190351	410 NW 5 ST	TO/DPOD
484235240130	404 NW 6 AVE	TO/DPOD
484235240140	410 NW 6 AVE	TO/DPOD
484235240171	428 NW 6 AVE	TO/DPOD
484235020210	321 NW 5 ST	TO/DPOD
484235020400	NW 4 AVE	TO/DPOD
484235020410	404 NW 4 AVE	TO/DPOD
484235020420	NW 4 AVE	TO/DPOD
484235020430	NW 4 ST	TO/DPOD
484235020470	333 NW 4 ST	TO/DPOD
484235020460	337 NW 4 STREET	TO/DPOD
484235020340	330 NW 5 ST	TO/DPOD
484235020330	324 NW 5 ST	TO/DPOD
484235020390	NW 4 AVE	TO/DPOD
484235020350	NW 5 ST	TO/DPOD
484235020170	337 NW 5 ST	TO/DPOD
484235020370	344 NW 5 ST	TO/DPOD
484235020380	420 NW 4 AVE	TO/DPOD
484235020440	343 NW 4 ST	TO/DPOD
484235020450	341 NW 4 ST	TO/DPOD

FOLIO	STREET ADDRESS	ZONING
484235190420	429 NW 5 ST	TO/DPOD
484235000750	430 NW 7 AVE	TO/DPOD
484235001330	437 NW 2 AVE	TO/DPOD
484235001332	424 NW 3 AVE	TO/DPOD
484235240040	409 NW 6 AVE	TO/DPOD
484235240050	413 NW 6 AVE	TO/DPOD
484235240060	417 NW 6 AVE	TO/DPOD
484235240070	421 NW 6 AVE	TO/DPOD
484235240080	425 NW 6 AVE	TO/DPOD
484235240100	501 NW 6 AVE	TO/DPOD
484235240110	509 NW 6 AVE	TO/DPOD
484235240111	507 NW 6 AVE	TO/DPOD
484233047680	NW 31 AVE	B-3
484233054100	180 NW 31 AVE	B-3
484234040590	801 NW 18 AVE	RM-12
484234040601	785 NW 18 AVE	RM-12
484234080470	NW 7 ST	RM-12
484235290050	1401 N DIXIE HWY	B-3
484235290060	1451 N DIXIE HWY	B-3
484235290100	1505 N DIXIE HWY	B-3
484235630010	370 N FLAGLER AVE	TO/DPOD
494202020360	S DIXIE HWY	RM-30
494202020320	203 S DIXIE HWY	B-4
494202020350	SW 2 ST	B-4
484233020570	N POWERLINE RD	B-2
484233020580	N POWERLINE RD	B-2
484233020980	NW 4 ST	B-2
484233020990	N POWERLINE RD	B-2
484233021000	N POWERLINE RD	B-2
484233021490	NW 3 ST	B-2
484233040340	NW 3 ST	B-2
484233200020	300 POWERLINE RD	B-2
484233041890	NW 27 AVE	B-2
484233053870	NW 27 AVE	B-3

EXHIBIT B-1
MASTER PROJECT DEVELOPMENT OVERVIEW

Estimated Program

Civic	136,000	SF
Retail	159,000	SF
Office	717,500	SF
Hotel	165	key
Resi-MKT	2,290	unit
Resi-FS	110	unit
Resi-Mixed	720	unit

Year	Blended Use Value	Year	Gross Leasable Area (SF)	Year	Cumulative GLA Sold (SF)
2024	$	2024	136,000	2027	176,000
2027	$ 7,760,000	2027	176,000	2028	1,265,300
2028	$ 39,800,000	2028	1,053,300	2029	2,031,050
2029	$ 33,155,000	2029	801,750	2030	2,639,050
2030	$ 20,060,000	2030	608,000	2031	3,138,250
2031	$ 21,140,000	2031	499,200	2032	3,662,250
2032	$ 18,800,000	2032	524,000	2033	4,110,250
2033	$ 18,400,000	2033	448,000	2034	
	$ 159,115,000		4,246,250		

Gross Leasable Area total includes civic uses (City Hall, E. Pat Larkins Center)

Cumulative GLA Sold total excludes civic uses (City Hall, E. Pat Larkins Center)

Build to Suite Projects (G3) - City Hall, Parking Garage, New E. Pat Larkins Center

Sources	**Total (30 years)***
Net Fiscal Impact Revenue to City/CRA[1]	$319,394,926
Net Parking Revenues[1] (600 spaces)	$7,392,657
Park Impact Fees[1]	$3,271,668
Land Sales to City/CRA[2]	$102,542,544
City Restricted Cash Available[3]	$21,007,425
Net Operating Expenditure Savings (Existing City Hall)[4]	$49,423,197
Deferred Capital Investment (Existing City Hall)[4]	$18,238,870
Total Sources	$521,271,287

USES	
Rent Payments (30 years)	$(368,464,473)
Total Uses (30 years)	$(368,464,473)

Profit/Loss	*$152,806,814*

***Note:** At the end of the Build to Suit Sublease term, City takes title to the Civic Buildings.

Source: Florida Economic Advisors (FEA) Economic and Fiscal Analysis. Net Fiscal Impact Revenue includes ad valorem, non- ad valorem, fire assessment revenues less projected impact on operating expenditures. Year 2027 and beyond assumes a 3% growth assumption in line with FEA assumptions in prior years. Parking revenues online after assumed full buildout (conservative).

Gross Leasable Area (GLA) value, net of Developer share of waterfall land sales and broker fees/closing costs

Committed within the City's 5 year Capital Improvement Plan (Building Inspections CIP). 2024-2025

Division's pro rata share of City Hall and Parking Garage (2024-2025)

Source: Partner Engineer and Science, Inc. Financial Condition Assessment.

Existing City Hall Deferred Capital Investment of $18.2M is amortized over 20 years

Infrastructure, Land Acquisition, Parking

Sources	
CRA Available Cash (pre-development)	$5,000,000
Tax Increment Revenue Bond Proceeds**	$64,500,000
CRA Available Cash	$20,000,000
Existing Tax Increment Revenue	$23,250,000
Sources	**$112,750,000**

Uses	
Downtown Infrastructure	$64,500,000
Downtown Land Acquisition	$30,000,000
Downtown Public Parking	$8,000,000
Uses	**$102,500,000**
Plus: Contingency (10%)*	$10,250,000
Budget Cap	$112,750,000

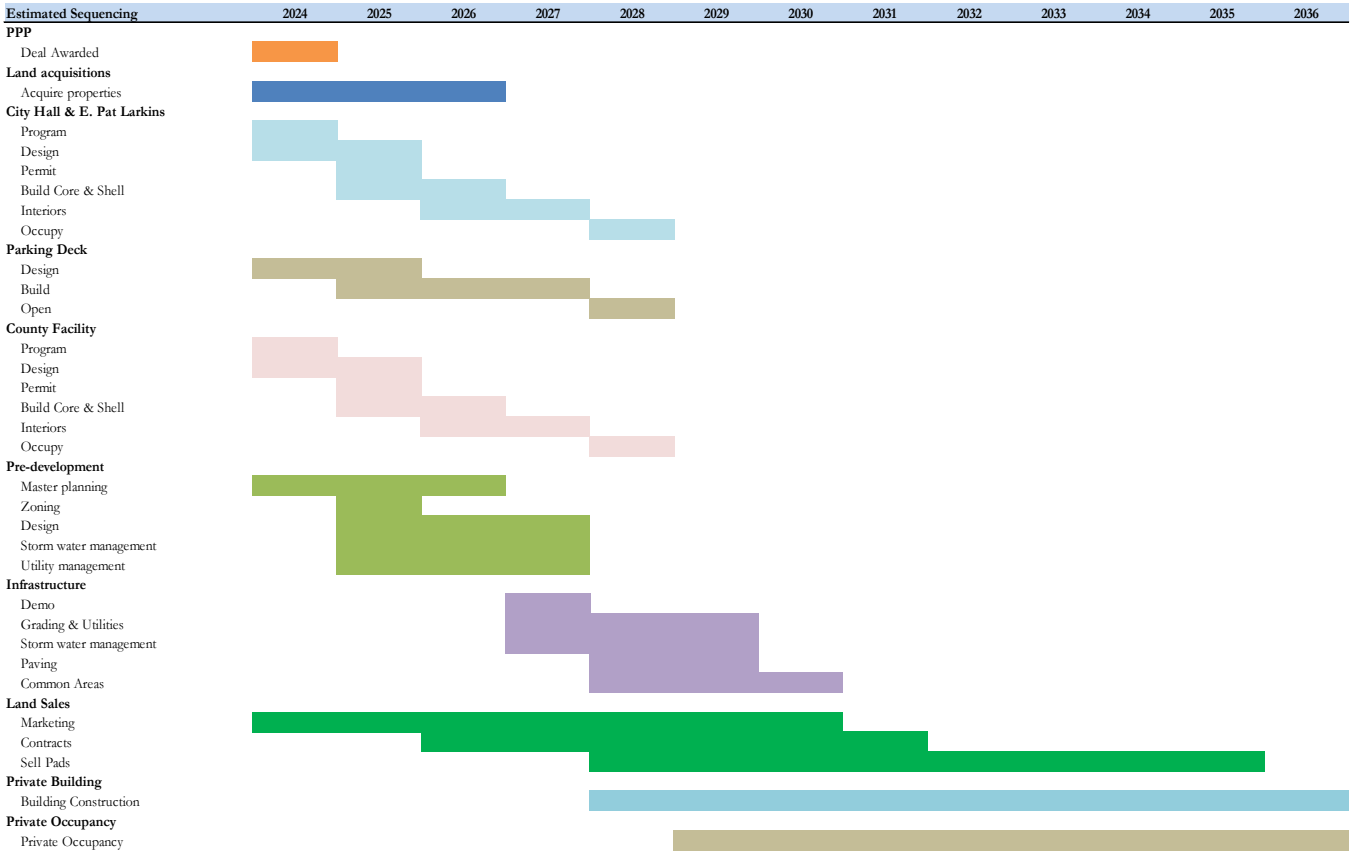
*Unforeseen conditions and/or escalations

**New Tax Increment Bond Issue - amortized over 30 years to be repaid with existing tax increment

EXHIBIT B-2
MASTER PLAN CONCEPT

Estimated Program			
Civic	136,000	SF	
Retail	159,000	SF	
Office	717,500	SF	
Hotel	165	key	
Resi - MKT	2,290	unit	
Resi - FS	110	unit	
Resi - Mixed	720	unit	
Total	**4,246,250**		
Total less Civic	4,110,250		
Low Range	3,821,625	SF	*-10%*
High Range	4,670,875	SF	*+10%*

EXHIBIT B-3
MASTER PROJECT SCHEDULE



TARGETS AND TARGET DATES*:

Draft Concept Plans: Six (6) months following the end of the Acquisition Period, or if earlier, six (6) months following the Plans and Specifications NTP for the applicable Phase.

Plans and Specifications for Master Infrastructure Project: Six (6) months following City Contract Administrator's approval of the Concept Plans.

Permits and Approvals for Master Infrastructure Project: Twelve (12) months following City Contract Administrator's approval of final Plans and Specifications for the Master Infrastructure Project.

Presentment of Executable Form of General Contractor's Construction Agreement for the Master Infrastructure Project to City Contract Administrator for Approval: Twelve (12) months following City Contract Administrator's approval of final Plans and Specifications for the Master Infrastructure Project.

*For avoidance of doubt, Target Dates are estimated dates, and a failure to meet a Target Date shall not give rise to a Default or Event of Default under this Agreement.

MILESTONES AND MILESTONE DATES:

Satisfaction of all Targets: Twenty (24) months following the end of the Acquisition Period.

Satisfaction of Developer Commencement Conditions and Commencement of Construction for Master Infrastructure Project: Sixty (60) days following satisfaction of all of the following: (a) CRA Commencement Conditions, (b) City Contract Administrator's approval of the General Contractor's Construction Agreement, and (c) all Targets.

GLA Milestones**: See below schedule of sales.

	Cumulative
Year	GLA Sold (SF)
2027	176,000
2028	1,265,300
2029	2,031,050
2030	2,639,050
2031	3,138,250
2032	3,662,250
2033	4,110,250
2034	

**All GLA Milestone timelines are through December 31st of the applicable year and all GLA square footage Milestones depicted herein are cumulative with Milestones of all prior years.

EXHIBIT B-4
DEVELOPMENT BUDGET

Description	Amount
Downtown Infrastructure	$64,500,000
Downtown Land Acquisition	$30,000,000
Downtown Public Parking	$8,000,000
Subtotal Estimated Project Costs	$102,500,000
Plus: Contingency (10%)*	10,250,000
Total	$112,750,000

*Contingency is part of the Cap and reserved for sole use by City/CRA to cover unforeseen conditions and/or potential cost escalations.

EXHIBIT C
DISPUTE RESOLUTION

Should a material claim, disagreement, dispute, problem or other matter in controversy (hereinafter each shall be referred to individually or collectively as a "**Dispute**") arise concerning the Agreement or the Master Project, which Dispute shall be described in writing by a least one Party (a "**Statement of Dispute**"), the Parties shall first attempt to resolve the Dispute using a process of informal communication at the following level:

For the Developer:	*For the City:*	*For the CRA:*
Patrick Leonard	City Contract Administrator	City Contract Administrator
RP Pompano, Manager		

The Parties shall make reasonable, good faith efforts to reach a mutually acceptable resolution of the Dispute within a timely manner using this informal process, but in no event shall this process take more than ten (10) days from the date of a Statement of Dispute. If the Parties are unable to resolve a Dispute within the ten days following the date of a Statement of Dispute, it will be referred to mediation per rules to be established by mutual agreement, or if the Parties are unable to agree upon the rules of mediation, the mediation shall be conducted pursuant to the Commercial Mediation Rules of the American Arbitration Association. If mediation fails, a Dispute between the Parties shall be tried before a Circuit Court judge sitting without a jury. Each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action, or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action, or proceeding in any such court or that any such suit, action, or proceeding that is brought in any such court has been brought in an inconvenient forum. Service of process, summons, notice, or other document by registered mail to the address set out in **Section 18.1** shall be effective service of process for any suit, action, or other proceeding brought in any such court. The Parties hereby waive their respective rights to a jury trial and agree that the venue of the action will be exclusively in the state and federal courts of Broward County, Florida. Any legal proceeding arising out of or relating to this Agreement shall include, by consolidation, joinder, or joint filing, any additional person or entity not a party to this Agreement to the extent necessary to the final resolution of the Dispute.

[**END OF EXHIBIT C**]

EXHIBIT D
FORM OF OPTION PURCHASE CONTRACT

THIS OPTION PURCHASE CONTRACT (this "**Agreement**") is made this _____ day of _____, 20_____ the ("**Effective Date**") by and between **RP POMPANO, LLC**, limited liability company organized under the laws of the State of Florida (hereinafter "**Purchaser**") and _____ (hereinafter "**Seller**"). In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Terms of Sale.

(a) **Property**: That certain parcel(s) of land containing _____acres, more or less, in the City of Pompano Beach, Florida, more particularly described on **Exhibit A** attached hereto and made a part hereof (the "**Property**").

(b) **Purchase Price**: _____and no/100 ($_____) Dollars (the "**Purchase Price**").

(c) **Option Deposit**: Initial option deposit in the sum of _____ and no/100 ($_____) Dollars payable to Escrow Agent upon execution hereof by Purchaser (said payment(s) collectively the "**Option Deposit**").

(d) **Escrow Agent**: Shutts & Bowen LLP

(e) **Closing Date**: The earlier of (i) a date agreed upon by the parties; or (ii) forty-five (45) days after the Effective Date (the "**Closing Date**").

(f) **Addresses for Notices**:

Purchaser:
RP Pompano, LLC
309 East Paces Ferry Road NE
Suite 825
Atlanta, GA 30305
Attn: Patrick Leonard
Email:

Seller:
_____
Attn:
Email:

2. Purchase Price. The Purchase Price shall be payable as follows:

(a) The Purchaser shall pay to Seller the Option Deposit as provided herein, which shall be held in escrow by the Escrow Agent. At Closing the Option Deposit shall be deemed a credit against the Purchase Price and disbursed by Escrow Agent to Seller as a credit against the Purchase Price. In the event the transaction contemplated herein does not close, Escrow Agent shall disburse the Option Deposit as hereinafter provided.

(b) At Closing, Purchaser shall pay to Seller the balance of the Purchase Price, subject to adjustments as set forth herein, by federal bank wire transfer.

3. Closing. Closing shall be held on a date to be determined by the parties, but not later than the Closing Date specified above. Closing shall take place through an escrow closing at the offices of Escrow Agent or at such other place as the parties may otherwise agree.

4. Closing Documents.

(a) Seller shall execute and deliver to Escrow Agent prior to Closing the following:

(i) A Special Warranty Deed. The deed shall be in proper form for recording, shall be duly executed and acknowledged.

(ii) A Seller's Affidavit in the form attached hereto as **Exhibit B**.

(iii) A certificate, certifying under oath, that the Seller is not a "foreign person" within the meaning of Section 1445 of the U.S. Internal Revenue Code.

(iv) Resolutions and such other evidence reasonably required by Purchaser's title company to demonstrate authority of Seller to convey the Property.

(b) Purchaser shall execute and deliver to Escrow Agent prior to Closing an affidavit pursuant to Chapter 692, Florida Statutes.

5. Closing Matters.

(a) Each of the parties shall pay its own attorney's fees arising from this transaction. Purchaser shall also pay all other closing costs, including deed recording fee, transfer tax, documentary stamp taxes, title abstract charges, title insurance premiums, survey costs, and any real estate commissions. [Include *proration of real estate taxes if appropriate*]

6. Sale As Is, Where Is. Except as specifically set forth in this Agreement, Purchaser acknowledges that Seller is conveying the Property in its present "as is" and "with all faults" condition, and has not made and does not make any other warranties or representations, whether express or implied, with respect to the Property, the condition, value, or marketability thereof, or its suitability for any particular use. Purchaser acknowledges that it has made or will make all factual, legal, and other inquiries or investigations it deems necessary, desirable, or appropriate with respect to the Property and the value thereof, and in entering into this Agreement it has and will rely solely on such independent inquiries and investigations. Excepting with respect to any warranties or representations made by Seller or as otherwise set forth in this Agreement, Purchaser agrees that upon closing this transaction it waives, releases, and discharges any claim it has or may have against the Seller with respect to the condition of the Property, either patent or latent, its ability or inability to obtain or maintain building permits, either temporary or final certificates of occupancy, or other license or permit for the use or development of the Property, the actual or potential income or profits to be derived from the Property, the real estate taxes or assessments now or hereafter payable thereon, the compliance with any environmental protection, pollution, or property use laws, rules, regulations or requirements, and any other state of facts which exist with respect to the Property.

7. Remedies.

(a) If Purchaser defaults on any of its obligations under this Agreement, at the option of Seller, the Escrow Agent shall pay the Option Deposit to Seller and Seller may pursue such other rights and remedies as may be available to it at law or in equity.

(b) If Seller defaults on any of its obligations hereunder, Purchaser shall have the right, as its sole and exclusive remedy, either (i) terminate this Agreement, in which case the Escrow Agent shall return the Option Deposit to Purchaser and Seller and Purchaser shall be relieved from all obligations under this Agreement except for those that expressly survive the termination of this Agreement, or (ii) Purchaser may pursue specific performance.

8. Risk of Loss. The risk of loss in connection with the Property shall be borne by Seller until Closing.

9. Assigns. This Agreement shall be binding upon and shall insure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. This Agreement may not be assigned by Purchaser without the written consent of Seller.

10. Miscellaneous Matters. Purchaser and Seller also agree as follows:

(a) It is understood and agreed that all understandings and agreements heretofore and between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement, neither party relying upon any statement or representation not embodied in this Agreement, made by the other.

(b) This Agreement may not be modified or amended nor shall any of its provisions be waived except by a written instrument signed by Seller and Purchaser.

(c) Possession of the Property will be delivered at Closing.

(d) In the event any provision in this Agreement shall be held by a court of competent jurisdiction after final appeal (if any) to be illegal, unenforceable or contrary to public policy, then such provision shall be stricken and the remaining provisions of this Agreement shall continue in full force and effect.

(e) Time is of the essence to the parties with respect to this Agreement and closing of the sale provided for herein.

(f) In the event either party resorts to legal action to enforce provisions of this Agreement, then the party prevailing in such litigation shall be awarded its costs and reasonable attorneys' fees.

(g) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to principles of conflicts of law. The parties hereby agree that any suit, action, or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort, or otherwise, shall be brought exclusively in the federal or state courts of Broward

County, Florida and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Florida. Each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action, or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action, or proceeding in any such court or that any such suit, action, or proceeding that is brought in any such court has been brought in an inconvenient forum. Service of process, summons, notice, or other document by registered mail to the address set out in **Section 18.1(a)** shall be effective service of process for any suit, action, or other proceeding brought in any such court.

(h) All notices required or permitted to be given hereunder shall be in writing and sent by (i) certified or registered U.S. Mail, postage prepaid, return receipt requested, (ii) personal delivery with a signed receipt (iii) a recognized national courier service or (iv) electronic transmission (facsimile or email) provided that the original also is sent via overnight courier or United States Mail, whereby delivery is deemed to have occurred at the end of the Business Day on which electronic transmission is completed to the party to be notified at its address set forth above.

(i) Counterparts; Electronic Signatures. This Agreement may be executed in counterparts by the parties hereto and each shall be considered an original. Electronic or PDF signatures for this Agreement shall be deemed originals for all purposes, and executed copies of this Agreement may be delivered between the parties via e-mail.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement has been duly signed, sealed and delivered by the parties hereto the day and year first above written.

RP POMPANO, LLC

_____

By_____

Its:_____

[_____]

_____

By_____

Its:_____

EXHIBIT A TO OPTION PURCHASE CONTRACT

EXHIBIT B TO OPTION PURCHASE CONTRACT

SELLER'S AFFIDAVIT

Before me, the undersigned officer, personally appeared the undersigned, _____, ("**Affiant**") for [_____] (the "**Seller**"), acting in his capacity as _____ and who being duly sworn according to law, deposes and says to the extent of his/her actual knowledge, without investigation:

1. Seller is the owner of a certain parcel or tract of real property located in the City of Pompano Beach, Florida, more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "**Property**").

2. To Affiant's knowledge, there are no pending suits, proceedings, judgments, bankruptcies, liens or executions served against Seller which could affect title to the Property.

3. To Affiant's knowledge, during the period of Seller's ownership of the Property, title to the Property has not been disputed or questioned, and there are no facts by reason of which either title to or possession of the Property might be disputed or questioned. There are no persons or entities other than Seller, as owner of the Property, in possession or with a claim to possession of the Property or any portion thereof. There are no tenancies or leases or other claims or interests affecting the Property, or any portion thereof, or rights of first refusal or options to purchase the Property.

4. There are no proceedings in bankruptcy or receivership pending against Seller nor has Seller ever made an assignment for the benefit of creditors.

5. No improvements or repairs have been made to the Property by or at the request of Seller during the ninety (90) days immediately preceding the date hereof, the costs of which have not been paid in full or provided for, and there are no outstanding bills incurred by or on behalf of Seller for labor or materials used in making improvements or repairs on the Property or for services of Architects, surveyors, engineers or others having lien rights.

6. This Affidavit is given to induce _____ Title Insurance Company to insure the title to the Property, and Affiant understands that material reliance will be placed upon this Affidavit. The undersigned hereby consents to the audit of the closing attorney's escrow accounts as well as the review of the closing file by _____ Title Insurance Company.

[SIGNATURE PAGE TO FOLLOW]

GIVEN under the undersigned's hand and seal this _____ day of _____, 20___.

_____

SWORN TO BEFORE ME this
_____ day of _____, 20___

_____ (L.S.)
Notary Name: _____
Notary Public for Florida
My Commission Expires: _____

[END OF EXHIBIT D]

EXHIBIT E
WATERFALL SPLIT

a. For the first $15 million in Net Land Sales Proceeds: City/CRA to receive 90% and Developer to receive 10% of proceeds.

b. For Net Land Sales Proceeds in excess of $15 million up to $100 million: City/CRA to receive 75% and Developer to receive 25% of proceeds.

c. For Net Land Sales Proceeds in excess of $100 million: City/CRA to receive 50% and Developer to receive 50% of proceeds.

EXHIBIT F
DEVELOPMENT CONSTRUCTION COMMENCEMENT AGREEMENT

This Development Commencement of Construction Agreement is entered into this ___ day of _____, 20__ by and among RP Pompano, LLC ("**RP**"), City of Pompano Beach, Florida (the "**City**"), and Pompano Beach Community Redevelopment Agency ("**CRA**") (collectively, the "**Parties**").

WHEREAS, RP, City and CRA entered into that certain Pompano Beach Public Private Development Agreement on _____ (the "**Development Agreement**");

WHEREAS, the Development Agreement contemplates the commencement of major work for the construction of the Improvements for the Master Infrastructure Project; and

WHEREAS, the Parties wish to enter into this Agreement to acknowledge a specific date for the Commencement of Construction pursuant to the Development Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. The Parties agree that the RD Construction Commencement Date shall be _____.

2. All capitalized terms not otherwise defined herein have their meaning set forth in the Development Agreement.

[SIGNATURE PAGE TO FOLLOW]

CITY OF POMPANO BEACH, FLORIDA

By:_____
Print Name:
Its:
Date:

RP POMPANO, LLC

By:_____
Print Name: Patrick Leonard
Its: Manager
Date:_____

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

By:_____
Print Name:
Its:
Date:_____

[END OF EXHIBIT F]

EXHIBIT G
Build to Suit Lease Agreement

BASELINE FORM OF GROUND LEASE FOR CIVIC BUILDING PROJECTS; DRAFT SUBJECT TO REVISION, WITH GROUND LEASE FOR EACH CIVIC BUILDING PROJECT TO BE FINALIZED AND EXECUTED IN ACCORDANCE WITH SECTION 2.5 OF THE DEVELOPMENT AGREEMENT

GROUND LEASE

between

The Pompano Beach Community Redevelopment Agency
("CRA" or "Owner")

and

_____
(Tenant)

Dated as of _____, _____

Form of Ground Lease for
City Hall Project, Parking Garage Project, and E. Pat Larkins Project

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GROUND LEASE

THIS GROUND LEASE, dated as of the ___ day of _____,_____ (the **"Commencement Date"**), by and between the **POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY** (**"CRA"** or **"Owner"**), and _____, a _____ _____, (**"Tenant"**).

RECITALS

A. WHEREAS, the City of Pompano Beach, Florida (the **"City"**) and CRA desire to create a vibrant and pedestrian friendly, mixed-use downtown development emphasizing and embodying "live, work, play" elements by integrating a variety of daytime and night-time economic uses, civic uses, and dense residential uses, all in accordance with the CRA's community redevelopment plan adopted in accordance with § 163.330, et seq, Florida Statutes (the **"CRA Plan"**).

B. WHEREAS, on [_____], City published Invitation to Negotiation No. C-18-22 (the **"ITN"**), seeking, among other things, proposals for the redevelopment of approximately __ acres located within the City into a mixed use development, including a new City Hall and other civic buildings, all in accordance with the CRA Plan, pursuant to that certain Pompano Beach Downtown Public Private Redevelopment Agreement, by and among the City, the CRA and RP Pompano, LLC, a Florida limited liability company (the **"Development Agreement"**), approved on _____, 2024 by the Mayor and City Commission of the City via City Commission Resolution No. _____, and by the Chairperson and members of the CRA, via CRA Resolution No. _____.

C. The CRA is the owner of approximately ___ acres of property more particularly described in **Exhibit "A"** to this Lease (the **"Property"**).

D. CRA and Tenant are entering into this Ground Lease to enable Tenant to commence the development, design, permitting, financing and construction of a new [***City Hall***] [***Parking Garage***] [***E. Pat Larkins Community Center***] building on the Property which, once completed, the City will occupy and use pursuant to that certain Build to Suit Sublease Agreement between the City and [Tenant] attached hereto and incorporated by reference herein as **Exhibit "B"**.

E. CRA and Tenant agree that the lease of the Property to Tenant for the development, design, permitting, financing and construction of the new civic building thereon will provide a benefit to the public at large as required by Section 253 of the City Charter.

TERMS OF AGREEMENT

NOW, THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the terms, covenants and conditions hereinafter set forth.

Article 1 - Definitions

Section 1.1 Definitions.

For all purposes of this Lease the terms defined in this Article 1 shall have the following meanings and the other provisions of this Article 1 shall apply:

"Affiliate" or **"Affiliates"** means, (A) with respect to the Tenant, any Person that is not a Prohibited Person who directly or indirectly, is controlled by the Key Persons, *and* for which the Key Persons, directly or indirectly, collectively own at least ten percent (10%) of the equity interests in such Person. For purposes hereof, the term **"controlled by"** shall mean the day to day operational management decisions of a Person, or (B) with respect to any other Person (including, without limitation, a Lender or a Permitted Buyer), a Person for which such Person has a Controlling Interest and that is not a Prohibited Person.

"Alterations" has the meaning provided in Section 14.5(a).

"**Anti-Money Laundering Laws**" means the USA Patriot Act of 2001, the Bank Secrecy Act, as amended through the date hereof, Executive Order 13324 - Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended through the date hereof, and other federal laws and regulations and executive orders administered by OFAC which prohibit, among other things, the engagement in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals (such individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanction and embargo programs), and such additional laws and programs administered by OFAC which prohibit dealing with individuals or entities in certain countries regardless of whether such individuals or entities appear on any of the OFAC lists.

"Architect" means the architect selected to provide architectural services for the Project pursuant to the terms of the City Sublease.

"Assignee" has the meaning provided in Section 10.2(b).

"Assignment" has the meaning provided in Section 10.2(a).

"Building Equipment" means all installations incorporated in, located at or attached to and used or usable in the operation of, or in connection with, the Premises and shall include, but shall not be limited to, machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; washroom, toilet and lavatory plumbing equipment; window washing hoists and equipment; and all additions or replacements thereof, excluding, however, any personal property which is owned by subtenants, licensees, concessionaires or contractors (except to the extent any of the foregoing are Affiliates of Tenant).

"Building Index" has the meaning provided Section 7.7.

"Business Day" or **"business day"** means a day other than Saturday, Sunday or a day on which banking institutions in the State of Florida are authorized or obligated by law or executive order to be closed and are, in fact, closed.

"Casualty Restoration" has the meaning provided in Section 8.2(a).

"Certificate of Occupancy" means the document by that name that is required prior to the occupancy of any premises by the Florida Building Code as amended from time to time; provided, however. Such term shall include both Temporary CO for the entire Project and Final CO for the entire Project, as the context may require.

"City" means the City of Pompano Beach, Florida, a municipal corporation duly organized and existing under the laws of the State of Florida.

"City Commission" means the elected governing body of the City established in accordance with the City Charter.

"City Delay" means a Tenant Delay as defined under the City Sublease.

"City Sublease" means that certain Build to Suit Sublease Agreement dated as of _____ between the City and [_____], attached as **Exhibit "B"** hereto and incorporated by reference herein, for the development, design, permitting, financing, construction, operation and use of the Project.

"City Sublease Commencement Date" means the date of delivery to the City of possession of a Substantially Completed Project pursuant to the City Sublease.

"CO Date" means the date on which Tenant receives a Certificate of Occupancy for the Project.

"Commence Construction" or **"Commencement of Construction"** means the actual, visible commencement of major work (such as excavation) after the satisfaction of all Possession Conditions and the filing of a Notice of Commencement for construction of the project in accordance with the plans and specifications, as applicable.

"Commencement Date" has the meaning provided in the preamble of this Lease.

"Condemnation Restoration" has the meaning provided in Section 9.2(b).

"Consenting Party" has the meaning provided in Section 26.2(c)(i).

"Contractor" means any contractor, subcontractor, supplier, vendor or materialman supplying services or goods in connection with the construction of the Project.

"Construction Agreement(s)" means any general contractor's agreement, Architect's agreement, engineers' agreements, consultant agreements or any other agreements for the provision of labor, materials or supplies entered into with respect to the construction of the Project,

including, without limitation, a Restoration, Alteration or other Construction Work performed in connection with the use, maintenance or operation of the Premises.

"Construction Period" means the period beginning on the Possession Date and ending on the CO Date.

"Construction Work" means any construction work performed under any provision of this Lease affecting the Premises and the Improvements, including, without limitation, the initial construction of the Project, a Restoration, Alteration or other construction work performed in connection with the use, maintenance or operation of the Premises.

"Controlling Interest" means the ownership of greater than fifty percent (50%) of the voting Equity Interests in a Person or the ownership of greater than fifty percent (50%) of the votes necessary to elect a majority of the Board of Directors or other governing body of such Person.

"CPI" means the Consumer Price Index for All Urban Consumers for the United States, all items, index base period 1982-84=100 (commonly referred to as CPI-U), as published periodically by the United States Bureau of Labor Statistics.

"CRA" means The Pompano Beach Community Redevelopment Agency, a public body created pursuant to Chapter 163, Part III, Florida Statutes. In all respects hereunder, the CRA's obligations and performance is pursuant to the CRA's position as the owner of the Property acting in its proprietary capacity. In the event the CRA exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any laws, rules, regulations, ordinances, and plans, shall be deemed to have occurred pursuant to the CRA's regulatory authority as a governmental body and shall not be attributable in any manner to the CRA as a party to this Lease or in any way deemed in conflict with, or a default under, the CRA's obligations hereunder.

"CRA Board" means the governing body of the CRA established in accordance with § 163.330, *et seq*, Florida Statutes.

"CRA Plan" has the meaning provided in the Recitals.

"Date of Taking" has the meaning provided in Section 9.1(c)(i).

"Debt" has the meaning provided in Section 11.2(a).

"Debt Service" means all payments in respect of principal and interest on Debt (including, without limitation, the net cost to Tenant of interest rate protection agreements and arrangements, and any and all fees paid to the lender(s), administrative fees and charges, extension fees, and the like). In the event, and only during the period in which, a Recognized Mortgagee or its Designee becomes Tenant under this Lease by virtue of a foreclosure of its Recognized Mortgage or by virtue of an assignment or conveyance in lieu thereof, Debt Service shall mean the payments that would have been due under the Recognized Mortgage if foreclosure or conveyance in lieu thereof had not occurred and there had been no acceleration of the Recognized Mortgage, and in the event that the maturity date of the Recognized Mortgage has occurred or occurs in such period, Debt

Service shall mean the amount that would have been due in order to make monthly payments, calculated on a level debt service basis, of (a) interest on the remaining unpaid principal indebtedness (i.e., the **"balloon"**) secured by the Recognized Mortgage computed at the contract (i.e., non-default) rate specified in the maturing Recognized Mortgage, plus (b) principal payments using the same amortization period as the maturing Recognized Mortgage (i.e., if the maturing Recognized Mortgage had a ten (10) year term with a twenty-five (25) year amortization period, the amortization period for calculating the monthly principal payments on the remaining principal balance shall be twenty-five (25) years).

"Default" means any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Lease) constitute, an Event of Default.

"Default Notice" has the meaning provided in Section 25.1(b).

"DEP" means the State of Florida Department of Environmental Protection.

"Development Agreement" has the meaning provided in the Recitals.

"Environment" has the meaning provided in Section 35.1(c).

"Environmental Compliance" has the meaning provided in Section 35.5.

"Environmental Condition" has the meaning provided in Section 35.1(d).

"Environmental Damages" has the meaning provided in Section 35.1(e).

"Environmental Laws" has the meaning provided in Section 35.1(b).

"EPA" means the Environmental Protection Agency of the United States.

"Equity Interest" has the meaning provided in Section 10.2(d).

"Equity Investment" means the portion of the cost of the Project funded by Tenant with funds not representing proceedings of the Loan.

"Event of Default" has the meaning provided in Section 25.1.

"**Event of Non-Appropriation"** has the meaning provided in Section 30.4 of the City Sublease.

"Expiration Date" means the date which is the last day of the month in which the thirtieth (30th) anniversary of the Sublease Commencement Date under the City Sublease occurs, provided however, that if the City Sublease is terminated by Tenant due to an Event of Default by City or an Event of Non-Appropriation, the Expiration Date shall be automatically extended for an additional period of ten (10) years from the date the City Sublease is terminated.

"Expiration of the Term" means the expiration of the Term of this Lease, or on such earlier date as this Lease may be terminated as provided herein.

"Final CO" means a certificate(s) of occupancy issued by the City's Building Department for all or a portion of the Improvements, other than a Temporary CO(s).

"Final Completion" shall occur when the Architect of record issues a certificate of completion of the Project, as the case may be, and all construction related costs and expenses in connection with the Project, as the case may be, are fully paid.

"Florida Building Code" means the Florida Building Code (Revised _____), as amended from time to time, or any successor thereto.

"Foreclosure Transferee" and **"Foreclosure Transfer"** have the meanings provided in Section 11.12(c).

"Foreign Instrumentality" means a foreign (i.e., non-United States of America) government or instrumentality thereof or a Person controlled thereby. A Person shall be deemed to be **"controlled"** by a foreign government or instrumentality if such government or instrumentality, directly or indirectly, directs or causes the direction of the management and policies of such Person.

"Garage" means the part of the Premises consisting of approximately ____ parking spaces, all of which shall be available as a public parking facility subject to the terms and conditions of Section 6.1(b) and any City ordinance(s) in effect from time to time establishing parking rates, fees and charges for public parking with respect to any parking facilities included in such Garage. [***Note: Definition applicable to Parking Garage Ground Lease only***]

"Governmental Approvals" means any and all governmental approvals from all applicable Governmental Authorities required for the development and construction of the Project, including, without limitation, the platting or re-platting of the Property or any portion thereof, with all appeal periods as provided by law with respect thereto having expired with no appeal or adverse suit having been filed, or if filed, having been rejected or terminated finally and conclusively in favor of the Project.

"Governmental Authority or Authorities" means the United States of America, the State of Florida, the City (acting in its governmental, not proprietary, capacity), Broward County, and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Tenant, or any owner, tenant or other occupant of, or over or under the Premises or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Premises, or any vault in or under the Premises, or airspace over the Premises.

"Imposition(s)" has the meaning provided in Section 3.4(b).

"Improvement(s)" means any building (including footings and foundations), Building Equipment, and other improvements and appurtenances of every kind and description now existing

or hereafter erected, constructed, or placed upon the Property (whether temporary or permanent), and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

"Key Persons" means Patrick Leonard and Phil Mays.

"Lender" means a Person which, at the time it becomes a Lender, is a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company or a foreign banking institution [in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity]; an insurance company organized and existing under the laws of the United States of America or any state thereof or a foreign insurance company [in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity]; an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a "REMIC" under the Internal Revenue Code of 1986, (as amended, or other public or private investment entity in each case whether acting as principal or agent); a brokerage or investment banking organization, in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity as principal or agent; an employees' welfare, benefit, pension or retirement fund; an institutional leasing company; a financing subsidiary or division of a New York Stock Exchange listed company; any governmental agency or entity insured by a governmental agency or any combination of Lenders; provided that each of the above entities shall qualify as a Lender only if (at the time it becomes a Lender) it shall (a) have assets of not less than Two Hundred Million Dollars ($200,000,000) adjusted for inflation and (b) not be an Affiliate of Tenant or otherwise a Person for which the Tenant or either of the Key Persons possesses a Controlling Interest (it being further agreed that this subsection (b) shall not be applicable to participants or co-lenders in a loan secured by a Mortgage which is held by a Lender), and (c) not be a Prohibited Person and/or a Foreign Instrumentality. The term **"Lender"** also includes an Affiliate of a Lender as described in this paragraph. [][*Note: Definition of Lender in Ground Lease and City Sublease to be conformed prior to execution*]

"Late Charge Rate" has the meaning provided in Article 4.

"Lease" means, collectively, this Ground Lease 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 Lease or by mutual agreement of the parties.

"Lease Year" means (a) the period commencing on the City Sublease Commencement Date, and expiring on the last day of the next occurring December which is at least twelve (12) months thereafter; (b) each succeeding 12 month period during the Term; and (c) the final shorter period, if any, ending on the last day of the Term.

"Loan(s)" means the loan or loans to be provided by the Lender(s) to the Tenant for development and construction of the Project pursuant to the terms of the City Sublease.

"Loan Documents" has the meaning provided in Section 11.1(b).

"Major Alteration" has the meaning provided in Section 14.5(a)(vi).

"Mayor" means the Mayor of the City.

"Member(s)" means a Person who owns an Equity Interest in a limited liability company.

"Membership Interest(s)" means the Equity Interest of a Member.

"Mortgage" has the meaning provided in Section 11.2(b).

"Mortgagee" means the holder of a Mortgage.

"Net Condemnation Award" has the meaning provided in Section 9.1(c)(iii).

"Net Insurance Proceeds" has the meaning provided in Section 8.2(a).

"Notice" has the meaning provided in Section 26.1.

"Notice of Failure to Cure" has the meaning provided in Section 11.4(a).

"Operating Expense(s)" means, without duplication, all costs and expenses incurred in owning, maintaining, conducting and operating the Premises, other than Debt Service, Rent, depreciation, amortization and the original costs of constructing the Improvements pursuant to this Lease and the City Sublease. Operating Expenses shall include, without limitation, all operating costs; all wages and benefits and payroll taxes; other goods, supplies, utilities and services; all repairs and maintenance; all professional fees and expenses; all costs of advertising, marketing and promotion; all insurance costs; all payments under equipment leases; all real estate, personal property and other taxes, assessments, governmental charges and other Impositions (other than income taxes, unless imposed in lieu of any of the foregoing taxes, assessments, charges or Impositions); provided, however, that no deduction shall be permitted for Alterations which under this Lease require the consent of Owner (unless such consent has been obtained or is deemed to be obtained). Any Operating Expense payable to an Affiliate of Tenant shall be deemed an Operating Expense only to the extent of the fair market value of the goods or services supplied by such Affiliate.

"Outside Construction Commencement Date" has the meaning provided in the City Sublease. [*Note: Date to be conformed with City Sublease*].

"Owner" means the CRA, acting in its proprietary capacity, and any assignee or transferee of the Owner's Interest in the Premises, from and after the date of the assignment or transfer pursuant to which the Owner's Interest in the Premises was assigned or transferred to such assignee or transferee.

"Owner Delay(s)" means delays resulting from the Owner's failure timely perform its obligations as required under this Lease.

"Owner's Designee" means _____, or such other natural person employed by the CRA which the CRA may appoint from time to time in such capacity upon written notice to Tenant.

"Owner Indemnified Parties" means, collectively, the CRA (and any successor Owner), the City of Pompano Beach, Florida and their respective elected and appointed officials (including the City's Mayor and City Commissioners), directors, officials, officers, shareholders, members, partners, holders of other ownership interests, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and affiliates. An **"Owner Indemnified Party"** shall mean any of the foregoing.

"Owner's Interest in the Premises" means Owner's interest in the Property and Owner's interest in this Lease.

"Parties" means Owner and Tenant.

"Permit" has the meaning provided in Section 35.1(f).

"Permitted Buyer" has the meaning provided in Section 10.3(c)

"Person" means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated association or other entity; any Federal, state, county or municipal government or any bureau, department, political subdivision or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Possession Conditions" shall have the meaning provided in Section 2.3(a).

"Possession Date" has the meaning provided in Section 2.3(a).

"Premises" means, collectively, the Property and the Improvements.

"Prohibited Person" means a country, territory, Person, individual or entity (i) listed on, included within or associated with any of the countries, territories, individuals or entities referred to on OFAC's List of Specially Designated Nationals and Blocked Persons or any other prohibited person lists maintained by governmental authorities, or otherwise included within or associated with any of the countries, territories, individuals or entities referred to in or prohibited by OFAC or any other Anti-Money Laundering Laws, (ii) which is obligated or has any interest to pay, donate, transfer or otherwise assign any property, money, goods, services, or other benefits from any of its assets, directly or indirectly, to any countries, territories, individuals or entities on or associated with anyone on such list or in such laws, (iii) which appears on the convicted vendor list maintained by the State of Florida pursuant to Section 287.133, Florida Statutes, (iv) which appears on any scrutinized company list maintained by the State of Florida pursuant to Section 287.135, Florida Statutes, or is otherwise prohibited from entering into a contract with a local governmental entity pursuant to Section 287.135, Florida Statutes, or (v) which has been debarred by the State of Florida, any political subdivision thereof, or any municipality, special district, or other governmental agency located within the State of Florida.

"Prohibited Uses" has the meaning provided in Section 6.2(a).

"Project" means Tenant's design, permitting, financing, and construction of the new [***City Hall***] [***Parking Garage***] [***E. Pat Larkins Community Center***] facility and all Improvements related thereto on the Property, in accordance with and subject to the terms of this Lease and the City Sublease, to be leased and operated by the City pursuant to the City Sublease.

"Project Documents" has the meaning set forth in Section 13.4.

"Project General Contractor" means the duly licensed general contractor(s) engaged by Tenant for the construction of the Project and completion of the Construction Work.

"Project Information" has the meaning provided in Section 37.22.

"Property" means the real property and air rights, if any, described on **Exhibit "A"** attached hereto and incorporated by reference herein.

"Recognized Mortgage" has the meaning provided in Section 11.2(c).

"Recognized Mortgagee" means the holder of a Recognized Mortgage; provided, however, that, except to the extent permitted by Section 11.2(c), a Recognized Mortgagee may not be an Affiliate of Tenant.

"Reinstatement Date" has the meaning provided in Section 11.5(a).

"Release" has the meaning provided in Section 35.1(g).

"Replacement Value" has the meaning provided in Section 7.7.

"Rent" has the meaning provided in Section 3.2(a).

"Requesting Party" has the meaning provided in Section 26.2(c)(ii).

"Requirements" has the meaning provided in Section 15.2.

"Restoration" means either a Casualty Restoration or a Condemnation Restoration, or both.

"Sale of the Project" has the meaning provided in Section 10.2(d).

"Significant Alteration" has the meaning provided in Section 14.5(a)(i).

"Sublease(s)" has the meaning provided in Section 10.2(e).

"Subtenant" has the meaning provided in Section 10.2(f).

"Substantial Completion" or **"Substantially Completed"** has the meaning set forth in the City Sublease.

"Temporary CO" means a temporary certificate of occupancy, as the same may be amended from time to time, issued by the City's Building Department for all or a portion of the Improvements.

"Tenant" means _____, a Florida _____, and any assignee, transferee or subtenant of the entire Tenant's Interest in the Premises that is permitted under this Lease from and after the date of the permitted assignment, transfer or sublease pursuant to which the entire Tenant's Interest in the Premises was assigned, transferred or sublet to such assignee, transferee or subtenant; provided, however, that the City, as subtenant under the City Sublease, shall not be deemed to be the Tenant under this Lease.

"Tenant's Interest in the Premises" means Tenant's interest in this Lease and Tenant's ownership of the Improvements during the Term as provided in Section 29.3.

"Term" means the term of years commencing on the Commencement Date and, subject to earlier termination as provided hereunder, expiring at 11:59 p.m. on the Expiration Date.

"Threat of Release" has the meaning provided in Section 35.1(h).

"Transfer" has the meaning provided in Section 10.2(g).

"Transferee" has the meaning provided in Section 10.2(h).

"Unavoidable Delays" means any of the following which directly cause a delay in the critical path of the construction of the Project, and such events were not known and which could not have been discovered through the exercise of reasonable due diligence by Tenant prior to the Commencement Date and which could not have been avoided or which cannot be remedied through the exercise of all commercially reasonable efforts: (i) labor delay, strike, work stoppage, supply chain disruptions, lock out or other labor dispute, (ii) severe weather; (iii) pandemic, flood, earthquake, hurricane, cyclone, tornado or other act of God; (iv) fire, explosion or other serious casualty; (v) freight embargoes; (vi) transportation interruption for any reason; (vii) acts of war (whether declared or not), terrorism, warlike circumstances, mobilization, revolution, riot or civil commotion; (viii) sabotage; (ix) the occurrence of a Casualty or a taking during the Construction Period; (x) any change in Requirements; (xi) regulation or order of Governmental Authority; (xii) any Event of Force Majeure under the City Sublease; and (xiii) such other matters beyond Landlord's or Tenant's reasonable control, as the case may be. In no event shall (i) any party's financial condition or inability to fund or obtain funding or financing constitute an **"Unavoidable Delay"** (except for a Lender's inability to fund, which inability is not caused by Tenant) with respect to such party and (ii) any delay arising from a party's (or its Affiliate's) default under this Lease or the City Sublease constitutes an **"Unavoidable Delay"** with respect to such party's obligations hereunder. The times for performance set forth in this Lease (other than for monetary obligations of a party) shall be extended to the extent performance is delayed by Unavoidable Delay, except as otherwise expressly set forth in this Lease. [*Conform with D.A. and Sublease*]

"U.S. Government" means the federal government of the United States of America, including all agencies and departments thereof.

Article 2 - Lease of Property and Term of Lease

Section 2.1 Lease of Property for Term.

(a) From and after the Possession Date, Owner does hereby demise and lease to Tenant, and Tenant does hereby lease and take from Owner, the Property, together with all the appurtenances, rights, privileges and hereditaments thereto, **"AS IS" "WHERE IS" and "WITH ALL FAULTS"**, subject to (i) the terms and conditions of this Lease, and (ii) all Permitted Encumbrances, as defined in the Development Agreement (the **"Title Matters"**), to have and to hold unto Tenant, its successors and assigns for a Term commencing on the Commencement Date and continuing until the Expiration Date, unless sooner terminated pursuant to the terms hereof.

Section 2.2 No Encumbrances.

Owner will not permit or suffer any encumbrance, mortgage, pledge or hypothecation of Owner's Interest in the Premises except with respect to those matters (such as utility easements and nonmonetary reciprocal easement agreements) reasonably approved by Tenant in writing and which do not adversely affect the operation or development of the Project. At Tenant's request, Owner shall join in any utility easements and other easements necessary for the Project.

Section 2.3 Possession Date; Conditions Precedent to Possession.

(a) The Parties recognize that as of the Commencement Date there remain various items and matters to be satisfied, obtained and approved in order that the Project may proceed as intended by the Parties. The date that the Owner delivers possession of the Property to Tenant as provided in this Section 2.3, as designated by the Owner to Tenant in writing, is referred to herein as, the "**Possession Date**". The Owner shall not be obligated to deliver possession of the Property and Tenant's rights as tenant hereunder shall not become effective until all Construction Commencement Conditions set forth in the City Sublease have been satisfied ("**Possession Conditions**"), at which time, the Owner shall deliver possession of the Property to Tenant, Tenant shall take possession thereof and the lease provisions of this Lease shall become effective. Until that time, this Lease shall be construed to be in the nature of a development agreement, and not a lease.

(b) **Site Inspections**. From and after the Commencement Date until this Lease is terminated or the Possession Date occurs, the Owner shall permit Tenant commercially reasonably access to the Property, to conduct at Tenant's sole cost and expense, physical inspections, tests, studies, samplings and analyses of the Property to the extent reasonably necessary to carry out the provisions of this Lease; provided, however, that such access shall not materially interfere with any ongoing operations at the Property. Tenant, at all times and at its sole cost and expense, shall maintain and shall cause its Project General Contractor and/or other Contractors to maintain, comprehensive general liability insurance as required in Article 7. Tenant shall restore any damage to the Property and such other areas caused by any such inspections, tests or studies.

Section 2.4 Failure to Satisfy Conditions.

Notwithstanding anything contained in this Lease to the contrary, if the City Sublease is terminated prior to the satisfaction of all Possession Conditions, including, without limitation, because the Construction Commencement Conditions have not occurred by the Outside Construction Commencement Date pursuant to the City Sublease, or because Owner and/or City have elected to obtain separate financing for the Project and/or otherwise not proceed with the construction thereof in accordance with the terms of the Development Agreement or City Sublease, this Lease shall terminate automatically upon such termination of the City Sublease.

Section 2.5 Termination of Development Agreement.

The Parties shall not commit or permit to be committed any act or omission under this Lease which would violate any term or condition of the Development Agreement. In the event of the termination of the Development Agreement (for any reason) prior to the Possession Date, then this Lease shall terminate automatically upon such termination of the Development Agreement.

Article 3 - Rent

Section 3.1 Method and Place of Payment.

Except as otherwise specifically provided herein, all Rent and/or Impositions shall be paid without notice or demand. Unless otherwise specified by Owner's Designee in writing, all Rent and/or Impositions payable to Owner (except Impositions, if the Requirements governing such payments are to the contrary) shall be paid by good checks (payable upon presentment) drawn on a United States or state chartered bank, in currency of the United States of America. Rent and/or Impositions that are payable to Owner (other than Impositions, if the Requirements governing such payments are to the contrary) shall be payable at the address of Owner set forth herein or at such other place as Owner shall direct by notice to Tenant. Impositions that are not payable directly to Owner shall be payable in the form and at the location provided by Requirements governing the payment of such.

Section 3.2 Rent and Other Payments.

(a) Tenant shall pay to Owner a one-time payment of base rent on the Commencement Date in the amount of Ten Dollars ($10.00), and thereafter, Tenant shall pay, as Rent, any other sums, costs, expenses or deposits which Tenant is obligated, pursuant to any provisions of this Lease, to pay and/or deposit (collectively, the **"Rent"**). Tenant acknowledges and agrees that the development, design, permitting, financing and construction of the Project on the Property, at Tenant's cost and expense, is a material inducement for Owner to offer the Property on the terms set forth herein to Tenant, and but for Tenant's agreement to deliver such Project and to sublease the Premises to the City upon completion thereof pursuant to the terms of the City Sublease, the terms contained herein would not be offered.

Section 3.3 Impositions.

(a) **City's Obligation to Pay Impositions During Term of City Sublease**. The Parties hereby acknowledge and agree that pursuant to the City Sublease, the City is obligated to pay, from and after the Sublease Commencement Date, all Impositions that are assessed, levied,

confirmed, imposed upon, or charged to Owner or Tenant with respect to (i) the Premises, or (ii) any vault, passageway or space in, over or under any sidewalk or street in front of or adjoining the Premises, or (iii) any other appurtenances of the Premises, or (iv) any personal property, Building Equipment or other facility used in the operation thereof, or (v) any document to which Landlord is a party creating or transferring an interest or estate in the Premises of, by or to City, or (vi) the use and occupancy of the Premises. Accordingly, prior to the Possession Date and from and after the Sublease Commencement Date and continuing until the expiration or earlier termination of the City Sublease: (A) Tenant shall have no obligation to pay Impositions; (B) City's failure to timely pay Impositions shall not create a Default or Event of Default on the part of Tenant under this Lease; and (C) Tenant shall not be liable to Owner with respect to City's failure to timely pay Impositions.

(b) **Obligation to Pay Impositions**. Except as provided in Section 3.3(a), Tenant shall pay or cause to be paid, in the manner provided in this Section 3.3, all Impositions that at any time thereafter are assessed, levied, confirmed, imposed upon, or charged to Owner or Tenant with respect to (i) the Premises, or (ii) any vault, passageway or space in, over or under any sidewalk or street in front of or adjoining the Premises, or (iii) any other appurtenances of the Premises, or (iv) any personal property, Building Equipment or other facility used in the operation thereof, or (v) any document to which Tenant is a party creating or transferring an interest or estate in the Premises of, by or to Tenant, or (vi) the use and occupancy of the Premises.

(c) **Definition**.

"Imposition" or **"Impositions"** means the following imposed by a Governmental Authority: (i) real property taxes and general and special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district); (ii) personal property taxes; (iii) sales and/or use taxes on Rent, if any; (iv) water, water meter and sewer rents, rates and charges; (v) excises; (vi) levies; (vii) license and permit fees; (viii) any other governmental levies of general application, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted of any kind whatsoever; (ix) service charges of general application with respect to police and fire protection, street and highway maintenance, lighting, sanitation and water supply; and (x) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing.

(d) **Payment of Impositions**.

(i) Subject to the provisions of Section 32.2 hereof, and except as provided in Section 3.3(a), Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty (which is the date of delinquency). However, if by law of the applicable Governmental Authority any Imposition may at the taxpayer's option be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments with interest, if any.

(ii) If Tenant twice fails within any thirty-six (36) month period to make any payment of an Imposition (or installment thereof) on or before the date the same may be paid

without penalty, Tenant shall, at Owner's request, and notwithstanding paragraph (i) above, pay all Impositions or installments thereof thereafter payable by Tenant not later than twenty (20) days before the date of delinquency. However, if Tenant thereafter makes all such payments as required in this paragraph (ii) for thirty-six (36) consecutive months without failure, the Imposition payment date in paragraph (i) above shall again become applicable, unless and until there are two further failures within a thirty-six (36) month period, in which case Tenant shall again have the right to cure the failure so that the payment date in paragraph (i) above shall again be applicable, and this provision shall continue to be applicable to each situation in which there are two further failures within a thirty-six (36) month period. Nothing in this paragraph shall be construed to limit Owner's Default remedies as set forth elsewhere in this Lease after failure by Tenant timely to pay any Imposition.

(e) **Evidence of Payment**. With respect to any Impositions required to be paid by Tenant under this Lease, Tenant shall furnish to Owner, within thirty (30) days after the date of Owner's request therefor, an official receipt of the appropriate taxing authority or other proof reasonably satisfactory to Owner, evidencing the payment thereof.

(f) **Evidence of Non Payment**. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein. Tenant shall, immediately upon receipt of any such certificate, advice or bill, deliver a copy of the same to Owner.

(g) **Apportionment of Imposition**. Any Imposition relating to a fiscal period of the taxing authority, a part of which occurs after the Possession Date and a part of which occurs before the Possession Date or after the Expiration of the Term (if the City Sublease is terminated prior to the Expiration of the Term), shall be apportioned pro rata between Owner and Tenant.

(h) **Exclusions from Impositions**. Except as expressly set forth above, nothing contained herein shall be construed to require Tenant to pay or to be charged for any portion of (i) municipal, state or federal income or gross receipts taxes assessed against Owner (other than sales or use taxes imposed on Rent, notwithstanding that Owner may be primarily liable by law for the payment thereof); (ii) municipal, state or federal capital levy, estate, succession, inheritance, transfer or gains taxes, of Owner; (iii) corporation or franchise taxes imposed on Owner or any corporate owner of the fee of the Property; or (iv) any penalties or late charges assessed against Owner (unless the same result from Tenant's failure to timely pay Impositions).

(i) **Tax Abatements and Reductions**. Tenant shall be entitled to the benefit of any tax abatements and reductions as are, or may be, available under applicable law as if Tenant were the fee owner of the Premises. Owner shall not be required to join in any action or proceeding in connection with such abatement or reduction unless the provisions of any Requirement at the time in effect require that such action or proceeding be brought by and/or in the name of Owner. If so required, Owner shall join and cooperate in such proceedings or permit them to be brought by Tenant in Owner’s name, in which case Tenant shall pay all reasonable costs and expenses (including, without limitation, attorneys’ fees and disbursements) incurred by Owner in connection therewith.

Section 3.4 Net Lease.

(a) **Tenant's Obligation to pay Rent**. It is the intention of Owner and Tenant that (a) Rent be absolutely net to Owner without any abatement, diminution, reduction, deduction, counterclaim, setoff or offset whatsoever, except to the extent expressly set forth in this Lease, and (b) subject to Section 3.4(b) below, following the termination of a City Sublease, Tenant pay all costs, expenses and charges of every kind or nature (except as expressly provided for herein to the contrary) relating or allocable to the Premises that may arise or become due or payable during or after (but attributable to a period falling within) the Term.

(b) **City's Obligation to Rent During Term of City Sublease**. The Parties hereby acknowledge and agree that pursuant to the City Sublease, the City is obligated to pay, from and after the Sublease Commencement Date, Rent and all Impositions that are assessed, levied, confirmed, imposed upon, or charged to Tenant under this Lease. Accordingly, prior to the Possession Date and from and after the Sublease Commencement Date and continuing until the expiration or earlier termination of the City Sublease: (A) Tenant shall have no obligation to pay Rent; (B) City's failure to timely pay Rent shall not create a Default or Event of Default on the part of Tenant under this Lease; and (C) Tenant shall not be liable to Owner with respect to City's failure to timely pay Rent.

Article 4 - Late Charges

Section 4.1 Late Charges.

If, following a termination of the City Sublease, Tenant shall fail to make any payment of the Rent or Impositions within thirty (30) days after the same shall be due, the late payment shall bear interest from the date due until the date paid at a rate (the **"Late Charge Rate"**) equal to a late payment fee in the amount of five percent (5%) of the amount due[***Note: conform to final City Sublease***]. All interest payable under this Section 4.1 shall be deemed Rent (but shall not be compounded) and shall be due and payable by Tenant within fifteen (15) days after demand. The collection by Owner of any interest under this Section 4.1 shall not be construed as a waiver of Tenant's default or of Tenant's obligation to perform any term, covenant or condition of this Lease nor shall it affect any other right or remedy of Owner under this Lease.

Article 5 - Inflation Adjustment

Section 5.1 Inflation Adjustment.

Unless otherwise expressly provided hereunder, any dollar amount described in this Lease as **"adjusted for inflation"** or **"subject to adjustment for inflation"** (or words of similar import) shall be adjusted by multiplying such amount by a fraction, the numerator of which shall be the CPI for the calendar year immediately preceding the date of such adjustment, and the denominator of which shall be the CPI for the calendar year during which the Commencement Date occurred. All amounts subject to adjustment hereunder shall be adjusted effective as of January 1 of each year pursuant to the formula described above. If the CPI ceases to be published, and there is no successor thereto, such other reasonably similar index as Owner and Tenant mutually designate shall be substituted for the CPI.

Article 6 - Use

Section 6.1 Use.

(a) **Continuous Legal Use**. Tenant shall use the Premises throughout the Term only as permitted by this Lease. In any event, the Premises shall be used only in accordance with the final Certificate(s) of Occupancy, final Certificate(s) of Completion or their functional equivalent therefor which from time to time exist (or Temporary Certificate(s) of Occupancy, Temporary Certificate(s) of Completion or their functional equivalent, to the extent that the final Certificate(s) of Occupancy or Certificate(s) of Completion has not been issued for the Project.

(b) **Scope of Use**. Tenant shall be permitted to use the Premises for any lawful purposes relating to the development, construction, and operation of the Project, in accordance with and subject to the terms of the City Sublease and the terms hereof; provided, however, that in the event of the early termination of the City Sublease at any time after the Possession Date, Tenant shall be permitted to use the Premises for the following purposes, provided that if the City Sublease is terminated by Tenant as a result of an Event of Default or an Event of Non-Appropriation, Tenant shall be permitted to use the Premises for any lawful purpose [*scope of uses in event of termination of City Sublease to be addressed on a Project-specific basis*]:

[For City Hall Project: for general office purposes and uses ancillary thereto]

[For Parking Garage Project: for the operation of public parking for use by members of the general public, and uses ancillary thereto]

[For E. Pat Larkins Center Project: for meeting and event facility rentals and activities related thereto].

(c) **Character and Operation of the Premises**. The parties recognize and acknowledge that the manner in which the Premises are developed, operated and maintained are matters of critical concern to the Owner, and Tenant hereby agrees to develop, operate and maintain the Premises and all other property and equipment located thereon which are owned, leased or maintained by Tenant in a manner consistent with: (i) the City Sublease during the term of the City Sublease (the "**City Sublease Term**"; and (ii) in the event the City Sublease is terminated after the Possession Date, other comparable first class projects of similar age and in good order, condition, repair and appearance, and in compliance with Article 14. To accomplish this result, Tenant shall establish or cause to be established such reasonable rules and regulations governing the use and operation of the Premises by subtenants as Tenant shall deem necessary or desirable in order to comply with Article 16 and assure the level of quality and character of operation of the Premises required herein, and it will use all reasonable efforts to enforce such rules and regulations.

Section 6.2 Prohibited Uses.

(a) Without limiting the provisions of Section 6.1, Tenant shall not use or occupy the Premises or any part of the Premises, and neither permit nor suffer the Premises to be used or occupied, for any of the following: any unlawful or illegal business, use or purpose; any use which

constitutes a public or private nuisance; any use which violates in any way the Certificate of Occupancy or other Governmental Approvals of the Premises; or any use which violates a Requirement (**"Prohibited Uses"**):

(b) Immediately upon its discovery of any Prohibited Use, Tenant shall take all reasonably necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Premises of any subtenants, licensees, invitees or concessionaires, subject to applicable Requirements.

Article 7 - Insurance

[*Note: All Article 7 Insurance Provisions Subject to Additional Review and to be conformed with City Sublease*]

Section 7.1 Insurance Requirements.

Tenant will maintain, at its sole cost and expense, the following insurance coverages throughout the Term of this Lease (unless otherwise specified for insurance during the Construction Period):

(a) **Liability Insurance**. Tenant shall maintain and keep in full force a policy of commercial general liability insurance for personal injury, death and property damage (including but not limited to automobile, personal injury, broad form contractual liability, Tenant's contractors protective and broad form property damage) under which Owner and Lender are shown as additional insureds and under which the insurer waives subrogation as to Owner's and Tenant's agents. The minimum limits of liability shall be a combined single limit with respect to each occurrence of not less than $2,000,000 per occurrence and $5,000,000 in the aggregate. The policy shall, if such is available on a commercially reasonable basis, contain a cross liability endorsement and shall be primary coverage for Tenant and Owner for any liability arising out of Owner's and its agent's use, occupancy or maintenance of the Premises and all areas appurtenant thereto, and Tenant's or any sublessee's use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall provide that it is primary insurance and not **"excess over"** or contributory. The policy shall contain a severability of interest clause. Tenant shall have the right to determine appropriate deductibles approved by Owner, in Owner's reasonable discretion.

(b) **Automobile Liability Insurance**. Tenant shall maintain automobile liability insurance covering owned, hired, and non-owned vehicles, with a limit of at least $1,000,000 each accident.

(c) **Property Insurance**. Tenant shall procure or cause to be procured and maintained in effect at all times fire and hazard **"all risk coverage"** insurance covering one hundred percent (100%) of the full replacement cost valuation of the Premises in the event of fire, lightning, windstorm, vandalism, malicious mischief, terrorism, steam pressure explosion, flood, earthquake and all other risks normally covered by **"all risk coverage"** policies carried by landlords of first-class buildings in the City of Pompano Beach, Florida market area. Tenant shall have the right to determine the appropriate deductible as reasonably approved by Owner.

(d) **Statutory Workers' Compensation**. Tenant shall maintain any other insurance required by law covering all employees of Tenant or any entity performing work on or for the Premises or the Improvements (unless and to the extent provided by such other parties), including Employers Liability coverage, all in amounts not less than the statutory minimum, except that Employers Liability coverage shall be in an amount not less than One Million Dollars ($1,000,000), subject to adjustment for inflation.

(e) **Construction Insurance**. Prior to the Commencement of Construction, Tenant shall procure or cause to be procured, and after such dates shall carry or cause to be carried, until Final Completion of such work, in addition to and not in lieu of the insurance required by the foregoing subsections (a), (b), (c) and (d), the insurance described in Section 7.1.

(f) **Insurance Criteria**. All the insurance required to be maintained by Tenant under this Lease shall:

(i) Be issued by insurance companies with a financial rating of at least A-/VIII for any property insurance and A-/VIII for any liability insurance as rated in the most recent edition of Best's Insurance Reports;

(ii) Be issued as a primary policy;

(iii) Require thirty (30) days' written notice from the insurance company to Owner and to Lender before cancellation or any material change in the coverage, scope or amount of any policy;

(iv) Owner and City shall be named as additional insured or loss payee, as its interests may appear, for each insurance policy required to be maintained by Tenant, with all proceeds under any policy to be paid in accordance with the provisions of this Lease;

(v) Contain a **"standard mortgagee/landlord clause"** providing that the interest of Lender or Owner shall not invalidated by any act or negligence of Tenant;

(vi) Contain a waiver of subrogation endorsement as to Owner and Lender; and

(vii) Contain a demolition and increased cost of construction endorsement.

Notwithstanding the foregoing, all of the insurance requirements set forth herein on the part of Tenant to be observed shall be deemed satisfied if the risk to be insured is covered by a blanket insurance policy insuring all or most of Tenant's facilities, and provided that the coverage attributable to the Premises and the other properties required to be insured by Tenant under such blanket insurance policy equals or exceeds the applicable requirements set forth in this Lease.

(g) **Evidence of Coverage**. Tenant shall furnish Owner with a certificate of insurance, prior to the date that Tenant or any of its contractors or agents first enters upon any portion of the Premises in order to commence the Improvements, but in no event later than the Possession Date, and on renewal of the policy a certificate of insurance listing the insurance coverages required hereunder and naming Owner, and any other parties required to be insured under the terms of this

Lease as additional insured and shall deliver such certificate of insurance to Owner, before the expiration of the term of the policy.

(h) **Certificates of Insurance**. Certificates of such insurance shall be delivered to Owner, and any additional insureds upon execution of this Lease and any renewals or extensions of said policies or certificates of insurance shall be delivered to Owner prior to the expiration or termination of such policies. Upon request of Owner, Tenant shall provide copies (certified as true and correct by Tenant's risk manager) of those portions of any policy requested covering all aspects of how a claim can or may be made under such policy, within fifteen (15) days of request. In the alternative, Tenant may provide a certificate from its insurance broker setting forth all of the foregoing, in form and substance reasonably satisfactory to Owner.

Section 7.2 Treatment of Proceeds.

(a) **Proceeds of Casualty Insurance in General**. Insurance proceeds payable with respect to a property loss shall be payable either to Owner or any Recognized Mortgagee or other Lender pursuant to a mutually acceptable insurance trust agreement, either of which shall hold such proceeds in trust for the purpose of paying the cost of the Casualty Restoration, or shall be payable to Tenant with respect to insurance proceeds not exceeding _____ Dollars ($_____), adjusted for inflation, per occurrence, and such proceeds shall be applied to the payment in full of the cost of such Casualty Restoration in accordance with the provisions of Article 8.

(b) **Cooperation in Collection of Proceeds**. Tenant, Owner and any Recognized Mortgagee shall cooperate in connection with the collection of any insurance proceeds that may be due in the event of a loss, and Tenant, Owner and any Recognized Mortgagee shall as soon as practicable execute and deliver such proofs of loss and other instruments as may be required of Tenant, Owner or any Recognized Mortgagee, respectively, for the purpose of obtaining the recovery of any such insurance proceeds.

Section 7.3 Construction Insurance Requirements.

(a) Tenant shall ensure that all insurance coverages to be obtained and maintained by the various parties to the Construction Agreements shall be obtained and maintained in accordance with the terms of the pertinent Construction Agreements. Tenant shall maintain certificates of insurance from all parties to all Construction Agreements procured enumerating, among other things, the waivers in favor of, and insured status of, Owner and City as required herein. Notwithstanding anything contained herein to the contrary, Tenant shall have the right to rely on a duly issued certificate of insurance as proof of insurance coverage maintained by a party to a Construction Agreement, without being required obtain copies or otherwise review the underlying insurance policies.

(b) Tenant shall cause Owner and City to be named as an insured or additional insured, as appropriate, in connection with any and all insurance policies provided for by Tenant under this Section 7.3 and, upon Owner's or City's request, shall deliver or cause to be delivered to Owner and/or City evidence of said insurance coverages in the form of appropriate certificates of insurance. Tenant shall provide City and Owner written notice at least thirty (30) days prior to the cancellation, material change or non-renewal of any such insurance policy. Certificates evidencing

timely renewal of all such insurance policies shall be provided to Owner and City by Tenant promptly upon receipt by the applicable insured.

(c) Tenant shall additionally maintain the following insurance coverages through Completion of Construction of the Project:

(i) Professional Liability or Errors & Omissions insurance in the name of the Tenant or licensed design professional providing architectural and/or engineering, project design, construction supervision, administration, surveying, testing, engineering and any other related professional qualifications or functions required by the project in an amount not less than [$5,000,000] per claim;

(ii) Completed Value Builders' Risk Insurance on an **"all risk"** basis in an amount not less than one hundred (100%) percent of the completed value of the project. Coverage shall remain in place until final completion of construction has determined by Owner. The policy shall be in the name of Owner.

(iii) Pollution Liability insurance, in an amount not less than [$10,000,000] covering third party claims, remediation expenses, and legal defense expenses arising from on-site and off-site loss, or expense or claim related to the release or threatened release of Hazardous Materials that result in contamination or degradation of the environment and surrounding ecosystems, and/or cause injury to humans and their economic interest.

(iv) Umbrella Liability Insurance in an amount not less than [$5,000,000] per occurrence, and [$5,000,000] in the aggregate.

Owner and City shall be named as additional insureds on Tenant's insurance policies except Worker's Compensation and Automobile Liability and shall deliver or cause to be delivered to Owner and/or City evidence of said insurance coverages in the form of appropriate certificates of insurance. All insurance shall be obtained from companies with a rating of A or better, and no less than **"Class VII"** as to financial strength, by A.M. Best. The CRA reserves the right, upon reasonable notice to Tenant, to request and examine the policies of insurance (including, but not limited to, policies, binders, amendments, exclusions or riders, etc.).

Section 7.4 No Representation as to Adequacy of Coverage.

The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Tenant hereunder shall not constitute a representation or warranty by Owner or Tenant that such insurance is in any respect adequate.

Section 7.5 Blanket or Umbrella Policies.

The insurance required to be carried by Tenant pursuant to the provisions of this Lease may, at Tenant's election, be effected by blanket, wrap-up and/or umbrella policies issued to Tenant covering the Premises and other properties owned or leased by Tenant or its Affiliates, provided such policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, including, without limitation, the specified coverage for all

insureds required to be named as insureds or additional insureds hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Owner, upon Owner's request, certificates of insurance and copies (certified by Tenant to be true, complete and correct) of such policies as provided in this Article 7, together with schedules annexed thereto setting forth the amount of insurance applicable to the Premises.

Section 7.6 Annual Aggregates.

Excluding Umbrella/Excess Liability Insurance, if there is imposed under any liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than two (2) times the per occurrence limit required for such insurance.

Section 7.7 Determination of Replacement Value.

(a) **Definition**. The current replacement value of the Improvements (the **"Replacement Value"**) shall be the full cost of replacing the Improvements according to Requirements in effect at that time, including, without limitation, all hard costs of construction as well as the costs of post casualty debris removal, and soft costs, including without limitation, architects', engineers', surveyors', assessors' and other professional fees and development fees. On the CO Date, Replacement Value of the Improvements shall be deemed to be an amount equal to the actual costs incurred or expended in connection with the construction of the Premises as certified by the architect upon completion of the Premises, other than foundations and financing and other soft costs not applicable to replacement, adjusted for each year after completion of the Premises in accordance with the percentage change in the Building Index. In no event shall such Replacement Value be reduced by depreciation or obsolescence of the Improvements.

(b) **Building Index**. As used herein, the **"Building Index"** shall mean the Marshall and Swift Cost Index or such other published index of construction costs which shall be selected from time to time by Owner and reasonably agreed to by Tenant, provided that such index shall be a measure of construction costs widely recognized in the insurance industry and appropriate to the type and location of the Improvements.

Section 7.8 Subleases.

All Subleases, except for the City Sublease, shall require the Subtenant to carry liability insurance naming Tenant, Owner, City and any Recognized Mortgagee as additional insureds with limits reasonably prudent under the circumstances.

Section 7.9 Additional Interests.

All insurance policies in this Article 7 shall contain a provision substantially to the effect that the insurance provided under the policy is extended to apply to Owner, as its interests may appear. Any holder of a Recognized Mortgage which, pursuant to the Recognized Mortgage, is

required to be named under any of the insurance carried hereunder shall be named under a standard New York form of mortgagee endorsement or its equivalent.

Article 8 - Damage, Destruction and Restoration

Section 8.1 Notice to Owner.

If, following a termination of the City Sublease, the Premises are damaged or destroyed in whole or in any material part by fire or other casualty, Tenant shall notify Owner of same as soon as reasonably possible after Tenant's discovery of same.

Section 8.2 Casualty Restoration.

(a) **Obligation to Restore**. Restoration obligations for the Premises during the City Sublease Term shall be governed by the terms of the City Sublease. If, following a termination of the City Sublease, all or any portion of the Premises are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, whether prior to or after completion of the initial construction of the Project, Tenant shall restore the Premises to the condition thereof as it existed immediately before such casualty (**"Casualty Restoration"**), [*Scope of Tenant's restoration obligations to the extent not covered by Net Insurance Proceeds to be addressed on a Project specific basis*]. **"Net Insurance Proceeds"** shall mean the actual amount of insurance proceeds paid following a fire or other insured casualty.

(b) **Commencement of Construction Work**. Subject to Unavoidable Delays, Owner Delays, and/or City Delays, Tenant shall use commercially reasonable efforts to commence the Construction Work in connection with a Casualty Restoration within ninety (90) days after receipt of the Net Insurance Proceeds by the Recognized Mortgagee or Owner arising from the damage or destruction which caused the need for such Casualty Restoration and shall diligently pursue the completion of such Casualty Restoration.

(c) **Pay Down of Mortgages Prohibited**. No Mortgagee (Recognized or otherwise) shall have the right to apply any insurance proceeds paid in connection with any casualty toward payment of the sum secured by its Mortgage to the extent that this Lease requires that Tenant effect a Casualty Restoration with such proceeds.

Section 8.3 Restoration Funds.

(a) Except as may be otherwise required by any Recognized Mortgage, all Net Insurance Proceeds shall, if in an amount equal to _____ [*Amount to be determined based on Project*], adjusted for inflation, or less per occurrence, be paid to Tenant and applied as provided herein. If greater than _____ [*Amount to be determined based on Project*], adjusted for inflation, then all Net Insurance Proceeds shall be deposited with the Recognized Mortgagee, or, if none, with another Lender pursuant to a mutually acceptable trust agreement. Provided Tenant is conducting the Casualty Restoration in accordance with this Lease, the Net Insurance Proceeds shall be paid out from time to time as the Casualty Restoration progresses, upon the written request of Tenant, which request shall be accompanied by the following:

(i) A certificate signed by Tenant and the architect or engineer in charge of the Casualty Restoration, reasonably satisfactory to Owner, dated not more than fifteen (15) days prior to such request, setting forth:

(1) that the sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for the work specified, and stating that no part of such expenditures has been or is being made the basis of any previous or then pending request for the withdrawal of the Net Insurance Proceeds;

(2) a brief description of the services and materials;

(3) that, except for the amount described in Section 8.3(a)(i)(1), there is no outstanding indebtedness actually known to the persons signing such certificate, after due inquiry, which is then due for labor, materials, or services in connection with the Casualty Restoration;

(4) that the cost, as estimated by the persons signing such certificate, of the work required to complete the Casualty Restoration does not exceed the amount of the remaining Net Insurance Proceeds, plus any amount deposited by Tenant to defray the expenses of the Casualty Restoration; and

(5) that the work described has been completed in accordance with the plans and specifications applicable thereto, in a good and workmanlike manner and in accordance with all Requirements.

(ii) Lien waivers, title insurance company reports or such other evidence, reasonably satisfactory to Owner, to the effect that there has not been filed with respect to the Premises, any vendor's, mechanic's, laborer's, materialman's or other lien which has not been discharged of record, except such as will be discharged by payment of the amount then requested; and

(iii) Such other documentation regarding the Casualty Restoration as Owner or the Recognized Mortgagee shall reasonably require.

(b) Tenant shall, prior to the commencement of the Casualty Restoration, furnish to Owner an estimate of the total cost of the Casualty Restoration certified by the architect or engineer in charge of the Casualty Restoration. If such cost estimate or any subsequent estimate provided pursuant to Section 8.3(a) shall show that the cost of completing the Casualty Restoration is in excess of the amount of the Net Insurance Proceeds then available, Tenant shall promptly deposit with the holder of the Net Insurance Proceeds an amount equal to such excess. The amount so deposited shall be included in the Net Insurance Proceeds for all purposes of this Article 8.

(c) Upon compliance by Tenant with the foregoing provisions of this Article 8, the holder of the Net Insurance Proceeds shall pay, to Tenant or the persons named in the certificate referred to in Section 8.3(a), from the Net Insurance Proceeds, an amount equal to ninety percent (90%) of the cost of the Casualty Restoration which is evidenced by the request. At the

completion of each contract or subcontract in connection with the Casualty Restoration, the balance of the Net Insurance Proceeds relating to that portion of the work, to the extent of and as required to complete the payment of Casualty Restoration costs relating to that portion of the work, shall be paid to Tenant and Tenant shall provide to Owner reasonable evidence that the Casualty Restoration relating to that portion of the work has been paid for in full.

(d) If the amount of any Net Insurance Proceeds, excluding deposits made by Tenant pursuant to Section 8.3(b) above, shall exceed the entire cost of the Casualty Restoration, such excess, upon completion of the Casualty Restoration, shall, if this Lease shall be in full force and effect, and not in default, be disbursed to Tenant, or if this Lease is no longer in full force and effect or is in default, such excess shall be paid to and retained by Owner and shall be (i) credited against any amounts due hereunder which are in default. Any amounts deposited by Tenant pursuant to Section 8.3(b) hereof shall be returned to Tenant to the extent the same are not necessary to fund the cost of the Casualty Restoration.

Section 8.4 Effect of Casualty on This Lease.

This Lease shall not terminate, be forfeited or be affected in any manner, and there shall be no reduction or abatement of Rent (except to the extent Owner receives the net proceeds of the insurance described in Section 7.8), by reason of damage to, or total or partial destruction of, or untenantability of, the Premises or any part thereof resulting from such damage or destruction. Subject to Unavoidable Delays, Owner Delays, and/or City Delays, and taking into account Tenant's Casualty Restoration obligations, Tenant's obligations hereunder shall continue as though the Premises had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

Section 8.5 Collection of Proceeds.

Each of the parties shall execute such documents as may be reasonably required to facilitate collection of any insurance proceeds paid or payable in connection with any casualty affecting the Premises.

Article 9 - Condemnation

Section 9.1 Substantial Taking.

(a) **Termination of Lease for Substantial Taking**. If all or Substantially All of the Premises shall be taken or condemned for any public or quasi-public use or purpose, by right of eminent domain or by purchase in lieu thereof (in each case, a **"Taking"**), then this Lease shall cease and terminate as of the date on which the condemning authority takes possession.

(b) **Disbursement of Award**. If all or Substantially All of the Premises are taken or condemned as provided in Section 9.1(a), the Net Condemnation Award paid or payable to Owner, Tenant or any lender or mortgagee claiming through either of them in connection with such taking or condemnation shall be paid as follows:

(i) First, Tenant shall be entitled to the then fair market value of its interest under this Lease and in the Improvements (as if the Lease were not being terminated as a result of such condemnation), less the discounted value of such Improvements as allocated to the Owner (subject, however, to the rights of the Recognized Mortgagee) together with all proceeds received in connection with loss of business claims made by Tenant;

(ii) Second, the Owner shall receive the then fair market value of the Premises so taken or condemned considered as vacant, unimproved, and unencumbered, together with the value of the Owner's remainder interest in the Improvements which have been taken; and

(iii) the Owner and Tenant shall each receive one-half (1/2) of any remaining balance of the award.

(c) **Definitions**.

(i) **"Date of Taking"** means the earlier of (1) the date on which actual possession of all or Substantially All of the Premises, or any part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of applicable law or (2) the date on which title to all or Substantially All of the Premises, or any part thereof, as the case may be, has vested in any lawful power or authority pursuant to the provisions of applicable law.

(ii) **"Substantially All of the Premises"** means such portion of the Premises as, when so taken, would leave, in Tenant's good faith determination, a balance of the Premises that, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not, under economic conditions, physical constraints, zoning laws, building regulations and other Requirements then existing, readily accommodate a new or reconstructed building or buildings and other improvements of a type fully comparable to the Improvements existing at the Date of Taking. Tenant shall notify Owner, on or about the Date of Taking, in writing of its determination as to whether or not **"Substantially All of the Premises"** has been taken. If Tenant does not determine that **"Substantially All of the Premises"** has been taken, then this Lease shall not terminate and expire but shall continue in force and effect, subject to the other provisions of this Article 9. If Tenant determines that **"Substantially All of the Premises"** has been taken, then this Lease shall terminate and expire on the Date of Taking pursuant to Section 9.1(a).

(iii) **"Net Condemnation Award"** shall mean the actual amount of the award paid in connection with or arising from the acquisition or other taking of all or Substantially All of the Premises or any portion of the Premises by any authority, less all reasonable out-of-pocket expenses incurred by Owner, Tenant or Recognized Mortgagee in connection with obtaining such award, including, without limitation, all reasonable attorneys' fees and disbursements incurred in connection therewith.

Section 9.2 Less Than Substantial Taking.

(a) **Taking of Less than Substantially All of the Premises**. If, during the City Sublease Term, less than Substantially All of the Premises are taken for any public or quasi public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent

domain or by agreement among Owner, Tenant and any Recognized Mortgagee, then terms of Article 15 of the City Sublease shall govern and this Lease shall continue for the remainder of the Term without diminution of any of Tenant's rights or obligations hereunder. If, following a termination of the City Sublease Tenant, less than Substantially All of the Premises are taken for any public or quasi public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Owner, Tenant and any Recognized Mortgagee, the terms of this Section 9.2 shall govern and this Lease shall continue for the remainder of the Term (subject to paragraph (b) below) without diminution of any of Tenant's obligations hereunder.

(b) **Obligation to Restore the Premises**. If less than Substantially All of the Premises are taken as provided in Section 9.2(a), whether prior to or after the completion of the initial construction of the Project, Tenant shall, in accordance with the provisions of this Article 9, the provisions of which shall be deemed to apply to all Construction Work necessary to complete the Condemnation Restoration, (to the extent the same are not inconsistent with the terms hereof) restore the remaining portion of the Premises, to the extent feasible, to the condition thereof as it existed immediately before such taking (a **"Condemnation Restoration"**). [*Scope of Tenant's restoration obligations to the extent not covered by condemnation proceeds to be addressed on a Project specific basis*].

(c) **Disbursement**. If less than Substantially All of the Premises are taken as provided in Section 9.2(a), the Net Condemnation Award payable to Owner, Tenant and any lender or mortgagee claiming through either of them shall be paid as follows: (1) first to the cost of the Condemnation Restoration; (2) second to the Recognized Mortgagee for any amounts due and payable under its Recognized Mortgage which are in default; (3) third to Recognized Mortgagee to the extent required by the Recognized Mortgage as a result of the less than Substantial Taking; (4) fourth to Owner for payment of any amounts due and payable hereunder which are in default and (5) fifth pursuant to Section 9.1(b).

(d) **Commencement of Construction Work**. Subject to Unavoidable Delays, Owner Delays, and/or City Delays, Tenant shall use commercially reasonable efforts to commence the Construction Work in connection with a Condemnation Restoration within ninety (90) days after receipt of the Net Condemnation Award arising from the taking which caused the need for such Condemnation Restoration and shall diligently pursue the completion of such Condemnation Restoration.

(e) **Pay Down of Mortgages Prohibited**. No Mortgagee (Recognized or otherwise) shall have the right to apply any award proceeds paid in connection with any taking toward payment of the sum secured by its Mortgage to the extent that this Lease requires that Tenant effect a Condemnation Restoration with such proceeds.

Section 9.3 Restoration Funds.

(a) If in connection with a taking the Net Condemnation Award is in excess of _____ [*Amount to be determined based on Project*], adjusted for inflation, then the Net Condemnation Award shall be deposited with the Recognized Mortgagee, or, if none, with a Lender pursuant to a mutually acceptable trust agreement. Except as may otherwise be required

by a Recognized Mortgagee, if such Net Condemnation Award is less than _____ [*Amount to be determined based on Project*] adjusted for inflation, the same shall be paid directly to Tenant to be applied as provided herein. Provided Tenant is conducting the Condemnation Restoration in accordance with this Lease, the Net Condemnation Award shall be paid out from time to time as the Condemnation Restoration progresses, upon the written request of Tenant, which request shall be accompanied by the following:

(i) A certificate signed by Tenant and the architect or engineer in charge of the Condemnation Restoration, reasonably satisfactory to Owner, dated not more than fifteen (15) days prior to such request, setting forth:

(1) that the sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for the work specified, and stating that no part of such expenditures has been or is being made the basis of any previous or then pending request for the withdrawal of the Net Condemnation Award;

(2) a brief description of the services and materials;

(3) that, except for the amount described in Section 9.3(a)(i)(1), there is no outstanding indebtedness actually known to the persons signing such certificate, after due inquiry, which is then due for labor, materials, or services in connection with the Condemnation Restoration;

(4) that the cost, as estimated by the persons signing such certificate, of the work required to complete the Condemnation Restoration does not exceed the amount of the remaining Net Condemnation Award, plus any amount deposited by Tenant to defray the expenses of the Condemnation Restoration; and

(5) that the work described has been completed in accordance with the plans and specifications applicable thereto, in a good and workmanlike manner and in accordance with all Requirements;

(ii) Lien waivers, title company reports or such other evidence, reasonably satisfactory to Owner, to the effect that there has not been filed with respect to the Premises, any vendor's, mechanic's, laborer's, materialman's or other lien which has not been discharged of record, except such as will be discharged by payment of the amount then requested; and

(iii) Such other documentation regarding the Condemnation Restoration as Owner or the Recognized Mortgagee shall reasonably require.

(b) Tenant shall, prior to the commencement of the Condemnation Restoration, furnish to Owner an estimate of the total cost of the Condemnation Restoration certified by the architect or engineer in charge of the Condemnation Restoration. If such cost estimate or any subsequent estimate provided pursuant to Section 9.3(a)(i)(4) shall show that the cost of completing the Condemnation Restoration is in excess of the amount of the Net Condemnation Award then available, Tenant shall promptly deposit with the holder of the Net Condemnation Award an

amount equal to such excess. The amount so deposited shall be included in the Net Condemnation Award for all purposes of this Article 9.

(c) Upon compliance by Tenant with the foregoing provisions of this Article, the holder of the Net Condemnation Award shall pay, to Tenant or the persons named in the certificate referred to in Section 9.3(a)(i), from the Net Condemnation Award, an amount equal to ninety percent (90%) of the cost of the Condemnation Restoration which is evidenced by the request. At the completion of each contract or subcontract in connection with the Condemnation Restoration, the balance of the Net Condemnation Award relating to that portion of the work, to the extent of and as required to complete the payment of Condemnation Restoration costs relating to that portion of the work, shall be paid to Tenant and Tenant shall provide to Owner reasonable evidence that the Condemnation Restoration relating to that portion of the work has been paid for in full.

(d) If the amount of any Net Condemnation Award, excluding deposits made by Tenant pursuant to Section 9.3(b) above, shall exceed the entire cost of the Condemnation Restoration, such excess, upon completion of the Condemnation Restoration, shall, if this Lease shall be in full force and effect, be disbursed to Tenant or if this Lease shall not be in full force and effect, such excess shall be paid to and retained by Owner.

Section 9.4 Temporary Taking.

(a) **Notice of Temporary Taking**. If during the City Sublease Term, the temporary use of the whole or any portion of the Premises is taken for a public or quasi public purpose by a lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, then terms of Article 15 of the City Sublease shall govern and this Lease shall continue for the remainder of the Term without diminution of any of Tenant's rights or obligations hereunder. If, following a termination of the City Sublease, the temporary use of the whole or any portion of the Premises is taken for a public or quasi public purpose by a lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right: (i) Tenant shall give Owner notice within five (5) Business Days thereof; (ii) the terms of this Section 9.4 shall apply; (iii) the Term shall not be reduced or affected in any way by reason of such temporary taking; and (iv) Tenant shall continue to pay to Owner the Rent and/or Impositions without reduction or abatement; provided, however, if such temporary taking is for a period in excess of eighteen (18) months, then such taking shall be deemed a permanent taking and the provisions of Sections 9.1 and 9.2, as applicable, shall apply.

(b) **Temporary Taking Not Extending Beyond the Term**. If the temporary taking is for a period not extending beyond the Term (including a taking restricted entirely to Tenant's Interest in the Premises and not affecting Owner's interest in any way), Tenant shall apply the award it receives in compensation therefor toward a Condemnation Restoration in accordance with Section 9.3, and Tenant shall, subject to the rights of any Recognized Mortgagee, be entitled to retain any remaining amount of such award.

(c) **Temporary Taking Extending Beyond the Expiration of the Term**. If the temporary taking is for a period extending beyond the Expiration of the Term, the award or payment shall first be disbursed pursuant to Section 9.3 to be applied toward such restoration of

the Improvements as may have been necessitated by such taking, and the remainder shall be equitably apportioned between Owner and Tenant as of the Expiration of the Term.

Section 9.5 Collection of Awards.

Each of the parties shall execute such documents as may be reasonably required to facilitate collection of any awards made in connection with any condemnation proceeding referred to in this Article 9.

Section 9.6 Negotiated Sale.

In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation.

Section 9.7 Intention of Parties.

The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any condemnation or taking of less than Substantially All of the Premises.

Section 9.8 No Waiver.

Notwithstanding anything to the contrary contained herein, the City, acting in its governmental capacity, does not waive, and hereby reserves, its right to consent or withhold consent to any acquisition of property owned by or belonging to the City, including the Premises.

Section 9.9 Effect of Taking on This Lease.

Except as provided in Section 9.1, this Lease shall not terminate, be forfeited or be affected in any manner, and there shall be no reduction or abatement of Rent and/or Impositions, by reason of any taking of the Premises or any part thereof. Except as provided in Section 9.2(a), and subject to Unavoidable Delays, Owner Delays, and/or City Delays, and taking into account Tenant's Condemnation Restoration obligations, Tenant's obligations hereunder shall continue as though the Premises had not been taken and shall continue without abatement, suspension, diminution or reduction whatsoever.

Article 10 - Sale of the Project, Transfer and Subletting

Section 10.1 Purpose of Restrictions on Transfer.

Subject to the provisions of this Article 10, this Lease is granted to Tenant solely for the purpose of development of the Property and its subsequent use in accordance with the terms hereof, and not for speculation in landholding. Tenant recognizes that, in view of the importance of the development of the Property to the general welfare of the community, the qualifications and identity of Tenant are of particular concern to the community and Owner. Tenant further recognizes that it is because of such qualifications and identity that Owner is entering into this Lease with Tenant and, in so doing, is further willing to accept and rely on the obligations of Tenant for the faithful performance of all undertakings and covenants by it to be performed.

Section 10.2 Definitions.

(a) **"Assignment"** means a sale, exchange, assignment, transfer or other disposition by Tenant of all or a portion of Tenant's Interest in the Premises, whether by operation of law or otherwise, which is not a Transfer or a Sublease. The creation or granting of a Mortgage shall not constitute an Assignment or a Transfer.

(b) **"Assignee"** means a purchaser, assignee, transferee, or other Person which acquires all or any portion of Tenant's Interest in the Premises.

(c) **"Equity Interest"** means, with respect to any entity, (1) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such entity if such entity is a business corporation, a real estate investment trust or a similar entity, (2) the legal (other than as a nominee) or beneficial ownership of any partnership, Membership Interest or other voting or non-voting ownership interest in a partnership, joint venture, limited liability company or similar entity, (3) a legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if such entity is a trust and (4) any other voting or non-voting interest that is the functional equivalent of any of the foregoing.

(d) **"Sale of the Project"** means (i) any Assignment or Sublease by Tenant of fifty percent (50%) or more of Tenant's Interest in the Premises or (ii) any change, by operation of law or otherwise, in the ownership of an Equity Interest in Tenant wherein such change in ownership, directly or indirectly, produces any change in the Controlling Interest of Tenant.

(e) **"Sublease(s)"** means any sublease (including a sub sublease or any further level of subletting) of all or any portion of the Premises, but does not include subleases serving the functional equivalent of a Recognized Mortgage or subleases to actual space users or other subleases entered into in the ordinary course of business for parking, retail, office or other space at the Premises.

(f) **"Subtenant"** means any party granted rights by Tenant under a Sublease or by any other Subtenant (immediate or remote) under a Sublease.

(g) **"Transfer"** means (i) any change, by operation of law or otherwise, in the ownership of an Equity Interest in Tenant, wherein such change in ownership, directly or indirectly, does not produce any change in the Controlling Interest of Tenant, or (ii) any transaction or series of transactions, by operation of law or otherwise, including, without limitation, the issuance of additional Equity Interests or the direct or indirect revision of the beneficial ownership or control structure of the management or operation of Tenant or any direct or indirect constituent entity of Tenant, which, in either case, does not produce any change, by operation of law or otherwise, in the Controlling Interest in Tenant.

(h) **"Transferee"** means a Person to which a Transfer is made.

Section 10.3 Restrictions on Sale of the Project or Transfer.

(a) **No Sale of the Project or Transfer Prior to CO Date**. There shall not be any Sale of the Project or Transfer prior to the CO Date other than as permitted by the provisions in Section 10.4 and other than a Foreclosure Transfer.

(b) **No Sale of the Project or Transfer to a Foreign Instrumentality or Prohibited Person**. Notwithstanding anything in this Lease to the contrary, there shall not be any Sale of the Project or any Transfer to a Foreign Instrumentality or Prohibited Person.

(c) **Restriction on Sale of the Project**. Subject to the provisions of Section 10.3(a) and (b) herein, Tenant may not effect a Sale of the Project except, upon the prior written consent of Owner, [*standard for withholding consent to be address on a Project specific basis*], to a permitted buyer (the **"Permitted Buyer"**) which shall mean any of the following:

(i) a real estate investor or real estate investment entity (including without limitation, a real estate investment trust) investing funds for its own account,

(ii) a pension fund, pension fund advisor or investment advisor investing on behalf of others, or

(iii) a developer who either invests, for its own account (with or without additional equity investors investing with said developer), in or develops commercial real estate projects located within or outside the United States; provided, however, that such Permitted Buyer in fact meets or exceeds and certifies to Tenant and Owner that it meets or exceeds the criteria described in subsections (A) through (G) below. For purposes of the Sale of the Project being permitted under this Section 10.3(c), Owner shall rely solely on Permitted Buyer's certification that the Permitted Buyer meets such criteria, together with the financial statements described in (A) below. At any time within the thirty (30) day period described in the last paragraph of this Section 10.3(c), Owner shall be entitled to engage an independent accounting firm to review the books, records and other information upon which the certifications and financial statements described below were based for the purpose of determining whether the certifications or the financial statements described below are accurate and complete.

(A) Together, with the Permitted Buyer's Affiliates, has equity ownership in real estate (or, in the case of pension fund advisors or investment advisors, current real estate equity under management) plus cash and/or cash equivalent of at least Fifty Million Dollars ($50,000,000), adjusted for inflation, (such real estate may either be owned or, in the case of pension fund advisors or investment advisors, under management by Affiliates owned or controlled by such Permitted Buyer or its principals), as set forth in the most recent year-end financial statements of the persons or entities used to arrive at said Fifty Million Dollars ($50,000,000), adjusted for inflation. Said financial statements shall be examined by an independent certified public accounting firm and shall be accompanied by such independent certified public accounting firm's **"examined special report,"** in accordance with attestation standards established by the American Institute of Certified Public Accountants, stating that the sum of the Permitted Buyer's equity ownership in real estate based upon current fair market value and cash or cash equivalent exceeds Fifty Million Dollars ($50,000,000), adjusted for inflation, (or, if such examined financial statements are not available, such equity may alternatively be established by evidence reasonably satisfactory to Owner's independent certified

public accounting firm, however, such alternative evidence must be submitted to Owner and approved by Owner's independent certified public accounting firm prior to any Sale of the Project being effective. Such approval shall be deemed given if the alternative evidence has not been disapproved in writing, with reasons given for disapproval, within forty-five (45) days of all such evidence being submitted to Owner);

(B) Is not (nor is any of the individuals or entities included for purposes of the calculation of the Fifty Million Dollars ($50,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above), a Foreign Instrumentality or Prohibited Person;

(C) Must not have been (nor are any of the individuals or entities included for purposes of the calculation of the Fifty Million Dollars ($50,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above) within the seven (7) years preceding the date of the Sale of the Project, in an adversarial relationship in litigation or are not in an adversarial relationship in litigation currently pending with Owner or the City, in both cases including but not limited to, litigation with respect to ordinances, charter provisions or resolutions of the Owner or City, including building code or other code violations (but excluding zoning appeals and appeals of property tax assessments);

(D) Must not be owned, controlled or run by entities or individuals (including for this purpose, all entities and individuals included for purposes of the calculation of the Fifty Million Dollars ($50,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above) who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or domestic jurisdiction;

(E) Must not (including for this purpose all entities and individuals included for purposes of the calculation of the Fifty Million Dollars ($50,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above) have filed or been discharged from bankruptcy, reorganization or insolvency proceedings within the past seven years (bankruptcy filings by Affiliates shall not disqualify an assignee, unless such Affiliates were included for purposes of determining the Fifty Million Dollars ($50,000,000), adjusted for inflation, equity plus cash and/or cash equivalent calculation described in (A) above);

(F) Must not in its charter or organizational documents (defined as the articles of incorporation and bylaws for any corporation, the operating agreement of any limited liability company, the partnership agreement and partnership certificate for any partnership, the trust agreement for any trust and the constitution of the relevant government for any governmental entity, but expressly excluding any statements, positions, actions or allegations not contained in such charter organizational documents) expressly advocate or have as its stated purpose: (x) the violent overthrow of, or armed resistance against, the U.S. Government; or (y) genocide, violence, hatred or animosity toward persons based solely on their race, religion, creed, color, sexual orientation or national origin; and

(G) Unless the Permitted Buyer is publicly held, must have an entity within the group of entities included for purposes of the calculation of the Fifty Million

Dollars ($50,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above which has not less than a five (5) years operating history.

In any Sale of the Project under this Section 10.3(c), Tenant agrees to provide Owner, at least thirty (30) days in advance of the actual Sale of the Project, with the certifications of the Permitted Buyer referred to above, together with the financial statements described in (A) above, and if the Permitted Buyer is a real estate investment trust that is not publicly held, the identity of the principal owners of such trust and the proposed documentation required by Section 10.5 below.

(d) **Foreclosure Transfer**. A Foreclosure Transfer pursuant to the provisions of Section 11.12 shall not require the consent of Owner.

Section 10.4 Transfers.

Tenant represents and warrants that Tenant has not made, created or suffered any Transfers as of the Commencement Date and that the entities and individuals who or which have an ownership interest in Tenant on the Commencement Date are listed, together with their percentage and character of ownership, in **Exhibit "C"** attached hereto and incorporated by reference herein. Except as permitted, pursuant to Sections 10.4(a)-(c) herein, no Transfer may or shall be made, suffered or created by Tenant, its successors, assigns or transferees without complying with the terms of Sections 10.5 and 10.6 and other sections herein applicable thereto. The following Transfers shall be permitted hereunder without the consent of Owner or any other action by Owner:

(a) Any Transfer of a Member's interest in Tenant (other than the interest of either of the Key Persons, whether directly or indirectly) or the admission of additional Members to Tenant, provided that such Transfer is not of a Controlling Interest;

(b) Any Transfer by a Person who is a Member of Tenant of his Membership interest in Tenant into a charitable trust, a blind trust, or for estate planning purposes; and

(c) A Transfer from the holder of an Equity Interest in Tenant (1) to his or her mother, father, spouse, brother, sister or child (an **"Immediate Family Member"**), or any combination thereof, of that holder; (2) to a trust whose sole beneficiary(ies) is (y) a holder of an Equity Interest in Tenant or (z) an Immediate Family Member of a holder of an Equity Interest in Tenant; (3) to a personal representative of the estate of a deceased holder of an Equity Interest in Tenant; (4) to a Person in which a holder of an Equity Interest in Tenant holds, directly or indirectly, the Controlling Interest; or (5) to any other holder of an Equity Interest in Tenant in which Transferee does not become (unless such Transferee already was) the holder of a Controlling Interest as a result of such Transfer; (for purposes of this Section 10.4(c) only, the term Transfer shall include a transfer of an Equity Interest in a Person or Persons having an Equity Interest, directly or indirectly, in Tenant).

(d) If, at the time of a requested Transfer under Sections 10.4(a) or 10.4(b), Tenant is a corporation or other type of entity, then the references to limited liability company shall be changed to the type entity in question and the Membership Interest being transferred shall be changed to the appropriate ownership interest.

Any consent to a Transfer shall not waive any of Owner's rights to consent to a subsequent Transfer. Any Transfer made in violation of the terms hereof shall be null and void and of no force and effect.

Section 10.5 Required Notices.

(a) Tenant shall give notice to Owner of every proposed Transfer and/or Sale of the Project, which notice shall contain the following information: (i) the name and address of proposed Transferee; (ii) the name and address of proposed transferor; (iii) the nature of the transaction; (iv) the percentage interest conveyed; and (v) such other additional information as Owner shall reasonably request in connection with the proposed Transfer and/or proposed Sale of the Project; provided, however, Owner shall make such request within ten (10) Business Days after receipt of Tenant's information. In addition, with respect to any proposed Transfer other than those described in Sections 10.4(a) through 10.4(c) above and with respect to any Sale of the Project, Tenant shall give or cause to be given to Owner written notice requesting approval of the proposed Transfer and/or proposed Sale of the Project and submit all information necessary for Owner to make an evaluation of the proposed Transferees and/or proposed purchaser of a Controlling Interest and the proposed Transfer and/or Sale of the Project and to obtain Owner's consent to same. Owner shall, within ___ (__) days of its receipt of such information, advise Tenant if it shall consent to same. If Owner shall fail to respond during such ____ (__) days, it shall be deemed to have consented to the proposed Transfer and/or proposed Sale of the Project in question [*Approval Rights for subleases by Tenant following a termination of the City Sublease to be addressed on a Project specific basis]*. If Owner shall not consent to a proposed Transfer and/or proposed Sale of the Project, Owner shall state all of its reasons for such disapproval in its notice to Tenant withholding its consent.

(b) In addition to all other obligations imposed upon Tenant hereunder, Tenant shall reimburse Owner, upon demand, for any reasonable costs incurred by Owner in connection with any such Transfer and/or Sale of the Project and/or Sublease, including without limitation, the out-of-pocket cost of making inquiries and investigations into the acceptability of the proposed Transferee and/or purchaser of a Controlling Interest and/or Sublessee, and the reasonable legal costs incurred, if any, in connection therewith.

Section 10.6 Effectuation of Transfers and Sales of the Project.

No Sale of the Project or Transfer of the nature described in Sections 10.3 and 10.4 shall be effective unless and until:

(a) executed copies of the documents and other agreements between the parties to effectuate the Sale of the Project and/or Transfer are delivered to Owner; and

(b) in the case of a Sale of the Project, the entity to which a Sale of the Project is made, by instrument in writing and in form and substance satisfactory to Owner and in form recordable among the Property records, shall, for itself and its successors and assigns, and especially for the benefit of Owner, expressly assume all of the obligations of Tenant under this Lease and agree to be personally liable and subject to all conditions and restrictions to which Tenant is subject;

provided, however, that a Recognized Mortgagee shall not be liable under this Lease with respect to any matter arising prior to its actual ownership of the Project, except:

(i) then existing and unpaid Rent and/or Impositions, other then existing and unpaid monetary obligations of Tenant under this Lease, including defaults which can be cured by the payment of money and are in a liquidated amount, non-monetary defaults which a Recognized Mortgagee can cure or remedy without title and possession, (all such defaults to include any then existing event, matter or occurrence which, with the passage of time or the happening of future events, matters or occurrences, becomes an Event of Default),

(ii) as provided in Article 11 (it being understood, nevertheless, that the limitation of any such liability of Recognized Mortgagee shall not impair, impede or prejudice any other right or remedy available to Owner for default by Tenant and/or the then current transferee).

Recognized Mortgagee shall not be liable under this Lease with respect to any matter arising subsequent to the period of its actual ownership of the Project; provided however, that the fact that Recognized Mortgagee has no liability for matters arising subsequent to the period of its actual ownership shall not relieve or except any subsequent transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit Owner of or with respect to any rights, remedies or controls with respect to the Project or the construction of the Improvements.

Section 10.7 Subleases.

Notwithstanding anything in this Lease to the contrary, by its execution of this Lease, Owner is deemed to have consented to any City Sublease. Subject to the terms and conditions of this Lease, in the event of the expiration or earlier termination of the City Sublease prior to the Expiration of the Term of this Lease, Tenant shall have the right to enter into individual subleases at any time and from time to time during the term of this Lease with such subtenants, but only for uses that are permitted under Article 6, and upon such commercially reasonable terms and conditions as Tenant shall, in its sole discretion, deem fit and proper. At Owner's request, Tenant shall allow Owner to review and inspect (but not retain copies of) any and all Subleases. Upon receipt of a written request from Tenant or any sublessee, Owner shall enter into attornment and non-disturbance agreements with sublessees. Such attornment and non-disturbance agreements shall be entered into upon such terms and conditions as are customary for such agreements.

Article 11 - Mortgages

Section 11.1 Right to Mortgage.

(a) Except as otherwise expressly provided for in this Lease, Tenant shall not mortgage, pledge, hypothecate or otherwise encumber Tenant's Interest in the Premises.

(b) Tenant shall have the right to mortgage, pledge, hypothecate or otherwise encumber Tenant's Interest in the Premises to secure Debt by a Recognized Mortgage, provided, however, that the loan documents, instruments or agreements evidencing such Debt and/or any Mortgage(s) related thereto, as any of the foregoing may from time to time be amended, restated, modified or replaced (the **"Loan Documents"**) shall be subject to Owner's prior review and written approval,

including, without limitation, approval of the loan terms relating to the treatment of reductions in Project development costs after closing, all amounts and returns on the Equity Investment to be paid to Tenant from the Loan proceeds, and all costs, retainage and expenses chargeable to Landlord or the City pursuant to the Loan Documents. Within twenty (20) days after Owner's receipt of the proposed Loan Documents, the Owner's Designee shall notify Tenant of its approval or disapproval thereof and, in the event of the Owner's disapproval, the reasons therefor.

Section 11.2 Definitions.

(a) **"Debt"** means the principal amount of debt and interest thereon secured by Tenant's Interest in the Premises, together with any other amounts owed by Tenant under a Recognized Mortgage to a Recognized Mortgagee. In addition, Debt shall include any debt obtained in connection with (i) a required Casualty Restoration or Condemnation Restoration, as applicable, if the Net Insurance Proceeds are, or the Net Condemnation Award is, inadequate to achieve the required Casualty Restoration or Condemnation Restoration, as applicable and (ii) any advances made by a Recognized Mortgagee with respect to Tenant's Interest in the Premises for the payment of taxes, assessments, insurance premiums or other costs incurred for the protection of Tenant's Interest in the Premises or the liens created by the Recognized Mortgage, and reasonable expenses incurred by such Recognized Mortgagee, by reason of a default by Tenant under such Recognized Mortgage or under this Lease.

(b) **"Mortgage"** means any mortgage or deed of trust, and all extensions, spreaders, splitters, consolidations, restatements, replacements, modifications and amendments thereof, that constitutes a lien on all or a portion of Tenant's Interest in the Premises, and any security interest in or assignment of the Lease and/or City Sublease or the rents, issues or profits related thereto.

(c) **"Recognized Mortgage"** means a Mortgage (i) that is held by a Person (other than an Affiliate) which is a Lender, (ii) which expressly provides that it is subject and subordinate to the terms of this Lease and to Owner's Interest in the Premises, and (iii) a photostatic copy of which is, following the execution and delivery thereof, delivered to Owner, together with a certification by Tenant confirming that the photostatic copy is a true copy of the Mortgage and a certification by the Recognized Mortgagee thereunder confirming the address of such Recognized Mortgagee for notices.

Section 11.3 Effect of Mortgages.

(a) **Owner's Interest**. No Mortgage shall extend to or be a lien or encumbrance upon, Owner's Interest in the Premises or any part thereof or any appurtenant rights thereto which have not been granted to Tenant under this Lease. A Mortgage may extend to and be a lien or encumbrance upon the entire Tenant's Interest in the City Sublease and Premises.

(b) **Mortgagee's Rights Not Greater than Tenant's**. The execution and delivery of a Recognized Mortgage shall not give or be deemed to give a Recognized Mortgagee any greater rights against Owner than those granted to Tenant hereunder, except as otherwise expressly provided in this Lease.

Section 11.4 Notice and Right to Cure Tenant Defaults.

(a) **Notice to Recognized Mortgagee**. Owner shall give to the Recognized Mortgagee, in the manner provided by the provisions of Section 26.1 at such address as such Recognized Mortgagee may confirm to Owner in the certification delivered to Owner pursuant to Section 11.2(c) or given by notice to Owner in accordance with Section 26.1, a copy of each notice of Default at the same time as it gives notice of Default to Tenant. Owner shall also give the Recognized Mortgagee notice (**"Notice of Failure to Cure"**) in the event Tenant fails to cure a Default within the period, if any, provided in this Lease for such cure, promptly following the expiration of such period (i.e., an Event of Default). Only Events of Default expressly described in the Notice of Failure to Cure may give rise to a termination of this Lease by Owner pursuant to its termination rights hereunder.

(b) **Right and Time to Cure**. The Recognized Mortgagee shall have a period of thirty (30) days after receipt of the Notice of Failure to Cure, in the case of any Event of Default, to (1) cure the Event of Default referred to in the Notice of Failure to Cure or (2) cause it to be cured, subject to the provisions of Section 25.1(b). Nothing contained herein shall be construed as imposing any obligation upon any Mortgagee to so perform or comply on behalf of Tenant. Anything contained in this Lease to the contrary notwithstanding, Owner shall have no right to terminate this Lease or terminate Tenant's right to possession of the Premises prior to the delivery of a Notice of Failure to Cure or following the delivery of a Notice of Failure to Cure if, within sixty (60) days after receipt of Owner's Notice of Failure to Cure, any Recognized Mortgagee shall:

(i) notify Owner of such Recognized Mortgagee's desire to cure the matter described in such Notice of Failure to Cure;

(ii) pay or cause to be paid all Rent and/or Impositions owed by Tenant then due and in arrears as specified in the Default Notice from Owner to such Recognized Mortgagee; provided, however, in the event that the Recognized Mortgagee (A) provides notice to Owner pursuant to Section 11.4(b)(i), and (B) files a foreclosure within sixty (60) days of its receipt of the Notice of Failure to Cure and diligently prosecutes such foreclosure, the Recognized Mortgagee's curative obligations with regard to an Event of Default as provided in this Section 11.4(b)(ii) shall be excused, subject to the provisions of Section 11.4(b)(iv), (which shall be applicable during the pendency of a foreclosure);

(iii) cure all Defaults by Tenant in the observance or performance of any term, covenant or condition of this Lease on Tenant's part to be observed or performed (other than the payment of Rent and/or Impositions), or if any such Default is of such a nature that it cannot reasonably be remedied within such thirty (30) day period (but is otherwise reasonably susceptible to cure), Recognized Mortgagee shall, (i) within thirty (30) days after the giving of such Notice of Failure to Cure, advise Owner of such Recognized Mortgagee's intention to institute all steps (and from time to time, as reasonably requested by Owner, such Recognized Mortgagee shall advise Owner of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same, it being acknowledged by Owner that, if possession or control of the Premises is required to effect such cure, the diligent prosecution of a foreclosure of a Recognized Mortgage, and the continuing efforts by such Recognized Mortgagee to effect such cure following completion of such foreclosure, shall constitute a part of the steps necessary to remedy such Default; and

(iv) if such Recognized Mortgagee files a foreclosure, during the pendency of such foreclosure, pays or causes to be paid all Rent and/or Impositions due beginning upon the filing of such foreclosure.

Notwithstanding the foregoing provisions of this Section 11.4(b), following the delivery of a Notice of Failure to Cure, within five (5) Business Days following the written request of any Recognized Mortgagee (which request may be contained in the notice from such Recognized Mortgagee to Owner given pursuant to Section 11.4(b)(i)), Owner shall deliver to such Recognized Mortgagee a statement certifying the aggregate amount of Rent and/or Impositions then due and in arrears hereunder and the estimated per diem increase in such amount, but no such request shall increase any of the time periods provided for in this Section 11.4(b).

(c) **Acceptance of Mortgagee's Performance**. Owner shall accept performance by a Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant.

(d) **Other Rights of Mortgagees**. Notwithstanding any other provision of this Lease, no payment made to Owner by any Mortgagee shall constitute the Mortgagee's agreement that such payment was, in fact, due under the terms of this Lease.

(e) **Owner's Self-Help Rights**. Notwithstanding the foregoing provisions of this Section 11.4, if a Recognized Mortgagee fails (for any reason) to cure any Default by Tenant described in Section 11.4(b)(iii) within sixty (60) days following receipt of the Notice of Failure to Cure regarding such Default, then Owner may upon notice, but shall be under no obligation to, perform the obligation of Tenant the breach of which gave rise to such Default, without waiving or releasing Tenant from its obligations with respect to such Default. Tenant hereby grants Owner access to the Premises in order to perform any such obligation. Any amount paid by Owner in performing Tenant's obligations as provided in this Section 11.4(e), including all costs and expenses incurred by Owner in connection therewith, shall constitute Rent hereunder and shall be reimbursed to Owner within thirty (30) days following Owner's demand therefor, together with a late charge on amounts actually paid by Owner, calculated at the Late Charge Rate from the date of notice of any such payment by Owner to the date on which payment of such amounts is received by Owner.

(f) **Acceptance of Owner's Performance**. Tenant shall cause all Mortgages to contain a provision requiring that all Mortgagees shall accept performance by Owner, within the applicable grace periods available to Tenant, to cure defaults under any covenant, condition or agreement on Tenant's part to be performed under such Mortgages with the same force and effect as though performed by Tenant.

Section 11.5 Recognized Mortgagee or its Designee as Tenant Under this Lease.

If a Recognized Mortgagee or its Designee becomes Tenant under this Lease, then, in that event, such Recognized Mortgagee or such Designee shall, during the period of its tenancy: (a) pay all current Rent and/or Impositions, in full, commencing as of the date such Recognized Mortgagee or such Designee becomes Tenant (the **"Reinstatement Date"**), and (b) comply with all the terms, covenants and conditions of this Lease.

Section 11.6 Execution of New Tenant's Documents.

(a) **Notice of Termination**. If this Lease is terminated by reason of an Event of Default, or by reason of the rejection thereof by or on behalf of Tenant in bankruptcy or for any other reason, Owner shall give prompt notice thereof to each Recognized Mortgagee.

(b) **Request for and Execution of New Tenant's Documents**. If, within sixty (60) days of receipt of the notice referred to in Section 11.6(a), the Recognized Mortgagee shall request, in writing, a new lease for the remainder of the Term, on the same terms and conditions as set forth in this Lease (the **"New Tenant's Documents"**), to the Recognized Mortgagee or to a Designee or Foreclosure Transferee identified in such request (other than a Foreign Instrumentality, a Prohibited Person and/or an Affiliate of Tenant), then, subject to the provisions of Sections 11.6(c) and 11.7, within ninety (90) days after Owner shall have received such request, Owner shall execute and deliver New Tenant's Documents covering the remainder of the Term to the Recognized Mortgagee or to any Designee or Foreclosure Transferee that has satisfied the requirements set forth in Section 10.3, 10.4, and such Recognized Mortgagee (or its Designee or Foreclosure Transferee) shall execute and deliver such New Tenant's Documents to Owner within thirty (30) days following receipt thereof by such Recognized Mortgagee (or Designee or Foreclosure Transferee). Such New Tenant's Documents shall be effective upon the execution thereof by both Owner and such Recognized Mortgagee or its Designee or Foreclosure Transferee. The New Tenant's Documents shall contain all of the covenants, conditions, limitations and agreements, and all of Tenant's rights and remedies, contained in this Lease (including, without limitation, a conveyance by Owner of all then-existing Improvements); provided, however, Owner shall not be deemed to have represented or covenanted that such New Tenant's Documents are superior to claims of Tenant, its other creditors or a judicially appointed receiver or trustee for Tenant; provided further, however, such New Tenant's Documents will have the same priority over any encumbrances on the estate of Owner which Tenant has or had by virtue of this Lease and the Recognized Mortgagee (or its Designee or Foreclosure Transferee) will not have any obligation to perform any acts under this Lease which shall at such time have already been performed by Tenant. Simultaneously with the making of such New Tenant's Documents, the party obtaining such New Tenant's Documents and all other parties junior in priority of interest in the Premises shall, at the option the Recognized Mortgagee or its Designee or Foreclosure Transferee, execute, acknowledge and deliver such new instruments, including new mortgages and new Subleases, as applicable, and shall make such payments and adjustments among themselves, as shall be necessary and proper for the purposes of restoring to each of such parties as nearly as reasonably possible, the respective interest and status with respect to the Premises which was possessed by the respective parties prior to the termination of this Lease as aforesaid.

Upon the execution and delivery of New Tenant's Documents under this Section 11.6(b), all Subleases which theretofore may have been assigned to Owner shall be assigned and transferred, without recourse, representation or warranty, by Owner to the New Tenant named in such New Tenant's Documents. Between the date of termination of this Lease and the date of execution and delivery of the New Tenant's Documents (but not later than thirty (30) days following receipt of such New Tenant's Documents by such Recognized Mortgagee, as provided in Section 11.6(b)), if a Recognized Mortgagee shall have requested such New Tenant's Documents as provided in this Section 11.6(b), Owner shall not enter into any new Subleases,

cancel or modify any then-existing Subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the written consent of a Recognized Mortgagee, except as permitted in the Subleases.

For so long as the Recognized Mortgagee (or its Designee or Foreclosure Transferee) shall have the right to enter into a new ground lease with Owner pursuant to this Section 11.6(b), Owner shall not enter into a new lease of the Property with any Person other than the Recognized Mortgagee (or its Designee or Foreclosure Transferee), without the prior written consent of the Recognized Mortgagee. The provisions of Section 11.6(b) shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if Section 11.6(b) were a separate and independent contract made by Owner, Tenant and any Recognized Mortgagee and, from the effective date of such termination, rejection or disaffirmance of this Lease to the date of execution and delivery of such new ground lease if such Recognized Mortgagee (or its Designee or Foreclosure Transferee) has requested the New Tenant's Documents within sixty (60) days after receipt of the aforesaid notice from Owner, the Recognized Mortgagee may use and enjoy the leasehold estate created by this Lease without hindrance by Owner. The aforesaid agreement of Owner to enter into a new ground lease with the Recognized Mortgagee shall be deemed a separate agreement between Owner and such Recognized Mortgagee, separate and apart from this Lease as well as a part of this Lease, and shall be unaffected by the rejection of this Lease in any bankruptcy proceeding by any party.

(c) **Conditions Precedent to Owner's Execution of New Tenant's Documents**. The provisions of Section 11.6(b) notwithstanding, Owner shall not be obligated to enter into New Tenant's Documents with a Recognized Mortgagee or its Designee or Foreclosure Transferee unless:

(i) the Recognized Mortgagee or its Designee or Foreclosure Transferee shall pay to Owner, concurrently with the execution and delivery of the New Tenant's Documents, all unpaid Rent and/or Impositions due under this Lease up to and including the date of the commencement of the term of the New Tenant's Documents and all reasonable out of pocket expenses, as evidenced by receipted bills therefor, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred in connection with the Default or Event of Default, the termination of this Lease and the preparation of such New Tenant's Documents, less the net revenue of the Premises actually received by Owner from the date of termination of this Lease to the date of execution of the New Tenant's Documents; and

(ii) in the case of a Default or Event of Default, the Recognized Mortgagee or its Designee or Foreclosure Transferee shall promptly after execution of the New Tenant's Documents, satisfy all obligations and cure all Events of Defaults existing or continuing under this Lease at the time of its termination (as though the Term had not been terminated) and which are reasonably susceptible to cure by such Recognized Mortgagee (or its Designee or Foreclosure Transferee).

(d) **No Waiver of Default**. The execution of New Tenant's Documents shall not constitute a waiver of any Default existing or continuing immediately before termination of this Lease and, except as to a Default which is not reasonably susceptible of being cured by the

Recognized Mortgagee or its Designee or Foreclosure Transferee (e.g., the insolvency of Tenant), the New Tenant under the New Tenant's Documents shall cure, within the applicable periods in such New Tenant's Documents (which periods shall be identical to the periods set forth in Section 25.1), all Defaults existing under this Lease immediately before its termination. Nothing in this Lease shall require a Recognized Mortgagee or its Designee or Foreclosure Transferee, as a condition to the exercise of its right to enter into New Tenant's Documents, to cure any default of Tenant not reasonably susceptible of being cured by such Person (e.g., a bankruptcy-related default).

(e) **Payments under Lease**. If the Recognized Mortgagee or its Designee or Foreclosure Transferee shall enter into New Tenant's Documents pursuant to this Article and if, upon such termination of this Lease, Tenant, but for such termination, would have been entitled to receive any amount pursuant to the provisions of this Lease, then Owner agrees that, subject to any rights of setoff Owner may have, the same shall be paid to the Recognized Mortgagee or its Designee or Foreclosure Transferee, as the New Tenant under the New Tenant's Documents, in the same manner and to the same extent as it would have been paid or apply the same to or for the benefit of the Recognized Mortgagee or its Designee or Foreclosure Transferee as if this Lease had not been terminated.

(f) The provisions of this Section 11.6 shall survive the Expiration of the Term.

Section 11.7 Application of Proceeds from Insurance or Condemnation Awards.

To the extent that this Lease requires that insurance proceeds paid in connection with any damage or destruction to the Premises, or the proceeds of an award paid in connection with a taking referred to in Article 9, be applied to restore any portion of the Premises, no Mortgagee shall have the right to apply the proceeds of insurance or awards toward the payment of the sum secured by its Mortgage, except for the reasonable costs of collection thereof.

Section 11.8 Appearance at Condemnation Proceedings.

A Recognized Mortgagee shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials and appeals in connection therewith.

Section 11.9 Rights Limited to Recognized Mortgagees.

The rights granted to a Recognized Mortgagee under the provisions of this Lease shall not apply in the case of any Mortgagee that is not a Recognized Mortgagee.

Section 11.10 No Surrender or Modification.

Owner agrees not to accept a voluntary surrender, termination or modification of this Lease at any time while such Recognized Mortgage(s) shall remain a lien on Tenant's leasehold estate. It is further understood and agreed that any such Recognized Mortgagee(s) shall not be bound by any surrender, termination or modification of this Lease unless such surrender, termination or modification is made with the prior written consent of such Recognized Mortgagee, and this Lease shall not terminate by merger or otherwise as long as the lien of the Recognized Mortgage(s)

remains undischarged. Notwithstanding the foregoing, Owner's waiver or postponement of any obligation of Tenant or any remedy Owner may have under this Lease shall not constitute a modification for purposes hereof.

Section 11.11 Recognition by Owner of Recognized Mortgagee Most Senior in Lien.

If there is more than one Recognized Mortgagee, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Recognized Mortgage is most senior in lien shall be recognized as having rights under Sections 11.4, 11.5 or 11.6, unless such first priority Recognized Mortgagee has designated in writing to Owner a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right.

Section 11.12 Recognized Mortgagee's Assignment Rights.

(a) Notwithstanding anything contained in Article 10 or elsewhere in this Lease to the contrary, a Foreclosure Transfer (other than to a Foreign Instrumentality or a Prohibited Person) shall not require the consent of Owner or constitute a breach of any provision of or a Default under this Lease. Upon any such Foreclosure Transfer, Owner shall recognize the Foreclosure Transferee as Tenant hereunder, provided, however, that such new Tenant shall deliver to Owner, or shall cause to be delivered to Owner, within thirty (30) days after the execution thereof, the appropriate instruments provided in Sections 10.5 and 10.6 (subject to the provisions of Section 11.12(b)).

(b) Except as expressly provided otherwise in this Lease, no Mortgagee or other Foreclosure Transferee shall be liable under this Lease unless and until such time as it becomes Tenant hereunder, and then only for so long as it remains Tenant hereunder.

(c) **Definitions**:

(i) **"Foreclosure Transfer"** means a transfer occurring as a result of the foreclosure of a Recognized Mortgage, or any sale of Tenant's Interest in the Premises, or any other transfer or assignment of Tenant's Interest in the Premises by judicial proceedings pertaining to a Recognized Mortgage or by virtue of the exercise of any power contained in a Recognized Mortgage, or by an assignment-in-lieu or other consensual conveyance, or otherwise:

(A) by or on behalf of Tenant or pursuant to foreclosure proceedings to a Recognized Mortgagee (or its Designee or Foreclosure Transferee); or

(B) by or on behalf of Tenant or a Recognized Mortgagee (or its Designee or Foreclosure Transferee) or pursuant to foreclosure proceedings to a purchaser of Tenant's Interest in the Premises at a foreclosure sale pursuant to a Recognized Mortgage or by a Recognized Mortgagee (or its Designee or its Foreclosure Transferee) after consummating a Foreclosure Transfer as described herein or after such foreclosure sale.

(ii) **"Foreclosure Transferee"** means the purchaser, transferee or other assignee in a Foreclosure Transfer.

(iii) **"Designee"** means an Affiliate of a Recognized Mortgagee that is the designee or nominee of such Recognized Mortgagee.

Section 11.13 Notices Under a Mortgage.

Tenant shall give to Owner copies of all notices of default received from a Mortgagee within ten (10) days after receiving written notice of same from Mortgagee.

(a) **Notices**. Tenant shall cause all Mortgages to contain a provision requiring that all Mortgagees shall send to Owner, simultaneously with the sending of such default notices to Tenant, copies of all default notices or other notices relating to the failure of Tenant to keep any Mortgage in good standing, which notices are sent pursuant to any loan document or security document to Tenant.

(b) **Estoppel Requests**. Tenant shall cause all Mortgages to contain a provision requiring that the Mortgagee shall comply with all reasonable estoppel requests of Owner. Owner shall comply with all reasonable estoppel requests of any Mortgagee.

Article 12 - Subordination

Section 12.1 No Subordination of Owner's Proprietary Interest in Property.

Owner's proprietary interest in the Property, including, without limitation, Owner's interest in this Lease, as the same may be modified, amended or renewed in accordance with the provisions of this Lease, shall not be subject or subordinate to (a) any Mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Tenant's Interest in the Premises or (c) any Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Subtenant's interest in the Premises.

Section 12.2 Tenant's Interest in the Premises Subject to Title Matters.

Tenant's Interest in the Premises, including, without limitation, this Lease and the leasehold estate of Tenant hereby created and all rights of Tenant hereunder are and shall be subject to all Title Matters.

Article 13 - Project Design and Construction

Tenant shall develop, design, permit and construct the Project in accordance with and subject to the terms of the City Sublease.

Article 14 - Maintenance, Repair and Alterations

Section 14.1 Maintenance Standards.

(a) Prior to the Possession Date and from and after the Sublease Commencement Date until the termination of the City Sublease: (A) Tenant shall have no obligation to perform repairs, maintenance and/or replacements of the Premises which are the responsibility of City under the City Sublease; (B) City's failure to timely make repairs, maintenance and/or replacements of the

Premises as required by the City Sublease shall not create a Default or Event of Default on the part of Tenant under this Lease; and (C) Tenant shall not be liable to Owner with respect to City's failure to timely make repairs, maintenance and/or replacements of the Premises as required by the City Sublease.

(b) Except as provided in Section 14.1(a), Tenant shall, at its own cost and expense, repair and maintain the Premises in accordance with the following terms:

(i) Tenant shall take good care of, and keep and maintain, the Premises in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Premises in good and safe order and condition, as other comparable first class projects in similar usage and of similar age are kept (reasonable wear and tear excepted).

(ii) Tenant shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Premises.

(iii) All repairs, replacements and renovations made by Tenant shall be substantially equal in quality and class to the original quality of the Improvements being repaired and shall be made in compliance with the Requirements.

(iv) Tenant shall keep clean and free from dirt, mud, standing water, rubbish, obstructions and physical encumbrances all areas of the Premises.

Section 14.2 Removal of Building Equipment.

Tenant shall not, without the consent of Owner, remove or dispose of any Building Equipment from the Premises unless such Building Equipment (i) is promptly replaced by Building Equipment of at least equal utility and quality, or (ii) is removed for repairs, cleaning or other servicing, provided Tenant reinstalls such Building Equipment with reasonable diligence; except, however, Tenant shall not be required to replace any Building Equipment that performed a function that has become obsolete, unnecessary or undesirable in connection with the operation of the Premises in accordance with the terms of this Lease.

Section 14.3 No Obligation to Repair or to Supply Utilities.

Owner (in its proprietary capacity only) shall not be required to supply any facilities, services or utilities whatsoever to the Premises. Owner shall not have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair with respect to the Premises.

Section 14.4 Waste Disposal.

Tenant shall dispose of waste from all areas of the Premises in accordance with Requirements and in a prompt and sanitary manner.

Section 14.5 Alterations.

(a) During the City Sublease Term, all alterations, additional installations, substitutions, improvements, renovations or betterments (collectively, **"Alterations"**) in and to the Premises or any portion, shall be governed by the City Sublease.

(b) Subject to the terms and conditions of this Article 14 and the other applicable provisions of this Lease, following a termination of the City Sublease, Tenant may, at any time and from time to time, at its sole cost and expense, make alterations, additional installations, substitutions, improvements, renovations or betterments (collectively, **"Alterations"**) in and to the Premises or any portion thereof provided that:

(i) no Alterations (or series of related Alterations) estimated to cost more than One Hundred Fifty Thousand Dollars ($150,000), adjusted for inflation (as estimated by Tenant's architect or engineer) (a **"Significant Alteration"**) and no Alteration affecting the structural portions, roofs or the heating, air conditioning, elevator, plumbing, electrical, sanitary, mechanical or other service or utility systems shall be undertaken except under the supervision of a licensed architect or licensed professional engineer;

(ii) the Alterations will not result in a violation of any Requirement or change the use permitted in Section 6.1 or violate any other provision of this Lease;

(iii) the outside appearance, character or permitted use of the Premises shall not be materially adversely affected unless approved pursuant to the provisions of Section 14.5(d), and the Alterations shall not materially (1) weaken or impair the structure, (2) reduce the size or (3) lessen the value of, the Premises;

(iv) the proper functioning of any of the heating, air conditioning, elevator, plumbing, electrical, sanitary, mechanical and other service or utility systems of the Premises shall not be materially adversely affected;

(v) if any Alteration (excluding interior subtenant improvements that do not materially affect the major building components) is (or related series of Alterations are) estimated to cost more than One Million Dollars ($1,000,000)], adjusted for inflation (as estimated by Tenant's architect or engineer), Tenant shall obtain the prior written consent of Owner for such Alterations (a **"Major Alteration"**) in accordance with the provisions of 26.2 below; and

(vi) no Major Alteration in excess of One Million Dollars ($1,000,000), adjusted for inflation, shall be undertaken prior to Tenant's delivering to Owner, at Tenant's option, either (x) a performance bond and a labor and materials payment bond (issued by a surety company reasonably satisfactory to Owner and licensed to do business in the State of Florida), each in an amount equal to one hundred percent (100%) of the estimated cost and otherwise in form reasonably satisfactory to Owner, with an oblige rider in favor of the Owner or (y) such other security for the completion of the Major Alteration, as may be reasonably satisfactory to Owner; provided, however, this Section 14.5 shall not apply to a Recognized Mortgagee or its Designee during the period that it is Tenant under this Lease.

(c) **Reimbursement of Owner's Expenses**. Following a termination of the City Sublease, Tenant shall reimburse Owner for all actual and reasonable out-of-pocket architectural

and engineering expenses for architectural and engineering review reasonably incurred by Owner in connection with its decision to grant or withhold consent to a proposed Major Alteration and inspecting the Major Alteration to determine whether the same is being or has been performed in accordance with the terms of this Lease, including only the actual reasonable fees and expenses of any architect or engineer employed for such purposes. Any Major Alteration for which consent has been received shall be performed substantially in accordance with the approved plans and specifications, and no material amendments or material additions to the plans and specifications shall be made without the prior consent of Owner in accordance with the terms hereof.

(d) **Approvals**. Following a termination of the City Sublease, Tenant, at its expense, shall obtain all necessary permits and certificates from Governmental Authorities for the commencement and prosecution of any Alterations and final approval from Governmental Authorities upon completion, promptly deliver copies of the same to Owner and cause the Alterations to be performed in compliance with all applicable Requirements and requirements of Mortgagees and insurers of the Premises, and any Board of Fire Underwriters, Fire Insurance Rating Organization, or other body having similar functions, and in good and workman like manner, using materials and equipment at least equal in quality and class to the original quality of the installations at the Premises that are being replaced.

(e) **Submission and Review of Alterations**. Following a termination of the City Sublease, Tenant shall submit to Owner plans and specifications showing in reasonable detail any proposed Major Alteration. Owner shall review the plans and specifications for any proposed Major Alteration and shall approve the same provided that the proposed Major Alteration will not:

(i) impair the structural integrity or change any exterior of the Premises; or

(ii) reduce floor area or parking spaces, unless Tenant agrees, in writing, to restore the portion of the Premises so modified to the original condition upon request of Owner prior to the Expiration of the Term; or

(iii) deviate from any approved uses of the Premises.

Within thirty (30) days after Owner's receipt of such plans and specifications, the Owner's Designee shall notify Tenant of its approval or disapproval thereof and, in the event of the Owner's disapproval, the reasons therefor. If Tenant desires to modify in any material respect previously approved plans and specifications (as such may have been modified by approved plans and specifications), Tenant shall submit any such proposed modifications to Owner for Owner's approval. Within fifteen (15) days of its receipt of the proposed modifications, Owner shall notify Tenant in writing with specificity of any material inconsistencies of which Owner disapproves between the plans and specifications as modified and the plans and specifications previously approved by Owner. Tenant shall, at its election, have the option of (x) submitting Owner's disapproval to arbitration as to the (i) materiality of the inconsistency and/or (ii) reasonableness of disapproval or (y) submitting revised modifications to the plans and specifications to meet Owner's objections (which revised plans and specifications shall be reviewed as herein above provided).

(f) **Costs of Alterations**. Following a termination of the City Sublease, the costs of all Alterations shall be borne by Tenant.

Article 15 - Requirements

Section 15.1 Tenant's Obligation to Comply With Requirements.

In connection with any Construction Work and Tenant's performance of its obligations hereunder, Tenant shall comply promptly with all Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment (but Tenant may seek to obtain an easement in order to cure an encroachment, if permitted by Requirements), or affecting the maintenance, management, use or occupancy of the Premises, or involving or requiring any structural changes or additions in or to the Premises and regardless of whether such changes or additions are required by reason of any particular use to which the Premises, or any part thereof, may be put. No consent to, approval of or acquiescence in any plans or actions of Tenant by Owner, in its proprietary capacity as landlord under this Lease, or Owner's Designee shall be relied upon or construed as being a determination that such are in compliance with the Requirements, or, in the case of construction plans, are structurally sufficient, prudent or in compliance with the Requirements.

Section 15.2 Definition.

"Requirements" means:

(a) any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over a Person and/or the Premises or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Premises or any vault in, or under the Premises (including, without limitation, any of the foregoing relating to handicapped access or parking, the Building Code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions);

(b) the temporary and/or permanent certificate(s) of occupancy or certificate(s) of completion or their functional equivalent issued for the Premises as then in force; and

(c) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease.

Section 15.3 Owner's Obligation to Comply With Requirements.

In connection with the performance of Owner's obligations hereunder, Owner shall comply promptly with all Requirements.

Article 16 - Intentionally Omitted.

Article 17 - Discharge of Liens

Section 17.1 Creation of Liens.

(a) Tenant shall not create, cause to be created, or suffer or permit to exist (i) any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom

or the Premises or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to Section 17.2, (ii) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Owner, or (iii) any other matter or thing whereby the estate, rights or interest of Owner in and to the Premises or any part thereof or appurtenance thereto might be materially impaired. Notwithstanding the above, Tenant shall have the right to execute Mortgages, subleases and other instruments (including, without limitation, equipment leases) as provided by, and in accordance with, the provisions of this Lease.

(b) Owner shall not create, cause to be created, or suffer or permit to exist (i) any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom (except as otherwise set permitted in Article 2) or the Premises or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to Section 17.2, (ii) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Tenant, or (iii) any other matter or thing whereby the estate, rights or interest of Tenant in and to the Premises or any part thereof or appurtenance thereto might be materially impaired.

Section 17.2 Discharge of Liens.

(a) If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Tenant by law or by a provision of this Lease) is filed against the Premises or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Tenant shall be filed against any assets of, or funds appropriated to, Tenant or Owner, Tenant shall, within thirty (30) days after Tenant receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Tenant shall not be required to discharge any such lien if Tenant shall have (a) furnished Owner with, at Tenant's option, a cash deposit, bond, letter of credit from a Lender (in form reasonably satisfactory to Owner) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to Owner, in an amount sufficient to pay the lien with interest and penalties and (b) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Tenant's efforts to seek discharge of the lien, Owner reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies Tenant, Tenant shall, within ten (10) days after notice to such effect from Owner (but not later than three (3) business days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or Owner may thereafter discharge the lien in accordance with Section 24.2 and look to the security furnished by Tenant for reimbursement of its cost in so doing. Notwithstanding anything to the contrary contained in this Section 17.2(a), in the case of a public improvement lien which provides for installment payments as a means of satisfying such lien, Tenant shall be required only to pay, on a timely basis, all installments when due.

(b) Notwithstanding anything to the contrary contained in Section 17.2, if any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Owner or City by law or by a provision of this Lease) is filed against the Premises or any part thereof or Tenant's interest therein as a result of any action of Owner or City, or their respective officers, employees, representatives or agents,

Owner shall, within thirty (30) days after Owner receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Owner shall not be required to discharge any such lien if Owner shall have (i) furnished Tenant with, at Owner's option, a cash deposit, bond, letter of credit from a Lender (in form reasonably satisfactory to Tenant) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to Tenant, in an amount sufficient to pay the lien with interest and penalties and (ii) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Owner's efforts to seek discharge of the lien, Tenant reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies Owner, Owner shall, within ten (10) days of notice to such effect from Tenant (but not later than three (3) business days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or Tenant may thereafter discharge the lien in accordance with Section 24.2 and look to the security furnished by Owner for reimbursement of its cost in so doing.

Section 17.3 No Authority to Contract in Name of Owner.

Nothing contained in this Article shall be deemed or construed to constitute the consent or request of Owner, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against Owner's interest in the Property or any part thereof or against assets of Owner, or Owner's interest in any Rent and/or Impositions. Notice is hereby given, and Tenant shall cause all Construction Agreements to provide, that to the extent enforceable under Florida law, Owner shall not be liable for any work performed or to be performed at the Premises or any part thereof for Tenant or any Subtenant or for any materials furnished or to be furnished to the Premises or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect Owner's interest in the Property or any part thereof or any assets of Owner, or Owner's interest in any Rent and/or Impositions. The foregoing shall not require Tenant to request advance waivers of lien from contractors or subcontractors.

Article 18 - Representations

Section 18.1 No Brokers.

Except with respect to services provided by CBRE Group, Inc., each of Owner and Tenant represents to the other that it has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby, and each party shall indemnify the other against any claim for brokerage commissions, fees or other compensation by any Person alleging to have acted for or dealt with the indemnifying party in connection with this Lease or the transactions contemplated hereby.

Section 18.2 No Other Representations.

Tenant acknowledges, represents and confirms that it or its authorized representatives have visited the Premises and are fully familiar therewith, the physical condition thereof (including but not limited to subsurface conditions) and title all matters of record affecting the Premises. Tenant accepts the Premises in existing condition and state of repair and Tenant confirms that: except for the representation contained in Section 18.1 (and any other representation expressly set forth in this Lease), (i) no representations, statements, or warranties, express or implied, have been made by, or on behalf of, Owner with respect to the Premises or the transactions contemplated by this Lease, the status of title thereto, the physical condition thereof, the zoning, wetlands or other laws, regulations, rules and orders applicable thereto or the use that may be made of the Premises, or the presence or absence of **"hazardous substances"** (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USCA § 9601 et seq.) on or under the Premises, (ii) Tenant has relied on no such representations, statements or warranties, and (iii) Owner shall not be liable to Tenant, in any event whatsoever, to correct any latent or patent defects in the Premises. Nothing contained herein shall, or shall be deemed to, modify, alter or affect the representations, warranties, indemnities and other rights and obligations of the Parties as set forth in the Development Agreement or other Project Documents.

Article 19 - No Liability for Injury or Damage

Section 19.1 Liability of Owner or Tenant.

(a) **Owner Not Liable for Injury or Damage, Etc**. The Owner Indemnified Parties shall not be liable to Tenant for any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements), penalty or fine incurred in connection with or arising from any injury (whether physical (including, without limitation, death), economic or otherwise) to Tenant or to any other Person in, about or concerning the Premises or any damage to, or loss (by theft or otherwise) of, any of Tenant's property or of the property of any other Person in, about or concerning the Premises, irrespective of the cause of injury, damage or loss (including, without limitation, the acts or negligence of any tenant or occupant of the Premises or of any owners or occupants of adjacent or neighboring property or caused by any Construction Work or by operations in construction of any private, public or quasi-public work) or any latent or patent defects in the Premises, except to the extent any of the foregoing is due to the gross negligence or willful misconduct of any Owner Indemnified Party. The Owner Indemnified Parties shall not be liable, to the extent of insurance proceeds paid by insurance carriers under Tenant's insurance policies, for any loss or damage to any Person or property even if due to the gross negligence or willful misconduct of any Owner Indemnified Party and, to that extent, Tenant releases Owner Indemnified Parties from such liability. Without limiting the generality of the foregoing, except to the extent caused by the gross negligence or willful misconduct of any of Owner Indemnified Parties (and then only in such Owner Indemnified Party's proprietary capacity as opposed to its governmental capacity), Owner Indemnified Parties shall not be liable for (i) any failure of water supply, gas or electric current, (ii) any injury or damage to person or property resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, act of God, act of war, enemy action, flood, wind or similar storms or disturbances, water, rain or ice, or (iii) leakage of gasoline or oil from pipes, appliances, sewer or plumbing works. Nothing contained herein shall, or shall be deemed to, modify, alter or affect the representations, warranties, indemnities and other rights and obligations of the Parties as set forth in the Development Agreement or other Project Documents.

(b) **Zoning Changes**. Except when Owner (if Owner, at the time of application is the City), acting in its proprietary capacity, is the applicant, Owner hereby assigns to Tenant any and all rights of Owner, as owner of the Property, under Requirements to execute objections or waivers of objections to applications for variances or other exceptions or exemptions from zoning or other Requirements by the owner of any property with respect to which, under applicable Requirements, the owner of the Property would have the right to object or consent to variances or other exceptions or exemptions from zoning or other Requirements. Such assignment shall in no way limit or otherwise restrict any other rights of the City, any instrumentalities of the City, or any elected or appointed officials or employees of the City, in its respective governmental or regulatory capacities, from taking or refraining from taking any action or expressing any views and opinions in connection with such application. If Owner is required to join in such application by Requirements, Owner shall do so provided Tenant pays all costs, including reasonable attorneys' fees, for same.

Section 19.2 Owner's Exculpation.

(a) Except as such liability may be eliminated or reduced by any constitutional, statutory, common law or other protections afforded to public bodies or governments (for such time as Owner is a Governmental Authority), including, but not limited to, sovereign immunity statutes, the liability of Owner (including, without limitation, with respect to any gross negligence or willful misconduct), or of any other Person who has at any time acted as Owner (for such time as Owner is a Governmental Authority) hereunder, for damages or otherwise, arising out of or in connection with any breach of this Lease or any injury (whether physical (including death) economic or otherwise) incurred in connection with this Lease or the Premises, shall be limited to Three Hundred Thousand Dollars ($300,000), adjusted for inflation, under this Lease, in the aggregate. As used in the preceding sentence, the terms **"breach"** and **"injury"** shall include all breaches and injuries arising out of the facts and circumstances resulting in such breach or injury.

(b) Except for conversion, fraud or willful misconduct (and then only to the extent such party acted in its proprietary capacity as opposed to its governmental capacity), none of the Owner Indemnified Parties (except Owner as provided in Section 19.2(a)) shall have any liability (personal or otherwise) hereunder, and except for Owner's Interest in the Premises (to the extent permitted by applicable Requirements), no property or assets of the Owner Indemnified Parties shall be subject to enforcement procedures for the satisfaction of Tenant's remedies hereunder or any other liability of the Owner Indemnified Parties arising from or in connection with this Lease or the Premises. Nothing contained herein shall be deemed a waiver of any equitable remedies available to Tenant.

(c) Nothing contained in this Section 19.2 or elsewhere in this Lease is in any way intended to be a waiver of the limitation placed upon Owner's liability as set forth in § 768.28, Fla. Stat., or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments.

(d) Nothing contained in this Section 19.2 or elsewhere in this Lease shall, or shall be deemed to, modify, alter or affect the representations, warranties, indemnities and other rights and obligations of the Parties as set forth in the Development Agreement or other Project Documents.

Section 19.3 Notice of Injury or Damage.

Following a termination of the City Sublease, Tenant shall notify Owner within thirty (30) days of any occurrence at the Premises of which Tenant has notice and which Tenant believes could give rise to a claim of One Hundred Thousand Dollars ($100,000), adjusted for inflation, or more, whether or not any claim has been made, complaint filed or suit commenced; however, Tenant's failure to so notify Owner shall not constitute or result in a breach or default of any of the terms or conditions of this Lease or result in a loss of any benefit or right granted to Tenant under this Lease.

Section 19.4 No Punitive Damages.

Neither Owner nor Tenant shall be liable to the other for any punitive damages in connection with this Lease and Owner and Tenant agree not to seek punitive damages from each other in connection with any lawsuit or other claim relating to this Lease.

Section 19.5 Survival.

The provisions of this Article 19 shall survive the Expiration of the Term.

Article 20 - Indemnification

Section 20.1 Indemnification of Owner.

(a) Tenant shall indemnify and hold the Owner Indemnified Parties harmless from all loss, cost, liability, claim, damage and expense (including, without limitation, reasonable attorneys' fees and disbursements), penalties and fines, incurred in connection with claims by a Person against an Owner Indemnified Party to the extent caused by (a) the use or occupancy or manner of use or occupancy of the Premises by Tenant or any Person claiming through or under Tenant; or (b) any acts, omissions or negligence of Tenant or any Person claiming through or under Tenant, or of the contractors, agents, servants, employees, guests, invitees or licensees of Tenant or any Person claiming through or under such Person, in each case to the extent in, about or concerning the Premises either during or after the expiration of, the Term, including, without limitation, any acts, omissions or negligence in connection with any Construction Work or in the making or performing of any repairs, restoration, alterations or improvements, except to the extent any of the foregoing is caused by the gross negligence or willful misconduct of any of the Owner Indemnified Parties. Notwithstanding the foregoing, Tenant’s indemnification and hold harmless obligations to Owner Indemnified Parties shall not apply to any such loss, cost, liability, claim, damage and expense arising from or related to the actions, inactions, or obligations of City or any contractors, agents, servants, employees, guests, invitees or licensees of City pursuant to the City Sublease.

Section 20.2 Contractual Liability.

(a) The obligations of Tenant under this Article 20 or Article 19 shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to Workers’ Compensation insurance), or by the failure or

refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises; provided, however, that if Owner actually receives any proceeds of Tenant's insurance with respect to an obligation of Tenant under this Article, the amount thereof shall be credited against, and applied to reduce, any amounts paid and/or payable hereunder by Tenant with respect to such obligation.

(b) The obligations of Owner under this Article 20 or Article 19 shall not be affected in any way by the absence or presence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises; provided, however, that if Tenant actually receives any proceeds of Owner's insurance with respect to an obligation of Owner under this Article, the amount thereof shall be credited against, and applied to reduce, any amounts paid and/or payable hereunder by Owner with respect to such obligation.

Section 20.3 Defense of Claim, Etc.

(a) If any claim, action or proceeding is made or brought against any Owner Indemnified Party by reason of any covered event to which reference is made in Section 20.1 or Article 19, then, upon demand by Owner or such Owner Indemnified Party, Tenant shall either resist, defend or satisfy such claim, action or proceeding in such Owner Indemnified Party's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as Owner shall reasonably approve. The foregoing notwithstanding, such Owner Indemnified Party may at its own expense engage its own attorneys to defend such Owner Indemnified Party, or to assist such Owner Indemnified Party in such Owner Indemnified Party's defense of such claim, action or proceeding, as the case may be.

Section 20.4 Notification and Payment.

(a) Each Owner Indemnified Party shall promptly notify Tenant of the imposition of, incurrence by or assertion against such Owner Indemnified Party of any cost or expense as to which Tenant has agreed to indemnify such Owner Indemnified Party pursuant to the provisions of this Article 20. Tenant agrees to pay such Owner Indemnified Party, as Rent hereunder, all amounts due under this Article 20 within sixty (60) days after receipt of the notice from such Owner Indemnified Party.

Section 20.5 Governs Lease.

The provisions of this Article 20 shall govern every other provision of this Lease. The absence of explicit reference to this Article 20 in any particular provision of this Lease shall not be construed to diminish the application of this Article 20 to such provision.

Section 20.6 Survival.

The provisions of this Article 20 shall survive the Expiration of the Term.

Article 21 - Covenant Against Waste and Inspection

Section 21.1 Waste.

Except as otherwise permitted by this Lease, Tenant covenants not to do or suffer any demolition, waste or damage, disfigurement or injury to the Premises or any part of it. The provisions of this Section 21.1 shall not apply to any demolition or disfigurement involved with repairs, renovations, upgrading or new construction pursuant to the City Sublease.

Section 21.2 Inspection of Premises.

Owner, its agents, employees and authorized representatives may enter the Premises at any time in response to an emergency, and at reasonable times as Owner deems necessary to, incident to, or connected with the performance of Owner duties and obligations hereunder or in the exercise of its rights and functions.

Article 22 - Intentionally Omitted

Article 23 - Intentionally Omitted

Article 24 - Right to Perform the Other Party's Obligations.

Section 24.1 Right to Perform the Other Party's Obligations.

(a) If a Default shall occur and be continuing beyond any applicable grace period, Owner may, but shall be under no obligation to, perform the obligation of Tenant the breach of which gave rise to such Default, without waiving or releasing Tenant from any of its obligations contained herein, provided that Owner shall exercise such right only in the event of a bona fide emergency or after five (5) Business Days' notice, and Tenant hereby grants Owner access to the Premises in order to perform any such obligation.

(b) If a default by Owner under this Lease shall occur and be continuing beyond any applicable grace period, Tenant may, but shall be under no obligation to, perform the obligations of Owner (other than those which are governmental as opposed to proprietary obligations) the breach of which gave rise to such default or event of default, without waiving or releasing Owner from any of its obligations contained herein, provided that Tenant shall exercise such right only in the event of a bona fide emergency or after five (5) Business Days' notice to Owner or the City, as applicable.

Section 24.2 Discharge of Liens.

(a) If Tenant fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, providing the underlying tax is an obligation of Tenant by law or by a provision of this Lease) to be discharged of record in accordance with the provisions of Article 17, Owner may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. If Owner's title is threatened or a material interest of Owner is impaired, Owner may also, if Tenant has not done so (or bonded such lien), compel the prosecution of an action for the

foreclosure of such lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances.

(b) If Owner fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, providing the underlying tax is an obligation of Owner by law or by a provision of this Lease) to be discharged of record in accordance with the provisions of Article 17, Tenant may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. If Tenant's leasehold interest in the Premises (or any portion thereof) is threatened or a material interest of Tenant is impaired, Tenant may also, if Owner has not done so (or bonded such lien), compel the prosecution of an action for the foreclosure of such lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances.

Section 24.3 Reimbursement for Amounts Paid Pursuant to this Article.

(a) Any amount paid by Owner in performing Tenant's obligations as provided in this Article 24, including all costs and expenses incurred by Owner in connection therewith, shall constitute Rent hereunder and shall be reimbursed to Owner within thirty (30) days of Owner's demand, together with a late charge on amounts actually paid by Owner, calculated at the Late Charge Rate from the date of notice of any such payment by Owner to the date on which payment of such amounts is received by Owner.

(b) Any amount paid by Tenant in performing Owner's obligations as provided in this Article 24, including all costs and expenses incurred by Tenant in connection therewith, shall be reimbursed to Tenant within thirty (30) days of Tenant's demand, together with a late charge on amounts actually paid by Tenant, calculated at the Late Charge Rate from the date of notice of any such payment by Tenant to the date on which payment of such amounts is received by Tenant.

Section 24.4 Waiver, Release and Assumption of Obligations.

(a) Owner's payment or performance pursuant to the provisions of this Article 24 shall not be, nor be deemed to constitute, Owner's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

(b) Tenant's payment or performance pursuant to the provisions of this Article 24 shall not be, nor be deemed to constitute, Tenant's assumption of Owner's obligations to pay or perform any of Owner's past, present or future obligations hereunder.

Article 25 - Events of Default, Remedies, Etc.

Section 25.1 Definition.

Each of the following events shall be an **"Event of Default"** hereunder:

(a) if Tenant fails to make any payment (or any part thereof) of Rent and/or Impositions due hereunder and such failure continues for a period of thirty (30) days after notice is given by Owner that the same is past due;

(b) if Tenant shall default in the observance or performance of any term, covenant or condition of this Lease on Tenant's part to be observed or performed (other than the covenants for the payment of Rent and/or Impositions or as expressly set forth below) and Tenant shall fail to remedy such Default within thirty (30) days after notice by Owner of such Default (the **"Default Notice"**), or if such a Default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), Tenant shall not (i) within thirty (30) days after the giving of such Default Notice, advise Owner of Tenant's intention to institute all steps (and from time to time, as reasonably requested by Owner, Tenant shall advise Owner of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same;

(c) if a default by Tenant under the City Sublease (in Tenant's capacity as Sublessor under the City Sublease) shall have occurred and be continuing beyond any applicable cure period, including any cure period applicable to a Recognized Mortgagee, and City terminates the Sublease in accordance therewith;

(d) to the extent permitted by law, if Tenant makes an assignment for the benefit of creditors;

(e) to the extent permitted by law, if Tenant files a voluntary petition under Title 11 of the United States Bankruptcy Code, or if Tenant files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, of all or any substantial part of its properties, or of all or any part of Tenant's Interest in the Premises, and the foregoing are not stayed or dismissed within ninety (90) days after such filing or other action;

(f) to the extent permitted by law, if, within ninety (90) days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within one hundred and eighty (180) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, of all or any substantial part of its properties, or of all or any part of Tenant's Interest in the Premises, such appointment has not been vacated or stayed on appeal or otherwise, or if, within one hundred and eighty (180) days after the expiration of any such stay, such appointment has not been vacated;

(g) if a levy under execution or attachment in an aggregate amount of One Hundred Thousand Dollars ($100,000), adjusted for inflation, at any one time, is made against the Premises

or any part thereof or rights appertaining thereto (except for a levy or attachment made in connection with actions or inactions of Owner (other than solely as holder of Owner's Interest in the Premises)) [*Conform to Lender Requirements*] or City and such execution or attachment is not vacated or removed by court order, bonding or otherwise within a period of sixty (60) days after Tenant becomes aware of such levy or attachment, subject to Unavoidable Delays, City Delays, and/or Owner Delays; or

(h) if any of the representations made by Tenant in Article 18 is proved to be or becomes false or incorrect in any material respect and the circumstances are not cured or modified so as to eliminate such material incorrectness within thirty (30) days after notice;

(i) any default of Tenant's obligations under Section 35.8 which is not cured by Tenant as provided in Section 35.8; or

(j) if Tenant or either Key Person becomes a Prohibited Person, and Tenant is unable to, within ninety (90) days, provide documentation satisfactory to Landlord, in its reasonable discretion, substantiating the qualifications, capacity, and responsibility of Tenant's proposed replacement Key Person(s), and that such replacement(s) will not result in a material negative consequence or impact on the Tenant's obligations under this Lease.

In the event of a Default which with the giving of notice to Tenant and the passage of time would constitute an Event of Default, Owner's notice of such Default to Tenant shall state with specificity the provision of this Lease under which the Default is claimed, the nature and character of such Default, the facts giving rise to such Default, the date by which such Default must be cured, and that the failure of Tenant to cure such Default by the date set forth in such notice will result in Owner having the rights and remedies set forth in this Lease.

Notwithstanding the foregoing, no Event of Default shall be deemed to have occurred until such time as Owner shall have given Tenant notice of the occurrence of an Event of Default (an **"Event of Default Notice"**).

Section 25.2 Enforcement of Performance; Damages and Termination.

If an Event of Default occurs and Owner chooses to pursue a remedy with respect to that Event of Default, Owner shall, as its sole and exclusive remedies, elect to: (a) enforce performance or observance by Tenant of the applicable provisions of this Lease; (b) recover damages for breach of this Lease; or (c) solely with respect to an Event of Default pursuant to Section 25.1(c),(d),(e),(f),(h) and (j), terminate this Lease pursuant to Section 25.3(a). Notwithstanding anything contained herein to the contrary, with the exception of Owner's right to terminate this Lease as set forth in this Section 25.2, or as otherwise expressly set forth in this Lease, Owner shall not have the right to terminate this Lease or terminate Tenant's right of possession under this Lease. Otherwise, Owner's election of a remedy hereunder with respect to an Event of Default shall not limit or otherwise affect Owner's right to elect any of the remedies available to Owner hereunder with respect to any other Event of Default.

Section 25.3 Expiration and Termination of Lease.

(a) If an Event of Default pursuant to Section 25.1(c),(d),(e),(f),(h) and (j) occurs, provided Owner has elected the remedy of termination, Owner may give Tenant and any Recognized Mortgagee notice stating that this Lease and the Term shall terminate on the date specified in such notice, which date shall not be less than sixty (60) days after the giving of the notice, and, subject to all rights of a Recognized Mortgagee pursuant to this Lease, this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice were the Expiration Date, and Tenant shall quit and surrender Tenant's Interest in the Premises and possession thereof forthwith. If such termination is stayed by order of any court having jurisdiction over any case described in Sections 25.1(h) or 25.1(i), or by federal or state statute, then, following the expiration of any such stay, or if the trustee appointed in any such case, Tenant or Tenant as debtor in possession fails to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within thirty (30) days after entry of the order for relief or as may be allowed by the court, Owner, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Lease on five (5) days' notice to Tenant, Tenant as debtor in possession or the trustee. Upon the expiration of the five (5) day period, this Lease shall expire and terminate and Tenant, Tenant as debtor in possession and/or the trustee immediately shall quit and surrender Tenant's Interest in the Premises and possession thereof forthwith.

(b) If this Lease is terminated as provided in Section 25.3(a), Owner may, without notice, re-enter and repossess Tenant's Interest in the Premises (which may include, but not be limited to, re-entering and repossessing the Premises) and may dispossess Tenant by summary proceedings, writ of possession, proceedings in bankruptcy court or otherwise, subject to applicable Requirements.

(c) If this Lease is terminated as provided in Section 25.3(a):

(i) Tenant shall pay to Owner all Rent and/or Impositions payable under this Lease by Tenant to Owner to the date upon which the Term shall have expired and come to an end and Tenant shall surrender to Owner Tenant's Interest in the Premises (and possession thereof) in the manner required by this Lease, and both parties shall be relieved of all further obligations hereunder, except to the extent this Lease expressly provides that an obligation hereunder shall survive the Expiration of the Term; and

(ii) In no event shall Tenant be entitled to receive any credit or payment with respect to the value of the Property and Improvements, title to which shall automatically vest in Owner upon such termination.

Section 25.4 Default by the Owner; Remedies.

An event of default by the Owner shall be deemed to have occurred under this Lease if the Owner fails to observe, keep or perform (i) any of the terms, conditions, and/or covenants under this Lease that Owner is obligated to observe or perform, for a period of thirty (30) days after notice to Tenant of said failure; provided however, that if the nature of Owner's default is such that more than thirty (30) days are reasonably required for its cure, then Owner shall not be deemed to be in default under the Lease if Owner shall commence the cure of such default so specified within said thirty (30) day period and shall diligently prosecute the same to completion.

Notwithstanding any other provisions hereof, Owner shall not be in default for failure to perform any act required of Owner where such failure is due to inability to perform due to Unavoidable Delay or a default caused in whole or in part by Tenant. Upon the occurrence and during the continuance of any Event of Default by Landlord, Tenant may at its option (but without obligation to do so), perform the Landlord's duty or obligation, the costs and expenses of any such performance by Tenant plus a performance fee equal to _____ (__) percent of such cost shall be due and payable by Landlord upon receipt of an itemized invoice. If Tenant undertakes any such performance on Landlord's behalf and Landlord does not pay Tenant the full undisputed amount within 30 days of its receipt of an itemized invoice setting forth the amount due, Tenant may offset the full undisputed amount due against all Rents due and owing to Landlord under this Agreement until the full undisputed amount is fully reimbursed to Tenant. In addition, Tenant may commence an action in a court of competent jurisdiction to compel performance by Owner hereunder or an action for damages. Notwithstanding anything contained in this Lease to the contrary, Landlord hereby stipulates and acknowledges that there will not be an adequate remedy at law available to Tenant for Landlord's failure to grant Tenant quiet use and enjoyment of the Premises in accordance with the terms and conditions of this Agreement and therefore, in addition all other remedies available to Tenant, Tenant shall have the right to injunctive relief and specific performance, in connection with such default(s) by Landlord.

Section 25.5 Waiver of Rights of Tenant and Owner.

To the extent not prohibited by law, Owner and Tenant hereby waive and release all rights now or hereafter conferred by statute or otherwise that would have the effect of limiting or modifying any of the provisions of this Article. Notwithstanding the foregoing, (i) neither party shall be deemed to have waived the benefit of any automatic stay provisions under any present or future bankruptcy code and (ii) Owner shall not be deemed to have waived or released any rights conferred by any sovereign immunity conferred by statute or otherwise, as provided in Section 19.2(c) hereof.

Section 25.6 Receipt of Moneys After Notice or Termination.

No receipt of money by Owner from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Owner to recover Tenant's Interest in the Premises (which may include, but not be limited to, recovering possession of the Premises) by proper remedy. After the service of notice to terminate this Lease or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of Tenant's Interest in the Premises (which may include, but not be limited to, a judgment for possession of the Premises), Owner may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of Tenant's Interest in the Premises (including, without limitation, the use and occupation of the Premises) or, at the election of Owner, on account of Tenant's liability hereunder.

Section 25.7 Strict Performance.

No failure by Owner or Tenant to insist upon strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to such party by reason of the other party's default or an Event of Default, and no payment or acceptance of full or partial Rent and/or Impositions during the continuance (or with Owner's knowledge of the occurrence) of any Default or Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. Subject to Section 11.11, no covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no default by either party, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Default or Event of Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default. Payment by Tenant to Owner of any Rent and/or Impositions shall be without prejudice to, and shall not constitute a waiver of, any rights of Tenant against Owner provided for under this Lease or at law or in equity. Tenant's compliance with any request or demand made by Owner shall not be deemed a waiver of Tenant's right to contest the validity of such request or demand.

Section 25.8 Right to Enjoin Defaults.

If an Event of Default occurs, Owner shall be entitled to seek to enjoin the Default or Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Owner's remedies are expressly limited by the terms hereof. In the event of any default by Owner of any term, covenant or condition under this Lease, Tenant shall be entitled to seek to enjoin the default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Tenant's remedies are expressly limited by the terms hereof. Provided however, in the event of any such default, Tenant shall be required to give Owner notice of such default and Owner shall have thirty (30) days from receipt of such notice to effect a cure of such default or if such default is not reasonably susceptible of being cured within such thirty (30) day period, Owner shall have a reasonable time to effect a cure of such default so long as Owner is diligently prosecuting such cure. Each right and remedy of Owner and Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise except to the extent Owner's remedies and Tenant's remedies are expressly limited by the terms hereof, and the exercise or beginning of the exercise by Owner or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Owner or Tenant of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent Owner's remedies and Tenant's remedies are expressly limited by the terms hereof.

Section 25.9 Remedies Under Bankruptcy and Insolvency Codes.

If an order for relief is entered or if any stay of proceeding or other act becomes effective against Tenant or Tenant's Interest in the Premises or Owner or Owner's Interest in the Premises as applicable, in any proceeding which is commenced by or against Tenant or Owner, as applicable, under the present or any future Federal Bankruptcy Code or in a proceeding which is

commenced by or against Tenant or Owner, as applicable, seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Owner or Tenant, as applicable, shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately protect Owner's or Tenant's, as applicable, right, title and interest in and to the Premises or this Lease or any part thereof and adequately assure the complete and continuous future performance of the other party's obligations under this Lease. Owner or Tenant, as applicable, may petition the Bankruptcy Court to determine that adequate protection of Owner's or Tenant's, as applicable, right, title and interest in and to the Premises or this Lease, and adequate assurance of the complete and continuous future performance of the other party's obligations under this Lease, shall include, without limitation, all of the following requirements:

(a) that the other party shall comply with all of its obligations under this Lease;

(b) in the case of a proceeding concerning Tenant, that Tenant shall continue to use the Premises in the manner required by this Lease;

(c) in the case of a proceeding concerning Tenant, that Owner shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(d) in the case of a proceeding concerning Tenant, that Tenant shall hire such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(e) in the case of a proceeding concerning Tenant, that Tenant shall have and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Owner that sufficient funds will be available to fulfill the obligations of Tenant under this Lease; and

(f) in the case of a proceeding concerning Tenant, that Owner shall be granted a security interest acceptable to it in property of Tenant to secure the performance of Tenant's obligations under this Lease, subject to the rights of any Recognized Mortgagee under the Recognized Mortgage.

Section 25.10 Inspection.

Owner and its representatives shall have the right, upon twenty-four (24) hours prior notice to Tenant, to enter upon the Premises (a) to inspect the operation, sanitation, safety, maintenance and use of the same (but Owner shall not thereby assume any responsibility or liability for the performance of Tenant's obligations hereunder, nor any liability arising from the improper performance thereof) and (b) to conduct inspections for the purpose of determining whether a Default or Event of Default has occurred, provided that Owner shall be accompanied by a representative of Tenant (in areas of the Project other than areas readily available to the general public), and provided further that such entry shall not unreasonably interfere with the operation of the Premises. Tenant agrees to make a representative of Tenant available to accompany Owner on any such inspection.

Article 26 - Notices, Consents and Approvals

Section 26.1 Service of Notices and Other Communications.

(a) **In Writing**. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the Parties by the other, or whenever either of the Parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Project, the Premises or this Lease, each such notice, demand, request, consent, approval or other communication (a **"Notice"**) shall be in writing (whether or not so indicated elsewhere in this Lease) and shall be effective for any purpose only if given or served by (i) certified or registered U.S. Mail, postage prepaid, return receipt requested, (ii) personal delivery with a signed receipt (iii) a recognized national courier service or (iv) electronic transmission (email), provided that if the Notice involves a notice of a default or breach of this Lease, a copy of such Notice shall also be sent via overnight courier, whereby delivery is deemed to have occurred at the end of the Business Day on which electronic transmission is completed. All Notices shall be sent to the addresses set forth in this Section 26.1(a). Landlord agrees to send copies of all notices required or permitted to be given to Tenant to all Recognized Mortgagees.

If to Tenant: [_____]
[_____]
[_____]
[_____]

With a copy to: Shutts & Bowen LLP
4301 W. Boy Scout Blvd
Suite 300
Tampa, Florida 33607
Attention: Tirso M. Carreja, Jr.
Email: TCarreja@shutts.com

If to Owner: [_____]
[_____]
[_____]
[_____]
Attn: [_____]
Email: [_____]

With a copy to: [_____]
[_____]
[_____]
[_____]
Attn: [_____]
Email: [_____]

Any such Notice may be given, in the manner provided in this Section 26.1, (x) on either party's behalf by its attorneys designated by such party by notice hereunder, and (y) at Tenant's request, on its behalf by any Recognized Mortgagee designated in such request.

(b) **Effectiveness**. Every Notice shall be effective on the date actually received, as indicated on the receipt therefor or on the date delivery thereof is refused by the recipient thereof.

(c) **References**. All references in this Lease to the date of Notice shall mean the effective date, as provided in the preceding Section 26.1(b).

Section 26.2 Consents and Approvals.

(a) **Effect of Granting or Failure to Grant Approvals or Consents**. All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting by a party of any consent to or approval of any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any other act.

(b) **Standard**. All consents and approvals which may be given by a party under this Lease shall not (whether or not so indicated elsewhere in this Lease) be unreasonably withheld or conditioned by such party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. In furtherance of the foregoing, in determining whether Owner has acted reasonably in not giving its consent or approval, the trier of fact shall take into consideration (for so long as Owner is the CRA or any Governmental Authority) that Owner is a political body governed by elected officials or persons that are appointed, directly or indirectly, by elected officials. Upon disapproval of any request for a consent or approval, the disapproving party shall, together with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.

(c) **Deemed Approval**. [*Parties to finalize this provision prior to execution of Lease*]

(i) If a party entitled to grant or deny its consent or approval (the **"Consenting Party"**) within the specified time period shall fail to do so, then, except as otherwise provided in Section 26.2(c)(ii) and (iii), and provided that the request for consent or approval (and the envelope in which such request is transmitted to the extent permitted by the carrier) bears the legend set forth below in capital letters and in a type size not less than that provided below, the matter for which such consent or approval is requested shall be deemed consented to or approved, as the case may be:

FAILURE TO RESPOND TO THIS REQUEST WITHIN THE TIME PERIOD PROVIDED IN THE LEASE AGREEMENT BETWEEN THE CRA AND [_____] SHALL CONSTITUTE AUTOMATIC APPROVAL OF THE MATTERS DESCRIBED HEREIN WITH RESPECT TO SECTION _____ [FILL IN APPLICABLE SECTION] OF SUCH LEASE AGREEMENT.

(ii) If the matter to which consent or approval is requested pertains to Article 10 , then such matter shall not be deemed consented to or approved unless (i) the Consenting Party fails to timely respond to the other party's (the **"Requesting Party's"**) initial request, which request (and the envelope in which such request is transmitted to the extent permitted by the carrier) shall bear the legend set forth above and (ii) the Requesting Party shall thereafter send a second request to the Consenting Party which request (and the envelope in which such request is transmitted to the extent permitted by the carrier) conspicuously bears the legend set forth above, and Owner shall fail to timely respond to such second request.

(iii) Notwithstanding anything to the contrary contained in this Lease, including, without limitation, Sections 26.2(c)(i) and 26.2(c)(ii) above, if either the CRA, City or any instrumentality thereof shall be the **"Owner"** hereunder and the matter (other than a matter referred to in Section 26.2(c)(iv)) to be consented to or approved requires the consideration of the CRA Board, City Commission, or the governing body of such instrumentality thereof as applicable (whether pursuant to Requirements or the written opinion of the chief legal officer of the CRA, City, or such other instrumentality) then, provided Owner gives Tenant notice of such requirement within the time period provided for such consent or approval, such matter shall not be deemed approved or consented to unless Owner shall fail to respond to Tenant's request (or second request if the provisions of Section 26.2(c)(ii) are applicable) by the date which is thirty (30) days after the first regular meeting of the CRA Board, City Commission, (or such other instrumentality's governing body, as applicable) which occurs no earlier than ten (10) days following the receipt of such request (or second request, as applicable); but in any event not later than sixty (60) days following such request (or second request), as applicable.

(iv) Owner hereby agrees, for so long as the CRA or any other Governmental Authority shall be the **"Owner"** hereunder, that, subject to Requirements, the Owner's Designee or the chief operating officer of such other Governmental Authority, as applicable, shall be authorized to grant consents or approvals on behalf of the Owner, with respect to the following Sections of this Lease: Article 7 and Sections 8.3, 9.3, 10.7 (for execution of instruments), 11.1, 13.2, 13.3, 13.4, 14.2, 14.5(d), 20.3, and 27.2. In addition to the foregoing, Owner's Designee shall be authorized to execute amendments to this Lease as provided in the Development Agreement.

(v) The foregoing provisions of this Section 26.2(c) shall not be construed to modify or otherwise affect a party's right to litigate the failure of a party to act reasonably in granting or denying a request for consent or to timely respond to a request for a consent, but such right to litigate shall not serve to delay the time period within which a grant or denial of such request is required hereunder.

(d) **Remedy for Refusal to Grant Consent or Approval**. If, pursuant to the terms of this Lease, any consent or approval by Owner or Tenant is alleged to have been unreasonably withheld, conditioned or delayed, then any dispute as to whether such consent or approval has been unreasonably withheld, conditioned or delayed shall be settled by litigation. In the event there shall be a final determination that the consent or approval was unreasonably withheld, conditioned or delayed so that the consent or approval should have been granted, the consent or approval shall be deemed granted and the Requesting Party shall be entitled to any and all damages resulting therefrom, subject to the limitations provided in this Lease.

(e) **No Fees, etc**. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease (provided that the foregoing shall not be deemed in any way to limit Owner acting in its governmental, as distinct from its proprietary, capacity from charging governmental fees on a nondiscriminatory basis).

(f) **Governmental Capacity**. Notwithstanding anything to the contrary contained in this Section 26.2, the Owner shall not be required by this Lease to give its consent to any matter arising from or in connection with this Lease when the Owner is acting in its governmental capacity.

Article 27 - Certificates By Owner and Tenant

Section 27.1 Certificate of Tenant.

(a) Tenant shall, within fifteen (15) days after notice by Owner, execute, acknowledge and deliver to Owner, or any other Person specified by Owner, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications) (and, if so requested, that the annexed copy of this Lease is a true, correct and complete copy of this Lease), and (ii) the date to which each item of Rent and/or Impositions payable by Tenant hereunder has been paid, and (b) stating (i) whether Tenant has given Owner written notice of any default, or any event that, with the giving of notice or the passage of time, or both, would constitute a default, by Owner in the performance of any covenant, agreement, obligation or condition contained in this Lease, which default or event has not been cured, and (ii) whether, to the actual knowledge of Tenant (but without independent inquiry), Owner is in default in performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying in detail each such default.

Section 27.2 Certificate of Owner.

Owner shall, within fifteen (15) days after notice by Tenant, execute, acknowledge and deliver to Tenant, or such other Person specified by Tenant, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications) (and, if so requested, that the annexed copy of this Lease is a true, correct and complete copy of this Lease), and (ii) the date to which each item of Rent and/or Impositions payable by Tenant hereunder has been paid, and (b) stating (i) whether an Event of Default has occurred or whether Owner has given Tenant notice of any event that, with the giving of notice or the passage of time, or both, would constitute an Event of Default, which Default or Event of Default has not been cured, and (ii) whether, to the actual knowledge of Owner (but without independent inquiry), Tenant is in default in the performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying, in detail, each such Default or Event of Default.

Article 28 - Financial Reports and Records.

Section 28.1 Books and Records; Audit Rights. [*This Article to be finalized prior to Lease execution.*]

Article 29 - Surrender at End of Term

Section 29.1 Surrender of Premises.

Upon the Expiration of the Term (or upon a re-entry by Owner upon the Premises pursuant to Article 25), Tenant, without any payment or allowance whatsoever by Owner, shall surrender the Premises to Owner in good order, condition and repair, reasonable wear and tear excepted and (subject to the provisions of Article 8) damage from casualty excepted, free and clear of all Subleases, liens and encumbrance other than as set forth below. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the Expiration of the Term.

Section 29.2 Delivery of Subleases, Etc.

Upon the Expiration of the Term (or upon a re-entry by Owner upon the Premises pursuant to Article 25), Tenant shall deliver to Owner the following (to the extent then in Tenant's possession or control): Tenant's original executed counterparts, if available (and if not available, true and correct copies thereof), of all subleases then in effect, any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary certificates of occupancy then in effect for the Premises, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Building Equipment installed in the Premises (such to be delivered without representation or warranty by Tenant), together with a duly executed assignment thereof (without recourse) to Owner in form suitable for recording, and all financial reports required by Article 28 and any and all other documents of every kind and nature whatsoever relating to the operation of the Premises and the condition of the Improvements.

Section 29.3 Title to Improvements.

Owner recognizes and agrees that until Expiration of the Term, ownership of and title to the Improvements shall be in Tenant and that until such time, Tenant has, and shall be entitled to, all rights and privileges of ownership of such Improvements. Ownership of and to all Improvements shall automatically vest in Owner upon the Expiration of the Term, without the payment of consideration therefor, and without the necessity for the execution and delivery by Tenant of any instrument transferring title. Notwithstanding the foregoing, Tenant covenants and agrees that upon the Expiration of the Term, Tenant shall, upon Owner's request, execute and deliver to Owner any instrument or document reasonably requested by Owner to confirm title to said Improvements in Owner.

Section 29.4 Personal Property.

Any personal property of Tenant or of any Subtenant which remains on the Premises after the termination of this Lease or after the removal of Tenant or such Subtenant from the Premises, may, at the option of Owner, be deemed to have been abandoned by Tenant or such Subtenant, and either may be retained by Owner as its property or be disposed of, without accountability, in such manner as Owner may see fit, in its absolute and sole discretion, but in compliance with applicable Requirements. Owner shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Subtenant.

Section 29.5 Survival Clause.

The provisions of this Article 29 shall survive the Expiration of the Term.

Article 30 - Quiet Enjoyment

Section 30.1 Quiet Enjoyment.

Owner covenants that, as long as this Lease is in full force and effect without an Event of Default existing hereunder, Tenant shall and may (subject to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy Tenant's Interest in the Premises for the Term without molestation or disturbance by or from Owner (solely in its proprietary capacity) or any Person claiming by, under or through Owner (solely in its proprietary capacity).

Article 31 - Intentionally Omitted

Article 32 - Administrative and Judicial Proceedings, Contests, Etc.

Section 32.1 Tax Contest Proceedings.

Tenant shall have the right (subject to the provisions of Section 32.2), at its sole cost and expense, to seek reductions in the valuation of the Premises assessed for real property tax purposes and to prosecute any action or proceeding in connection therewith by appropriate proceedings diligently conducted in good faith and in accordance with applicable Requirements.

Section 32.2 Imposition Contest Proceedings.

Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event payment of such Imposition may be postponed, subject to Requirements, if, and only as long as:

(a) Neither the Premises nor any part thereof would, by reason of such postponement or deferment, be, in the reasonable judgment of Owner, in danger of being forfeited to a Governmental Authority and Owner is not in danger of being subjected to criminal liability or penalty or civil liability or penalty in excess of the amount for which Tenant has furnished security as provided in Section 32.2(b) by reason of nonpayment thereof; and

(b) Tenant has deposited with a Recognized Mortgagee, if any (or if not, with a third party escrow agent proposed by Tenant, subject to Owner's consent, not to be unreasonably withheld (failure to respond within fifteen (15) days after notice being conclusively deemed approval)), cash in the amount so contested and unpaid or, alternatively, at Tenant's option, a surety company bond or an irrevocable letter of credit issued by a Lender (in form reasonably satisfactory to Owner) or other security (for example, a personal guaranty) reasonably satisfactory to Owner, in the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges relating to such contested Imposition that may or might, in Owner's reasonable judgment, be assessed against, or become a charge on, the Premises or any part thereof in or during the pendency of such proceedings; provided, however, any amount deposited with any governmental entity, the making of which deposit is required by law in order for Tenant to contest such matters, shall be considered part of the amount so required of Tenant by Owner (the intent being that Tenant shall not be required to make duplicitous deposits under this Section 32.2(b)). Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which was deferred during the prosecution of such proceedings, together with any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith, and, upon such payment, any Recognized Mortgagee or escrow agent holding any amount or other security deposited with it with respect to such Imposition shall (subject to the terms of any agreement between Tenant and any Recognized Mortgagee or escrow agent) return the same, together with the interest, if any, earned thereon. However, if such Recognized Mortgagee or escrow agent is so requested by Tenant, such Recognized Mortgagee or escrow agent shall disburse said moneys on deposit with it directly to the Person to whom or to which such Imposition is payable. If at any time during the continuance of such proceedings Owner, in its reasonable judgment, deems insufficient the amount or nature of the security deposited, Tenant, within ten (10) days after Owner's demand, shall make an additional deposit of such additional sums or other acceptable security as Owner may request, and upon failure of Tenant to so do, the amount theretofore deposited, together with the interest, if any, earned thereon, shall, upon demand by Owner, be applied by such Recognized Mortgagee or escrow agent to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements) or other liability accruing in any such proceedings and the balance, if any, remaining thereafter, together with the interest, if any, earned thereon and remaining after application by Owner as aforesaid, shall be returned to Tenant or to the Person entitled to receive it. If there is a deficiency, Tenant shall pay the deficiency to Owner or the Person entitled to receive it, within ten (10) days after Owner's demand.

Section 32.3 Requirement Contest.

Tenant shall have the right to contest the validity of any Requirement or the application thereof. During such contest, compliance with any such contested Requirement may be deferred by Tenant provided that before instituting any such proceeding, Tenant shall furnish such Recognized Mortgagee, if any (or if not, with a third party escrow agent proposed by Tenant, subject to Owner's consent, not to be unreasonably withheld (failure to respond within fifteen (15) days after notice being conclusively deemed approval)), with a surety company bond or, alternatively at Tenant's option, a cash deposit, an irrevocable letter of credit issued by a Lender

or other security (e.g., a personal guaranty), in form and amount reasonably satisfactory to Owner, securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and expenses in connection therewith; provided, however, any amount deposited with any governmental entity, the making of which deposit is required by law in order for Tenant to contest such matters, shall be considered part of the amount so required of Tenant by Owner (the intent being that Tenant shall not be required to make duplicitous deposits under this Section 32.3). Any such proceeding instituted by Tenant shall be commenced as soon as possible after the issuance of any such contested Requirement and shall be prosecuted with diligence to final adjudication, settlement, compliance or other mutually acceptable disposition of the Requirement so contested. The furnishing of any bond, deposit, letter of credit or other security notwithstanding, Tenant shall comply with any such Requirement in accordance with the provisions of Section 15.1 if, in Owner's reasonable judgment, (i) noncompliance therewith would create an emergency condition involving the health or safety of persons, (ii) the Premises, or any part thereof, are in material danger of being forfeited to an authority (other than Owner, or the City or an instrumentality thereof) or (iii) Owner is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished security as hereinabove provided by reason of noncompliance therewith, and any security posted by Tenant shall (subject to the terms of any agreement between Tenant and any Recognized Mortgagee or escrow agent) be returned to Tenant with any interest accrued thereon.

Section 32.4 Owner's Participation in Contest Proceedings.

Owner shall not be required to join in any action or proceeding referred to in this Section 32.4 unless the provisions of any law, rule or regulation at the time in effect require that such action or proceeding be brought by and/or in the name of Owner. If so required, Owner shall join and cooperate in such proceedings or permit them to be brought by Tenant in Owner's name, in which case Tenant shall pay all reasonable costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by Owner in connection therewith. Notwithstanding the foregoing, Owner's joinder and cooperation shall be limited to actions necessary to enable Tenant to satisfy technical requirements of any such action or proceeding and in no event shall Owner be required to join in any such action or proceeding in any substantive capacity.

Article 33 - Nondiscrimination

Section 33.1 Nondiscrimination.

Tenant shall be an equal opportunity employer, and shall not engage in any unlawful discrimination against any Person on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

Article 34 - Indictment, Investigations, Etc.

Section 34.1 Cooperation in Investigations.

To the extent required by Requirements, Tenant shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by a Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry. In addition, Tenant shall promptly report in writing to the City Attorney of the City of Pompano Beach, Florida any solicitation, of which Tenant's officers or directors have knowledge, of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the Owner, City or other Person relating to the procurement or obtaining of this Lease by Tenant or affecting the performance of this Lease.

Article 35 - Environmental Matters

Section 35.1 Definitions.

For the purposes of this Lease, the following terms shall have the following definitions:

(a) **"Hazardous Materials"** shall mean (i) petroleum and its constituents; (ii) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (iii) any substance, gas, material or chemical which is or may hereafter be defined as or included in the definition of **"hazardous substances," "hazardous materials," "hazardous wastes," "pollutants or contaminants," "solid wastes"** or words of similar import under any Requirement including the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9061 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and Florida Statutes, Chapters 376 and 403; and (iv) any other chemical, material, gas or substance, the exposure to or release of which is regulated by any governmental or quasi-governmental entity having jurisdiction over the Premises or the operations thereon;

(b) **"Environmental Laws"** shall mean all Requirements relating to the protection of human health or the Environment, including:

(i) all Requirements relating to reporting, licensing, permitting, investigation and remediation of Releases or Threat of Release into the Environment, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials; and

(ii) all Requirements pertaining to the protection of the health and safety of employees or the public;

(c) **"Environment"** shall mean soil, surface waters, groundwaters, landstream sediments, surface or subsurface strata and ambient air;

(d) **"Environmental Condition"** shall mean any condition with respect to the Premises, whether or not yet discovered, which could or does result in any Environmental Damages, including any condition resulting from the operation of Tenant's business or the operation of the business of any subtenant or occupant of the Premises or that of any other property owner or operator in the vicinity of the Premises or any activity or operation formerly conducted by any Person on or off the Premises;

(e) **"Environmental Damages"** shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of the assessment, monitoring, remediation or mitigation of an Environmental Condition (and shall include any damages for the failure to do so), including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation and remediation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration or monitoring work;

(f) **"Permit"** shall mean any environmental permit, license, approval, consent or authorization issued by a federal, state or local governmental or quasi-governmental entity;

(g) **"Release"** shall mean any releasing, seeping, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of a Hazardous Material into the Environment; and

(h) **"Threat of Release"** shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the Environment which may result from such Release.

Section 35.2 Representations and Warranties of Tenant.

Tenant represents and warrants that it has made such physical inspection of the Property, and has inspected such records of the City, Broward County, Florida, the State of Florida, and the United States of America, as Tenant deemed necessary to make an informed business decision that it would enter into this Lease with the knowledge that Tenant, as part of its construction obligations with respect to the Project shall be solely responsible for the remediation and abatement of any Environmental Condition existing as of the Possession Date, including any Environmental Condition caused by Owner or any prior owner of the Property, that must be remediated and/or abated pursuant to any Environmental Laws, to the extent such costs thereof are included as part of the approved Project budget pursuant to the City Sublease. Tenant agrees to expeditiously undertake such assessment, remediation, and monitoring of the soil and ground water as required under applicable Environmental Laws; and to take such action as necessary to obtain a No Further Action determination from Broward County, Florida or DEP, if required under Environmental Laws as soon as may be practical. Tenant agrees that in connection with any remediation or abatement pursuant to this Section 35.2 it will provide to Owner all correspondence, reports, studies and other documents exchanged between Owner, its consultants, and Broward County,

Florida or DEP promptly after those documents are provided to or received from Broward County, Florida or DEP. If the costs associated with remediation of Environmental Conditions would render the Project economically unfeasible such that Tenant is unable to obtain the Loan, Tenant and Owner shall meet and confer regarding the matter and shall attempt to identify options for an alternate site for the construction of the Project on any other available property owned by the Owner, each Party acting in good faith with respect to the foregoing. If an alternate mutually-acceptable site is identified, the Parties shall negotiate an appropriate amendment to this Lease to provide for the substitution of the leased premises.

Section 35.3 Use of Hazardous Materials.

Tenant shall not cause or permit any Hazardous Material to be brought on, kept or used in or about the Premises except as necessary or useful to Tenant's business and in compliance with all Environmental Laws.

Section 35.4 Tenant Indemnification of Owner.

Tenant hereby indemnifies and holds harmless the Owner Indemnified Parties from and against any and all Environmental Damages to the Premises during the term of this Lease except for Environmental Damages to the Premises caused by the any of the Owner Indemnified Parties during the Term or which is the responsibility of City under the City Sublease. Such obligation of Tenant shall include the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably satisfactory to Owner), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against any of the Owner Indemnified Parties. Without limiting the foregoing, if the presence or Release on or from the Premises caused or expressly permitted by Tenant results in contamination of the Premises, Tenant shall promptly take all actions at its sole cost and expense as are necessary to remediate the Premises in compliance with Environmental Laws in effect from time to time and to comply with any requirements imposed by any Governmental Authorities; provided that Owner's approval of such actions shall first be obtained.

Section 35.5 Compliance.

Tenant, at its sole cost and expense (except as otherwise provided in this Lease), shall comply with all Environmental Laws with respect to the use and operation of the Premises.

Section 35.6 Notices.

If Tenant or Owner receives any notice of a Release, Threat of Release or Environmental Condition or a notice with regard to air emissions, water discharges, noise emissions, recycling, violation of any Environmental Law or any other environmental, health or safety matter affecting Tenant or the Premises (an **"Environmental Complaint"**) independently or by notice from any Governmental Authority having jurisdiction over the Premises, including the EPA, or with respect to any litigation regarding Environmental Conditions at or about the Premises, then such party shall give prompt oral and written notice of same to the other party detailing all relevant facts and circumstances.

Section 35.7 Owner's Remedies.

Provided Tenant does not diligently commence to remediate the applicable Environmental Conditions which are the obligation of Tenant to remediate under this Lease promptly after becoming aware of the same and thereafter diligently pursue the completion thereof in a reasonable time (and in any event in accordance with Requirements), Owner shall have the right, but not the obligation, to enter onto the Premises and remediate the Premises in compliance with Environmental Laws in effect from time to time and to comply with any requirements imposed by any Governmental Authorities, at Tenant's sole cost and expense, upon its obtaining knowledge of such matters independently or by receipt of any notice from any Person, including the EPA.

Section 35.8 Defaults.

From and after the Possession Date, but only to the extent of any express obligation of Tenant with respect to an Environmental Condition affecting the Premises, the occurrence of any of the following events shall constitute an Event of Default under this Lease:

(a) if the EPA or any other federal, state or local body or agency creates a lien upon the Premises which is not discharged by payment or bonding within ninety (90) days except in the event said lien is the result of Environmental Damages caused by any of the Owner Indemnified Parties during the Term; or

(b) if the EPA or any other federal, state or local body or agency makes a claim (which shall mean, for the purposes of this Section 35.8, issuance of a warning notice, citation, notice of violation or administrative complaint) against Tenant (or any subtenant, licensee or other occupant of the Premises), the Premises or Owner, for damages or cleanup costs related to a Release or an Environmental Complaint on or pertaining to the Premises; provided however, such claim shall not constitute an Event of Default if, within thirty (30) days of the lien or claim:

(i) Tenant has commenced and is diligently pursuing either: (x) cure or correction of the event which constitutes the basis for the lien or claim and continues diligently to pursue the cure or correction to the satisfaction of the Governmental Authority that asserted the lien or claim and obtains the discharge of any lien, or (y) proceedings for an injunction, restraining order, administrative or other appropriate emergency relief contesting the validity of the claim and, if such relief is granted, the emergency relief is not thereafter dissolved or reversed on appeal; and

(ii) Tenant has posted a bond, letter of credit or other security satisfactory in form and substance to Owner to secure the proper and complete cure or correction of the event which constitutes the basis of the claim. The amount of the bond, letter of credit or other security shall be determined in the following manner: (A) Owner, Tenant and their respective consultants shall use their best efforts to agree upon the most probable cost to cure or correct the event which constitutes the basis of the claim; (B) in the event Owner and Tenant are unable to agree despite their best efforts, Owner's consultant and Tenant's consultant shall select a third consultant who shall provide an estimate of the most probable cost of curing or correcting the event which constitutes the basis of the claim. Owner and Tenant shall each pay the cost of their own consultant under this 35.8(b)(ii) and shall share evenly the cost of the third consultant should use of a third consultant become necessary.

Section 35.9 Owner Responsibility.

Owner (in its proprietary capacity) is responsible for all Environmental Damages resulting from an Environmental Condition existing prior to the Possession Date and/or caused by any of the Owner Indemnified Parties during the Term.

Section 35.10 Survival.

The provisions of this Article 35 shall survive the Expiration of the Term.

Article 36 - Intentionally Omitted

Article 37 - Miscellaneous

Section 37.1 Governing Law.

This Lease shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Lease shall be Broward County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court.

Section 37.2 References and Interpretation of Lease.

(a) **Captions**. The captions of this Lease are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease. All captions, when referring to Articles or Sections, refer to Articles or Sections in this Lease, unless specified otherwise.

(b) **Table of Contents**. The Table of Contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Lease.

(c) **Reference to Owner and Tenant**. The use herein of the neuter pronoun in any reference to Owner or Tenant shall be deemed to include any individual Owner or Tenant, and the use herein of the words **"successors and assigns"** or **"successors or assigns"** of Owner or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Owner or Tenant.

(d) **Reference to "herein," "hereunder," etc**. All references in this Lease to the terms **"herein," "hereunder"** and words of similar import shall refer to this Lease, as distinguished from the paragraph, Section or Article within which such term is located.

(e) **Reference to "Approval" or "Consent," etc**. All references in this Lease to the terms **"approval," "consent"** and words of similar import shall mean reasonable written approval or reasonable written consent except where specifically provided otherwise.

(f) **Singular and Plural, Gender, Etc**. Words importing singular number shall include the plural number in each case and vice versa, and words importing **"persons"** shall include firms, associations, corporations, and other entities, including governments and

governmental bodies, as well as natural persons, unless the context shall otherwise indicate. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and vice versa, as the context may require.

Section 37.3 Entire Agreement.

This Lease, together with the attachments hereto, contains all of the promises, agreements, conditions, inducements and understandings between Owner and Tenant concerning the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such attachments hereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto. Notwithstanding anything to the contrary set forth in this Lease, the terms of this Lease shall supersede the terms of the RFP and Tenant's response thereto.

Section 37.4 Counterparts.

This Lease may be executed in counterparts, each of which shall be deemed an original but all of which together shall represent one instrument.

Section 37.5 Waiver, Modification, Etc.

No covenant, agreement, term or condition of this Lease shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Owner and Tenant. No waiver of any Default or default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default or default thereof.

Section 37.6 Effect of Other Transactions.

No Sublease, Mortgage or other agreement of any kind, whether executed simultaneously with this Lease or otherwise, and whether or not consented to by Owner, shall be deemed to modify this Lease in any respect, and in the event of an inconsistency or conflict between this Lease and any such instrument, this Lease shall control, except where specifically stated otherwise herein.

Section 37.7 Severability.

If any provision of this Lease or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Lease, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 37.8 Merger.

Unless Owner, Tenant and all Mortgagees execute and record an agreement to the contrary, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease and the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 37.9 Remedies Cumulative.

Each right and remedy of either party provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Lease), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, except as otherwise expressly limited by the terms of this Lease, shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise except as otherwise expressly limited by the terms of this Lease.

Section 37.10 Performance at Each Party's Sole Cost and Expense.

Unless otherwise expressly provided in this Lease, when either party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense.

Section 37.11 Recognized Mortgagee Charges and Fees.

Tenant shall pay any and all fees, charges and expenses owing to a Recognized Mortgagee in connection with any services rendered by it as a depositary pursuant to the provisions of this Lease.

Section 37.12 Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Owner and Tenant and, except as otherwise provided herein, their respective permitted successors and permitted assigns and shall be construed as covenants running with the Property.

Section 37.13 Recording of Lease.

Tenant shall cause this Lease and any amendments hereto, or memorandums thereof, to be recorded in the Public Records of Broward County, Florida promptly after the execution and delivery of this Lease or any such amendments and shall pay and discharge all costs, fees and taxes in connection therewith.

Section 37.14 Notice of Defaults.

Notwithstanding anything to the contrary set forth in this Lease, under no circumstances shall any party to this Lease lose any right or benefit granted under this Lease or suffer any harm

as a result of the occurrence of any Default or default of such party as to which Default or default such party has not received notice thereof from the other party.

Section 37.15 No Liability of Officials and Employees of Owner or Tenant.

It is expressly understood that this Lease and obligations issued hereunder are solely corporate obligations, and, except as otherwise provided in Article 19, that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, members, partners, holders of other ownership interests, directors, elected or appointed officials (including, without limitation, the members of the CRA Board, the members of the City Commission, or employees, as such, of Owner or Tenant, or of any successor corporation or other successor entity, or any of them, under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom; and, except as otherwise provided in Article 19, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, member, partner, holder of other ownership interest, director, elected or appointed official (including, without limitation, the Mayor and Commissioners of the City and the members of any other governing body of Owner) or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

Section 37.16 Conflict of Interest.

Tenant represents and warrants that, to the best of its actual knowledge, no member, official or employee of the City has any direct or indirect financial interest in this Lease, nor has participated in any decision relating to this Lease that is prohibited by law. Tenant represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the Owner or City has received any payment or other consideration for the making of this Lease, directly or indirectly, from Tenant. Tenant represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Lease, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys. Tenant acknowledges that Owner is relying upon the foregoing representations and warranties in entering into this Lease and would not enter into this Lease absent the same.

Section 37.17 No Partnership or Joint Venture.

The parties hereby acknowledge that it is not their intention under this Lease to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for the purpose of developing the Project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Lease or the other documents executed by the parties with respect to the Project, whether based on the calculation of Rent or otherwise, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this Section 37.17 shall survive Expiration of the Term.

Section 37.18 Time Periods.

Any time periods in this Lease measured in a period of days shall be computed as calendar days unless expressly designated as Business Days. Any time period which shall end on a day other than a Business Day shall be deemed to extend to the next Business Day.

Section 37.19 Time is of the Essence.

Time is of the essence with respect to all matters in, and requirements of, this Lease as to both Owner and Tenant, including, but not limited to, the times within which Tenant must commence and complete construction of the Project.

Section 37.20 Radon Notice.

Chapter 88-285, Laws of Florida, requires the following notice to be provided with respect to the contract for sale and purchase of any building, or a Rent agreement for any building:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

Section 37.21 No Third Party Beneficiaries.

Nothing in this Lease shall confer upon any Person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Lease; provided, however, that a Recognized Mortgagee or its Designee shall be an intended third party beneficiary hereunder to the extent such Recognized Mortgagee or such Designee is granted rights hereunder.

Section 37.22 Ownership of Information and Materials.

(a) On or prior to the Expiration of the Term, or upon written request by Owner during the Term, the Tenant shall deliver to Owner all originals of written data and information generated by or for the Tenant in connection with the Project (collectively, the **"Project Information"**); provided, however, the Tenant shall, for the purposes of the Tenant's post-termination obligations and dispute resolution, be permitted to retain copies of the Project Information.

(b) All Project Information, including, without limitation, the following, are the Owner's property:

(i) data and information supplied to the Tenant by the Contractors or agents;

(ii) all drawings, plans, logs, photographs, books, records, contracts, agreements, documents, and writings in the Tenant's possession or control relating to the Project;

(iii) plans, specifications, and drawings (including as-built construction drawings) for the Project or any other element of the Project;

(iv) names, logos, trademarks, words, symbols or marks that have been or may be used to identify the Project; and

(v) any data collected as a result of facility-management technology (i.e., **"smart building"** technology) used in the Improvements to the fullest extent of applicable law.

(c) The Owner may use that data and information that is neither proprietary, protected by attorney/client privilege or other applicable privilege, or constitutes a trade secret of Tenant, without further compensation to the Tenant or any consultant and their respective contractors, subcontractors, subconsultants, agents, employees and those supplying labor, equipment, or material by or through them to the Project.

(d) The Tenant may use that data and information in marketing its services to other owners or governmental agencies.

(e) The Tenant may identify itself as the Tenant of the Project on any sign, advertisement, promotional publication, commercial, or other dissemination of any information about the Project.

Section 37.23 Public Records.

In accordance with Section 119.0701, Florida Statutes, Tenant shall:

(a) Keep and maintain public records required by the Owner and/or City to perform the service;

(b) Upon request from the Owner's and/or City's custodian of public records, provide the Owner and/or City 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;

(c) 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 (i) the duration of the term of this Lease and (ii) following completion of its obligations under the terms of this Lease if Tenant does not transfer the records to the public agency; and

(d) Upon completion of its obligations under the terms of this Lease, transfer, at no cost, to the Owner and City all public records in its possession or keep and maintain public records required by the Owner and/or City to perform the service. If Tenant transfers all public records to the Owner and City upon completion of its obligations under the terms of this Lease, it shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Tenant keeps and maintains public records upon completion of its obligations under the terms of this Lease, it shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Owner and City, upon

request from the applicable public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS LEASE, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT [*Insert public records custodian for CRA*].

Section 37.24 Additional Requirements.

(a) **E-Verify**. By entering into this Lease, Tenant and its contractors and subcontractors are jointly and severally obligated to comply with the provisions of Section 448.095, Florida Statutes, as amended, titled **"Employment Eligibility."** Tenant affirms that (a) it has registered and uses the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees of Tenant; (b) it has required all contractors and subcontractors to this Lease (or otherwise hired by Tenant in connection with the performance of this Lease) to register and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor; (c) it has an affidavit from all contractors and subcontractors attesting that the contractor or subcontractor does not employ, contract with, or subcontract with, unauthorized aliens; and (d) it shall maintain copies of any such affidavits for duration of the Agreement. If City or Owner has a good faith belief that Tenant has knowingly violated Section 448.09(1), Florida Statutes, then City or Owner shall terminate this Lease in accordance with Section 448.095(5)(c), Florida Statutes. In the event of such termination, Tenant agrees and acknowledges that it may not be awarded a public contract for at least one (1) year from the date of such termination and that Tenant shall be liable for any additional costs incurred by City or Owner because of such termination. In addition, if City or Owner has a good faith belief that a contractor or subcontractor has knowingly violated any provisions of Sections 448.09(1) or 448.095, Florida Statutes, but Tenant has otherwise complied with its requirements under those statutes, then Tenant agrees that it shall terminate its contract with the contractor or subcontractor upon receipt of notice from Owner or City of such violation by contractor or subcontractor in accordance with Section 448.095(5)(c), Florida Statutes. Any challenge to termination under this provision must be filed in the Circuit or County Court by Owner, City, Tenant, or contractor or subcontractor no later than twenty (20) calendar days after the date of contract termination. Public and private employers must enroll in the E-Verify System (http://www.uscis.gov/e-verify) and retain the I-9 Forms for inspection.

(b) **Foreign County of Concern**. By entering into this Lease, Tenant affirms that it is not in violation of Section 287.138, Florida Statutes, titled Contracting with Entities of Foreign Countries of Concern Prohibited. The Tenant further affirms that it is not giving a government of a foreign country of concern, as listed in Section 287.138, Florida Statutes, access to an individual's personal identifying information if: a) the Tenant is owned by a government of a foreign country of concern; b) the government of a foreign country of concern has a controlling interest in the Tenant; or c) the Tenant is organized under the laws of or has its principal place of business in a foreign country of concern as is set forth in Section 287.138(2)(a)-(c), Florida Statutes. Tenant shall require that each of its contractors and subcontractors affirm compliance with this paragraph and Section 287.138, Florida Statutes.

(c) **Public Entity Crime**. Tenant further warrants it will neither knowingly utilize the services of, nor contract with, any supplier, subcontractor, or consultant in excess of $10,000 in connection with the performance of any services in connection with the Project for a period of 36 months from the date of such party being placed on the convicted vendor list, and Tenant shall require that each of its suppliers, contractors, subcontractors, or consultants affirm that it has not been convicted of a Public Entity Crime, as defined by Section 287.133, Florida Statutes, prior to entering into any such contract.

(d) **Scrutinized Companies**. By entering into this Lease, Tenant warrants that it is not (A) on the Scrutinized Companies that Boycott Israel List, (B) engaged in a boycott of Israel, (C) on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or (D) engaged in business operations in Cuba or Syria, in each case as defined in Section 287.135, Florida Statutes, and Tenant shall require that each of its suppliers, contractors, subcontractors, or consultants affirm that it complies with the foregoing prior to entering into any such contract.

EXECUTION

IN WITNESS WHEREOF, Owner and Tenant, intending to be legally bound, have executed this Lease as of the day and year first above written.

WITNESSES:

_____

Print Name:_____

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

By:_____

_____, Chairperson

ATTEST:

_____

Print Name:_____

By:_____

_____, Secretary

[**SEAL**]

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of ( ) physical presence or ( ) online notarization, this ___ day of _____, 2024, by _____, as Chairperson of Pompano Beach Community Redevelopment Agency, a public body corporate of the State of Florida, on behalf of said corporation. _____ is ( ) personally known to me or has ( ) produced a State of Florida driver's license as identification.

Sign Name:_____

Print Name:_____

NOTARY PUBLIC

Serial No. (none, if blank):_____

My Commission Expires:

[NOTARY SEAL]

WITNESSES:

By: [Tenant Name]

_____
Print Name:_____

By:_____
_____, President

_____
Print Name:_____

Attest:_____
Print Name:_____
Title:_____
_____, Secretary
[**CORPORATE SEAL**]

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of ( ) physical presence or ( ) online notarization, this ___ day of _____, 2024, by _____, as _____ of _____, a Florida corporation, on behalf of said corporation. _____ is ( ) personally known to me or has ( ) produced a State of Florida driver's license as identification.

Sign Name:_____
Print Name:_____
NOTARY PUBLIC
Serial No. (none, if blank):_____

My Commission Expires:

[NOTARY SEAL]

List of Exhibits

Exhibit **"A"** Legal Description of the Property

Exhibit **"B"** City Sublease

Exhibit **"C"** Ownership Interest in Tenant

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "B"

CITY SUBLEASE

EXHIBIT "C"

OWNERSHIP INTEREST IN TENANT

Member	Percentage Membership Interest Owned
TOTAL	**100**

EXHIBIT D

PROJECT CONSTRUCTION COMMENCEMENT AGREEMENT

This Project Commencement of Construction Agreement is entered into this ___ day of _____, 20__ by and among City of Pompano Beach, Florida (the **"City"**), Pompano Beach Community Redevelopment Agency (**"CRA"** or **"Owner"**) and _____ (**"Tenant"**) (collectively, the **"Parties"**).

WHEREAS, Owner and Tenant entered into that certain Ground Lease dated _____ (the **"Lease"**);

WHEREAS, the Lease contemplates the commencement of major work for the construction of the Improvements for the [***City Hall Project***] [***Parking Garage Project***] [***E. Pat Larkins Community Center***], to be used and operated by the City pursuant to that certain Build to Suit Sublease Agreement dated _____; and

WHEREAS, the Owner, Tenant and City wish to enter into this Agreement to acknowledge a specific date for the Commencement of Construction pursuant to the Lease and City Sublease.

NOW, THEREFORE, the Parties agree as follows:

1. The Parties agree that the Project Construction Commencement Date shall be _____.

2. All capitalized terms not otherwise defined herein have their meaning set forth in the Lease.

[**SIGNATURE PAGE TO FOLLOW**]

CITY OF POMPANO BEACH, FLORIDA

By:_____
Print Name: _____
Its: _____
Date: _____

Tenant

By:_____
Print Name: _____
Its: Manager
Date: _____

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

By:_____
Print Name: _____
Its: _____
Date: _____

[**END OF EXHIBIT D**]

BASELINE FORM OF CITY SUBLEASE FOR CIVIC BUILDING PROJECTS; DRAFT SUBJECT TO REVISION, WITH SUBLEASE FOR EACH CIVIC BUILDING PROJECT TO BE FINALIZED AND EXECUTED IN ACCORDANCE WITH SECTION 2.5 OF THE DEVELOPMENT AGREEMENT

BUILD TO SUIT SUBLEASE AGREEMENT

LANDLORD: [INSERT NAME]

TENANT: [INSERT NAME]

PROPERTY: [INSERT ADDRESS]

DATE: [INSERT DATE]

BASELINE FORM OF CITY SUBLEASE FOR CIVIC BUILDING PROJECTS; DRAFT SUBJECT TO REVISION, WITH SUBLEASE FOR EACH CIVIC BUILDING PROJECT TO BE FINALIZED AND EXECUTED IN ACCORDANCE WITH SECTION 2.5 OF THE DEVELOPMENT AGREEMENT

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BASELINE FORM OF CITY SUBLEASE FOR CIVIC BUILDING PROJECTS; DRAFT SUBJECT TO REVISION, WITH SUBLEASE FOR EACH CIVIC BUILDING PROJECT TO BE FINALIZED AND EXECUTED IN ACCORDANCE WITH SECTION 2.5 OF THE DEVELOPMENT AGREEMENT

BUILD TO SUIT SUBLEASE AGREEMENT

This BUILD TO SUIT SUBLEASE AGREEMENT (as amended from time to time, this "**Sublease**"), dated as of _____, with an effective date as set forth in Section 2.1 hereto, is made and entered into by and between **_____** ("**Sub-Lessor**" or "**Landlord**") and **_____** ("**Sub-Lessee**" or "**Tenant**").

A. DEFINITIONS

The following definitions are incorporated into the Sublease attached hereto and said provisions shall have the following meanings throughout the Sublease:

ADA:	Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., as amended.
Additional Services:	As defined in Section 12.2.
Affiliate:	With respect to Landlord means any Person that is not a Prohibited Person, who directly or indirectly, is controlled by the Key Persons, *and* for which the Key Persons, directly or indirectly, collectively own at least ten percent (10%) of the equity interests in such Person. For purposes hereof, the term **"controlled by"** shall mean the day to day operational management decisions of a Person.
Allocated Rent:	As defined in Section 4.9. [*Developer to confirm this term is still applicable under Ground Lease structure*.]
Alterations:	Any and all alterations, additions, and/or Improvements to any portion of the Premises made by or for Tenant following the Sublease Commencement Date and which are not maintenance or repairs of existing fixtures or Improvements.
Annual Base Rent:	As defined in Section 4.1.
Applicable Laws:	All existing and future applicable laws (including common laws), rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of

	and interpretations by, any Governmental Authorities, and applicable judgments, decrees, injunctions, writs, orders or like action of any court or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction (including those pertaining to health, safety or the environment and those pertaining to the construction, use or occupancy of the Project), and any reciprocal easement agreement, covenant, other agreement or deed restriction or easement of record affecting the Premises.
Approved Environmental Consultant:	Any environmental consultant to Tenant of national standing and reasonably approved by Landlord and Lender.
Approved Project Budget:	The detailed estimate of Project costs attached as **Exhibit "E"** to the Sublease.
Architect:	The qualified, licensed design professional selected by the Landlord, and retained by the Landlord pursuant to a written agreement, to furnish architectural and design services required relating to the Project in accordance with the terms of this Sublease.
Building Concept Plan:	Collectively, those certain conceptual drawings, narratives and renderings depicting the preliminary program, layout, architectural style, and design elements of the building exterior, interior spaces, common areas, and landscaping for the Project as set forth in **Exhibit "B"**, as approved by the City Commission.
Building Improvements Costs	All costs and expenses incurred by Landlord, including transaction costs and soft costs, during the Construction Period in connection with the design, permitting and construction of the Building Improvements pursuant to the Plans and Specifications, as modified by Change Orders. For purposes of this definition, costs and expenses incurred by the Landlord shall include the amount capitalized in the Building by the Landlord in accordance with GAAP. Building Improvements Cost shall exclude costs that are the responsibility of the designer, contractor, or both under the applicable Project agreements (e.g.,

	costs relating to design and construction errors or the costs of correcting such errors).
Building Improvements:	All elements of the Improvements purchased with the proceeds of the Loan or with the Landlord's Equity Investment, as set forth in the final Plans and Specifications, including all such machinery, apparatus, equipment, fittings, appliances and fixtures of every kind and nature now or hereafter located on the Site, and all plumbing, gas, electrical, ventilating, heating, air conditioning, lighting and other mechanical and utility systems and all other building systems and fixtures attached to or comprising a part of the Improvements.
Broker(s):	None.
Building Structure:	As set forth in Section 11.3.
Building Systems:	As set forth in Section 11.3.
Building:	The facility to be constructed on the Site consisting of approximately ____ square feet and containing all Building Improvements.
Business Day:	Any day other than a Saturday, Sunday or other day on which banks are authorized to be closed in New York, New York or Pompano Beach, Florida.
Calendar Year:	The period from January 1 to December 31.
Casualty:	As defined in Section 15.2(b).
City:	The City of Pompano Beach, Florida, a Florida municipal Corporation.
City Commission	The elected governing body of the City established in accordance with the City Charter.
Closing Date:	As defined in Article 34.
Common Areas:	All driveways and roadways now or hereafter located within the Project, walkways now or hereafter located within the Project, all utility lines, pipes, wires, cables and other utility facilities now or hereafter located within and

	serving the Project or otherwise exclusively serving the Project, any retention or detention facilities now or hereafter serving the Project, any storm and sanitary sewers, culverts, drains, headwalls, manholes and related equipment now or hereafter located within the Project, all grounds and landscaping within the Project, all covered walkways, tunnels, or other means of access to the Project, together with all hallways, lobbies, bathrooms, corridors, elevators, entrances and exits, stairways and other similar areas within the Project.
Communications Equipment:	As defined in Article 35.
"Construction Documents"	All Plans and Specifications, Construction Drawings, Construction Agreements and the Change Orders for the Project (collectively).
"Construction Drawings"	The drawings, including schematic drawings, design development drawings, and construction drawings, prepared by the Landlord's Contractor, the Architect, or one or more consultants and approved by Tenant for the completion of the Project, and any changes, modifications, or supplements thereto.
Construction Period	The period commencing on the Effective Date and ending on the Sublease Commencement Date.
Construction Period Force Majeure Event:	As defined in Section 3.19
Construction Warranties	As defined in Section 7.1
Contract Rate:	5.0% per annum in excess of *The Wall Street Journal* Prime Rate, which is the Prime Rate published in the "**Money Rates**" section of *The Wall Street Journal* from time to time, provided that if *The Wall Street Journal* ceases to publish the "**Prime Rate**" at any time during the term of this Note, then Prime Rate shall be the base rate published or announced by a generally recognized national publication or financial institution, as selected by Landlord, in Landlord's reasonable discretion. Notwithstanding any provision of this Sublease, the parties intend that no provision of this Sublease be

	interpreted, to construed, applied, or enforced so as to permit or require the payment or collection of interest in excess of the highest rate of interest permitted to be paid or collected by the laws of the State of Florida, or by federal law in the event that federal law preempts Florida law with respect to this transaction (the "**Maximum Permitted Rate**"). If, however, any such provision is so interpreted, construed, applied, or enforced, then the parties intend: (i) that such provision automatically shall be deemed reformed nunc pro tunc so as to require payment only of interest at the Maximum Permitted Rate; and (ii) if interest payments in excess of such Maximum Permitted Rate have been received, that the amount of such excess shall be deemed credited nunc pro tunc in reduction of the then outstanding principal amount of this obligation, together with interest at such Maximum Permitted Rate. In connection with all calculations to determine the Maximum Permitted Rate, the parties intend: first, that all charges be excluded to the extent they are properly excludable under the usury laws of the State of Florida or the United States of America, as they from time to time are determined to apply; and, second, that all charges that may be "spread" in the manner provided by Section 687.03(3), Florida Statutes, or any similar successor law, be spread in the manner provided by such statute.
Contractor:	The duly licensed general contractor engaged by Landlord to provide general construction services for the construction of the Project pursuant to the terms of this Lease.
Cost to Repair	As defined in Section 15.2(b).
CRA	The Pompano Beach Community Redevelopment Agency, a public body created pursuant to Chapter 163, Part III, Florida Statutes.
Development Agreement	That certain Pompano Beach Downtown Public Private Redevelopment Agreement, by and among the City, the CRA and RP Pompano, LLC, a Florida limited liability company, approved on _____, 2024 by the Mayor and City Commission of the City via City Commission

	Resolution No. _____, and by the Chairperson and members of the CRA, via CRA Resolution No. _____.
Effective Date:	As defined in Section 2.1.
Environmental Laws:	All federal, state or local laws, ordinances, rules, orders, statutes, decrees, judgments, injunctions, codes, regulations and common law (a) relating to the environment, human health or natural resources; (b) regulating, controlling or imposing liability or standards of conduct concerning Hazardous Materials; (c) relating to the remediation of real property, including investigation, response, clean-up, remediation, prevention, mitigation or removal of Hazardous Materials; or (d) requiring notification or disclosure of releases of Hazardous Materials or any other environmental conditions on or migrating from the Site, as any of the foregoing may have been or may be amended, supplemented or supplanted from time to time, including the Resource Conservation and Recovery Act of 1976 ("**RCRA**"), 42 U.S.C. §§ 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq. ("**CERCLA**"), the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. §§ 7041 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.
Estoppel Certificate:	As defined in Article 28.
Event of Default:	As defined in Article 17.
Event of Force Majeure	As defined in Section 37.9.
Event of Non-Appropriation:	As defined in Section 30.4.
Excluded Borrower Costs and Expenses:	Any costs and expenses incurred or expended by Lender pursuant to any of the Operative Documents, as a result solely of the following: (a) an action by Landlord

	prohibited by any of the Operative Documents that is not the result of any action or inaction of Tenant, or (b) an omission or failure by Landlord to take an action or fulfill an obligation required under any of the Operative Documents other than any of the following actions or obligations: (i) the payment of money (except for the failure to pay the costs and expenses incurred by Lender covered by clause (a) of this paragraph) or (ii) any other action or obligation required to be taken or fulfilled that Tenant can reasonably take or fulfill on behalf of Landlord or in Landlord's stead, or is obligated to take pursuant to this Sublease, or (iii) any other action required to be taken by Landlord, or any action that Lender is permitted to take, in each case under any of the Operative Documents, in order to preserve or protect the assets of Landlord that are collateral for the Loan or to enforce the Landlord's rights under any agreements that are collateral for the Loan.
Expiration Date:	Thirty (30) Years after the Sublease Commencement Date; provided, however, that this Sublease is subject to earlier termination as expressly provided herein.
Federal Bankruptcy Code:	The Bankruptcy Reform Act of 1978 as amended and as may be further amended.
Final Completion	The satisfaction of all construction work for the Project, including all Punch List items, as certified by the Architect of record, at which time all conditions and requirements of the construction contract(s) permits and regulatory agencies have been met, as evidenced by the issuance of final certificate(s) of occupancy, certificate(s) of completion, or their functional equivalent for the Project.
GAAP:	Generally accepted accounting principles as in effect in the United States at the time of the preparation of the subject financial statements, consistently applied.
Governmental Approvals	All approvals from all applicable Governmental Authorities required for the development and construction of the Project, including, without limitation, the platting

	or re-platting of the Property or any portion thereof, with all appeal periods as provided by law with respect thereto having expired with no appeal or adverse suit having been filed, or if filed, having been rejected or terminated finally and conclusively in favor of the Project.
Governmental Authority:	The United States of America, the State of Florida, the City of Pompano Beach, Florida (in its governmental as opposed to proprietary capacity), Pompano Beach Community Redevelopment Agency (in its governmental as opposed to proprietary capacity), the County of Broward, Florida and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over or under the Premises or Project or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Project, or any vault in or under the Project, or airspace over the Project.
Ground Lease	As defined in Section 1.3.
Hazardous Materials:	Any and all toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous substances, chemicals, materials or pollutants which are regulated, governed, restricted or prohibited by any federal, state or local law, decision, statute, rule or ordinance currently in existence or hereafter enacted or rendered, including, without limitation, asbestos, poly-chlorinated biphenyls and radon gases.
HVAC Unit:	As defined in Article 35.
Improvements:	The Building, Building Improvements, Common Areas, and all other buildings, structures, infrastructure, site improvements, landscaping and other onsite or offsite improvements of any kind or nature whatsoever relating to the Project now existing or hereafter constructed on the Site.

Indemnitee:	The Landlord, all direct or indirect beneficial owners of the Landlord, the Lender, any trustee or collateral agent acting on behalf of the Lender and their respective Affiliates and the respective officers, directors, owners, agents, successors and assigns of all of the foregoing.
Landlord:	[_____]
Landlord's Address for Notices:	[_____]
with copy to	[_____]
Landlord's Equity Investment:	The portion of the cost of the Improvements funded by Landlord with funds not representing proceeds of the Loan.
Lender:	The lending institution financing the Project pursuant to a Loan procured by Landlord, in accordance with the Ground Lease.
Lien:	Any lien, mortgage, pledge, charge, security interest or encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest on the Premises or any portion thereof or interest therein, including, without limitation, any thereof arising under any conditional sale agreement, capital Sublease or other title retention agreement.
Loan:	The loan obtained by Landlord from Lender with respect to the Project.
Minor Alterations:	As defined in Section 8.2(a).
Mortgage:	The mortgage, security agreement, fixture filing and assignment of rents securing the Loan.
Net Casualty Award	As defined in Section 15.2(b).
Net Taking Award	As defined in Section 15.2(b).
Operating Expenses:	As set forth in Section 5.1.

Operative Documents:	The Sublease, all Loan documents, including the Mortgage and all other documents or agreements attached to or referred to in any of the preceding documents, as such Loan documents shall have been approved by the Tenant.
Outside Completion Deadline:	[__] days following Substantial Completion of the Project, provided such date shall be extended on a day for day basis for each day of Construction Period Force Majeure or Tenant Delays.
Permits:	As to the Premises all licenses, authorizations, certificates, variances, concessions, grants, registrations, consents, permits and other approvals issued by a Governmental Authority now or hereafter pertaining to the ownership, management, occupancy, use, maintenance or operation of such Premises, including certificates of occupancy.
Permitted Liens:	(a) The respective rights and interests of the Tenant, the Landlord, all other parties to the Operative Documents, (b) Liens for Taxes either not yet due or being contested in accordance with Section 5.2, (c) Liens arising out of judgments or awards with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and, if an Event of Default has occurred and is continuing during the appeal or proceeding for review, which have been bonded to Landlord's satisfaction, (d) easements, rights of way, reservations, servitudes covenants, conditions, restrictions and rights of others against the Premises which do not have a material adverse effect on the Premises, its value or its uses, (e) easements, rights of way, reservations, servitudes, covenants, conditions, restrictions and rights of others against the Premises existing on the Effective Date of this Sublease, which are listed in the title policies issued to the Lender or the Landlord (as applicable); and (f) sub-Subleases expressly permitted by this Sublease.

Person:	A natural person, a partnership, a corporation, a limited liability company, a trust, and any other form of business or legal association or entity.
Personal Property Taxes:	As defined in Section 4.5.
Plans and Specifications:	The final plans and specifications for the Project as established in accordance with Article 3, as the same may be modified from time to time.
Premises:	The Site, together with the Building Improvements, all other Improvements, and the Common Areas.
Project:	The entire Premises.
Punch List Items:	Any items of the Project that are incomplete but, in the aggregate, do not materially interfere with the issuance of a temporary certificate(s) of occupancy, certificate(s) of completion, or their functional equivalent, for the Project and the lawful use or enjoyment of the Project for its intended purposes.
Purchase Option Notice:	As defined in Article 34.
Release:	The release or threatened release of any Hazardous Material into or upon or under any land or water or air, or otherwise into the environment, including, without limitation, by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, pouring, escaping, emptying, placement and the like.
Remedial Action	The investigation, response, clean-up, remediation, prevention, mitigation or removal of contamination, environmental degradation or damage caused by, related to or arising from the existence, generation, use, handling, treatment, storage, transportation, disposal, discharge, Release (including a continuous Release), or emission of Hazardous Materials, including, without limitation, investigations, response, removal, monitoring and remedial actions under CERCLA; corrective action under the Resource Conservation and Recovery Act of 1976, as amended, the investigation, removal or closure of any

	underground storage tanks, and any related soil or groundwater investigation, remediation or other action, and investigation, clean-up or other actions required under or necessary to comply with any Environmental Laws.
Rent Commencement Date:	As defined in Article 4.3.
Rent Constant:	Shall be [____ percent (_%) [*to be determined prior to Loan closing in context of City's approval of final Loan documents*].
Rent:	As defined in Article 4.6.
Replacement Part:	As defined in Section 11.1.
Requirements	Any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over a Person and/or the Premises or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Premises or any vault in, or under the Premises (including, without limitation, any of the foregoing relating to handicapped access or parking, the Building Code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions); the temporary and/or permanent certificate(s) of occupancy or certificate(s) of completion or their functional equivalent issued for the Premises as then in force; and, as applicable, any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease.
Restoration Contracts	As defined in Section 15.2(b).
Services:	Those services required by this Sublease to be provided by Tenant as further described in Section 12.1.
Signage Rights:	As set forth in Article 33.
Site:	That certain property described on **Exhibit "A"** attached hereto and incorporated herein by reference and all

	easements, air rights, and other rights and interests appurtenant thereto. Landlord and Tenant have agreed to substitute, and hereby incorporate by reference, a revised **Exhibit "A"** to recognize minor changes required in the property dimensions (boundary line adjustments) due to completion and approval of construction and engineering documents.
Stipulated Loss Value:	$_____.
Sublease Commencement Date:	As defined in Section 2.2.
Sublease Year:	Sublease Year shall refer to the Year beginning on the Sublease Commencement Date and to each Year thereafter beginning on the anniversary of the Sublease Commencement Date.
Substantial Completion or Substantially Complete:	The satisfaction of all construction aspects of the Project other than Punch List Items, including, but not limited to, any and all items associated with the Improvements to be installed by the Landlord are completed in accordance with the Plans and Specifications, as certified by the Architect of record, and as evidenced by temporary certificate(s) of occupancy or certificate(s) of completion for the Project, or their functional equivalent. The Landlord shall secure the appropriate temporary certificate(s) of occupancy, certificate(s) of completion, or their functional equivalent for the Project and the issuance thereof shall be the date of Substantial Completion. The temporary certificate(s) of occupancy, certificate(s) of completion, or functional equivalent shall serve as evidence that the work for the Project has been Substantially Completed.
Substantial Completion Deadline:	As defined in Section 3.12 of this Lease.
Supplemental Rent:	Collectively: (i) any and all amounts, fees, expenses, liabilities, obligations, late charges, Operating Expenses, Taxes and impositions other than the Annual Base Rent which Tenant assumes or agrees in writing or is otherwise obligated to pay under this Sublease to the Landlord or the Lender; and (ii) any and all amounts payable by Landlord

	under the Operative Documents, including but not limited to late charges, default interest, Trustee fees and attorney's fees and costs, excluding, however, all Excluded Borrower Costs and Expenses.
Parties:	Landlord and Tenant, and "**Party**" is a reference to either Landlord or Tenant, as the context may indicate or require.
Tax Protest:	As defined in Section 5.2.
Taxes:	As defined in Section 4.5.
Tenant:	The City of Pompano Beach, Florida, a Florida municipal Corporation, and its successors or assigns. In all respects hereunder, Tenant's obligations and performance is pursuant to City's position as the owner of the Site acting in its proprietary capacity. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances (including through the exercise of the City's building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to City's regulatory authority as a governmental body and shall not be attributable in any manner to Tenant as a party to this Sublease or in any way be deemed in conflict with, or a default under, the Tenants' obligations hereunder.
Tenant's Address for Notices:	[_____]
with a copy to:	[_____]
Tenant Delay:	As defined in Section 3.13.
Tenant's Designated Representative:	[_____]
Tenant's Property:	Tenant's trade fixtures, furnishings, equipment or other personal property located in or used at the Premises.
Term:	The period commencing on the Sublease Commencement Date and ending on the Expiration Date, unless earlier terminated as specifically provided in the Sublease.

Total Cost:	The sum of (i) the proceeds of the Loan actually drawn through the calendar day immediately preceding the Rent Commencement Date, including, without limitation, all interest accrued to but excluding the Rent Commencement Date, including any interest accruing thereon during any Construction Period Force Majeure Events or Tenant Delays in the construction of the Project, plus (ii) the Landlord's Equity Investment, plus (iii) all other costs and expenses incurred by Lender or otherwise chargeable to Landlord in connection with Building Improvement Costs, the making and administration of the Loan or the enforcement of any rights Lender may have under the Operative Documents or the protection of Lender's security in any collateral for the Loan, in each case to but excluding the Rent Commencement Date, provided that Tenant shall not be responsible for any Excluded Borrower Costs and Expenses, less (iv) any amounts applied by Lender in the reduction of the amounts referred to in clauses (i), (ii) or (iii) above actually received by Lender from insurance proceeds, liquidated damages, or other sources to but excluding the Rent Commencement Date.
Use:	As defined in Section 6.1.
Year:	Any period of 365/366 consecutive days.

[**END OF SECTION A – DEFINITIONS**]

B. SPECIFIC TERMS AND CONDITIONS

Landlord and Tenant specifically agree as follows:

ARTICLE 1 - PREMISES

1.1 **Sublease of Project**. Upon the terms and conditions of this Sublease, Landlord hereby Subleases to Tenant, and Tenant hereby Subleases from Landlord, the entire Premises, which shall be delivered by Landlord substantially in accordance with the Building Concept Plan set forth in **Exhibit "B"** and the Plans and Specifications developed by the Landlord in consultation with the Tenant based on such Building Concept Plan, subject to any changes agreed to by Landlord and Tenant in accordance with this Sublease.

1.2 **Tenant's Acceptance of the Premises**. Upon taking possession of the Premises, Tenant accepts the Premises (subject only to Landlord's obligation to complete any Punch List Items, with all applicable Construction Warranties (as defined in Section 7.1 below) associated therewith. All Improvements shall be in new condition and in conformance with the Plans and Specifications as of the Sublease Commencement Date.

1.3 **Ground Lease**. This Sublease is subject and subordinate to all of the terms and conditions of that certain Ground Lease dated as of _____ (the " **Ground Lease**") between Pompano Beach Community Redevelopment Agency and _____. A copy of the Ground Lease is attached hereto as **Exhibit "H"** and incorporated herein by this reference. The Parties shall not commit or permit to be committed any act or omission which would violate any term or condition of the Ground Lease. In the event of the termination of the Ground Lease for any reason, then this Sublease shall terminate automatically upon such termination. All of the terms and conditions contained in the Ground Lease as they may apply to the Premises are incorporated herein and shall be terms and conditions of this Sublease, except as otherwise expressly specified in this Sublease.

ARTICLE 2 - TERM

2.1 **Effective Date**. The Sublease is effective as of _____ (the "**Effective Date**").

2.2 **Term of Sublease**. The term of this Sublease (together with all extensions thereto, the "**Term**") shall commence on the date the Landlord delivers to the Tenant possession of the Substantially Completed Project (the "**Sublease Commencement Date**") and, subject to the terms and conditions of this Sublease, shall continue to the Expiration Date, unless Tenant exercises its right to purchase the Landlord's interest in the Sublease and in the Premises pursuant to Article 34 hereof, or unless sooner terminated as hereinafter provided. Landlord and Tenant shall execute a Memorandum of Acceptance, in the form attached hereto as **Exhibit "C"**, once the conditions set

forth therein have been met. To the extent there shall be any discrepancy between anything contained in this Sublease and anything contained in the Memorandum of Acceptance, the Memorandum of Acceptance shall control and operate as an amendment of this Sublease with respect to such discrepancy.

ARTICLE 3 - DESIGN AND CONSTRUCTION OF THE PROJECT

3.1 **Landlord's Project Obligations**. Prior to the Sublease Commencement Date, the Landlord shall, or shall cause others to, develop, design, permit, install, and construct, in a good and workmanlike manner, and in accordance with all Applicable Laws, the Project, and shall thereafter cause for the Project to achieve Final Completion, in conformance with the Plans and Specifications and all Permits and Approvals (including, without limitation, the installation of any furniture purchased by the Landlord for the Tenant as may be specified in the Plans and Specifications) and the Approved Project Budget.

(a) Landlord, at its cost and expense (as part of the Building Improvements Costs), shall pay for the design, permitting, and construction on the Site of the Building Improvements pursuant to the Plans and Specifications, including payment of costs and expenses for all permits, professional fees, materials, supplies, bonds, insurance and labor relating thereto. Prior to execution of the Construction Contract (which contract shall contain a GMP for the Project), in the event the Building Improvements Costs are expected to exceed the Approved Project Budget, and the Tenant does not approve an increase of the Approved Project Budget to accommodate the difference, the Parties shall meet to identify mutually acceptable alternatives to bring the Building Improvements Costs within the Approved Project Budget, including without limitation, modifying or limiting the scope of the Project. Upon request by Tenant, Landlord shall value engineer any designated portions of the Project in order to attempt to bring the Building Improvements Costs within the Approved Project Budget. In the event the Parties cannot agree on a means of bringing the Building Improvements Costs within the Approved Project Budget, such dispute shall be subject to the non-binding mediation process pursuant to Section 3.9 below. [*This Section to be finalized on a Project specific basis, prior to execution of each Sublease, to address risk and reward allocation for Project cost overruns and/or Project savings following execution of the Construction Contract for the Project.*]

(b) In managing the design and construction of the Project, Landlord shall, in its reasonable business judgment, monitor the quality and costs of design and construction, assert its rights under the applicable agreements, and dispute claims for additional compensation from designers and contractors in a manner that reasonably achieves Tenant's desire for the Project to be constructed in the manner required by this Sublease without exceeding the approved Project Budget.

(c) Except as expressly set forth in this Sublease, Landlord shall not be entitled under this Sublease to receive from the Tenant any type of construction management fee or other compensation for the work associated with the Project, and Landlord's sole compensation under

this Sublease for its performance of the Project shall be through the Tenant's payment of Rent; provided, however, that the Approved Project Budget shall include a line item for payment to Landlord, as part of the Building Improvements Costs paid from the proceeds of the Loan, of (i) a Project management fee equal to five percent (5%) of the Approved Project Budget, to be paid monthly pursuant to the terms of the Loan, (ii) a Performance Payment (as defined in the Development Agreement) to be paid to Landlord pursuant to the terms of the Development Agreement, [and (iii) the Additional CBRE Fee pursuant to the terms of the Development Agreement ((iii) solely to be included in the City Hall Lease)].

(d) Landlord intends to utilize commercially reasonable, good faith efforts to cooperate with the City to identify and promote opportunities for inclusion and outreach for potential contracting and employment opportunities within the Project, as well as community input on the design of the Project, as provided in the Development Agreement. Notwithstanding anything contained in this Sublease to the contrary, the provisions of this Section 3.1(d) shall not give rise to a Default or Event of Default by Landlord under this Sublease.

3.2 **Selection of Architect**. The Architect, and any professional engineers, landscape architects, and registered surveyors and mappers performing professional services on the Project as contemplated in Section 287.055, Florida Statutes (the "**CCNA**") shall be selected by the Landlord utilizing a competitive selection process in accordance with the CCNA, unless Landlord and Tenant agree, in writing, that a statutory exemption to the CCNA exists and/or the CCNA otherwise does not apply to a proposed scope of services (in which case, Landlord shall select the provider pursuant to customary commercial practices). Landlord's contract with the Architect shall require the Architect to commence preparing plans and specifications and permit-ready set of drawings for the Project based on the Building Concept Plan set forth in **Exhibit "B"** within sixty (60) days following the Effective Date. Except as provided herein with respect to architects, professional engineers, landscape architects and registered surveyors and mappers providing professional services under Section 287.055 of the CCNA, all other consultants and professional service providers shall be selected by Landlord pursuant to its customary commercial practices.

3.3 **Governmental Approvals and Rezoning of the Property**.

(a) Landlord shall use commercially reasonable efforts to obtain all Governmental Approvals, as and when necessary for the development of the Project, including without limitation the following approvals:

(i) Rezoning the Property (the **"Rezoning"**) and, if applicable, entering into a development agreement(s) with the City of Pompano Beach, Florida (in its governmental capacity), that permits the construction, development and operation of the Project in accordance with the Building Concept Plan;

(ii) Concurrent approvals for transportation and non-transportation public services, such as potable water and sewer, for the Project;

(iii) Storm water management approvals;

(iv) Platting, replatting and/or subdivision approvals; and

(v) Building permits for the Project.

Tenant agrees to timely cooperate with Landlord in connection with Landlord's preparation and filing of all application(s) for the Governmental Approvals, and with Landlord's actions to obtain such approvals and with all other aspects of the Governmental Approvals. In furtherance and not in limitation thereof, where required by Governmental Authorities and/or requested by Landlord, Tenant shall: (i) execute, within five (5) Business Days of receipt, any necessary agreements, applications, authorizations or submissions requiring the consent or joinder of the Tenant, provided that Landlord delivers to Tenant complete copies of all instruments required for execution, together with copies of all supporting documents to be included in the submission, at least ten (10) Business Days in advance of the date Landlord intends to submit to the Governmental Authority; and (ii) concurrent with the execution of this Agreement, provide written authorization, in the form required by the appropriate Governmental Authorities and otherwise reasonably acceptable to Tenant, empowering Landlord to act as Tenant's agent before such Governmental Authorities for the purpose of obtaining any such Governmental Approval. In the event that any Governmental Authorities require different or additional authorization forms for the Governmental Approvals, Tenant shall execute and return such forms within ten (10) Business Days of receipt of such forms from Landlord. Prior to the filing of an application to any Governmental Agency for a Governmental Approval or any addition or modification of such application, which shall include zoning conditions imposed as part of the Rezoning review process, Landlord shall provide to Tenant (as applicable) notice and copies of the application, including plans, specifications, and other submittals and zoning conditions (collectively, the **"Submittals"**) regarding such Governmental Approvals for review and approval. To the extent required, Tenant shall not unreasonably withhold, condition or delay its consent to the filing of the Submittals for the Governmental Approvals, and provided that Submittals are (i) recommended by the Tenant's Designated Representative and (ii) are consistent with the Building Concept Plan, such Submittals shall be approved.

3.4 **Selection of Contractor(s)**. All Project construction-related work shall be performed by licensed contractor(s) selected by Landlord. The Contractor shall be selected in accordance with Section 255.20, Fla. Stat., and, unless otherwise waived by Tenant in writing, must, at a minimum, have the following qualifications: _____] [*to be finalized prior to execution of each Sublease on a Project specific basis*]. Except as provided herein with respect to the Contractor, all other consultants, subcontractors, or providers shall be selected by Landlord pursuant to its customary commercial practices.

3.5 **Design and Construction Agreements**. The Landlord shall keep the Tenant timely advised and updated on the negotiations for the drafting of the design and construction agreement(s) as selected by the Landlord (subject to compliance with the above competitive

selection requirements, if applicable) and shall submit the final draft of the design and construction agreement(s) for the Architect and Contractor to the Tenant for review and approval prior to execution of same by the Landlord.

(a) Tenant shall have twenty (20) business days from receipt of the Architect's and Contractor's design and construction agreements to review and approve or disapprove such design and construction agreement; provided, however, that Tenant shall be required to approve such design and construction agreements so long as such design and construction agreement(s) provide for the Substantial Completion of the Project in accordance with the timeframes set forth herein and are substantially in accordance with the Approved Project Budget, and are otherwise consistent with the terms and conditions of this Sublease.

(b) If the Tenant fails to approve or disapprove a design or construction agreement within the time frame specified in Section 3.4(a), Landlord and Tenant shall meet to discuss and confer on the status of the matter, or Landlord may submit the matter to the non-binding mediation process pursuant to Section 3.9 below.

3.6 **Compliance with Requirements; Construction Standards**.

(a) Notwithstanding anything to the contrary contained herein, the Plans and Specifications shall comply with all applicable Requirements. The Tenant's approval in accordance with this Article of any Plans and Specifications shall be deemed to be a determination by the Tenant's Designated Representative that the Plans and Specifications so approved are in substantial conformity with the Building Concept Plan, but shall not be, and shall not be construed as being, or relied upon as, a determination by the Tenant that such Plans and Specifications comply with other applicable Requirements, including, without limitation, any Requirements providing for the review and approval of the Plans and Specifications by any Governmental Authority (in its governmental capacity as opposed to its proprietary capacity).

(b) Construction of the Project shall be carried out pursuant to Plans and Specifications prepared by licensed Architects, engineers and Contractors, with controlled inspections conducted by a licensed Architect or professional engineer as required by applicable Requirements.

(c) Within [____] days following approval of the Plans and Specifications, Landlord, in collaboration with Tenant, shall prepare (or have prepared) and submit to the Tenant the proposed Construction Documents, Project Budget, and Project Schedule (collectively, the **"Project Documents"**, or individually, a **"Project Document"**). Within thirty (30) Business Days of its receipt of a Project Documents, the Tenant's Designated Representative shall notify Landlord, in writing, whether it approves or disapproves of the Project Document. If the Tenant's Designated Representative disapproves of the Project Documents, such disapproval must describe, with specificity, the basis for the disapproval, in which case Landlord shall cause the Project Documents to be modified in accordance with such comments and resubmitted to the Tenant's

Designated Representative for approval. The Tenant's Designated Representative shall review each modified Project Documents within twenty (20) Business Days of its receipt of the document solely for the purpose of confirming that the prior comments were incorporated into the Project Documents. The Tenant's Designated Representative's failure to timely approve or disapprove a Project Document shall be deemed a Tenant Delay.

(d) Prior to the Commencement of Construction of the Project, Landlord shall provide to Tenant's Designated Representative a construction schedule for each stage of the Project, which schedule shall be prepared using the critical path method (**"CPM"**; such schedule, as it shall be amended from time to time in accordance with the Construction Agreements, shall be referred to as the **"CPM Schedule" or "Project Schedule"**), including a CPM network diagram, for use in scheduling and controlling the Construction. The CPM Schedule shall, at a minimum, show:

(i) the early and late start and stop times for each major construction activity;

(ii) all **"critical path"** activities and their duration;

(iii) the sequencing of all procurement, approval, delivery and work activities;

(iv) manpower levels;

(v) late order dates for all long lead time materials and equipment; and

(vi) critical Landlord and Tenant decision dates.

(e) Landlord shall promptly provide to Tenant's Designated Representative informational copies of the CPM Schedule as early as possible prior to the Commencement of Construction of the Project. The CPM Schedule shall (1) be revised by Landlord whenever there is a material variance in the progress of the Construction from the then current CPM Schedule and otherwise at appropriate intervals, and (2) provide for expeditious and practicable execution of the Construction. Landlord shall notify the Tenant's Designated Representative of any deviation from the CPM Schedule which, in Landlord's good faith determination, is likely to cause a material delay in the Substantial Completion of the Project (as shown on the current CPM Schedule).

(f) Neither the CPM Schedule nor any revision thereto in accordance with this Section 13.4 shall authorize any delay from the deadlines set forth in the Project Schedule unless such delay is authorized in accordance with the approved Construction Agreement, or results from an Unavoidable Delay or Tenant Delay.

(g) Landlord shall, subject to Unavoidable Delays and/or Tenant Delays, use commercially reasonable efforts to (a) satisfy all Construction Commencement Conditions and cause Commencement of Construction of the Project to begin on or before the **"Construction Commencement Date"** set forth in the Project Schedule and (b) thereafter use commercially reasonable efforts to continue to prosecute Construction of the Project with diligence and continuity to completion in accordance with the Project Schedule.

(h) Substantial Completion of the Project shall be accomplished in a diligent manner in accordance with the Project Schedule and Final Completion of the Construction of the Project shall be accomplished in a diligent manner thereafter, in each case in a good and workmanlike manner, in substantial accordance with the Plans and Specifications, and in accordance with all applicable Requirements. Within ninety (90) days after Substantial Completion of Construction of the Project, Landlord shall furnish Tenant with the following:

(i) a certification of the Architect that it has examined the Plans and Specifications and that, in its professional judgment, after diligent inquiry, Construction of the Project has been Substantially Completed in accordance with the Plans and Specifications applicable thereto and, as constructed, the Improvements comply with all applicable Requirements;

(ii) lien waivers in form and substance reasonably satisfactory to Tenant from each Contractor retained by or on behalf of Tenant in connection with the Construction of the Project, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the Construction of the Project;

(iii) a complete set of **"as built"** plans and a survey showing the Improvement(s) for which the Construction of the Project has been completed. Tenant shall have an unrestricted license to use such **"as built"** plans and survey for any purpose related to the Project without paying any additional cost or compensation therefor, subject to copyright and similar rights of the Architect to prohibit use of designs for purposes unrelated to the Project, as such rights exist in law or may appear in the Architect's contract, and subject to applicable public records laws. The foregoing requirement with respect to **"as built"** plans shall be satisfied by Landlord furnishing to the Tenant a complete set of Plans and Specifications, with all addenda thereto and change orders in respect thereof, marked to show all changes, additions, deletions and selections made during the course of the Construction of the Project.

3.7 **Procurement and Assignment of Contracts; Mandatory Terms**. [***Conform to final D.A.***]

(a) The Architects, engineers, and other providers of professional services, as defined in Section 287.055, Florida Statutes (the **"CCNA"**) utilized by Landlord in connection with the development of the Project shall be competitively selected by Landlord in accordance with the CCNA, including, without limitation, the requirement that Landlord publicly advertise

any procurement of professional services; that Landlord rank responding firms based solely upon qualifications, and not price; and that Landlord attempt to negotiate final terms and conditions with the most qualified firm, all accordance with the CCNA. The Project General Contractor shall be selected by Landlord in accordance with Section 255.20, Florida Statutes, utilizing any of the public, competitive procurement methods authorized by that statute; or, in the event, that Landlord elects to utilize a design-build delivery method for the Project, Landlord shall select the design-build contractor in accordance with the two-phased competitive procurement method set forth in the CCNA. Pursuant to Section 287.05701, Florida Statutes, when procuring contractors for the Project, Landlord shall not request documentation of, or consider, the social, ideological or political interests of a proposer when determining if a proposer is a responsible proposer, nor will Landlord give preference to a proposer based on the proposer's social, ideological or political interests. Notwithstanding anything in this Agreement to the contrary, Landlord shall not enter into any contract with a Contractor that is a Prohibited Person or that does not meet the requirements of Section 37.24 of the Ground Lease.

(b) All Construction Agreements and other contracts for the design and construction of the Project shall be assignable to the Tenant at its election upon an Event of Default. All Construction Agreement(s) with the Project General Contractor for construction of the Project shall include retainage of five percent (5%) from each progress payment and a guaranteed maximum price (**"GMP"**) for the completion of all construction work required by the contract, and such GMP shall be subject to approval by the Tenant and incorporated into the Approved Project Budget prior to execution of such contract by the Landlord. Landlord will procure and maintain and require the Project General Contractor and any other Contractor performing or furnishing any work related to the design, engineering and construction of the Project to possess all registrations, certifications, licenses and other authorizations necessary under applicable Requirements to perform work or services related to the Project and to procure and maintain the policies of insurance required hereunder.

(c) All material Construction Agreements (at any tier) shall, unless otherwise waived by Tenant:

(i) require the Contractor to carry out its scope of work in accordance with the terms of this City Sublease, any applicable Governmental Approvals, applicable Requirements, and the approved Plans and Specifications;

(ii) include a covenant to maintain all licenses required by applicable Requirements;

(iii) set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the Lease and in accordance with good industry practice;

(iv) include an agreement by the Contractor to participate in any dispute resolution proceedings pursuant to the Agreement, if such participation is requested by either the Landlord or Tenant;

(v) provide that the Contractor shall have no right to suspend or demobilize unless and until it delivers to Tenant written notice of Landlord's breach or default, and provide a reasonable opportunity for Tenant, at its option, to cure such breach or default (it being understood that Tenant shall in no event incur any liability to such Contractor under its Construction Agreement in connection with the exercise by Tenant of such cure rights);

(vi) require the Contractor to participate in meetings between Landlord and Tenant concerning matters pertaining to such Contractor, its work or the coordination of its work with other contractors on and around the Property;

(vii) Require the Contractor to warrant that all materials and equipment included in the construction of the Project will be new except where indicated otherwise in the Plans and Specifications, and that such Construction Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Plans and Specifications and that such Construction Work will provide proper and continuous service under all conditions of service required by, specified in, or which may be reasonably inferred from the Plans and Specifications. With respect to the same Construction Work, the Construction Contract shall:

(A) Require the Contractor to correct all Work found by the Tenant to be defective in material and workmanship or not in conformance with the Plans and Specifications for a period of one year from date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the Plans and Specifications, as well as any damage to the Construction Work resulting from defective design, materials, equipment, or workmanship which develop during construction or during the one-year warranty period set forth in this Section; and

(B) Require the Contractor to collect and deliver to the Landlord and Tenant any specific written warranties given by subcontractors or others as required by the Plans and Specifications (and such warranties shall be in addition to, and not substitutes for, those warranties mandated to be obtained pursuant to the Plans and Specifications). All such warranties shall commence upon Substantial Completion or such other dates as provided for in the Plans and Specifications.

(viii) without cost to Tenant, permit assignment to Tenant (or its designee) of all of the Landlord's rights under the Construction Agreement, contingent only upon delivery of written request from Tenant following termination of the Agreement, allowing Tenant to assume the benefit of Landlord's rights with liability only for those remaining obligations of Landlord

accruing after the date of assumption, such assignment to include the benefit of all Contractor warranties, indemnities, guarantees and professional responsibility;

(ix) provide that any acceptance of assignment of the Construction Agreement by Tenant (or its designee) shall not operate to make the assignee responsible or liable for any breach of such Construction Agreement by the Landlord;

(x) include a covenant acknowledging that Tenant (directly or through a designee) is entitled to exercise step-in rights with respect to the Construction Agreement, upon written notice to Landlord and Contractor stating that an Event of Default by Landlord exists under the Construction Agreement or Lease that has not been cured by Landlord within the applicable cure period set forth herein or in the Construction Agreement (and stating the specific Event of Default) and Tenant is exercising its step-in rights under this provision, but without any necessity for a consent or approval from the Landlord or the Contractor or the need for Contractor to make a determination whether Tenant validly exercised its step-in rights, and include a waiver and release by the Landlord of any claim or cause of action against the Contractor arising out of or relating to its recognition of the Landlord's rights in reliance on any such written notice from the Tenant, provided that the foregoing shall not waive Landlord's rights against Tenant should Tenant exercise the step-in rights when it did not have the right to do so;

(xi) include a covenant, expressly stated to survive termination of the Construction Agreement, to promptly execute and deliver to Tenant a new contract between the Contractor and Tenant (or its designee) on the same terms and conditions as the Construction Agreement, if (i) the Construction Agreement is rejected by the Landlord in bankruptcy or is terminated by the Landlord and (ii) Tenant delivers written request for such new contract within sixty (60) days following termination of the Construction Agreement;

(xii) indemnify the Tenant Indemnitees, with direct right of enforcement during the existence of an Event of Default, in any indemnity given by the Contractor under its Construction Agreement;

(xiii) include an acknowledgement that the Contractor has no right or claim to any Lien or encumbrance upon the Property for failure of the other contracting party to pay amounts due the Contractor, and a waiver of any such right or claim that may exist under applicable law or in equity; and

(xiv) provide that any purported amendment to the Construction Agreement, including but not limited to with respect to any of the foregoing matters, without the prior written consent of Tenant shall be null and void [*scope of this provision to be confirmed prior to execution of Sublease on a Project-specific basis*]; and

(xv) include the provisions set forth in Sections 37.23 and 37.24 of the Ground Lease as obligations of the contractor to both the Landlord and to the Tenant.

3.8 **Tenant Project Monitor**. Tenant shall have a right to appoint, at its sole cost and expense pursuant to this Sublease, and any agreement for the design and construction of the Project entered into by the Landlord shall authorize, the participation of a "**Tenant Project Monitor**" and/or "**Inspecting Engineer**" who shall be a firm or individual appointed by the Tenant to monitor the construction of the Project in accordance with the procedures set forth herein. Solely to the extent and limits permitted by Fla. Stat. 768.28, the Tenant shall indemnify, defend, and hold harmless the Landlord and its Affiliates and each of their officers, directors, members, managers, agents and employees from liabilities, damages, losses and costs, including reasonable attorneys' fees, for the negligent acts or omissions, or willful misconduct, of the Tenant Project Monitor and/or Inspecting Engineer.

3.9 **Tenant Access to the Site During Construction Period**. Upon the Tenant's request, the Tenant's Project Monitor shall have access to the Site, construction documentation, Project milestones and timelines, and shall be invited, but shall have no obligation, to attend and participate in regularly scheduled meetings with the Architect and other design professionals and contractors responsible for the design and construction of the Project. Any input from the Tenant's Project Monitor or Inspecting Engineer shall only be communicated to the Landlord's project manager responsible for overseeing the implementation of the Project. Upon the Tenant's request, the Tenant's Project Monitor shall be kept apprised of any change orders, delays, non-conforming work, site incidents and/or similar issues affecting in any material respect the design or construction of the Project. The Inspecting Engineer shall have the same rights of access and participation as the Tenant's Project Monitor to review and inspect the Improvements as they progress to confirm that the work is being undertaken in a timely manner and substantially in accordance with the design/construction agreement(s) and any construction schedule that is a part thereof. Upon the Tenant's request, the Tenant's Project Monitor and Inspecting Engineer shall be provided with the schedule of work with appropriate milestones and goals, which schedule shall be reviewed as required during each progress meeting; any known area of delay or known missed targets will be identified and, without requiring the expenditure of additional funds, corrective action will be implemented. Notwithstanding the foregoing, the Tenant's Project Monitor and Inspecting Engineer shall not have the right to interfere with the progress of the design or construction of the Project or to make any contractual demands under the design/construction agreement.

3.10 **Tenant's Approval of Plans and Specifications**. The Landlord shall provide the Tenant with copies of the draft plans and specifications for the Project at the thirty percent (30%) and sixty percent (60%) stages of completion, and with copies of the permit-ready plans and specifications for the Project.

(a) The Tenant shall have the right to approve the 30% plans and specifications for substantial consistency with the Building Concept Plan, incorporating any mutually agreed modifications during the design process. The Tenant shall have the right to approve the 60% plans and specifications for substantial consistency with the 30% plans and specifications, incorporating

any mutually agreed modifications during the design process. The Tenant shall have the right to approve the permit-ready plans and specifications for substantial consistency with the 60% plans and specifications, incorporating any mutually agreed modifications during the design process.

(b) The draft plans and specifications shall be approved or rejected by the Tenant, in the exercise of its reasonable discretion, within twenty (20) days of receipt; provided, however, that Tenant shall not be required to approve such plans if they are substantially or materially inconsistent with the previously approved plans. If the plans and specifications are rejected by the Tenant for substantial or material inconsistency, the Tenant shall provide the Landlord with the reasons for such disapproval and proposed revisions. The Landlord shall then instruct the designer to revise the plans and specifications to achieve substantial and material consistency within the Approved Budget and resubmit them to the Landlord for approval within ten (10) business days, and the Tenant shall thereafter approve or reject the resubmission within ten (10) business days.

(c) If Tenant disapproves the plans and specifications, Landlord shall provide Tenant updated plans and specifications clearly indicating, by "**ballooning**", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such updated plans and specifications, all such proposed updates to the plans and specifications consistent with Tenant's reasonable disapproval.

(d) If the Tenant fails to approve or reject the resubmission within ten (10) business days, the Landlord and Tenant shall meet to discuss and confer on the status of the matter, or Landlord may submit the matter to the non-binding mediation process pursuant to Section 3.9 below. This process shall continue until the approval of the plans and specifications is issued by the Tenant, which shall then be deemed the final Plans and Specifications.

(e) Unless as otherwise specified in this Sublease, if Landlord desires to modify the plans and specifications, Landlord shall submit such modifications to Tenant. Such modified plans and specifications shall clearly indicate, by "**ballooning**", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such modified Plans and Specifications, all such proposed modifications to the Plans and Specifications. Tenant's approval of the modified Plans and Specification shall follow the same process as set forth in this Article 3.

(f) Notwithstanding anything to the contrary contained herein, Tenant shall not object to any modifications to the plans and specifications which are necessitated by any and all laws, constitutions, rules, regulations, orders, ordinances, charters, statutes, codes, executive orders and requirements of any Governmental Authority having jurisdiction over the Project (including without limitation, the Building Code of the City of Pompano Beach, Florida and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions) or as a result of a drafting, coordination, mechanical or technical error in the Plans and Specifications.

3.11 **Tenant-Requested Changes of Final Plans and Specifications**. Once the Plans and Specifications are final, all Tenant requests to change the final Plans and Specifications (a "**Tenant Requested Change**") shall be subject to the approval of Landlord and Lender. To request a Tenant Requested Change, Tenant shall send written notice to Landlord detailing the change request (a "**Change Request**"), and Landlord shall use commercially reasonable efforts to respond to such Change Request in writing within twenty (20) business days after receipt thereof (a "**Change Response**"). The Change Response shall set forth, without limitation and as appropriate (i) whether Landlord and Lender consent to the Change Request, and if Landlord or Lender do not consent, the detailed reason(s) for such decision (provided consent may not be unreasonably withheld, conditioned or delayed), (ii) Contractor's detailed description of any costs (including, without limitation, increased holding costs, design costs, or construction costs) that Tenant may incur because of such Change Request, including documentation supporting said costs, and (iii) Contractor's reasonable estimate of any likely delays in the completion of the Project, including without limitation, any delays in the critical path of the Project and/or the Substantial Completion Deadline, as a result of such Change Request, and the cost impact of such delay.

(a) No later than five (5) Business Days following receipt of a Change Response, provided the Tenant Requested Changes were consented to by Landlord and Lender, Tenant shall diligently notify Landlord in writing of whether it still desires to proceed with such Tenant Requested Changes. If Tenant has decided to proceed with the Tenant Requested Changes, such notice shall be the "**Change Order.**" Upon execution of a Change Order, the Tenant Requested Changes shall become a part of the Plans and Specifications. If Tenant fails to timely provide Landlord such written notice, Landlord and Tenant shall meet to discuss and confer on the status of the matter, to determine whether Tenant has elected not to proceed with the Tenant Requested Changes.

(b) Tenant shall be solely responsible for the additional costs of any Change Orders that cause the Approved Project Budget to be exceeded, and for the additional costs associated with delays resulting from such Change Order, including provable increased interest expenses actually incurred by the Landlord, with such costs considered as Building Improvement Costs added to the Total Cost of the Project, unless Tenant elects to pay for such Change Order from a separate funding source and Lender has not disapproved the Tenant-requested Change (to the extent Lender's approval is required under the applicable Loan documents).

(c) Landlord's Substantial Completion Deadline shall automatically be extended as needed due to any Change Order to the extent such delay impacts the critical path as shown on a time impact analysis. Notwithstanding the foregoing, to the extent a Tenant Requested Change would result in the reduction of scope, and would not impose any additional costs on Landlord (including, without limitation, design costs and holding costs such as increased interest expenses) the Landlord shall not be entitled to provide a Change Response withholding consent to such Tenant Requested Change and, when calculated, the Total Cost shall be reduced by the amount set forth in the Approved Project Budget for the deleted scope or, if such scope is not set

forth in the Approved Project Budget or reasonably discernable therefrom, for an amount agreed by the Parties for such deleted scope, utilizing the process set forth in Section 3.9 if necessary, unless Lender has the right to disapprove the request under the Loan and, in fact, disapproves the request.

3.12 **Disputes over Plans and Specifications or Tenant-Requested Changes**. (A) If Landlord or Tenant desires to determine any dispute between Landlord and Tenant as to (i) Landlord's proposed plans and specifications, or the Tenant's or Landlord's approval or disapproval thereof, or (ii) Tenant Requested Changes, then the Parties agree to participate in a non-binding mediation process to attempt to resolve such disputes, and such dispute shall be submitted to an architectural firm or an architect with respect to architectural disputes (or an engineering firm or an engineer with respect to engineering disputes) licensed to practice and who maintains offices in the State of Florida and approved in writing by both parties, or if both parties are unable to agree on such architectural (or engineering) firm within thirty (30) days after request by either party, then the dispute shall be submitted to a firm of licensed architects appointed by the American Institute of Architects ("**AIA**") or to a firm of licensed engineers appointed by the American Society of Civil Engineers, Structural Engineering Institute ("**SEI**") (or any successor of either such organization).

(a) The architectural or engineering firm (or architect or engineer, as applicable) chosen by mutual agreement of the Landlord and the Tenant or designated by the AIA (or the SEI), as aforesaid is referred to herein as the "**Mediator,**" and any dispute submitted to a Mediator as aforesaid, is referred to herein as a "**Dispute.**"

(b) The Parties shall split the mediator's fees equally. Participation in mediation shall be a condition precedent to filing suit in a court of competent jurisdiction, unless otherwise stipulated by both Parties in writing.

3.13 **Intentionally Omitted.**

3.14 **Connection of Improvements to Utilities**. Landlord shall, as part of the Building Improvements, and in compliance with all Applicable Laws, install or cause to be installed all necessary connections between the Improvements, and the water, sanitary and storm drain mains and mechanical and electrical conduits whether or not owned by the City. Design and construction of the Project shall include the locating, grounding and installing within the Premises, as applicable, new facilities for sewer, water, electrical, and other utilities as needed to service the Project, and, all necessary utility lines included in the Plans and Specifications.

3.15 **No Construction-Related Liens**. In accordance with Landlord's obligation under the Ground Lease to comply with the provisions of Section 713.10, Florida Statutes to ensure the fee simple interest in the Premises is not subject to liens, Landlord shall not do or permit to be done any act which results in a lien being filed against the Premises. Landlord shall obtain and require its contractor to obtain a performance bond and payment bond, each in the amount of the

total contract price for the construction of the Improvements, as such amount may be amended from time to time. Such bonds shall name the Tenant as a dual obligee, and the costs of such bonds shall be borne by the Landlord (as part of the Building Improvements Costs). Any liens on the Project or Premises relating to the construction of the Project shall be transferred to the payment bond within thirty (30) days of Landlord's receipt of written notice thereof.

3.16 **Substantial Completion Deadline**. Landlord shall prosecute completion of the Project with all commercially reasonable diligence and in good faith, time being of the essence. Upon the satisfaction of all of the following conditions ("**Construction Commencement Conditions**"), the Parties will execute an amendment to this Sublease setting forth an updated Approved Project Budget and the maximum time required to achieve Substantial Completion of the Project (the "**Substantial Completion Deadline**"), subject to extension for delays caused by Construction Period Force Majeure and Tenant Delays:

(a) There exists no uncured Event of Default by the Landlord or Tenant under this Lease;

(b) All Governmental Approvals required to commence vertical construction of the Project have been obtained, and Landlord shall have delivered a copy of same to Tenant.

(c) Landlord shall have delivered to Tenant a fully executed copy of the construction agreement for the Project between Landlord and the Contractor (the "**GC Contract**").

(d) Tenant shall have provided its written approval of the Loan documents, including, without limitation, approval of the Loan terms relating to the treatment of reductions in Project development costs after closing, all amounts and returns on the Equity Investment to be paid to Landlord from the Loan proceeds, all costs, expenses and retainage chargeable to Landlord or the City pursuant to the Loan Documents, and the terms of any related escrow agreement for any performance payment to be paid pursuant to the Development Agreement.

(e) Landlord shall have delivered to the Tenant reasonable evidence that the closing of the Loan between Landlord and Lender has occurred, with Loan proceeds immediately available to commence construction of the Project.

(f) Landlord shall have delivered to Tenant, and Tenant shall have approved, any changes to the Approved Project Budget.

(g) Landlord shall have delivered to Tenant, and recorded in the public records of Broward County, Florida, a payment bond and performance bond meeting the requirements of Section 255.05, Florida Statutes, in the full amount of the total GC Contract price for the construction of the Project, with all premiums paid and in favor of Landlord, with a dual obligee rider in favor of Tenant and the CRA, along with copies of all insurance policies required of the Contractor pursuant to the GC Contract and the Ground Lease.

(h) The representations and warranties made by the Landlord in the Ground Lease pursuant to Sections and 35.2 and 37.16 thereof remain true and correct in all material respects on and as of the Possession Date.

3.17 **Commencement and Completion of Construction of the Project.** Landlord shall, subject to Unavoidable Delays and/or Tenant Delays, use commercially reasonable efforts to (a) satisfy all Construction Commencement Conditions no later than _____months following _____ (the "**Outside Construction Commencement Date**") and (b) thereafter use commercially reasonable efforts to continue to prosecute Construction of the Project with diligence and continuity to completion in accordance with the Project Schedule. Promptly after Commencement of the Project, the Landlord and Tenant shall enter into a memorandum of agreement in a form agreed-upon by the Parties acknowledging the Construction Commencement Date.

3.18 **Time Extension for Tenant Delays**. Should the Tenant cause any delay in the Landlord completing the Project, solely in the Tenant's proprietary capacity as a tenant (not in the Tenant's regulatory capacity as a governmental entity) (a "**Tenant Delay**") then Landlord shall be entitled to an extension of the Substantial Completion Deadline and Outside Completion Deadline for each day of Tenant Delay, but only if such Tenant Delay directly causes a delay in the critical path of the construction of the Project. As used herein, a "**Tenant Delay**" shall include, without limitation:

(a) Tenant's failure to timely approve any matter requiring Tenant's approval, or Tenant failure to timely respond or provide information to Landlord pursuant to Landlord's design and/or construction schedule;

(b) a breach by Tenant of the terms of this Sublease;

(c) the failure of Tenant to timely approve or disapprove the Plans and Specifications; and

(d) because Tenant, the Tenant Project Monitor and/or the Inspecting Engineer (including agents, contractors, employees, and invitees of thereof) otherwise willfully or actively interfere with the completion of the Project, including, but not limited to, any delay or interference in the completion of the Project caused by Tenant, the Tenant Project Monitor and/or the Inspecting Engineer's entry into the Premises prior to Substantial Completion, any delays or interruption arising out of or related to Tenant (including agents, contractors, employees, and invitees of Tenant) performing any work or installing any trade fixtures or other equipment or improvements in the Premises prior to the Sublease Commencement Date.

Extensions of time provided herein for Tenant Delays shall be the sole and exclusive remedy for such delays; provided, however, that if such delays cause Landlord to incur additional financing costs (including additional interest payments made to Landlord's lender), and Landlord

and Tenant are in agreement as to such additional costs (both acting in good faith), then such additional financing costs shall be included as part of the Total Cost of the Project.

3.19 **Time Extension for Construction Period Force Majeure Events**. If the Landlord is delayed at any time in the critical path of the Project due to a Construction Period Force Majeure Event, the Landlord shall be entitled to an extension of the Substantial Completion Deadline and the Outside Completion Deadline for each day of delay. A "**Construction Period Force Majeure Event**" means any of the following which directly cause a delay in the critical path of the construction of the Project, and which could not have reasonably been avoided or which cannot be remedied through the exercise of all commercially reasonable efforts (not including the expenditure of additional funds): (i) labor delay, strike, work stoppage, supply chain disruptions, lock out or other labor dispute, (ii) weather related work stoppages; (iii) pandemic, flood, earthquake, hurricane, cyclone, tornado or other act of God; (iv) fire, explosion or other serious casualty; (v) freight embargoes; (vi) transportation interruption for any reason; (vi) acts of war (whether declared or not), terrorism, warlike circumstances, mobilization, revolution, riot or civil commotion; (vii) sabotage; (viii) the occurrence of a Casualty or a Taking; (ix) any change in Applicable Laws; (x) regulation or order of Governmental Authority; and (xi) such other matters beyond Landlord's reasonable control. Landlord shall use reasonable good faith efforts to notify the Tenant of a Construction Period Force Majeure Event not later than twenty (20) days after the Landlord has reasonably determined that such Construction Period Force Majeure Event has occurred. Failure to timely provide the written notice required by the preceding sentence will result in Landlord only being entitled to claim the benefit of such Construction Period Force Majeure Event with respect to any days that occur after Landlord notifies the Tenant of the Construction Period Force Majeure Event.

(a) In no event shall any delay arising from Landlord's, or Landlord's financial condition or inability to fund Landlord's Equity Investment constitute a "**Construction Period Force Majeure Event**". [*This Section to be finalized on a Project specific basis, prior to execution of each Sublease, to address contractor delay risk allocation.*]

(b) The extensions of time provided herein for Construction Period Force Majeure Events shall be the sole and exclusive remedy for such delays; provided, however, that if such delays cause Landlord to incur additional financing costs (including additional interest payments made to Landlord's lender), and Landlord and Tenant are in agreement as to such additional costs (both acting in good faith), then such additional financing costs shall be included as part of the Total Cost of the Project. .

3.20 **Substantial Completion**. Upon Substantial Completion of the Project, the Landlord shall cause the Contractor to secure and deliver to Tenant a copy of the temporary certificate(s) of occupancy, certificate(s) of completion, or their functional equivalent issued by the appropriate governmental entity or agency, which shall control and serve as conclusive evidence of the date that the Project was completed except for Punch List Items. The Landlord shall cause any Punch List Items to be completed on or before the Outside Completion Deadline.

(a) Prior to securing the temporary certificate(s) of occupancy, certificate(s) of completion, or their functional equivalent, the Landlord shall endeavor to notify the Tenant, at least ninety (90) calendar days in advance that the Project is nearing Substantial Completion, so that the Tenant can prepare to occupy the Premises. The ninety (90) day notice to Tenant shall be in writing. Notwithstanding anything contained herein to the contrary, unless otherwise waived by Tenant, the Sublease Commencement Date shall not be deemed to have occurred and Tenant shall not be required to take possession of the Premises until Tenant has been provided not less than ninety (90) calendar days advance written notice of the anticipated date of Substantial Completion.

(b) Landlord shall achieve Final Completion of the Improvements on or before the Outside Completion Deadline. In the event Landlord fails to timely complete the Improvements on or before the Outside Completion Deadline, Tenant shall be entitled to the remedies as provided in **Section 3.22** of this Sublease.

3.21 **Completion of Construction of the Project**.

(a) Substantial Completion of the Project shall be accomplished in a diligent manner in accordance with the Project Schedule and Final Completion of the Project shall be accomplished in a diligent manner thereafter, in each case in a good and workmanlike manner, in substantial accordance with the Plans and Specifications, and in accordance with all applicable Requirements.

(b) Within ninety (90) days after Substantial Completion of Construction of the Project, Landlord shall furnish Tenant with the following:

(i) a certification of the Architect that it has examined the Plans and Specifications and that, in its professional judgment, after diligent inquiry, Construction of the Project has been Substantially Completed in accordance with the Plans and Specifications applicable thereto and, as constructed, the Improvements comply with all applicable Requirements;

(ii) lien waivers in form and substance reasonably satisfactory to Tenant from each Contractor retained by or on behalf of Landlord in connection with the Construction of the Project, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the Construction of the Project; and

(iii) a complete set of **"as built"** plans and a survey showing the Improvement(s) for which the Construction of the Project has been completed. Tenant shall have an unrestricted license to use such **"as built"** plans and survey for any purpose related to the Project without paying any additional cost or compensation therefor, subject to copyright and similar rights of the Architect to prohibit use of designs for purposes unrelated to the Project, as such rights exist in law or may appear in the Architect's contract, and subject to applicable public

records laws. The foregoing requirement with respect to **"as built"** plans shall be satisfied by Landlord furnishing to the Tenant a complete set of Plans and Specifications, with all addenda thereto and change orders in respect thereof, marked to show all changes, additions, deletions and selections made during the course of the Construction of the Project.

3.22 **Failure to Timely Achieve Substantial Completion Deadline or Outside Completion Deadline**. Should the Landlord's Contractor fail to timely Substantially Complete the Project by the Substantial Completion Deadline (as such date may be extended for delays caused by Construction Period Force Majeure Events and Tenant Delays), or should Landlord fail to deliver the Premises to Tenant by the Outside Completion Deadline (as such date may be extended for delays caused by Construction Period Force Majeure Events and Tenant Delays), the Tenant shall be entitled to _____ [*Remedy, including potential liquidated damages, to be addressed on a Project specific basis based on applicable terms contained in construction agreement approved by Tenant*].

3.23 **Memorandum of Acceptance**. Prior to occupying the Premises, Tenant shall execute and deliver to Landlord a Memorandum of Acceptance confirming the following: (1) the Sublease Commencement Date and the Expiration Date of the Term; (2) that Tenant has accepted the Premises; and (3) that Landlord has performed all of its obligations with respect to the Premises and the Project (except for Punch List Items specified in such letter); however, the failure of the Tenant to deliver such Memorandum of Acceptance shall not defer the Sublease Commencement Date or otherwise invalidate this Lease.

3.24 **No Possession Prior to Temporary Certificate(s) of Occupancy or Certificate(s) of Completion**. The Tenant shall not have the right to take possession of any portion or all of the Premises prior to the issuance of a temporary certificate(s) of occupancy, certificate(s) of completion, or their functional equivalent.

3.25 **No Tenant Obligation to Pay Rent or Other Charges Prior to Substantial Completion**. For the avoidance of doubt, the Parties agree that notwithstanding any date provided in this Sublease for the Sublease Commencement Date or Rent Commencement Date, the Tenant's obligation to pay Rent and any other charges, costs or fees in relation to the Premises (e.g., applicable taxes) shall not commence unless and until the Project is Substantially Completed in accordance with the Tenant-approved Plans and Specifications, and the Landlord has obtained the temporary certificate(s) of Occupancy, certificate(s) of completion, or their functional equivalent for the Project. Notwithstanding anything contained herein to the contrary, this Section 3.19 shall not apply to additional costs or expenses incurred by Landlord, including, without limitation, financing costs (including additional interest payments made to Lender) arising from Tenant Delays.

3.26 **Documentation of Total Costs of Project**. Prior to the Sublease Commencement Date, the Landlord shall provide the Tenant with (i) any and all existing invoices, receipts, release of liens, and copies of cancelled checks, wire confirmation reports or ACH confirmation

evidencing payments which have been made for the Improvements, (ii) a detailed report, in Excel format, identifying and comparing the Total Costs of the Project to the Approved Project Budget, by line item. After the Sublease Commencement Date, the Landlord shall promptly provide the Tenant with any additional evidence of payments for such Building Improvements, but only to the extent that such costs and expenses are associated with documents that were not in existence prior to the Sublease Commencement Date, but in any event such supplemental supporting documents shall be provided no later than the Substantial Completion Deadline.

ARTICLE 4 - RENT

4.1 **Payment of Rent**. Commencing on the Rent Commencement Date, Tenant agrees to pay to Landlord, as rent for the Premises, annual base rent ("**Annual Base Rent**") during the Term in an amount equal to the Total Cost multiplied by the Rent Constant as set forth in a Notice from Landlord to Tenant delivered not less than thirty (30) days prior to the Rent Commencement Date. The determination of the Total Cost and Annual Base Rent set forth in such notice shall be binding on Tenant absent manifest error and shall be the amounts set forth in the Memorandum of Acceptance. Such Annual Base Rent for the Term shall be paid monthly beginning on the Rent Commencement Date and on the first (1st) day of each calendar month thereafter during the Term. The monthly payment shall be determined by dividing the Annual Base Rent by twelve (12). Tenant shall pay to Landlord (or as otherwise directed in writing by Landlord as to place and manner of payment) the Annual Base Rent in the amounts, at the times and in the manner set forth below:

(a) Tenant shall pay the Annual Base Rent to Landlord in the manner and at the times set forth at the outset of this Section 4.1.

(b) Anything contained herein to the contrary notwithstanding, Tenant shall pay the Annual Base Rent installments in any event no later than the first (1st) calendar day of each month.

(c) All payments of the Annual Base Rent shall be paid without notice, deduction, set-off or counterclaim, except as otherwise set forth herein.

(d) [*Parties to address right to direct payments directly to Lender on a Project specific basis based on Lender input*].

4.2 **Intentionally Omitted**.

4.3 **Rent Commencement Date**. Payment of Annual Base Rent with respect to the Premises shall begin on the Rent Commencement Date, "**Rent Commencement Date**" means the Sublease Commencement Date.

4.4 **Supplemental Rent**. Tenant shall pay to Landlord, or the Lender within thirty (30) days of Landlord's written request or as otherwise required by Landlord within the time periods set forth in the Operative Documents (and following demand therefor to the extent notice or demand to Tenant is required by the applicable provisions of the Operative Documents), any and all Supplemental Rent as the same shall become due and payable. In the event of Tenant's failure to pay when due and payable any Supplemental Rent, Landlord shall have all rights, powers and remedies provided for herein in the case of nonpayment of Rent.

4.5 **Taxes; Rent Taxes**.

(a) In addition to all other amounts payable by Tenant hereunder, to the extent Tenant is responsible for payment of any taxes or other charges under Applicable Laws, Tenant shall pay to the appropriate taxing authority(ies), prior to delinquency, and subject to Tenant's right to contest taxes or assessments, as set forth in Section 5.2 hereof, all actual taxes, assessments, levies, fees, charges, water and sewer charges, special assessments or assessments of special purpose taxing districts, and all other governmental charges general and special, ordinary and extraordinary, foreseen or unforeseen (collectively "**Taxes**") which are at a time prior to or during the Term levied or assessed on, imposed upon or attributable to (i) the Premises or any portion thereof or interest therein, (ii) any Annual Base Rent, Supplemental Rent or other sum payable hereunder, (iii) this Sublease, the leasehold estate created hereby, (iv) the acquisition, occupancy, leasing, subleasing, licensing, use, possession or operation of the Premises or any portion thereof or interest therein (including without limitation, any taxes on revenues, rents, income, awards, proceeds, capital gains, profits, excess profits, gross receipts, sales, use, excise and other taxes, duties or imports whether similar or not in nature, assessed, levied or imposed against Tenant any subtenant or any licensee, Landlord or the Premises by any governmental authority) or (v) the operation of the Premises, including but not limited to Taxes against the Premises or assessments levied or assessed against the Premises, and all personal property taxes, charges, rates, duties and license fees (collectively, "**Personal Property Taxes**") assessed against or levied upon Tenant's Property, but excluding any net income, franchise, capital stock, succession, transfer, gift, estate or inheritance taxes imposed by the State of Florida or the United States or by their respective agencies, branches or departments. Any Tax or Personal Property Tax due prior to the Sublease Commencement Date shall be paid from Total Project Costs. In the event that such Taxes are imposed or assessed against Landlord or the Premises, Landlord shall furnish Tenant with all applicable tax bills, public charges and other assessments or impositions and Tenant shall forthwith pay the same either directly to the taxing authority or, at Landlord's option, to Landlord. In addition, notwithstanding any other provision of this Sublease, in the event there is imposed at any time a tax, levy or fee upon and/or measured or based, in whole or in part, by the rental payable by Tenant under this Sublease, whether by way of a sales or use tax or otherwise, Tenant shall be responsible for the payment of such tax (and such tax shall be included within the definition of "**Taxes**" hereunder) and shall pay the same on or prior to the due date thereof to Landlord for remittance to the taxing authority; provided, however, that the foregoing shall not include any inheritance, estate, succession, transfer, gift or net income tax imposed on or payable by Landlord.

Tenant shall prepare and file all tax reports required by Governmental Authorities which relate to the Taxes (other than the filing of the report for the sales and use tax discussed above), and Tenant shall deliver to Landlord copies of specified receipts for payment of all Taxes within ten (10) days after payment thereof.

(b) If applicable, Tenant shall pay and remit all applicable sales and use taxes to Landlord along with monthly installments of Annual Base Rent. Tenant represents to Landlord that the Tenant is not responsible to pay sales tax on the Rent, pursuant to Section 212.031, Florida Statutes, and Rule 12A-1.070, Florida Administrative Code, because of the Tenant's status as a governmental entity. Notwithstanding the foregoing, should, during the course of the Term of this Lease, any taxing authority allege that the Tenant or the Sublease do not qualify for the exemption or otherwise becomes subject to the payment of sales tax, the Tenant shall thereafter pay sales tax in accordance with Florida law. The Tenant shall indemnify, defend, and hold harmless the Landlord and its Affiliates and each of their officers, directors, members, managers, agents and employees from liabilities, damages, losses and costs, including reasonable attorneys' fees, related to such Tenant's obligation to pay sales and use taxes pursuant to this Sublease.

4.6 **Definition of Rent**. The term "**Rent**" includes any and all payments of the Annual Base Rent, Operating Expenses, Taxes, Supplemental Rent and any fees, charges, costs, expenses, insurance obligations, late charges, and all other payments, disbursements or reimbursements (collectively "**Rent**"). All payments owed by Tenant to Landlord under the Sublease shall be paid, by such payment method (including wire transfer) as may be directed by Landlord to Tenant from time to time, to Landlord or to such party as Landlord otherwise directs in accordance with Section 4.1(d) in immediately available lawful money of the United States of America at the address specified for Landlord in the definitions section of this Sublease as may be changed from time to time pursuant to Article 32. All Rent shall be paid without deduction, setoff or counterclaim, except as otherwise expressly set forth in this Sublease.

4.7 **Late Charge**. Tenant acknowledges that the late payment by Tenant of Rent under this Sublease will cause the Landlord to incur damages, including administrative costs, loss of use of the overdue funds and other costs, the exact amount of which would be impractical and extremely difficult to fix. Tenant agrees that if the Landlord does not receive a Rent payment when due _____. [*Remedies of late payments to be addressed on a Project specific basis based on terms of applicable Loan*] If the Landlord does not receive a Rent payment within thirty (30) days after same shall become due, then the amount due shall bear interest at the Contract Rate thereafter until paid. Acceptance of the late charges by Landlord shall not cure or waive a default, nor prevent Landlord from exercising, before or after such acceptance, any of the rights and remedies for a default provided by this Sublease or at law. Payment of the late charge is not an alternative means of performance of Tenant's obligation at the times specified in this Sublease. Tenant will be liable for the late charge regardless of whether Tenant's failure to pay when due constitutes a default under the Sublease. Notwithstanding anything to the contrary in this Sublease, Landlord does not intend to charge, accept, or collect any interest on late payments

which would be greater than the highest legal rate of interest which may be charged under Florida law and, if at any time, the Contract Rate exceeds the highest legal rate of interest permitted to be charged under Florida law, then for purposes of assessing interest on late payments, the Contract Rate shall be reduced to the highest legal rate of interest then-permitted to be charged under Florida law.

4.8 **Intentionally Omitted**.

4.9 **Allocated Rent**. For the purpose of allocating the payments of Annual Base Rent for federal income tax related purposes pursuant to Section 467 of the Internal Revenue Code of 1986 and the rules and regulations thereunder, the Landlord and the Tenant hereby agree that the Annual Base Rent payments shall be allocated as follows (such amount for any portion of the Term is hereinafter referred to as the "**Allocated Rent**"): (i) The average monthly rent under the Sublease shall be determined by aggregating the Annual Base Rent due under the Sublease and dividing the total by the number of months in the Term. Pursuant to Section 467 of the Code and the rules and regulations thereunder, _____ percent (___%) of such average shall be allocated to each month during the first one-half (1/2) of the Term and _____ percent (___%) of such average shall be allocated to each month during the second one-half (1/2) of the Term. The rent so allocated to each month during the Term shall be uniformly apportioned to each day during such month based on the actual number of days in such month. The Tenant shall be treated as becoming liable for rent allocated to any period on account of the use of the Premises during such period. Full effect shall be given to such allocations for federal income tax and all other purposes. Interest taken into account in accordance with Section 467 of the Internal Revenue Code of 1986 and regulations thereunder shall be computed at a rate equal to ___% of the applicable federal rate in effect at the Sublease Commencement Date, compounded monthly. Notwithstanding anything to the contrary contained in this Section 4.9, in no event shall principal and interest be payable by Landlord to Tenant arising out of the use of this Section 467 structure. [*Tax provisions to be confirmed prior to execution of each Sublease*]

4.10 **Tenant's Waivers**. Except to the extent expressly set forth in this Sublease, Tenant waives all rights which may now or hereafter be conferred by law to: (i) quit, terminate, or surrender this Sublease or the Premises; and (ii) any setoff, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense of or to Annual Base Rent, Supplemental Rent or any other sums payable under this Sublease, except as otherwise expressly provided herein.

ARTICLE 5 - OPERATING EXPENSES

5.1 **Tenant's Responsibility for Operating Expenses**. Commencing on the Sublease Commencement Date, Tenant shall pay all costs, expenses and disbursements of owning, maintaining, repairing, replacing or operating the Premises (the "**Operating Expenses**"), including, but not limited to, utilities, insurance, maintenance, repairs and replacements required to be performed by Tenant hereunder or otherwise necessary to the operation and preservation of the Project. Anything contained in the foregoing sentence to the contrary notwithstanding,

"**Operating Expenses**" shall not include the following: (i) Taxes; (ii) Personal Property Taxes; (iii) depreciation on the Project or any part thereof and on any equipment or other property contained therein or thereon; (iv) Excluded Borrower Costs and Expenses and (v) amounts reimbursed to Landlord by third parties such as insurers. Tenant shall pay all Operating Expenses directly to the party entitled to payment of the same prior to the same becoming delinquent.

5.2 **Tax Protests**. Subject to Section 4.5 of this Sublease, Tenant shall pay all Taxes and Personal Property Taxes when due and payable and prior to the time any penalty or interest may be charged in respect of the nonpayment thereof, and shall obtain receipted tax bills for such payments. Tenant, may, however, petition for reduction of the assessed valuation of the Project and/or the Project or Site, claim a refund of Taxes or Personal Property Taxes, otherwise challenge the validity, amount or applicability of any Tax or Personal Property Tax, assessment or other similar governmental charge ("**Tax Protest**"), in accordance with this Section 5.2. After prior written notice to Landlord and Lender, and provided no Event of Default has occurred and is continuing, Tenant may conduct a Tax Protest so long as the contest is in good faith, at Tenant's sole cost and expense, and by appropriate proceedings which, as a condition to Tenant's right to contest under this Section 5.2, shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon, the Taxes so contested, (B) the sale, forfeiture, or loss of any of the Premises, any interest therein or any Rent to satisfy the same or to pay any damages, fines, or penalties related to the Taxes so contested, (C) any interference with the use or occupancy of the Premises, (D) any interference with the payment of any Rent, or any other sum payable hereunder, and (E) the cancellation of any fire or other insurance policy. If at the time of commencement of or at any time during any such contest there shall have occurred and be continuing an Event of Default, Tenant shall provide to Landlord and Lender a bond of a surety acceptable to Landlord and Lender in an amount satisfactory to Landlord and Lender. While any such proceedings are pending, neither Landlord nor Lender shall have the right to pay, remove or cause to be discharged the Tax, Personal Property Tax or Lien thereby being contested unless an Event of Default has occurred and is continuing. Tenant agrees that each such contest shall be promptly and diligently prosecuted to a final conclusion, except that Tenant shall, so long as the conditions of this Section 5.2 are at all times complied with, have the right to attempt to settle or compromise such contest through negotiations. Tenant shall pay and, to the extent and limits permitted by law, indemnify and hold harmless Landlord and Lender against any and all damages, liabilities, costs, expenses, losses, judgments, decrees and costs (including all reasonable attorneys' fees and expenses through all appeals) in connection with or arising from any such contest and shall, promptly after the final determination of such contest, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interest, costs and expenses thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof. No such contest shall subject Landlord or Lender to the risk of any material civil liability or any criminal liability, penalty or sanction. The foregoing indemnity is in addition to, and not in substitution or limitation of the other indemnities provided in this Sublease, and shall survive the expiration or termination of this Sublease. Landlord and Tenant shall each

cooperate in such filings as reasonably requested by Tenant. Tenant shall pay all costs incurred in connection with such filings. If Tenant is successful in reducing taxes and/or assessed value through such Tax Protest, and if during the Term Tenant's Premises at the conclusion of such Tax Protest are less than one hundred percent (100%) of the Premises, then Landlord shall reimburse Tenant for a pro rata share (based on the relative percentages of the Premises Subleased by Tenant and not Subleased by Tenant) of its reasonable costs to the extent same do not exceed the tax refund or reduction achieved. Any Tax Protest initiated by Landlord or Tenant shall be conducted in accordance with all applicable governmental requirements and in such a manner as to prevent any Liens from attaching to the Premises, the Project or the Site. Any refund of any Tax or Personal Property Tax paid by Tenant which is received by Landlord pursuant to any Tax Protest (after any reimbursement of Landlord's costs incurred in connection therewith) shall be paid over to Tenant unless Tenant is in default hereunder.

5.3 **Litigation; Zoning; Joint Assessment**. Tenant shall provide written notice to Landlord and the Lender within ten (10) Business Days following receipt of any notice of any litigation or governmental proceedings pending or threatened against Tenant or the Project of which Tenant has actual knowledge, which in Tenant's reasonable determination, could reasonably be expected to materially adversely affect the Project. Tenant shall not initiate any zoning reclassification for the Project, or any portion thereof, or seek any variance under any existing zoning ordinances or use or permit the use of any portion of the Project in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other Applicable Law. Tenant shall not initiate any proceeding to cause the Project to be jointly assessed with any other property or with any personal property of Tenant, or take any other action or initiate any proceeding which might cause the personal property of the Tenant to be taxed in a manner whereby such taxes or levies could be assessed against the Project.

ARTICLE 6 - USE

6.1 **Permitted Use**. Tenant or its assignees or sublessees may use the Premises, in accordance with Section 6.2 hereof, as _____ and for no other use or purpose whatsoever (the "**Use**").

[**For City Hall Sublease:** for municipal offices and public assembly, activities or operations related thereto, and any other lawful purpose of Tenant's choosing, consistent with the foregoing.]

[**For Parking Garage Sublease:** for the provision of public parking and activities or operations related thereto, [and if applicable, ground floor retail or offices?], and any other lawful purpose of Tenant's choosing.]

[**For Larkins Center Sublease:** as a meeting and event space for facility rentals and related activities, and any other lawful purpose of Tenant's choosing consistent with the foregoing.]

6.2 **Restriction on Use**. Tenant shall not do or permit to be done in or about the Premises nor bring, keep or permit to be brought or kept therein, anything which is prohibited by any standard form fire or other property insurance policy or which will in any way increase the existing rate of or otherwise adversely affect, any fire or other insurance upon the Premises or any portion thereof. Tenant, at its sole cost and expense, shall comply with all Applicable Laws affecting the Premises, and with the requirements of any board of fire underwriters or other similar body now or hereafter instituted, and shall also comply with any order of the fire marshal or similar governmental body or certificate of occupancy issued pursuant to any Applicable Laws which affect the Premises or the use or occupancy thereof, including, but not limited to, any requirements of structural changes or capital expenditures, whether or not related to or affected by Tenant's acts, occupancy or use of the Premises, and whether foreseeable or unforeseeable.

ARTICLE 7 - TENANT'S ACCEPTANCE OF PREMISES

7.1 **Tenant's Right to Enforce Construction Warranties**.

(a) As of the Sublease Commencement Date, provided that no Event of Default shall have occurred and be continuing, to the full extent permitted by law and contract, and subject to Section 7.1(b) below, Landlord hereby assigns and sets over (without recourse) to, and Tenant hereby accepts the assignment and assumes the obligations thereunder from and after the Sublease Commencement Date of all of Landlord's right, title and interest, and estate in, to and under any and all warranties (other than warranties of title to the Premises), guaranties and other claims against dealers, manufacturers, vendors, suppliers, contractors and subcontractors relating to the construction, use and maintenance of the Premises or any portion thereof now existing or hereafter acquired (collectively, "**Construction Warranties**"); provided, however, that Landlord shall have no obligations under, or liabilities with respect to, any such warranties, guaranties and claims. Landlord represents that, except as otherwise provided in the Operative Documents, it has not and shall not make any further assignments of the warranties, guarantees, rights, claims and Permits that have been assigned to Tenant pursuant to this Section 7.1. To the extent any Construction Warranties are not assignable, Landlord agrees reasonably to cooperate with Tenant at Tenant's request and solely at Tenant's expense in pursuing a claim under such items for Tenant's benefit.

(b) Unless an Event of Default shall have occurred and be continuing, Landlord authorizes Tenant (directly or through agents) at Tenant's expense to assert during the Term, all of Landlord's rights (if any) under any applicable warranty, guaranty and any other claim that Tenant or Landlord may have against any dealer, vendor, supplier, manufacturer, contractor or subcontractor. If an Event of Default shall have occurred and be continuing, Landlord shall have the right but not the obligation to pursue any or all of such rights at Tenant's expense, in which case, absent Landlord's gross negligence or willful misconduct, Landlord shall have no liability to Tenant regardless of the outcome thereof. Any amount recovered by Landlord during an Event of Default shall be applied (after deducting expenses incurred by Landlord in connection with such recovery) to Tenant's obligations hereunder. Tenant shall indemnify and hold Landlord harmless

from any claims, expenses, liabilities, costs, losses or damages arising out of or relating to Tenant's enforcement of any such warranty, guaranty or indemnity.

(c) Unless an Event of Default shall have occurred and be continuing, Landlord agrees, at Tenant's expense, to cooperate with Tenant and take all other action necessary as specifically and reasonably requested by Tenant to enable Tenant to enforce all of Tenant's rights (if any) under this Section 7.2, such rights of enforcement to be exclusive to Tenant, and Landlord will not, during the Term (except during the continuance of an Event of Default), amend, modify or waive, or take any action under, any applicable warranty, guaranty or any other claim, that Tenant may have under this Section 7.2 without Tenant's prior written consent, which shall not be unreasonably withheld. Tenant agrees at its expense to diligently assert all of its rights under such warranties, guaranties and any other claims that the Tenant may have against such vendor, manufacturer, supplier, contractor or subcontractor with respect to the Project or any portion thereof.

7.2 **As-Is Condition upon Acceptance**. Except to the extent expressly set forth in this Sublease and subject to Section 7.1 above and Landlord's obligations with respect to any Punch List Items, as of the Sublease Commencement Date: (i) the Premises shall be demised and let by Landlord and shall be accepted by Tenant "AS IS" in its then present condition; (ii) NONE OF LANDLORD, LENDER, OR ANY AFFILIATE OR REPRESENTATIVE THEREOF SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE CONDITION OF THE PREMISES, INCLUDING BUT NOT LIMITED TO, ANY LATENT, HIDDEN, OR PATENT DEFECT THEREIN OR FOR THE FAILURE OF THE PROJECT TO BE CONSTRUCTED IN ACCORDANCE WITH ANY PLANS AND SPECIFICATIONS THEREFOR, FOR THE COMPLIANCE OF THE PLANS AND SPECIFICATIONS FOR THE PROJECT WITH APPLICABLE LAWS OR FOR THE FAILURE OF THE PROJECT, OR ANY PART THEREOF, TO OTHERWISE COMPLY WITH ANY APPLICABLE LAWS, OR FOR ANY ACTUAL, EXCEPTIONAL OR CONSEQUENTIAL DAMAGES ARISING THEREFROM (INCLUDING STRICT LIABILITY IN TORT), IT BEING AGREED THAT ALL RISKS INCIDENT TO ALL OF THESE MATTERS AS OF THE SUBLEASE COMMENCEMENT DATE ARE TO BE BORNE SOLELY BY TENANT. The provisions of this Section 7.2 have been negotiated, and except as provided in Section 7.1 regarding the Construction Warranties, the foregoing provisions are intended to be a complete exclusion and negation of any representations or warranties by Landlord, any Affiliate thereof or the Lender or any Affiliate thereof, express or implied, with respect to the Premises, the condition thereof and title thereto, that may arise pursuant to any law now or hereafter in effect, or otherwise and specifically negating any warranties under the Uniform Commercial Code.

ARTICLE 8 - ALTERATIONS AND ADDITIONS

8.1 **Tenant's Rights to Make Alterations**. Tenant, at its sole cost and expense, upon fifteen (15) days' prior notice to Landlord, shall have the right to make Alterations, provided that

Tenant shall obtain Landlord's prior written consent to same, unless consent is expressly waived below and, to the extent that any secured party's consent is required under the Operative Documents, Tenant shall also obtain the prior written consent of same (hereafter "**Lender's Consent**"). Except as provided in Section 8.3 below, Tenant shall not have any obligation to remove any such Alterations. Notwithstanding anything to the contrary set forth herein, Tenant shall not be required to obtain Landlord's or Lender's consent with respect to any Alterations performed within the Premises by Tenant provided that such Alterations: (a) are Minor Alterations, and (b) are non-structural. Upon completion of any Alterations made by Tenant to the Premises (including any such Alterations involving the moving, removal or construction of walls), Tenant shall provide Landlord as built plans or drawings with respect to such Alterations, irrespective of whether Landlord's consent to such Alterations was required hereunder. Any consent required from Landlord pursuant to this Section 8.1 shall not be unreasonably conditioned, withheld or delayed. Landlord shall respond promptly after receipt by Landlord of a written request for such consent together with Tenant's plans with respect to such Alterations. All such Alterations shall be made in conformity with the requirements of Section 8.2 below and, if applicable, removed in accordance with the requirements of Section 8.3 below. Once the Alterations have been completed, such Alterations shall thereafter also be included in the designation of "**Building Improvements**" under the applicable provisions of this Sublease.

8.2 **Installation of Alterations**. Any Alterations installed by Tenant shall be done in strict compliance with all of the following:

(a) Prior to the beginning of Alterations, unless the Alterations at issue will cost less than $100,000 ("**Minor Alterations**"), are non-structural and do not involve penetration of the roof, Tenant shall furnish to Landlord (i) certificates of insurance from a company or companies reasonably acceptable to Landlord, covering Tenant's contractors, for combined single limit bodily injury and property damage insurance covering comprehensive general liability and automobile liability, in an amount not less than One Million Dollars ($1,000,000.00) per occurrence and endorsed to show Landlord, Lender and any agents of Landlord reasonably designated by Landlord in writing, as additional insureds, and for workers' compensation as required by Florida law (provided, however, nothing in this Section 8.2(a) shall release Tenant of its other insurance obligations hereunder); and (ii) detailed plans and specifications for such work to the extent reasonably required, which shall be subject to Landlord's review and reasonable approval; and

(b) All such work shall be done in a good and workmanlike manner and, unless they are Minor Alterations, by a general contractor reasonably satisfactory to Landlord, and in conformity with a valid building permit and/or all other permits or licenses when and where required, and any work not acceptable to any governmental authority or agency having or exercising jurisdiction over such work, or not done in a first-class, workmanlike manner, shall be promptly replaced and corrected at Tenant's expense. Landlord's approval or consent and/or Lender's Consent to any such work shall not impose any liability upon Landlord or Lender. Except

for Minor Alterations, no work shall proceed until and unless Landlord has received at least five (5) days' written notice that such work is to commence and a reasonable description of the work.

8.3 **Improvements; Treatment at End of Sublease**. All Alterations and any of the Improvements which are permanent in character and permanently attached to the Building Structure or Building Systems, made either by Landlord or Tenant, shall be Landlord's property, and shall be surrendered to Landlord in good condition, reasonable wear and tear excepted, upon expiration of the Term or termination of the Sublease, without compensation to Tenant; provided however, that upon expiration of the Term or termination of the Sublease, all of Tenant's Property shall be and remain the property of the Tenant and may be removed by Tenant, at its election, at any time during the Term including, without limitation any security system installed pursuant to Section 31.2 hereof and the Communication Equipment; provided, however, that such Tenant's Property shall not be removed if it was acquired using proceeds included in the Total Cost. Notwithstanding the above and foregoing, Tenant expressly reserves the right upon expiration of the Term or termination of the Sublease to remove all reusable communications lines and communications equipment, including but not limited to cabling, roof antennas and dishes, monitoring or security equipment, conveyor systems and shelving, and mechanical and electrical equipment above standard Improvements installed by Tenant (but in the course of performing such removals, Tenant shall not leave the Project in a condition which is not operationally functional) and all public art installed by Tenant or at Tenant's cost (but only to the extent such public art may be removed without violating any Applicable Laws); provided, however, that Tenant shall repair all damage caused by any removal permitted by this Section 8.3 prior to the expiration of the Term, and provided further, that any of Tenant's Property not so removed shall, at the option of Landlord, if not removed by Tenant within sixty (60) Business Days after receipt of written notice from Landlord requesting such removal, automatically and without further consideration become the property of Landlord upon the later of the expiration or termination of the Sublease and the expiration of such 60-Business Day period. Thereafter, Landlord may retain or dispose of in any manner (at Tenant's expense) the Tenant's Property not so removed. All actual and reasonable costs and expenses incurred by Landlord in removing and disposing of any such Tenant's Property shall be reimbursed to Landlord by Tenant within thirty (30) days of Landlord's delivery of demand therefor with reasonable supporting documentation. This obligation of Tenant shall survive the expiration or termination of this Sublease.

The above and foregoing notwithstanding, if Tenant Alterations are of such a nature that Landlord's consent and/or Lender's Consent is required prior to installation of same, and if, at the time that Landlord's consent and/or Lender's Consent is given, it is conditioned upon Tenant's agreement to remove the Alterations consented to at the termination of this Sublease, then, upon such termination, Tenant shall remove such Alterations at its expense and repair any damage caused to the Project by their removal and shall restore floor openings caused by the installation of such Alterations.

8.4 **Lobby Alterations**. Tenant shall have the right to make non-structural, decorative Alterations to the lobby, provided that (i) if the Alterations are intended to be permanent in nature and Tenant does not intend to remove such Alterations at the end of the Term of this Sublease, Tenant shall obtain Landlord's prior written approval of such Alterations, which approval shall not be unreasonably delayed, withheld or conditioned (the provisions of Section 8.1 hereof apply as to the procedure and time period for Landlord's review and approval of the same); (ii) at least four (4) full years shall remain in the Term following the completion of such Alterations; (iii) such Alterations do not adversely affect the Building Structure or Building Systems; and (iv) such Alterations do not materially reduce the overall quality of the finish and improvements in the Building lobby. [*Delete this Section for Garage Project]*

ARTICLE 9 - COMPLIANCE WITH APPLICABLE LAWS (INCLUDING ENVIRONMENTAL LAWS)

9.1 **Compliance**. Prior to the Sublease Commencement Date, Landlord, at Landlord's sole cost and expense (as part of the Building Improvements Costs), shall comply, and shall cause its Contractor to comply, in all material respects at all times with all Applicable Laws, including Environmental Laws. From and after the Sublease Commencement Date, Tenant, at Tenant's sole cost and expense, shall comply, and shall cause its subtenants and other users of the Project to comply, in all material respects at all times with all Applicable Laws, including Environmental Laws. Such compliance includes, without limitation, Tenant's obligation, at its sole cost and expense, to take Remedial Action when required by Applicable Laws (in accordance with Applicable Laws and this Sublease) whether such requirement is now or hereafter existing, currently known or unknown to Tenant and/or Landlord, as and when such requirements are known to Tenant. In the event that Tenant is required or elects to enter into any plan relating to a Remedial Action in connection with the Project with respect to any Environmental Laws, Tenant shall on a quarterly basis (or more frequently if reasonably requested by Landlord) apprise Landlord and the Lender in writing of the status of such remediation plan and provide copies of all correspondence, plans, proposals, contracts and other documents relating to such plan or proposed plan. After prior written notice to Landlord and Lender, Tenant may in good faith contest the applicability or alleged liability under any Environmental Law to the Project, provided (i) compliance with such Environmental Law will be satisfied as of the Expiration Date or earlier termination of the Sublease, and if not completed by the Expiration Date, Tenant will continue to remain liable to comply with such Environmental Law; (ii) such contest shall be by appropriate legal proceedings conducted in good faith and with due diligence, (iii) such contest will operate to suspend the enforcement of such Law against the Landlord or the Project; (iv) such contest will not result in the possibility of the Project or any Rent being sold, attached, forfeited or otherwise lost if such contest is adversely decided; (v) such contest will not adversely affect the Lender's Lien on any Property, or Tenant's right to the Project, (vi) such contest will not materially and adversely interfere with the possession, use or occupancy or sale of the Project, (vii) such contest will not subject Landlord or the Lender to the risk of any civil liability, criminal liability, penalty or sanction, (viii) Tenant shall not permit the Project to become subject to a Lien created by such

contest, and (ix) no Event of Default is existing under the Sublease. Tenant shall keep Landlord regularly apprised of the status of such contest. In all events Tenant must pay any cost, fine, penalty, assessment or other charge due in order to remove any Lien, encumbrance or judgment against the Project after the contest is either adversely decided or terminated voluntarily by Tenant. Tenant agrees that each such contest shall be promptly and diligently prosecuted to a final conclusion or settlement. Tenant shall pay indemnify, defend (with counsel reasonably satisfactory to Landlord and Lender) and save each Indemnitee harmless against any and all damages, liabilities, costs, expenses, losses, judgments, decrees and costs (including all reasonable attorneys' fees and expenses) in connection with or arising from any such contest and shall, promptly after the final determination of such contest, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interest, costs and expenses thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof. The foregoing indemnity is in addition to, and not in substitution or limitation of the other indemnities provided in this Sublease, and shall survive the expiration or termination of this Sublease.

9.2 **Notices**. Tenant shall notify Landlord and Lender promptly if (i) Tenant becomes aware of the presence or Release of any Hazardous Material at, on, under, within, emanating from, or migrating to, the Project or related to the Project in any quantity or manner which could reasonably be expected to violate in any respect any Environmental Law or give rise to any liability or obligation to take Remedial Action or other obligations under any Environmental Law, or (ii) Tenant receives any written notice, claim, demand, request for information, or other communication from a Governmental Authority or a third party regarding the presence or Release of any Hazardous Material at, on, under, within, emanating from, or migrating to, the Project or related to the Project in any quantity or manner which could reasonably be expected to violate in any respect any Environmental Law or give rise to any liability or obligation to take Remedial Action or other obligations under any Environmental Law. In connection with any actions undertaken pursuant to this Lease, Tenant shall at all times comply with all applicable Environmental Laws and with all other Applicable Laws and shall use an Approved Environmental Consultant to perform any Remedial Action.

In the event Tenant is obligated or desires to undertake any Remedial Action on, under or about the Project, Tenant shall undertake and complete such Remedial Action to the extent required, under and in full compliance with all Applicable Laws and shall submit to Landlord and the Lender written confirmation from the applicable Governmental Authority that no further Remedial Action is required to be taken ("**Final Governmental Approval**").

ARTICLE 10 - NO LIENS BY TENANT

10.1 **No Liens**. Tenant, at its sole cost and expense, shall promptly pay for all materials supplied and work done in respect of the Premises by, through, or under Tenant so as to ensure that no lien is recorded against any portion of the Premises or against Landlord's or Tenant's

interest therein. Tenant shall not do or permit to be done any act which results in a lien being filed against the Premises. If a lien is so recorded, Tenant shall discharge it by payment or bonding promptly, but in no event more than thirty (30) days from the date of its filing or recordation. If Tenant fails to discharge such lien within such thirty (30) day period, Landlord shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately by Tenant to Landlord. Landlord and Tenant expressly agree and acknowledge that no interest of Landlord in the Premises shall be subject to any lien for Improvements made by Tenant in or for the Premises, and Landlord shall not be liable for any lien for any Improvements made by Tenant, such liability being expressly prohibited by the terms of this Lease.

ARTICLE 11 - REPAIRS TO PROJECT

11.1 **Scope of Tenant's Obligations**. Commencing on the Sublease Commencement Date, Tenant, at its sole cost and expense, shall at all times: (a) keep in good condition and repair the Premises and Building Structure, Building Systems, all Improvements, and all elements of the Premises and Common Areas, with the level of service and maintenance provided by Tenant at other similar properties owned or Subleased by Tenant; (b) maintain the Premises in accordance with all Applicable Laws; and (c) make all necessary or appropriate repairs and replacements of the Premises or any portion or element thereof which may be required to keep the Premises in the condition required by the preceding clause (a), whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen. Except to the extent expressly set forth in this Sublease, Tenant waives any right that it may now have or hereafter acquire to require the Landlord to (i) maintain, repair, replace, alter, remove, or rebuild all or any part of the Project or (ii) make repairs (whether or not at the expense of the Landlord) pursuant to any Applicable Laws, including Environmental Laws or otherwise. The Tenant shall, at its own cost and expense, comply with, and shall perform all obligations of the Landlord under, each restrictive covenant, deed or easement of record binding on or affecting the Project or any part thereof. The Tenant, at its own cost and expense, shall promptly replace or cause to be replaced all parts of the Premises which may from time to time fail to function properly or become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for any reason whatsoever, provided, however, that the Tenant shall not be obligated to replace any part if such part has become redundant and its replacement is not necessary for the proper functioning of the Project as a whole in accordance with all Applicable Laws, in each case assuming the Premises is then being operated and maintained in accordance with this Article 11. In addition, the Tenant may, at its own cost and expense, remove in the ordinary course of maintenance, service, repair, overhaul or testing, any such parts, whether or not functioning properly, worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use, provided that the Tenant will, at its own cost and expense, replace such parts as promptly as practicable. All replacement parts ("**Replacement Parts**") shall be new and free and clear of all liens, and shall be in as good operating condition as, and shall have a value, useful life and utility at least equal to, the parts replaced, assuming such replaced parts were in the condition and repair required to be maintained by the terms hereof. Immediately upon any Replacement Part becoming

incorporated or installed in or attached to any of the Project as above provided, without further act, (i) legal title to such Replacement Part shall thereupon vest in Landlord and shall become subject to this Sublease, (ii) such Replacement Part shall be deemed part of the Project for all purposes hereof to the same extent as the parts originally incorporated or installed in or attached to the Project, and (iii) title to the replaced part shall vest in the Tenant free and clear of all rights of the Landlord, and shall no longer be deemed part of the Project. Subject to applicable Construction Warranties and Landlord's obligation to complete Punch List Items, Tenant shall have the sole and exclusive obligation to cause all defects in the Project to be repaired and corrected at its sole cost and expense promptly upon discovery by or notice to Tenant of the same and Tenant may seek recovery from the builder or other third parties responsible, however, Landlord shall have no responsibility for any such defects.

11.2 **Landlord's Right of Entry to Make Repairs**. Landlord, or its agents, shall have the right (but not the obligation) to enter the Premises at all reasonable times during normal business hours upon not less than forty-eight (48) hours prior notice for the purpose of performing inspections at, to, of and about the Premises in order to determine whether or not Tenant is complying with its obligations under this Lease with respect to repairs, maintenance and replacements (each, an "**Inspection**"). If an Inspection reveals that Tenant is in default of its obligations under this Lease (it being understood that the failure of an Inspection to reveal any then-existing Tenant defaults shall in no event constitute or otherwise be construed as an estoppel or a representation that Tenant is in compliance with its obligations under this Lease), Landlord shall deliver to Tenant a copy of the report of the Inspection that advises that Tenant has failed to comply with its repair, replacement and maintenance obligations under this Lease (such failure(s), the "**Deficiencies**"). Tenant shall correct all such Deficiencies within thirty (30) days after Landlord delivers the Inspection report to Tenant; provided, however, if Tenant promptly commences, and pursues with due diligence, the correction or remedy of the Deficiencies, but Tenant is unable to complete such correction or remedy within the stated thirty (30) day cure period, for any reason outside of Tenant's reasonable control, such thirty (30) day period shall be extended until Tenant diligently and in good-faith cures the Deficiencies. If Tenant fails to timely correct or remedy the Deficiencies, then, Landlord shall have the right, but not the obligation, to undertake the correction or remediation of any outstanding Deficiencies at Tenant's sole cost and expense. Tenant shall pay to Landlord, within thirty (30) days of Landlord's delivery of demand therefor with reasonable supporting documentation, any and all actual and reasonable costs and expenses that Landlord incurs in the correction or remediation of Deficiencies and in the event Tenant fails to timely make any such payment to Landlord, Landlord shall have the right to exercise its rights under Article 17 below. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Premises by Tenant as a result of performing any such work.

11.3 **Building Structure and Building Systems**. Tenant at all times and at its sole cost and expense will maintain, repair and when necessary replace the structural portions of the Project, and including the foundation, floor slabs, ceilings of Common Areas, roof, curtain wall, exterior

glass and mullions, columns, beams, shafts (including elevator shafts), fire stairwells, escalators, elevator cabs, plazas, washrooms, mechanical, electrical and telephone closets, and all Common Areas and public areas (collectively, "**Building Structure**") and the Project mechanical, electrical, life safety, security, plumbing, sprinkler, and HVAC systems ("**Building Systems**") so as to keep the Building Structure and the Building Systems at all times in good working order condition and repair. Notwithstanding anything in this Sublease to the contrary, Landlord shall have the right (but not the obligation) to make any repair or replacement to the Building Structure and/or the Building Systems to the extent required because of Tenant's failure to make repairs within the time period required under this Sublease (except in the case of emergency, when such repairs can be made immediately upon telephonic notice to Tenant), and charge Tenant for the actual cost of such repairs, plus interest thereon at the Contract Rate if Tenant fails to pay the invoice within thirty (30) days of Tenant's receipt thereof.

ARTICLE 12 - BUILDING SERVICES

12.1 **Standard Building Services**. During the Term of this Sublease, Tenant at its sole cost and expense shall furnish the Premises with the standard building services, including, but not limited to, HVAC, electricity, power, gas, oil, water, telephone, sanitary sewer services and all other utilities (collectively, the "**Services**") which are commonly offered by owners of first-class buildings in the Pompano Beach, Florida commercial real estate market.

12.2 **Additional Services**. Tenant agrees to pay on or before the date due all costs incurred by Tenant from time to time in providing all Services supplied to or used by the Premises. If Tenant needs services in addition to the Services and same may not be provided by utilization of the existing Building Systems ("**Additional Services**"), Tenant, at Tenant's sole cost and expense and conditioned upon the prior written consent of Landlord, which consent shall not be unreasonably conditioned, withheld or delayed (the provisions of Section 8.1 hereof apply as to the procedure and time period for Landlord's review and approval of the same), may install such additional equipment it needs to obtain such Additional Services, and Landlord shall allow Tenant the right to install such equipment in portions of the Premises that are reasonably necessary for such installation and use, subject, however, to the terms of Article 8 hereof.

12.3 **Tenant's Right to Elect Service Provider**. To the extent more than one provider of any given utility or Service or Additional Service is available, and to the extent permitted by Applicable Law, Tenant shall have the absolute right, from time to time during the Term of this Sublease, to select the provider(s) of utilities, Services and Additional Services to the Premises.

ARTICLE 13 - ASSIGNMENT AND SUBLETTING

13.1 **Right to Sub-Sublease and Assign**. Except to the extent expressly permitted under this Sublease, Tenant may not assign, or transfer any of its rights under this Sublease, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner. Notwithstanding the foregoing, Landlord hereby consents to Tenant's subletting of the

Premises to any third party for any lawful purpose. Landlord further acknowledges and agrees that any sub-sublease, license agreement, use agreement, or other operating agreement with a valet operator, parking operator, food and beverage operator or concessionaire, retail operator, management company for operation of any portion of the Premises for any lawful purpose, shall not be considered an assignment, or transfer under this Sublease.

ARTICLE 14 - INSURANCE

14.1 **Tenant's Insurance**. [*To be finalized prior to execution of each Sublease based on operational requirements of each Civic Building Project]*

(a) Liability Insurance. Tenant shall obtain and keep in full force a policy of commercial general liability insurance for personal injury, death and property damage (including but not limited to automobile, personal injury, broad form contractual liability, Tenant's contractors protective and broad form property damage) under which Landlord and Lender are shown as additional insureds and under which the insurer waives subrogation as to Landlord's and Tenant's agents. The minimum limits of liability shall be a combined single limit with respect to each occurrence of not less than $[3],000,000 and $[5],000,000 in the aggregate. The policy shall, if such is available on a commercially reasonable basis, contain a cross liability endorsement and shall be primary coverage for Tenant and Landlord for any liability arising out of Landlord's and its agent's use, occupancy or maintenance of the Premises and the Building and all areas appurtenant thereto, and Tenant's use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall provide that it is primary insurance and not "**excess over**" or contributory. The policy shall contain a severability of interest clause. Tenant shall have the right to determine appropriate deductibles approved by Landlord, in Landlord's reasonable discretion.

(b) Tenant's Property Insurance. Tenant at its cost shall maintain on all of Tenant's Property, in, on, or about the Premises, an "**all risk coverage**" property policy covering not less than one hundred percent (100%) of the full replacement cost valuation, under which Tenant is named as the insured but subject to such deductibles as Tenant shall deem appropriate. The proceeds from any such policy shall be used by Tenant for the replacement of such Tenant's Property.

(c) Tenant's Obligation to Insure Premises. During the Term of the Sublease, Tenant shall obtain and maintain in effect at all times fire and hazard "**all risk coverage**" insurance covering one hundred percent (100%) of the full replacement cost valuation of the Premises in the event of fire, lightning, windstorm, vandalism, malicious mischief, terrorism, steam pressure explosion, flood, earthquake and all other risks normally covered by "**all risk coverage**" policies carried by landlords of first-class buildings in the Pompano Beach, Florida market area. Tenant shall have the right to determine the appropriate deductible as reasonably approved by Landlord.

(d) Insurance Criteria. All the insurance required to be maintained by Tenant under this Sublease shall:

(i) Be issued by insurance companies with a financial rating of at least A-/VIII for any property insurance and A-/VIII for any liability insurance as rated in the most recent edition of Best's Insurance Reports;

(ii) Be issued as a primary policy;

(iii) Require thirty (30) days' written notice from the insurance company to Landlord and to Lender before cancellation or any material change in the coverage, scope or amount of any policy;

(iv) Landlord and Lender shall be named as additional insured or loss payees, as their interests may appear, for each insurance policy required to be maintained by Tenant, with all proceeds under any policy to be paid in accordance with the provisions of this Sublease;

(v) Contain a "**standard mortgagee/landlord clause**" providing that the interest of Lender or Landlord shall not invalidated by any act or negligence of Tenant;

(vi) Contain a waiver of subrogation endorsement as to Landlord and Lender; and

(vii) Contain a demolition and increased cost of construction endorsement.

Notwithstanding the foregoing, all of the insurance requirements set forth herein on the part of Tenant to be observed shall be deemed satisfied if the risk to be insured is covered by a blanket insurance policy insuring all or most of Tenant's facilities, and provided that the coverage attributable to the Premises and the other properties required to be insured by Tenant under such blanket insurance policy equals or exceeds the applicable requirements set forth in this Sublease.

(e) Evidence of Coverage. Tenant shall furnish Landlord with a certificate of insurance, prior to the date that Tenant or any of its contractors or agents first enters upon any portion of the Premises in order to commence the Improvements, but in no event later than the Sublease Commencement Date, and on renewal of the policy a certificate of insurance listing the insurance coverages required hereunder or under the Operative Documents and naming Landlord, and any other parties required to be insured under the terms of this Sublease, specifically including the Lender, as additional insured and shall deliver such certificate of insurance to Landlord, before the expiration of the term of the policy.

(f) Certificates of Insurance. Certificates of such insurance shall be delivered to Landlord and Lender, and any additional insureds upon execution of this Sublease and any renewals or extensions of said policies or certificates of insurance shall be delivered to Landlord and Lender prior to the expiration or termination of such policies. Upon request of Landlord or Lender; Tenant shall provide copies (certified as true and correct by Tenant's risk manager) of those portions of any policy requested covering all aspects of how a claim can or may be made under such policy, within thirty (30) days of request. In the alternative, Tenant may provide a certificate from its insurance broker setting forth all of the foregoing, in form and substance reasonably satisfactory to Landlord and Lender.

ARTICLE 15 - LOSS, DAMAGE, DESTRUCTION AND TAKING

15.1 **Risk of Loss**.

(a) From the Effective Date to the Sublease Commencement Date, Landlord hereby assumes all risk of loss, damage, theft, taking, destruction, confiscation, requisitions or commandeering, partial or complete, of or to the Project, however caused or occasioned, and whether or not insured, such risk to be borne by Landlord with respect to any Improvements being constructed or installed by Landlord.

(b) After the Sublease Commencement Date, Tenant hereby assumes all risk of loss, damage, theft, taking, destruction, confiscation, requisitions or commandeering, partial or complete, of or to the Project, however caused or occasioned, and whether or not insured, such risk to be borne by Tenant with respect to the entire Project, including the Premises. No occurrence specified in the preceding sentence shall impair, in whole or in part, any obligation of Tenant under this Sublease to pay Rent, including the Annual Base Rent, Operating Expenses, Taxes or Personal Property Taxes or any other amounts pursuant to Article 4 hereof as they become due, or to perform any of its other obligations hereunder as and when required except as herein expressly provided.

(c) Tenant shall give Landlord and Lender prompt written notice of any Casualty or Taking, describing in reasonable detail the circumstances of such Taking or Casualty and the damage to or loss of the Project.

15.2 **No Notice of Termination**.

(a) Prior to the Sublease Commencement Date, Landlord shall be entitled to receive (and Tenant hereby irrevocably assigns to Landlord all of Tenant's right, title and interest in, and agrees to turn over to Landlord), subject to Landlord's obligation to restore, any award, compensation, insurance proceeds or other payment to which Landlord may become entitled by reason of the Project if the Project, including the Premises, or any portion thereof, is damaged or destroyed by fire or other casualty or cause in an amount in excess of any applicable deductibles (a "**Casualty**").

(b) As of the Sublease Commencement Date and so long as no Event of Default shall have occurred or be continuing:

(i) Tenant shall be entitled to receive (and Landlord hereby irrevocably assigns to Tenant all of Landlord's right, title and interest in, and agrees to turn over to Tenant), subject to Tenant's obligation to restore, any award, compensation, insurance proceeds or other payment to which Tenant may become entitled by reason of its leasehold interest in the Premises, Tenant's Property, moving expenses, good will, and any separate award made to Tenant as reimbursement for defeasance payments, make whole premiums or other extraordinary costs incurred by Tenant hereunder, (i) if the Project, including the Premises, or any portion thereof, is damaged or destroyed by Casualty, or (ii) by reason of any taking by condemnation or by sale or conveyance in lieu of condemnation, of the Project, including the Premises, or any portion thereof (a "**Taking**"); provided however that if any such amounts are or would be received at a time when either an Event of Default shall have occurred and be continuing, then all such amounts together with the amount of any applicable deductible, shall be paid to Lender to be disbursed in accordance with the terms of the Mortgage (or if no Loan is outstanding, to Landlord).

(ii) Tenant shall be entitled to receive, subject to Tenant's obligation to restore, all other amounts paid or payable for any Casualty or Taking of all or any portion of the Premises and any costs or expenses incurred by Landlord or Lender in connection with such Casualty or Taking (the amounts received for any Casualty are referred to as the "**Net Casualty Award**" and the amounts received for any Taking, less such costs and expenses, are referred to as the "**Net Taking Award**"). No award for any partial or entire Taking shall be apportioned and, provided no Event of Default has occurred and is continuing, Landlord assigns to Tenant any Net Taking Award together with all rights of Landlord to such award including, without limitation, any award or compensation for the value of all or any part of the leasehold estate.

(iii) The Net Casualty Award or the Net Taking Award and any and all other awards received with respect to the Casualty or Taking shall be applied in accordance with the provisions of this Sublease for the actual cost of repair, restoration, rebuilding or replacement by Tenant of the Improvements damaged by such Casualty or Taking (collectively, "**Cost To Repair**"). If the Net Casualty Award or the Net Taking Award and any and all other awards received with respect to the Casualty or Taking are not sufficient to complete the repair, restoration, rebuilding or replacement of the Project or any portion of the Project damaged by such Casualty or Taking, the Tenant shall be liable to pay the shortfall.

(iv) Upon any Taking or Casualty, and regardless of the extent to which such Taking or Casualty is insured, Tenant shall, at its sole cost and expense, within one hundred twenty (120) days of the occurrence of such Casualty or Taking, enter into a contract with an architect and/or engineer (the "**Restoration Contracts**") to restore, repair, replace and/or rebuild the Project as provided in this Section 15.2. Each Restoration Contract shall include a schedule for completion for all restoration, repair, replacement and/or rebuilding therein provided for. Tenant shall cause the contractors under such Restoration Contracts to proceed with diligence and

promptness, and in all cases within time periods set forth in the Restoration Contracts, to carry out any demolition and to restore, repair, replace and/or rebuild the Project, as nearly as practicable, to a configuration, condition and fair market value as existed immediately prior to such Taking or Casualty, assuming that the Premises had been maintained in accordance with this Sublease. Upon completion of the restoration, repair, replacement and/or rebuilding of the Project (including any upgrades or redesign as Tenant shall require (subject to Landlord's reasonable approval and to Lender's approval if required by the Operative Documents) to bring the Project up to current standards of Tenant and to reflect any changes in use as may be permitted by this Sublease and reasonably deemed necessary to Tenant's efficient occupancy of the Premises), Tenant shall be entitled to retain such portion of the Net Casualty Award or Net Taking Award, if any, which was not used by Tenant in the restoration, repair, replacement and/or rebuilding of the Project; provided that if at the time of receipt thereof an Event of Default shall have occurred and be continuing, such amounts shall be paid to Lender to be applied in accordance with the terms of the Mortgage (or, if no Loan is outstanding to Landlord). Each repair or restoration pursuant to this Section 15.2(b) shall be undertaken and completed in a good and workmanlike manner and in compliance in all material respects with all Applicable Laws then in effect with respect to the Project and the Restoration Contracts, and in compliance with the provisions of Article 8 hereof

(v) During the Term hereof, Tenant may, at its cost and expense, in its own name or in the name and on behalf of Landlord and Lender, appear in any proceeding or other action relative to a Casualty or Taking to negotiate, accept and prosecute any claim for any award, compensation, insurance proceeds or other payment on account of such Casualty or Taking and to cause any such award, compensation, insurance proceeds or other payment to be paid to Tenant in accordance with the provisions of this Section 15.2. Tenant shall use its commercially reasonable efforts to achieve the maximum award or other recovery obtainable under the circumstances. Any negotiated awards, settlements or recoveries shall be subject to Landlord's and Lender's prior approval, which approvals shall not be unreasonably withheld, conditioned or delayed. Landlord and Lender may appear in any such proceeding or other action, in a manner consistent with the foregoing, and the reasonable costs and expenses of any such appearance shall be borne by Tenant.

(c) If an Event of Default by Tenant has occurred and is continuing beyond applicable cure periods:

(i) Landlord and Lender shall have the right (but not the obligation) to appear, at Tenant's expense, in any proceeding or other action relative to a Casualty or Taking, and to negotiate, accept and prosecute in their sole discretion any claim for any award, compensation, insurance proceeds or other payment on account of such Casualty or Taking without the approval of Tenant.

(ii) The Net Casualty Award or the Net Taking Award and any and all other awards received with respect to the Casualty or Taking then or thereafter made shall be paid to the Lender, if the Loan has not been paid in full and the Mortgage discharged as of the date such awards are received, or the Landlord and Lender or Landlord, as the case may be, may, but shall

not be obligated to apply such award in accordance with the provisions of this Sublease for the actual cost of repair, restoration, rebuilding or replacement of the portion of the Project damaged by such Casualty or Taking. If the Net Casualty Award or the Net Taking Award and any and all other awards received with respect to the Casualty or Taking are not sufficient to complete the repair, restoration, rebuilding or replacement of the portion of the Project damaged by such Casualty or Taking, the Tenant shall be liable to pay the shortfall.

(d) Notwithstanding the provisions of Sections 15.2(a)-(c) or any other provisions of this Sublease, the provisions of the Mortgage and the other Operative Documents with respect to the payment and disbursal of any insurance proceeds, Net Casualty Award and Net Taking Award shall govern the receipt and disbursement thereof for as long as the Loan is outstanding.

ARTICLE 16 - LANDLORD AND TENANT REPRESENTATIONS AND COVENANTS

16.1 **Representations and Warranties of Tenant**. Tenant represents and warrants to Landlord that the following are true and correct as of the Effective Date:

(a) Due Organization. Tenant is duly organized, validly existing, and in good standing under the laws of the State in which it was formed and is duly qualified to transact business in the State in which the Premises are located.

(b) Due Authorization; No Conflict. This Sublease has been duly authorized by all necessary action on the part of Tenant and has been duly executed and delivered by Tenant, and the execution, delivery and performance thereof by Tenant will not, (i) contravene any Applicable Law binding on Tenant or the Premises or (ii) contravene or result in any breach of or constitute any default under Tenant's charter or by-laws or other organizational documents, or any indenture, judgment, order, decree, mortgage, loan agreement, contract, partnership or joint venture agreement, Sublease or other agreement or instrument to which Tenant is a party or by which Tenant is bound, or result in the creation of any Lien (other than pursuant to this Sublease) upon any of the property of Tenant. This Sublease is the legal, valid and binding obligation of Tenant, enforceable against it in accordance with its terms except to the extent that enforcement may be affected by applicable bankruptcy, reorganization, insolvency and similar laws affecting creditors' rights and remedies generally and by general principles of equity (regardless of whether enforcement is sought at law or in equity).

(c) Governmental Approvals. All governmental approvals required in connection with the execution, delivery and performance by Tenant of this Sublease, have been or will have been obtained, given or made, including, without limitation, obtaining all approvals from any federal or state regulatory authorities and, to the actual knowledge of Tenant, are in full force and effect.

(d) Bankruptcy. No bankruptcy, reorganization, arrangement or insolvency proceedings are pending, threatened or contemplated by Tenant, and Tenant has not made a general assignment for the benefit of creditors.

(e) Solvency. Taking into account the transfers and transactions to occur on the Effective Date, Tenant shall be solvent and shall not be rendered insolvent as a result of this transaction. Debts and Liabilities. The Tenant is able to realize upon its property and pay its debts and other liabilities (including contingent and unliquidated liabilities) as they mature in the normal course of business; the Tenant does not intend to, and does not believe that it will incur debts or liabilities beyond the Tenant's ability to pay as such debts and liabilities become due; and Tenant is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which the Tenant's remaining assets are unreasonably small in relation to such business or transaction.

16.2 **Representation and Warranties of Landlord:**

(a) Due Organization. Landlord is a limited liability company duly organized, validly existing and in good standing in the State of Florida. Landlord has the limited liability company power to conduct its business as now conducted, to own or hold under Sublease its property, to Sublease the Project and to enter into and perform its obligations under this Sublease.

(b) Due Authorization; No Conflict. This Sublease has been duly authorized by all necessary limited liability company action on the part of Landlord and has been duly executed and delivered by Landlord, and the execution, delivery and performance thereof by Landlord will not (i) contravene any Applicable Law binding on Landlord, or (ii) contravene or result in any breach of or constitute any default under Landlord's certificate of organization or operating agreement or other organizational documents, or any indenture, judgment, order, mortgage, loan agreement, contract, partnership or joint venture agreement, Sublease or other agreement or instrument to which Landlord is a party or by which Landlord is bound, or result in the creation of any Lien (other than pursuant to this Sublease and the Operative Documents) upon any of the property of Landlord.

ARTICLE 17 - DEFAULTS

17.1 **Default by Tenant**. Each of the following shall be an "**Event of Default**" by Tenant and a material breach of the Sublease, entitling Landlord to exercise all remedies which may be available to Landlord hereunder, in equity or at law, including, without limitation, those remedies set forth in Section 18.1 hereof:

(a) Tenant shall fail to pay any monthly installment of Annual Base Rent or Supplemental Rent for reasons other than an Event of Non-Appropriation pursuant to Article 30 of this Sublease, on or before the time set forth in Sections 4.1 and 4.4, respectively, and any such failure continues uncured for a period of fifteen (15) days after written notice from Landlord.

(b) Tenant shall fail to make any other payment owed by Tenant under this Sublease for reasons other than an Event of Non-Appropriation pursuant to Article 30 of this Sublease, within thirty (30) days after written notice from Landlord notifying Tenant of its failure to pay.

(c) Tenant or any surety of this Sublease shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent, or shall file a petition in any proceeding seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or fail timely to contest the material allegations of a petition filed against it in any such proceeding.

(d) A proceeding is commenced against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, and such proceeding shall not have been withdrawn or dismissed within one hundred twenty (120) days after the commencement thereof.

(e) A receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of Tenant, and such receivership or trusteeship shall not be withdrawn or dismissed within one hundred twenty (120) days following such appointment.

(f) Tenant shall fail to observe, keep or perform any of the terms, conditions, and/or covenants under this Sublease that Tenant is obligated to observe or perform, other than those described in subparagraphs (a) and (b) of this Section 17.1, for a period of thirty (30) days after notice to Tenant of said failure or any representation of Tenant made hereunder is untrue in any material respect when made and remains untrue for a period of thirty (30) days after notice to Tenant; provided however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default under the Sublease if Tenant shall commence the cure of such default so specified within said thirty (30) day period and shall diligently prosecute the same to completion.

Notwithstanding any other provisions hereof, Tenant shall not be in default under this Sublease for failure to perform any act required of Landlord where such failure is due to inability to perform due to an Event of Force Majeure.

17.2 **Default by Landlord**. An event of default by the Landlord shall be deemed to have occurred under this Sublease if the Landlord fails to observe, keep or perform (i) any of the terms, conditions, and/or covenants under this Sublease that Landlord is obligated to observe or perform, for a period of thirty (30) days after notice to Tenant of said failure, (ii) any of the terms, conditions, and/or covenants under the Ground Lease that Landlord is obligated to observe or perform, for a period of thirty (30) days after notice to Tenant of said failure; or (iii) any representation of Landlord made hereunder is untrue in any material respect when made and

remains untrue for a period of thirty (30) days after notice to Landlord; provided however, that if the nature of Landlord's default is such that more than thirty (30) days are reasonably required for its cure, then Landlord shall not be deemed to be in default under the Sublease if Landlord shall commence the cure of such default so specified within said thirty (30) day period and shall diligently prosecute the same to completion. Notwithstanding any other provisions hereof, Landlord shall not be in default under this Sublease for failure to perform any act required of Landlord where such failure is due to inability to perform due to an Event of Force Majeure. However, during such period of nonperformance, if Tenant is deprived of the use of any portion of the Premises, then Tenant shall have the right to pursue an action for actual damages against Landlord.

ARTICLE 18 - REMEDIES

18.1 **Remedies for Tenant's Default**. Upon the occurrence and during the continuance of any Event of Default by Tenant, Landlord shall have the option to pursue any one or more of the following remedies:

(a) without obligation to do so, and without releasing the Tenant from any obligation under this Sublease, Landlord may make any payment or take any action the Landlord may deem necessary or desirable to cure such Event of Default, and the reasonable cost thereof, together with the sum of ___ percent (__%) of said costs for overhead, to the extent permitted by law, shall be reimbursed by the Tenant to the Landlord within thirty (30) days from Tenant's receipt of Landlord's written demand for reimbursement (such demand for reimbursement shall contain all supporting documentation). [*To be finalized prior to execution of Sublease, based on final risk allocation approach determined for each Civic Building Project*]

(b) for an Event of Default involving the failure to pay Rent or other amounts due to Landlord under this Sublease (for reasons other than an Event of Non-Appropriation, the exclusive remedies for which are as set forth in Article 30 below), Landlord may terminate Tenant's right to possession of the Premises or elect to terminate the Sublease by any lawful means, in which case Tenant shall surrender possession of the Premises to Landlord, in compliance with Tenant's surrender obligations under this Sublease; provided, however, Landlord shall not exercise such termination right unless the Tenant default is continuing for _____ (___) days. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including without limitation, accrued Rent, the costs of recovering possession of the Premises, and costs incurred in reletting the Premises. [*To be finalized prior to Loan closing and determined in context of final Loan documents*.]

(c) For Events of Default (other than those involving the failure to pay Rent or other amounts due to Landlord or otherwise involving an Event of Non-Appropriation), Landlord may terminate Tenant's right of possession or elect to terminate the Sublease by any lawful means in which case Tenant shall surrender possession of the Premises to Landlord, in compliance with Tenant's surrender obligations under this Sublease

(d) In the event Landlord terminates this Sublease or terminates Tenant's right to possession under this Sublease) in accordance with subsections 18.1(b) or 18.1(c) , Landlord shall have the right to enter upon and take possession of the Premises and expel or remove Tenant and any other Person who may be occupying the Premises or any part thereof, by entry (including the use of legal force, if necessary), dispossessory suit or otherwise, without thereby releasing Tenant from any liability hereunder, without terminating this Sublease, and without being liable for prosecution or any claim of damages therefor and, if Landlord so elects, make such commercially reasonable alterations, redecorations and repairs as, in Landlord's judgment, may be necessary to relet the Premises, and Landlord may relet the Premises or any portion thereof in Landlord's name, but for the account of Tenant, for such term or terms (which may be for a term less than the Term) and at such rental or rentals and upon such other terms as Landlord reasonably may deem advisable, subject to compliance with, and limited by, all terms, conditions, and covenants of the Ground Lease with or without advertisement, and by private negotiations, and receive the rent therefor, Tenant hereby agreeing to pay to Landlord at any time and from time to time, upon Landlord's demand, the deficiency, if any, between all Rent reserved hereunder for the period covered by Landlord's demand and rentals actually received by Landlord from releting for the period covered by Landlord's demand (or, if Landlord has not relet for such period, the amount of such rental loss Tenant proves could be reasonably avoided). Tenant shall be liable for Landlord's reasonable expenses in redecorating and restoring the Premises and all actual and reasonable costs incident to such re-letting or attempts to relet;

(e) Landlord may seek specific performance of the Tenant's obligations under this Lease

(f) Notwithstanding anything to the contrary herein, (i) no releting, reentry or taking of possession of the Premises by the Landlord will be construed as an election on the Landlord's part to terminate this Sublease unless a written notice of such intention is given to the Tenant, and notwithstanding any releting, reentry or taking of possession, the Landlord may at any time thereafter elect to terminate this Sublease for a continuing Event of Default, and (ii) no act or thing done by the Landlord or any of its agents, representatives or employees and no agreement accepting a surrender of the Premises shall be valid unless the same be made in writing and executed by the Landlord.

(g) Landlord may enter upon the Premises without being liable for prosecution or any claim of damages therefor, and do whatever Tenant is obligated to do under the terms of this Sublease other than pay Rent and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action, unless caused by the negligence or willful misconduct of Landlord, its agents, contractors or employees. Any performance by Landlord of Tenant's obligations shall not waive or cure such default.

(h) the Landlord may exercise any other right or remedy that may be available to it under this Sublease, Applicable Laws or in equity, or proceed by appropriate court action (legal or equitable) to enforce the terms hereof or to recover damages for the breach hereof.

Separate suits may be brought to collect any such damages for any period of this Sublease, and such suits shall not in any manner prejudice the Landlord's right to collect any such damages for any subsequent period of this Sublease, or the Landlord may defer any such suit until after the expiration of the Term, in which event such suit shall be deemed not to have accrued until the expiration of the Term.

18.2 **Remedies for Landlord's Default**. Upon the occurrence and during the continuance of any Event of Default by Landlord, Tenant may commence an action in a court of competent jurisdiction to compel performance by Landlord hereunder or an action for damages.

(a) Tenant also reserves the right, at its option, to cure any of the Landlord's defaults, after written notice to the Landlord, and the Landlord shall immediately (within thirty (30) calendar days) reimburse the Tenant for all costs and expenses, including, but not limited to labor and materials (such demand for reimbursement shall contain all supporting documentation). Notwithstanding anything in this Sublease to the contrary, in the event Tenant has not received such payment within such thirty (30) day period, then Tenant may offset said amounts against Rent, subject to the offset limitation in Section 29.31, until fully repaid.

(b) Notwithstanding anything else set forth in this Lease, in the event the Landlord defaults on any of the terms, conditions, and/or covenants of this Sublease, the Tenant agrees to notify the Lender concurrently with any notice given to the Landlord and the Tenant agrees that such Lender shall have the right (but not the obligation) to cure any default specified in such notice and the Tenant shall not declare a default under the Sublease as to such Lender, provided the Lender cures such default within thirty (30) days from and after the expiration of the time period provided in this Sublease for the cure thereof by the Landlord. If the nature of the Landlord's default is such that more than thirty (30) days are reasonably required for its cure, then Lender shall not be deemed to be in default under the Sublease if Lender commences the cure of such default so specified within said thirty (30) day period and shall diligently prosecute the same to completion.

(c) Notwithstanding any other provisions hereof, Landlord shall not be in default under this Sublease for failure to perform any act required of Landlord where such failure is due to inability to perform due to an Event of Force Majeure. However, during such period of nonperformance, if Tenant is deprived of the use of any portion of the Premises, then Tenant shall have the right to pursue an action for actual damages against Landlord.

(d) To the extent the Landlord obtains financing from Lender that is secured, in whole or in part, by an encumbrance on the Landlord's interest in the Sublease or Premises, and the Landlord becomes delinquent on the performance of any obligation (monetary or non-monetary) related to such financing, and Tenant is not in default of its monetary obligations under this Sublease, the Tenant shall be entitled to apply to payments on such financing any Rent otherwise due to the Landlord or take such other steps necessary to cure such delinquency. Any

payment made by Tenant pursuant to this subsection shall offset the Rent due by Tenant to Landlord in the amount of Tenant's payment to the Lender.

18.3 **Remedies Not Exclusive**. The rights and remedies of either Party set forth herein are not exclusive, and either Party may exercise any other right or remedy available to it under this Sublease, at law or in equity, including, without limitation, injunctive relief of all varieties, except as otherwise expressly set forth herein. Forbearance by either Party to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such default or an election of remedies. Notwithstanding anything contained in this Sublease to the contrary, from and after the Sublease Commencement Date, Tenant shall not have the right to terminate this Sublease in connection with an Event of Default by Landlord.

18.4 **Enforceability**. The provisions of this Article 18 shall be enforceable to the maximum extent not prohibited by Applicable Law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion.

ARTICLE 19 - INDEMNITIES AND ATTORNEYS' FEES

19.1 **Attorney Fees**. If either Landlord or Tenant commences or engages in any action or litigation against the other Party arising out of or in connection with this Sublease, including but not limited to, any action for recovery of any payment owed by either party under this Sublease, or to recover possession of the Premises, or for damages for breach of this Sublease, the prevailing party shall be entitled to have and recover from the non-prevailing party reasonable attorneys' fees and other costs incurred in connection with the action and in preparation for said action (through all appeals).

19.2 **General Indemnification**.

(a) The Landlord shall indemnify and hold harmless the Tenant and its officers, employees, agents and instrumentalities (the "**Tenant Indemnitees**") from any and all third party claims of liability, losses or damages, including reasonable attorneys' fees and costs of defense, which the Tenant Indemnitees incur to the extent caused by the failure of performance by Landlord of its obligations under this Sublease. The Landlord shall pay all such claims and losses in connection therewith and shall investigate and defend all such claims, suits or actions of any kind or nature in the name of the Tenant, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. The Landlord expressly understands and agrees that any insurance protection required by this Lease or otherwise provided by Landlord shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Tenant or its officers, employees, agents and instrumentalities as herein provided. Landlord shall be entitled to credit against any payments due under this Section 19.2 for any insurance recoveries or other reimbursements covering such claims if, as, when and to the extent actually received by the Indemnitee to be indemnified, to the extent such insurance recoveries exceed such Indemnitee's costs and expenses incurred in recouping such insurance recovery.

(b) Tenant shall not be liable to Landlord for any damage or injury which may be sustained by any party or person inside or outside of the Premises, in the Building, on the Site, or on or about the Project other than the damage or injury caused solely by the negligence of the Tenant, its officers, employees, vendors, or agents, subject to the limitations of Florida Statutes, Section 768.28 to the extent such statutory limitations are required by law. Notwithstanding the foregoing, Tenant hereby agrees to indemnify and hold harmless the Landlord and its officers, employees, agents and instrumentalities (the "**Landlord Indemnitees**") from and against any and all liability, losses or damages, including attorneys' fees and cost of defense which the Landlord and Landlord Indemnitees may incur as a result of (i) all Taxes for which Tenant is responsible under Section 5.2, (ii) claims, violations, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the negligence of the Tenant or the negligence of its employees, agents and/or vendors or any matter that occurs within the Premises (unless caused by the negligence of the Landlord or Landlord Indemnitees) up to the statutory limits found in Section 768.28, Florida Statutes, as such may be amended from time to time and to the extent such statutory limitations are required by law; (iii) the operation, maintenance, use, possession, lease, sublease, condition, maintenance, repair, replacement, alteration or reconstruction of the Project as of the Sublease Commencement Date, up to the statutory limits found in Section 768.28, Florida Statutes, as such may be amended from time to time and to the extent such statutory limitations are required by law . Tenant shall be entitled to credit against any payments due under this Section 19.2 any insurance recoveries or other reimbursements if, as, when and to the extent actually received by the Indemnitee to be indemnified in respect of the related claim under or from insurance paid for, directly, by Tenant or assigned to Landlord by Tenant, to the extent such insurance recoveries exceed such Indemnitee's costs and expenses incurred in recouping such insurance recovery.

(c) In case any claim shall be made or brought against any Tenant Indemnitee(s) or Landlord Indemnitee(s) (collectively, the "**Indemnitees**"), such Indemnitee shall give prompt notice thereof to either the Tenant or Landlord as the indemnifying Party, as applicable (Tenant and Landlord each, as the context may require, an "**Indemnifying Party**"); provided that failure to so notify the Indemnifying Party shall not reduce the Indemnifying Party's obligations to indemnify any Indemnitee hereunder unless and only to the extent such failure materially prejudices the Indemnifying Party's right to contest such claim.

(d) Each Indemnitee shall at the Indemnifying Party's expense supply the Indemnifying Party with such information and documents reasonably requested by the Indemnifying Party and in such Indemnitee's possession in connection with any claim for which the Indemnifying Party may be required to indemnify any Indemnitee under this Section 19.2 Unless an Event of Default is continuing, no Indemnitee shall enter into any settlement or other compromise with respect to any claim for which indemnification is required under this Section 19.2 without the prior written consent of the Indemnifying Party, which shall not be unreasonably withheld. The Indemnifying Party shall have the authority to settle or compromise any claim against an Indemnitee hereunder so long as no Event of Default is continuing; provided

that no admission of wrongdoing, shall be required of such Indemnitee, and such settlement or compromise does not involve any finding of criminality or impose any injunctive or other equitable relief affecting any Indemnitee or the Project, and such Indemnitee shall be released of all liability in connection with any such claim.

(e) Upon payment in full of any claim by an Indemnifying Party pursuant to this Section 19.2 to or on behalf of an Indemnitee, the Indemnifying Party, without any further action to the extent of such payment, shall be subrogated to any and all claims that such Indemnitee may have relating thereto (other than claims in respect of insurance policies maintained by such Indemnitee at its own expense), and such Indemnitee shall execute such instruments of assignment and conveyance, evidence of claims and payment and such other documents, instruments and agreements as may be necessary to preserve any such claims and otherwise reasonably cooperate (at the Indemnifying Party's expense) with the Indemnifying Party to enable the Indemnifying Party to pursue such claims.

(f) Prior to paying any amount otherwise payable to an Indemnitee pursuant to this Section 19.2, the Indemnifying Party shall be entitled to receive from such Indemnitee (i) a written statement describing the amount so payable, and (ii) such additional information as the Indemnifying Party may reasonably request and which is reasonably available to such Indemnitee to properly substantiate the requested payment.

(g) All indemnities provided for in this Sublease are cumulative; all such indemnities shall survive without limitation the expiration or termination of this Sublease even if liability does not accrue or any claim with respect thereto is not made until after the effective date of such expiration or termination; all such indemnities shall continue to run in favor of and be enforceable by each person or entity that shall be an Indemnitee from time to time, and their respective partners, shareholders, members, officers, directors, etc., notwithstanding the assignment of this Sublease by such Indemnitee and the release of such Indemnitee hereunder. An Indemnifying Party's indemnity obligations shall not be limited by insurance maintained or required to be maintained by Tenant hereunder.

ARTICLE 20 - SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE

20.1 **Obligations of Tenant**. This Sublease and the rights granted to Tenant by this Sublease shall be subject and subordinate to all deeds of trust or leasehold mortgages affecting or encumbering all or any part of the Project; provided however, that (a) the subordination of this Sublease to any present or future mortgage or deed of trust shall be conditioned upon the mortgagee, beneficiary, or purchaser at foreclosure, as the case may be, agreeing that Tenant's occupancy of the Premises and other rights under this Sublease shall not be disturbed by reason of the foreclosure of such mortgage or deed of trust, as the case may be, so long as Tenant is not in default under this Lease, and (b) if Landlord elects at any time to have Tenant's interest in the Sublease be or become superior, senior or prior to any such instrument, then upon receipt by Tenant of written notice of such election, Tenant shall promptly execute all necessary and reasonable

subordination instruments or other documents confirming the subordination of such mortgage or deed of trust.

20.2 **Landlord's Right to Assign**. Landlord's interest in the Sublease may be assigned to any mortgagee or trust deed beneficiary as additional security. Nothing in this Sublease shall empower Tenant to do any act without Landlord's prior consent which can, shall or may encumber the title of the Landlord of all or any part of the Project. Nothing in this Sublease shall prohibit Tenant from encumbering Tenant's leasehold estate in and to the Premises; provided however, that any transfer upon or in lieu of foreclosure of such encumbrance shall be subject to the conditions to and restrictions on assignment in Article 13 hereof, and any failure to comply with such conditions or restrictions will constitute an Event of Default hereunder.

20.3 **Tenant's Consent to Assignment for Indebtedness**. Tenant acknowledges that in order to secure Landlord's obligations under the loan in favor of the Lender as reflected in the Operative Documents, Landlord has agreed to the assignment (to the extent provided therein) of Landlord's right, title and interest to this Sublease. While the Operative Documents or any replacements, renewals, extensions or modifications thereof are in effect, Tenant hereby:

(a) consents to such assignment in this Sublease;

(b) agrees:

(i) that all matters requiring the consent, approval, waiver and the like of the Landlord pursuant to this Sublease shall require such consent, approval, waiver or the like of both Landlord and Lender, and no such consent, approval, waiver and the like delivered by Landlord shall be of any force or effect unless also delivered by Lender;

(ii) to deliver to the Lender, concurrently with Tenant's delivery to Landlord, duplicate originals of all notices and other communications delivered to Landlord pursuant to this Sublease, in accordance with this Sublease, of (A) the occurrence of any Event of Default, or (B) the exercise of any right expressly granted to Tenant in this Sublease to terminate all or any portion of this Sublease;

(iii) that it shall not, except as expressly provided in this Sublease, seek to recover from the Lender any moneys paid to the Landlord or the Lender by virtue of the assignment of Sublease and the foregoing provisions; provided, however, that neither the assignment of Sublease nor the foregoing provisions shall limit Tenant's right to recover (A) any duplicate payment made to the Lender, whether due to computational or administrative error or otherwise, if the Lender has received such payment, and (B) any amounts that have been paid to or are actually held by the Lender that are expressly required to be refunded to, repaid, or otherwise released to or for the benefit of Tenant under this Sublease;

(iv) that Tenant shall not pay any Rent more than thirty (30) days prior to such payment's scheduled due date except as provided in this Sublease;

(v) that Tenant shall not enter into any agreement subordinating or (except as expressly permitted by the terms of this Sublease as in effect on the date hereof) surrendering, canceling, or terminating this Sublease without the prior written consent of the Lender, and any such attempted subordination, surrender, cancellation or termination without such consent shall be void;

(vi) that Tenant shall not enter into any amendment or modification of this Sublease without the prior written consent of the Lender;

(vii) that if this Sublease shall be amended, it shall continue to constitute collateral under the Mortgage without the necessity of any further act by Landlord, Tenant, or the Lender; and

(viii) that except as expressly provided in this Sublease, Tenant shall not take any action to terminate, rescind or avoid this Sublease, notwithstanding, the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or other proceeding affecting Landlord or any assignee of Landlord and notwithstanding any action with respect to this Sublease which may be taken by an assignee, Lender or receiver of Landlord or of any such assignee or by any court in any such proceedings.

20.4 **Attornment by Tenant**. In the event of any foreclosure of any or all mortgages or deeds of trust encumbering the Project or the Site by trustee's sale, voluntary agreement, deed in lieu of foreclosure, or by the commencement of any judicial action seeking foreclosure, Tenant, at the request of the then landlord under this Sublease, shall attorn to and recognize the beneficiary or purchaser at the foreclosure sale, as Tenant's landlord under this Sublease. Tenant further agrees that the beneficiary or purchaser at the foreclosure sale shall not be (i) bound by any payment of Rent for more than one (1) month in advance, except prepayments in the nature of security for the performance by Tenant of its obligations under this Sublease (and then only if such prepayments have been deposited with and are under the control of such beneficiary or purchaser); (ii) bound by any amendment or modification of this Sublease made without the express written consent of Landlord's lender of record (i.e., the holder of record of such mortgage or deed of trust) at the time such amendment or modification is made; (iii) liable for any act or omission of any prior landlord (including Landlord) except to the extent such act or omission continues after such time as such beneficiary or purchaser acquires the Project; (iv) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except to the extent the circumstances giving rise to such offsets or defenses continues to exist or not exist, as the case may be, after such time as such beneficiary or purchaser acquires the Project; or (v) subject to any obligation to cure any default by a prior Landlord except for defaults of a continuing nature or with respect to the Construction Warranties provided herein. Tenant agrees to execute and deliver at any time upon request of such beneficiary, purchaser, or their successors, any instrument to further

evidence such attornment. Tenant hereby waives its right, if any, to elect to terminate this Sublease or to surrender possession of the Premises in the event of any such termination of mortgage or deed of trust foreclosure.

ARTICLE 21 - SURRENDER OF PREMISES

Upon the termination of Tenant's right of possession pursuant to Landlord's exercise of remedies under this Sublease, Tenant shall quit and surrender to Landlord the Premises. In the event of an early termination of this Sublease prior to the Expiration Date, Tenant shall free and clear of all Liens (other than Liens created by Landlord) broom clean and with the Building Improvements in substantially the same condition as at the completion thereof and with the Improvements in substantially in the same condition as at the completion thereof; except for (a) those Alterations which Tenant is required to remove and/or restore in accordance with Article 8 hereof, (b) reasonable wear and tear, (c) removal by Tenant, at Tenant's sole discretion, of Tenant's Property from the Premises (subject to Tenant's obligation to repair any damage caused by such removal and to remove such Tenant's Property within the time period required under this Sublease) and (d) portions of the Property subject to a Taking or Casualty (except to the extent required to be restored under this Sublease). The covenants and conditions of this Article 21 shall survive any early termination of this Sublease.

ARTICLE 22 - HOLDING OVER

Tenant shall surrender, subject to the provisions of Article 21, possession of the Premises immediately upon the early termination of Tenant's right of possession pursuant to Landlord's exercise of remedies under this Sublease. If Tenant shall continue to occupy or possess the Premises after such termination without the consent of Landlord, then unless Landlord and Tenant have otherwise agreed in writing, Tenant shall be a tenant from month-to-month. All the terms, conditions and/or covenants of this Sublease shall apply to this month-to-month tenancy, provided that Tenant shall be obligated to pay monthly installments during the holdover period of rent equal to 125% of one-twelfth of the Annual Base Rent for the first two months of any such month-to-month tenancy, and Tenant shall thereafter pay rent equal to 150% of one-twelfth of the Annual Base Rent. This month-to-month tenancy may be terminated by Landlord or Tenant upon thirty (30) days' prior notice to the non-terminating party.

ARTICLE 23 - INSPECTIONS AND ACCESS

23.1 **Entry by Landlord**. Upon reasonable prior notice (which shall not be required in case of emergency or upon the requirement of any applicable Governmental Authority (e.g., surprise inspection) in any of which events no such prior notice shall be required but Landlord shall provide notice as soon as reasonably practicable), Landlord, or its agents, may enter the Premises during normal business hours for any reasonable purpose when accompanied by an authorized representative of Tenant. Any such entry shall be accomplished as expeditiously as

reasonably possible and in a manner so as to cause as little interference to Tenant as reasonably possible.

ARTICLE 24 - NAME OF PROJECT

Tenant shall have the sole and exclusive right, from time to time, to name the Building. Landlord reserves the right, subject to the provisions of Article 34, at any time to change the street address of the Building to comply with applicable governmental regulations. Upon the termination of Tenant's right of possession pursuant to Landlord's exercise of remedies under this Sublease, Tenant shall have the obligation, at Tenant's expense, to remove from the Building and/or the Project any name which refers to Tenant or by which Tenant is known.

ARTICLE 25 - MERGER OF ESTATES; SURRENDER OF SUBLEASE

No voluntary or other surrender of this Sublease by Tenant, no acquisition by Landlord of Tenant's estate in the Sublease, no acquisition by Tenant of Landlord's estate in the Sublease or the Project, and no ownership by any one Person of both the Landlord's estate under the Sublease and the Tenant's estate under the Sublease shall result in the merger of this Sublease or the respective estates of the Landlord and Tenant created hereunder. No such merger shall occur unless and until all persons, corporations, firms and other entities (including any mortgagee) having any interest in (x) this Sublease or the leasehold estate created by this Sublease, and (y) the fee estate in or ownership of the Premises sought to be merged shall join in a written instrument expressly effecting such merger and shall duly record the same. Any termination or surrender of this Sublease by Tenant or a mutual cancellation of this Sublease shall, at the option of Landlord, terminate all or any existing sub-subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of Tenant's interest in any or all such sub-Subleases or subtenancies; provided, however, that any sub-sublease consented to by Landlord or deemed consented to by Landlord or otherwise permitted under Article 13 hereof and for which Landlord has provided a subordination, non-disturbance and attornment agreement shall survive and be automatically assigned to Landlord as the prime Landlord thereunder.

ARTICLE 26 - WAIVER

The waiver by Landlord or Tenant of any term, covenant, agreement or condition contained in this Sublease shall not (i) be effective unless in writing and signed by the party against whom enforcement is sought, or (ii) be deemed to be a waiver of any subsequent breach of the same or of any other term, covenant, agreement, condition or provision of this Sublease, nor shall any custom or practice which may develop between the parties in the administration of this Sublease be construed to waive or lessen the right of Landlord or Tenant to insist upon the performance by the other in strict accordance with all of the terms, conditions and covenants of the Sublease. The subsequent acceptance by Landlord of any payment owed by Tenant to Landlord under this Sublease, or the payment of Rent by Tenant, shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, agreement, condition or provision of this Sublease, other

than the failure of Tenant to make the specific payment so accepted by Landlord, regardless of Landlord's or Tenant's knowledge of such preceding breach at the time of the making or acceptance of such payment.

ARTICLE 27 - SALE BY LANDLORD

In the event Landlord shall sell, assign, convey or transfer all of its interest in the Sublease in accordance with the Ground Lease, Tenant agrees to attorn to such transferee, assignee or new Landlord, subject however to the provisions of Section 20.4 hereof, and upon consummation of such sale, conveyance or transfer and delivery of the written assumption of this Sublease by such transferee of all of the obligations of the Landlord under this Sublease and the transferee's agreement to be liable and subject to all conditions and restrictions to which Landlord is subject, Landlord shall automatically be freed and relieved from all liability and obligations accruing or to be performed from and after the date of such sale, transfer, or conveyance

ARTICLE 28 - ESTOPPEL CERTIFICATES

Each Party shall, at any time and from time to time upon request of the other Party or Lender within twenty (20) days following notice of such request from the requesting party, execute, acknowledge and deliver to the requesting party a certificate (the "**Estoppel Certificate**") in writing substantially in the form of the attached **Exhibit "F"**. For purposes of this Article 28, an Estoppel Certificate shall not be deemed to be commercially reasonable if it amends or modifies any of the provisions of this Sublease (other than notice provisions). The Party to whom any such certificate shall be issued may rely on the matters therein set forth; however, in delivering such certificate neither Landlord nor the Tenant (nor any individual signing such certificate on such Party's behalf) shall be liable for the accuracy of the statements made therein, but rather shall be estopped from denying the veracity or accuracy of the same. Any certificate required to be made by the Landlord or Tenant pursuant to this paragraph shall be deemed to have been made by the Landlord or Tenant (as the case may be) and not by the person signing same.

ARTICLE 29 - RIGHT TO PERFORMANCE

Except as otherwise provided in this Sublease, all covenants and agreements to be performed by Landlord or Tenant under the Sublease shall be performed by such Party at such Party's sole cost and expense.

ARTICLE 30 - CITY APPROPRIATIONS

[*Article 30 subject to review and to be finalized prior to closing of Loan for each Project, in order to confirm lease financing will be available in compliance with all applicable laws and City Charter provisions*]

30.1 **Definitions**. For purposes of this Section:

"**Available Revenues**" means the moneys and revenues of the City (including non-ad valorem revenue and ad valorem revenue) legally available in any Fiscal Year to pay Rent.

"**Budget**" means the annual budget of revenues and expenditures (both operating expenditures and capital expenditures) required to be adopted by the City for each Fiscal Year (as defined herein) pursuant to the laws of the State. "**Budget**" shall include the City's preliminary Budget, tentative Budget and its final Budget.

"**Fiscal Year**" means the period commencing on October 1 of each year and continuing through the next succeeding September 30th, or such other period as may be prescribed by law.

"**Initial Term**" means the period commencing on the Sublease Commencement Date through and including the following September 30th.

"**Renewal Term**" means the period commencing on the day after the last day of the Initial Term and ending on the following September 30th. Thereafter, "**Renewal Term**" shall refer to each succeeding one (1) year term commencing on the day after the last day of the previous Renewal Term and ending on the following September 30th.

30.2 **No Lien, Indebtedness or Pledge of Taxing Power of City**. No provision of the Sublease shall be construed or interpreted as creating a pledge of the Tenant's full faith, credit or taxing power within the meaning of any State constitutional debt limitation or a general obligation of the City, Broward County, Florida, the State or any political subdivision thereof. No provision of the Sublease shall be construed or interpreted as an improper delegation of governmental powers or as a donation or a lending of the City's credit within the meaning of the State constitution. No provision of the Sublease shall be construed to create a lien on or pledge of any of the City's revenues or other moneys, nor shall any provision of this lease restrict the future issuance of any of the City's bonds or obligations payable from any of the City's revenues or other moneys. The obligation of the Tenant to pay Rent, for such fiscal year of the Tenant, shall constitute a current expense of the Tenant and shall be payable only from legally Available Revenues appropriated on an annual basis for that purpose in accordance with all Applicable Laws. The Sublease is not intended to, and does not, create a mortgage of or a security interest in the Project, and shall not in any way be construed to be a debt of the Tenant in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the Tenant.

THE PAYMENTS DUE HEREUNDER ARE TO BE MADE ONLY FROM AVAILABLE REVENUES APPROPRIATED BY THE TENANT FOR SUCH PURPOSE AND NEITHER THE CITY, THE STATE, NOR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY ANY SUMS DUE TO THE LANDLORD HEREUNDER FROM SOURCES OTHER THAN APPROPRIATED REVENUES, AND THE FAITH AND CREDIT OF NEITHER THE CITY, NOR THE STATE NOR ANY POLITICAL

SUBDIVISION OR AGENCY THEREOF IS PLEDGED FOR PAYMENT OF SUCH SUMS DUE HEREUNDER AND THE OBLIGATIONS ARISING HEREUNDER DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY, OR THE STATE OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION.

30.3 **City Manager's Annual Budget Recommendation**. Subject to the Tenant's right of non-appropriation pursuant to this Article 30 hereof, the Tenant hereby covenants that it will cause the City Manager to provide for the Rent payments coming due in the following Fiscal Year in his or her annual Budget recommendation in accordance with Applicable Law. Except as otherwise provided in this Article 30, the Tenant agrees to take such action as may be necessary to include all such Rent payments due hereunder in its annual Budget. During the Term, the Tenant will furnish to Landlord a copy of each adopted annual Budget as soon as available.

30.4 **All Rent Payments Contingent Upon Annual City Appropriation**. Tenant's performance and obligation to pay any amounts under this Sublease are contingent upon an annual appropriation by the City. This Sublease shall initially terminate at the end of the Initial Term, but may be renewed for all Renewal Terms; provided, that such Renewal Term shall not occur and this Lease shall terminate as of the end of the then-current Fiscal Year, if City enacts a Budget in accordance with Applicable Law which does not provide sufficient funds from legally Available Revenues to continue making Rent payments in full for the next succeeding Renewal Term ("**Event of Non-Appropriation**").

30.5 **Notice of Event of Non-Appropriation**. Tenant hereby agrees that, within three (3) Business Days after the adoption or approval of the final annual Budget which does not include the full amount of the Rent payments coming due in the following fiscal year, it will give notice of that fact to Landlord. Upon the occurrence of an Event of Non-Appropriation, the City will not be obligated to pay Rent accruing or arising beyond the then current Fiscal Year, but will not be relieved of any obligations arising or accruing prior to such Event of Non-Appropriation, provided that such payment shall be payable solely from legally available revenues. The City must deliver notice of the Event of Non-Appropriation to the Landlord within ten (10) Business Days thereof.

30.6 **Event of Non-Appropriation Shall Not Constitute Event of Default**. Under no circumstances shall the failure of the City to appropriate sufficient moneys to pay Rent constitute a default or Event of Default or require payment of a penalty, or in any way limit the right of the City to purchase or utilize, buildings, facilities or equipment similar in function to the Premises. If an Event of Non-Appropriation shall occur, the City shall peaceably return to the Landlord possession of each Project or portion thereof that is subject to surrender within thirty (30) Business Days after the date on which such Event of Non-Appropriation occurs. The Project or portion thereof that is subject to surrender shall remain subject to the terms, conditions, and covenants set forth in the Sublease and Ground Lease, and the lessor under the Ground Lease shall retain access to the surrendered Project through the term of the Ground Lease, subject to and in accordance with

the terms thereof. The Tenant's obligation to vacate and return the Premises or applicable portion thereof shall survive the termination of the Sublease.

30.7 **Failure to Timely Surrender the Premises Following Event of Non-Appropriation**. The Tenant's failure to timely vacate and surrender the Premises to the Landlord following an Event of Non-Appropriation shall constitute an Event of Default under the Sublease. Upon the occurrence of an Event of Default pursuant to this Section, the Landlord may exercise any and all remedies available pursuant to law or granted pursuant to the Sublease, including, without limitation:

(a) Without terminating the Sublease, the Landlord may re-enter and take possession of all or any portion of the Project that is subject to surrender and exclude the Tenant from using the same until the Default is cured;

(b) Without terminating the Sublease, the Landlord may terminate Tenant's right to possession of all or any portion of the Project that is subject to surrender of the Premises, in which event the Tenant shall have no further possessory right whatsoever in the Project for the remaining term of the Sublease and thereafter attempt to re-let such Project or portion thereof subject to surrender, holding the City liable for the difference between (i) the rent and other amounts paid by the new sublessee pursuant to such sublease, and (ii) the Rent currently payable by the Tenant pursuant to the Sublease;

(c) Take whatever action at law or in equity that may appear necessary or desirable to collect the Rent then due and thereafter to become due during the Term of the Sublease or enforce performance and observance of any obligation, agreement or covenant of the Tenant under the Sublease;

(d) Terminate the Sublease, if it has not been previously terminated as a result of an Event of Default and require the City to surrender and transfer possession to the Landlord, subject to the terms, conditions, and covenants set forth in the Sublease and Ground Lease, in which event the Sublease shall terminate and upon such termination the Tenant shall have no further possessory right whatsoever in the Project for the remaining term of the Sublease.

(e) In the event Landlord elects to terminate the Sublease or terminate Tenant's right to possession of all or any portion of the Project that is subject to surrender of the Premises pursuant to this Section, the City shall take all actions necessary to authorize, execute and deliver to the Landlord all documents necessary to vest in the Landlord all of the City's interest in and to the Sublease, as may be necessary to allow Landlord to re-lease the Premises, in accordance with applicable law, subject to the Ground Lease; and thereupon, the City shall be responsible for the payment of damages in an amount equal to the Rent which would have accrued hereunder, calculated on a daily basis, for any period during which the Tenant fails to surrender the Premises, and the actual and reasonable costs and expenses incurred by Landlord in recovering possession of the Premises as a result of the Tenant's failure to surrender, all without prejudice to any remedy

which might otherwise be available to the Landlord for arrears of Rent, payable only from legally available revenues appropriated therefor in accordance with Applicable Laws.

(f) In the event that moneys received by the Landlord from the re-letting of all or any portion of the Premises that is subject to surrender exceeds the amount necessary to pay the Rent which would have been due under the Sublease together with all damages suffered by Landlord in connection with Tenant's Default and all costs incurred by Landlord in the re-letting of the Premises, such surplus shall be [*Allocation of distribution to be addressed on a Project specific basis prior to execution of Sublease*].

(g) Each right and remedy provided for herein shall be cumulative and shall be in addition to every other right or remedy provided for in this Sublease, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Sublease), and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Sublease, or now or hereafter existing at law or in equity or by statute or otherwise, except as otherwise expressly limited by the terms of this Sublease, shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Sublease or now or hereafter existing at law or in equity or by statute or otherwise except as otherwise expressly limited by the terms of this Sublease.

ARTICLE 31 - SECURITY SERVICES

31.1 **Tenant's Obligation to Furnish Security Services**. Tenant hereby acknowledges that the Rent payable to Landlord under this Sublease does not include the cost of guard service or other security measures, and that Landlord shall have no obligation whatsoever to provide any security measures for the Premises. Tenant assumes all responsibility for the protection of Tenant, its officers, agents, employees, licensees, or invitees, and any other persons on or about the Premises, as well as the property of any of the foregoing.

31.2 **Tenant's Right to Install Security System**. Tenant may, at Tenant's cost (which may include use of funds provided under the Operative Documents for such purposes), establish or install any automated and/or non-automated security system or security personnel in, on or about the Premises in lieu of or in addition to Landlord's Building Improvements security equipment.

ARTICLE 32 - NOTICES

Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the Parties by the other, or whenever either of the Parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Project, the Premises or this Sublease, each such notice, demand, request, consent, approval or other communication (a **"Notice"**) shall be in writing (whether or not so indicated elsewhere in this Agreement) and shall be effective for any purpose only if given or served by (i) certified or registered U.S. Mail, postage

prepaid, return receipt requested, (ii) personal delivery with a signed receipt (iii) a recognized national courier service or (iv) electronic transmission (email), provided that if the Notice involves a notice of a default or breach of this Sublease or Tenant's exercise of its Purchase Option, a copy of such Notice shall also be sent via overnight courier, whereby delivery is deemed to have occurred at the end of the Business Day on which electronic transmission is completed. If to Tenant, at Tenant's Address for Notices set forth in Section A of this Sublease, or to such other place as Tenant may from time to time designate in a notice to Landlord given in the manner set forth in this Article 32; if to Landlord, at Landlord's Address for Notices set forth in Section A of this Sublease, or to such other places as Landlord may from time to time designate in a notice to Tenant given in the manner set forth in this Article 32. Tenant agrees to send copies of all notices required or permitted to be given to Landlord to any holder or beneficiary under a mortgage or deed of trust that notifies Tenant in writing of its interest and the address to which notices are to be sent.

ARTICLE 33 - SIGNAGE AND BUILDING IDENTITY

In addition to Building/Project identity signage which is included in the Building Improvements budget, Tenant, at Tenant's sole cost and expense, and subject to Tenant obtaining all applicable governmental approvals regarding same, shall be entitled to install appropriate signage, including Tenant's or any other party's name and logo, on and in the Building, including (a) exterior signage and (b) signage on or adjacent to the entrance doors to Tenant's Premises, and (c) on the directory board located in the main entrance to the Building or anywhere else Tenant deems appropriate (collectively, the "**Signage Rights**").

ARTICLE 34 - OPTION TO PURCHASE

34.1 **Tenant's Option to Purchase**. Commencing on the Sublease Commencement Date and continuing through the Term or earlier termination of this Sublease, Tenant shall have, and is hereby granted:

(a) an ongoing option to purchase from Landlord, all of Landlord's interest in the Sublease and in the Premises (the "**Purchase Option**") for a purchase price (the "**Purchase Option Price**") equal to the sum of (i) the Stipulated Loss Value as of the Closing Date, plus all other amounts payable to Lender such that the Loan is paid in full as of the Closing Date (defined below), including any make whole premium payable under the Loan, plus (ii) all other amounts which may be due and owing to Landlord or Lender under the Sublease as of the Closing Date, plus (iii) all Rent payable by Tenant with respect to the period through and including the Closing Date, plus (iv) all costs of closing, except Landlord's own attorneys' fees and any commissions payable to any broker retained by Landlord. Tenant may exercise its Purchase Option to purchase under this Article 34 by giving Landlord written notice thereof (the "**Purchase Option Notice**").

(b) If Tenant timely exercises the Purchase Option the closing of the sale and the purchase of the Landlord's interest in the Sublease and in the Premises shall be held no later

than sixty (60) days after the date of the Purchase Option Notice (the "**Closing Date**"). Tenant shall notify Landlord in writing of the intended Closing Date at least ten (10) days prior thereto. Failure to timely provide the Purchase Option Notice prior to the expiration of the Term or earlier termination of this Sublease shall be deemed a waiver of such Purchase Option. The Term shall end on the Closing Date. Tenant shall pay the Purchase Price (without deduction, set-off or counterclaim) by transferring immediately available funds in the amount of such Purchase Price to such account or accounts in such bank or banks as Landlord shall designate, upon delivery of a special warranty deed conveying the Project to Tenant. The Premises shall be sold "**AS IS**" in its then present condition, subject to (a) the rights of any parties in possession thereof (other than rights, if any, granted by Landlord to Persons other than Tenant or any sublessees under any Sub-sublease), (b) the state of the title thereto existing as of the Closing Date (including liens created by the Operative Documents and any other permitted exceptions to title), (c) any state of facts which an accurate survey or physical inspection might show, (d) all Applicable Laws, (e) any violations of Applicable Laws which may exist as of the Closing Date, (f) the presence of any Hazardous Materials at or under the Premises or at or under any property in the vicinity of the Project, or (g) any other conditions or state of facts that may affect the Project. Without limiting any of Landlord's other rights and remedies hereunder, Landlord will be entitled to specific performance to enforce its rights under this Article 34.

ARTICLE 35 - ROOF RIGHTS

Except as hereinafter provided, during the Term of the Sublease (as it may be extended), Tenant shall have the sole and exclusive right at no additional cost to install and maintain at Tenant's expense, on the roof of the Building and elsewhere on the Project, satellite dishes, television or communications antennas or facilities, related receiving or transmitting equipment, related cable connections and any and all other related equipment (collectively, "**Communications Equipment**") required in connection with Tenant's communications and data transmission network. Tenant shall have the right to use "**risers**" in the Building over and above those provided in the Building Improvements (and to install additional risers if necessary) as long as there is no adverse effect on the Building Structure or Building Systems. In addition to the foregoing, Tenant shall, at its option, have the right to use additional space on the roof of the Building for Tenant's additional HVAC equipment and any and all related equipment to accommodate Tenant's excess HVAC requirements (collectively, "**HVAC Unit**"). All such Communications Equipment and HVAC Units shall be screened from view of pedestrians, to the extent required by Applicable Laws or Governmental Authority. Furthermore, the exact location, construction method and installation of any such Communications Equipment or HVAC Unit shall be mutually and reasonably acceptable to Landlord and Tenant and Tenant shall have secured, at Tenant's sole cost and expense, the approval of all Governmental Authorities and all permits required by Governmental Authorities having jurisdiction over such approvals and permits for the Communications Equipment and the HVAC Unit, and shall provide copies of such approvals and permits to Landlord prior to commencing any work with respect to such Communications Equipment and the HVAC Unit. Landlord shall have the right to place reasonable conditions upon

the method of installation as reasonably necessary to preserve Landlord's roof warranty. Tenant shall be permitted to alter its Communications Equipment in connection with technological upgrades from time to time. Tenant shall pay for any and all costs and expenses in connection with the installation, maintenance, use and removal of the Communications Equipment and the HVAC Unit, including without limitation any and all costs related to ensuring that Landlord's roof warranties related to the Building or any portion thereof are not terminated, negated in any way by any of such installations or by Tenant's applicable repair and maintenance of such facilities, but in no event shall Tenant be obligated to pay Landlord any rental or license fees for any area(s) on which the Communications Equipment and the HVAC Unit shall be located. The contractor selected by Tenant to install and to maintain and repair any such Communications Equipment and HVAC Units shall be reputable and licensed in the jurisdiction where the Building is located. Furthermore, Tenant shall, at its sole and absolute discretion when it deems it as necessary or appropriate to do so, repair and maintain the Communications Equipment and the HVAC Unit.

Upon termination or expiration of this Sublease, Tenant shall remove the Communications Equipment and/or HVAC Unit installed by it pursuant to this Article 35, at Tenant's expense, and shall repair and restore any damage to the Building and Project caused by such removal to a condition comparable to that existing prior to such installation, normal wear and tear excepted.

ARTICLE 36 - SECURITY DEPOSIT

Tenant, in recognition of its financial standing and reputation, shall not be obligated to provide a security deposit.

ARTICLE 37 - MISCELLANEOUS

37.1 **Authorization to Sign Sublease**. Each individual executing this Sublease on behalf of a party represents and warrants that he/she is duly authorized to execute and deliver this Sublease on behalf of such party.

37.2 **Entire Agreement**. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Sublease, and this Sublease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Sublease. This Sublease, and the exhibits and schedules attached hereto together with the other Operative Documents, contain all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises and shall be considered to be the only agreements between the parties hereto and their representatives and agents. None of the terms, conditions and covenants of this Sublease can be modified, deleted or added to except in writing signed by the parties hereto and, so long as the Loan is outstanding, with Lender's prior written consent. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or

warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Sublease and the other Operative Documents.

37.3 **Severability**. The illegality, invalidity or unenforceability of any term, condition, or provision of this Sublease shall in no way impair or invalidate any other term, provision or condition of this Sublease, and all such other terms, provisions and conditions shall remain in full force and effect.

37.4 **Gender and Headings**. The words "**Landlord**" and "**Tenant**" as used herein shall include the plural as well as the singular and, when appropriate, shall refer to action taken by or on behalf of Landlord or Tenant by their respective employees, agents, or authorized representatives. Words in masculine gender include the feminine and neuter. If there be more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several. The section and article headings of this Sublease are not a part of this Sublease and shall have no effect upon the construction or interpretation of any part hereof. Subject to the provisions of Articles 13 and 27, and except as otherwise provided to the contrary in this Sublease, the terms, conditions and covenants of this Sublease shall apply to and bind the heirs, successors, legal representatives and permitted assigns of the parties hereto. This Sublease shall be governed by and construed pursuant to the laws of the State of Florida.

37.5 **Exhibits**. The Exhibits attached to this Sublease, are hereby incorporated by this reference and made a part of this Sublease.

37.6 **Quiet Enjoyment**. Landlord covenants and agrees that so long as Tenant makes all of Tenant's payments as and when due under this Sublease, and upon fully performing, observing and keeping the covenants, agreements and conditions of this Sublease on its part to be kept, and so long as no Event of Default is continuing, Landlord or anyone claiming through Landlord shall do no act nor authorize any act to disturb the peaceful and quiet enjoyment of the Premises by Tenant during the Term of this Sublease, subject to the terms and provisions of this Sublease.

37.7 **No Recordation**. Landlord and Tenant agree that in no event and under no circumstances shall this Sublease be recorded by Landlord or Tenant, but at Tenant's or Landlord's election, a Memorandum of Sublease in the form set forth in **Exhibit "G"** may be recorded, and Tenant shall also have the right to grant to its subtenants or assignees the right to record a Memorandum referencing such sub-Sublease or assignment. The granting to any subtenants or assignees of the right to record a Memorandum referencing such sub-Sublease or assignment shall not be deemed an acceptance or approval of such sub-Sublease or assignment by Landlord except to the extent otherwise provided in Article 13 hereof with respect to Sub-Subleases not requiring Landlord's approval. Upon the request of Landlord following the expiration or termination of this Sublease, Tenant shall promptly execute and deliver to Landlord an appropriate re-lease and/or cancellation instrument acknowledging the expiration or termination of this Sublease and releasing any and all right, title and interest of Tenant in and to the Premises under this Sublease. The release

and/or cancellation instruments contemplated herein shall be executed in proper form for recordation in the real estate records of Broward County, Florida.

37.8 **Cumulative Remedies**. No remedy or election provided, allowed or given to Landlord by any provision of this Sublease shall be deemed exclusive unless so indicated, but shall, whenever possible, be cumulative with all other remedies under this Sublease, in law or equity.

37.9 **Force Majeure**. Except as otherwise specified in this Sublease with respect to Construction Period Force Majeure Events, in the event that the Tenant or the Landlord shall be delayed, hindered in, or prevented from the performance of any act or obligation required under this Sublease (other than Construction Period Force Majeure Events) by reason of a strike, lockout, inability to procure materials, failure of power, restrictive government laws or regulations in connection with a national emergency, disease (including, without limitation, delays arising out of the spread of any virus via epidemic), or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or any executive order (but only to the extent issued after the Effective Date and Tenant or the Landlord is actually delayed, hindered in, or prevented from the performance of any act or obligation required under this Sublease), riots, insurrection, or another reason beyond either Party's reasonable control ("Event of Force Majeure"), the performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, under no circumstances shall the non-payment of money by either Party or a failure attributable to a lack of funds on the part of either Party be deemed to be (or to have caused) an Event of Force Majeure, nor shall any Event of Force Majeure excuse the payment of Rent or any other amounts owed by Tenant under this Sublease. In connection with an Event of Force Majeure extending a Party's performance obligations under this Sublease, such Party shall use reasonable, good faith efforts to notify the other Party not later than twenty (20) days after the Party has reasonably determined that such event constitutes an Event of Force Majeure. Failure to timely provide the written notice required by the preceding sentence will result in such Party only being entitled to claim the benefit of such Event of Force Majeure with respect to any days that occur after such Party notifies the other of the Event of Force Majeure.

37.10 **Offset Limitation.** Notwithstanding anything to the contrary contained in this Sublease, Tenant's right to offset any sums Landlord owes to Tenant under one or more terms of this Lease is limited in the aggregate to fifty percent (50%) of each monthly installment of Base Rent payable to Landlord.

37.11 **Consent/Duty to Act Reasonably**. Except for any references to the terms "**sole**" or "**absolute**", any time the consent of Landlord or Tenant is required, such consent shall not be unreasonably withheld, conditioned or delayed. Whenever this Sublease grants Landlord or Tenant the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations (other than decisions to exercise expansion, contraction, cancellation, termination or renewal options), unless another standard is expressly set forth in this

Sublease limiting any such rights (or unless Landlord is bound by another standard in the Operative Documents in consenting to the exercise of such rights), Landlord and Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the reasonable expectations of a sophisticated tenant or landlord concerning the benefits to be enjoyed under this Sublease in consenting to or withholding consent to the exercise of such rights.

37.12 **Net Sublease, No Setoff, Etc**. It is the intention and agreement of the parties hereto that the obligations of Tenant hereunder shall be separate and independent covenants and agreements, and that the Annual Base Rent, Supplemental Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events, and that the obligations of Tenant hereunder shall continue unaffected for any reason, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Sublease. This Sublease is an absolutely net Sublease and, except to the extent expressly set forth in this Sublease, it is agreed and intended that the Annual Base Rent, Supplemental Rent and any other amounts payable hereunder by Tenant shall be paid without notice, demand, counterclaim, setoff, recoupment, deduction or defense and without abatement, suspension, deferment, diminution or reduction and that Tenant's obligation to pay all such amounts, throughout the Term is absolute and unconditional and free from any charges, assessments, impositions, expenses or deductions of any and every kind or nature. Under no circumstances shall Landlord be obligated to repay Tenant, refund to Tenant, or return to Tenant, any Annual Base Rent, Supplemental Rent, or any other Rent or any portion thereof, except for periods after the termination of this Sublease. All costs, expenses and obligations of every kind and nature whatsoever relating to the Premises and the appurtenances thereto or otherwise payable by Tenant pursuant to the terms and conditions of this Sublease and the use and occupancy thereof that may arise or become due and payable prior to or with respect to the Term (whether or not the same shall become payable during the Term or thereafter) shall be paid by Tenant. Tenant assumes the sole responsibility for the condition, use, operation, maintenance, repair, replacement, underletting and management of the Premises and the Landlord shall have no responsibility in respect thereof and shall have no liability for damage to the Premises of Tenant or any subtenant of Tenant on any account for any reason whatsoever, other than by reason of such Landlord's negligence (other than negligence imputed to Landlord by virtue of any action or inaction on the part of Tenant). It is the purpose and intention of the parties to this Sublease that the Annual Base Rent, Supplemental Rent and all other Rent due hereunder shall be absolutely net to the Landlord and that this Sublease shall yield, net to the Landlord, the Annual Base Rent, Supplemental Rent and all other payments hereunder required to be made by Tenant as provided in this Sublease.

Without limiting the generality of the foregoing, except as elsewhere expressly provided in this Sublease, this Sublease shall not terminate and Tenant shall not take any action to terminate, rescind or void this Sublease and the obligations and liabilities of Tenant hereunder shall in no way be released, discharged or otherwise affected for any reason, including without limitation: (a) any latent or other defect in the condition, merchantability, design, quality or fitness for use of the Premises or any part thereof, or the failure of the Premises to comply with all Applicable Laws,

including any inability to occupy or use the Premises by reason of such noncompliance; (b) any damage to, removal, abandonment, salvage, loss, condemnation (except as set forth in this Sublease), theft, scrapping or destruction of or any requisition or taking of the Premises or any part thereof, or any environmental conditions on the Premises or any property in the vicinity of the Premises; (c) any restriction, deprivation, prevention, prohibition, or curtailment of or interference with any use of, access to or occupancy of the Premises or any part thereof including eviction; (d) any defect in title to or rights to the Premises or any Lien on such title or rights to the Premises or any inadequacy or failure of the description of the Premises to demise and let to Tenant the Premises intended to be Subleased hereunder; (e) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by any Person; (f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to Tenant, Landlord or any other Person, or any action taken with respect to this Sublease by any trustee or receiver of Tenant, Landlord or any other Person, or by any court, in any such proceeding; (g) any right or claim that Tenant has or might have against any Person, including without limitation Landlord, the Lender, or any vendor, manufacturer, contractor of or for the Premises; (h) any action, omission, breach or failure on the part of Landlord or any other Person to perform or comply with any of the terms of this Sublease, any other Operative Document or of any other agreement; (i) any invalidity, unenforceability, rejection or disaffirmance of this Sublease, any of the Operative Documents, or any provision hereof or thereof, by operation of law or otherwise against or by Tenant or Landlord or any provision hereof; (j) the impossibility or illegality of performance by Tenant or Landlord, or both; (k) any action by any court, administrative agency or other Governmental Authority; (1) any interference, interruption or cessation or delay in the use, possession or quiet enjoyment of the Premises; (m) the exercise of any remedy, including foreclosure, under the Mortgage, (n) any action with respect to this Sublease (including the disaffirmance or rejection hereof) which may be taken by Landlord or Tenant under the Federal Bankruptcy Code or by any trustee, receiver or liquidator of Landlord or Tenant or by any court under the Federal Bankruptcy Code or otherwise, (o) the prohibition or restriction of Tenant's use of the Premises under any Applicable Laws or otherwise, (p) the eviction of Tenant from possession of the Premises by paramount title or otherwise, (q) any breach or default by Landlord hereunder or under any other agreement between Landlord and Tenant, (provided, that this provision shall not prohibit the Tenant from exercising any remedy it may have at law or in equity to collect damages or obtain specific performance); provided, further that damages to which Tenant may be entitled may in no event whatsoever be set off against or deducted from Rent), (r) any sale or other disposition of the Premises; or (s) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether foreseeable or unforeseeable, and whether or not Tenant shall have notice or knowledge of any of the foregoing, any present or future law to the contrary notwithstanding. Except as specifically set forth in this Sublease, this Sublease shall be non-cancellable by Tenant for any reason whatsoever and, except as expressly provided in this Sublease, Tenant, to the extent now or hereafter permitted by Applicable Laws, waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this Sublease or to any diminution, abatement or reduction of Rent payable hereunder. Under no circumstances or conditions shall Landlord be expected or required to make any payment of any

kind hereunder or have any obligations with respect to the use, possession, control, maintenance, alteration, rebuilding, replacing, repair, restoration or operation of all or any part of the Premises, so long as the Premises or any part thereof is subject to this Sublease, and Tenant expressly waives the right to perform any such action at the expense of Landlord whether hereunder or pursuant to any law. Tenant waives all rights which are not expressly stated herein but which may now or hereafter otherwise be conferred by law (i) to quit, terminate or surrender this Sublease or any of the Premises; (ii) except to the extent expressly set forth in this Sublease, to have any setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense of or to the Annual Base Rent, Supplemental Rent, or any other sums payable under this Sublease, except as otherwise expressly provided herein; and (iii) to have any statutory Lien or offset right against Landlord or the Premises.

37.13 Notwithstanding anything to the contrary in this Sublease, it is specifically understood and agreed that there is and shall be absolutely no personal liability on the part of Landlord or any partner, shareholder, member or beneficiary of Landlord or its successors or permitted assigns with respect to any of the terms, covenants and conditions of this Sublease, and any liability on the part of Landlord or its successors or assigns is and shall be limited to solely to its interest in the Premises (and the rents and income therefrom) and in any Net Taking Award or Net Casualty Award. Upon Landlord's sale or transfer of the Project to a transferee that is not an Affiliate of Landlord, provided such transferee has assumed all of Landlord's prospective obligations under this Sublease in a written instrument delivered to Tenant, Landlord shall have no further liability of any kind whatsoever under this Sublease for any liability accruing subsequent to such transfer, and Tenant shall look solely to such transferee for any recourse to the extent any recourse against the Landlord is provided for herein. **Survivability**. The parties agree that the appropriate provisions of this Sublease will be deemed to survive and continue to remain in effect to the extent necessary to allow Landlord and/or Tenant to enforce rights accruing prior to, and attributable to the period of time, prior to the expiration or termination of this Sublease; provided, however, that all indemnification obligations of Tenant shall survive as provided in Section 19.2 (g).

37.14 **Covenants and Agreements**. The failure of Landlord or Tenant to insist in any instance on the strict keeping, observance or performance of any covenant or agreement contained in this Sublease, or the exercise of any election contained in this Sublease, shall not be construed as a waiver or relinquishment for the future of such covenant or agreement, but the same shall continue and remain in full force and effect.

37.15 **Interest on Past Due Obligations**. Except with respect to the late payment of Rent (which shall be governed by the provisions of Section 4.7), whenever one Party is obligated pursuant to this Sublease to make a payment to the other Party, if such payment is not paid when due, then the Party who does not make such payment when due shall pay interest at the Contract Rate to the party on the unpaid amount from the date such amount was due until the date such amount is paid.

37.16 **When Payment Is Due**. Except for Annual Base Rent and late fees or charges accruing due to a late payment of the Annual Base Rent, whenever in this Sublease a payment is required to be made by one party to the other, but a specific date for payment is not set forth or a specific number of days within which payment is to be made is not set forth, or the words "**immediately**", "**promptly**" and/or "**on demand**", or the equivalent, are used to specify when such payment is due, then such payment shall be due thirty (30) days after the party which is entitled to such payment sends written notice to the other party demanding payment.

37.17 **Time is of the Essence**. Time is of the essence in the performance of all of the covenants, conditions and agreements of this Sublease.

37.18 **Intentionally Omitted**.

37.19 **Meaning of Payment of Loan**. For all purposes of this Sublease, all references to the Loan being "**paid in full**" (or similar phrases) means that the entire principal balance plus all accrued interest and other amounts payable to Lender under the Operative Documents have actually been paid in full, but excluding any Excluded Borrower Costs and Expenses. A foreclosure of the Mortgage or deed in lieu of foreclosure shall not be deemed for purposes of this Sublease to reduce the amount of the Loan or any other amounts owing to Lender under the Operative Documents or to be a payment on account of any such amount, regardless of the amount bid at the foreclosure sale or the agreed-upon consideration for the deed in lieu of foreclosure, it being the intent of Landlord and Tenant that the Loan shall be deemed paid in full only after all payments of Rent have been made for the term of this Sublease, when all Base Rent, and all Supplemental Rent attributable to amounts owing to Lender under any of the Operative Documents has been paid, or the payment in full in cash or immediately available funds of the greater of the amounts owing under this Sublease or the amount of the Loan, all accrued interest thereon and all other amounts owing under the Operative Documents upon the permitted termination of this Sublease by Tenant.

37.20 **Disclosure Related to Tax Matters**. Notwithstanding anything herein to the contrary, any Party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may, in accordance with Applicable Laws (including, without limitation, Chapter 119 of the Florida Statutes), disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure.

37.21 **Radon Gas**. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department. This notice is provided pursuant to Section 404.056(5) of the Florida Statutes.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed the Sublease as of the last date set forth below, acknowledged that each party has carefully read each and every provision of the Sublease, that each party has freely entered into the Sublease of its own free will and volition, and that the terms, conditions and covenants of the Sublease are commercially reasonable as of the date of execution.

WITNESSES:

"**LANDLORD**"

[**LANDLORD**]

_____
Name: _____

_____
Name: _____

By: _____
Name: _____
Title: _____
Date of Execution: _____

"**TENANT**"

[**TENANT**]

_____
Name: _____

_____
Name: _____

By: _____
Name: _____
Title: _____
Date of Execution: _____

BASELINE FORM OF CITY SUBLEASE FOR CIVIC BUILDING PROJECTS; DRAFT SUBJECT TO REVISION, WITH SUBLEASE FOR EACH CIVIC BUILDING PROJECT TO BE FINALIZED AND EXECUTED IN ACCORDANCE WITH SECTION 2.5 OF THE DEVELOPMENT AGREEMENT

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B"
PLANS AND SPECIFICATIONS

EXHIBIT "C"
MEMORANDUM OF ACCEPTANCE

This Memorandum of Acceptance is an amendment to the Sublease Agreement, having an effective date of _____, between _____, as Landlord, and _____, as Tenant.

Landlord and Tenant acknowledge and agree that:

1. The Premises (as defined in the Sublease) are tenantable and accepted by Tenant as suitable for the purpose for which they were let.

2. The Sublease Commencement Date is agreed to be _____ and the Rent Commencement Date is agreed to be

3. The expiration date of the Term of the Sublease is agreed to be _____.

4. The Total Project Costs are agreed to be $_____.

5. The Annual Base Rent shall be shown on **Exhibit C-1** attached hereto.

6. All other terms and conditions of the Sublease are ratified and acknowledged to be unchanged.

Executed and delivered:

Tenant:

By:_____
Name: _____
Title: _____
Date of Execution:_____

Landlord:

By:_____
Name: _____
Title: _____
Date of Execution:_____

EXHIBIT "D"
CONSTRUCTION PERIOD STIPULATED LOSS VALUE

EXHIBIT "E"
APPROVED PROJECT BUDGET

EXHIBIT "F"
FORM OF ESTOPPEL AGREEMENT

_____, the _____ of [Tenant][Landlord] hereby certifies that as of _____ (the "**Certification Date**"), the following is true and correct:

(a) the Sublease dated as of _____ is unmodified and in force and effect [(or if there have been modifications, that the Sublease is in force and effect as modified, and identifying the modification agreements)];

(b) the date to which Annual Base Rent has been paid is _____;

(c) there is no default by Tenant in the payment of Annual Base Rent or any other Rent payable to Landlord hereunder, and there is no other existing default by either party with respect to which a notice of default or notice of termination (by Landlord) has been served, [and, if there is any such default, specifying the nature and extent thereof], and, to the actual knowledge of the property or asset manager of Tenant having responsibility for the Sublease and Premises, and the officer to which he or she reports, there are no acts under the Sublease that have occurred that would constitute an Event of Default with notice, and the passage of time;

(d) to the knowledge of the signer, there are no setoffs, defenses or counterclaims against enforcement of the obligations to be performed hereunder existing in favor of the party executing such certificate.

(e) the term of the Sublease and the payment of rent commenced on _____, 20__, and is scheduled to expire on _____, unless renewed or terminated in accordance with the terms of the Sublease. Pursuant to the Sublease, Tenant is entitled to renew the Sublease for ___ (__) terms of five (5) years each.

[(f) Tenant is not the subject of any filing for bankruptcy or reorganization under any applicable law.]

[LESSOR/TENANT]

Only if Lessee is delivering estoppel certificate.

EXHIBIT "G"
FORM MEMORANDUM OF SUBLEASE

This MEMORANDUM OF AGREEMENT OF SUBLEASE is made and entered into as of this ___th day of _____, by and between _____, with a mailing address located at _____, hereinafter designated LESSOR, and _____, with a mailing address located at _____, hereinafter designated LESSEE.

1. LESSOR and LESSEE entered into that certain Sublease Agreement ("**Sublease Agreement**") dated as of _____, for an initial term of _____ (__) years with the option to renew for _____ (__) additional periods of five (5) years each.

2. In consideration of the rental set forth in the Sublease Agreement, LESSOR has agreed to Sublease to LESSEE and LESSEE has Subleased and has taken possession from LESSOR all that parcel of land located in the City of Pompano Beach, Broward County, Florida, as more specifically described in **Exhibit "A"** attached hereto and made a part hereof, and all improvements located thereon.

3. The Sublease Agreement will commence on the date the Building Improvements are Substantially Complete as defined in the Sublease Agreement.

4. In accordance with the provisions of Section 713.10, Florida Statutes, Landlord shall not do or permit to be done any act which results in a lien being filed against the Premises. Landlord shall obtain and require its contractor to obtain a performance bond and payment bond, each in the amount of the total contract price for the construction of the Improvements, as such amount may be amended from time to time. Such bonds shall name the Tenant as a dual obligee, and the costs of such bonds shall be borne by the Landlord (as part of the Building Improvements Costs). Any liens on the Project or Premises relating to the construction of the Project shall be transferred to the payment bond within thirty (30) days of Landlord's receipt of written notice thereof.

5. The terms, covenants and provisions of the Sublease Agreement are incorporated by reference into this Memorandum, and such terms, covenants and provisions shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of LESSOR and LESSEE.

6. This Memorandum is not intended to modify the terms of the Sublease Agreement and, in the event of any ambiguity, the Sublease Agreement shall control.

BASELINE FORM OF CITY SUBLEASE FOR CIVIC BUILDING PROJECTS; DRAFT SUBJECT TO REVISION, WITH SUBLEASE FOR EACH CIVIC BUILDING PROJECT TO BE FINALIZED AND EXECUTED IN ACCORDANCE WITH SECTION 2.5 OF THE DEVELOPMENT AGREEMENT

IN WITNESS WHEREOF, LESSOR and LESSEE have caused this Memorandum to be duly executed as of the date first written above.

WITNESSES:

_____

Name: _____

_____

Name: _____

LESSOR:

[**LESSOR NAME**]

By: _____

Name: _____

Title: _____

WITNESSES:

_____

Name: _____

_____

Name: _____

LESSEE:

[**LESSEE NAME**]

By: _____

Name: _____

Title: _____

BASELINE FORM OF CITY SUBLEASE FOR CIVIC BUILDING PROJECTS; DRAFT SUBJECT TO REVISION, WITH SUBLEASE FOR EACH CIVIC BUILDING PROJECT TO BE FINALIZED AND EXECUTED IN ACCORDANCE WITH SECTION 2.5 OF THE DEVELOPMENT AGREEMENT

EXHIBIT "H"
GROUND LEASE

BASELINE FORM OF CITY SUBLEASE FOR CIVIC BUILDING PROJECTS; DRAFT SUBJECT TO REVISION, WITH SUBLEASE FOR EACH CIVIC BUILDING PROJECT TO BE FINALIZED AND EXECUTED IN ACCORDANCE WITH SECTION 2.5 OF THE DEVELOPMENT AGREEMENT

BASELINE FORM OF CITY SUBLEASE FOR CIVIC BUILDING PROJECTS; DRAFT SUBJECT TO REVISION, WITH SUBLEASE FOR EACH CIVIC BUILDING PROJECT TO BE FINALIZED AND EXECUTED IN ACCORDANCE WITH SECTION 2.5 OF THE DEVELOPMENT AGREEMENT

SCHEDULE 1

PROJECT DEVELOPMENT FEE SCHEDULE

Commencing on the Commencement Date and continuing on the first (1st) day of every month thereafter for a period of thirty six (36) months, CRA shall pay to Developer a monthly fee equal to five percent (5%) of the Estimated Fee Basis divided by thirty six (36) (the "**Monthly Development Fee**"), subject to the terms and conditions of the Agreement.

As of the Commencement Date, the Monthly Development Fee is $70,833.33, calculated as follows: .05 x $51,000,000.00 = $2,550,000.00 / 36. Within thirty (30) days following Final Completion of the Master Project, Developer shall determine the Actual Master Project Costs and provide a written accounting of such costs to CRA and reasonable back-up documentation supporting such accounting. Once the Actual Master Project Costs are determined: (i) the final Project Development Fee shall be calculated by multiplying the Actual Master Project Costs by 5% (the "***Final Project Cost Fee***"), and (ii) CRA or Developer, as the case may be, shall promptly pay to the other party as appropriate the difference between the amount of the Project Development Fee actually paid by CRA to Developer through the Term, and the Final Project Cost Fee (the "***True-up Payment***").

For purposes of this Schedule 1:

(a) The term "**Actual Master Project Costs**" is herein defined as the amount of the Master Project Costs approved under the terms of this Agreement and actually incurred in connection with the development of the Master Project as determined from time to time hereunder, including without limitation, all hard costs, soft costs, design costs, reimbursable costs, utility costs, marketing, landscaping, common space, public space, public features, impacts and utility fees or any other costs associated with the Master Project, including without limitation, the Master Infrastructure Project, the County BTS Development Project (if applicable) and the marketing and sale of the RD Property.

(b) The term "**Estimated Fee Basis**" as of the Commencement Date is $51,000,000.00, for the Master Infrastructure Project. The Estimated Fee Basis and Monthly Development Fee will be adjusted from time to time based on increases in the approved budgets, including without limitation, the approved budgets for the County BTS Development Project and any other Civic Building Project constructed pursuant to this Agreement.

[END OF SCHEDULE 1]