



CITY OF BOYNTON BEACH SPECIAL MEETING

DATE: Tuesday, March 13, 2018

TIME: 4:00 PM

PLACE: Library Program Rm. 208 S. Seacrest Blvd.

1. AGENDA ITEMS

A. OPENING:

Call to Order by Steven B. Grant Mayor

Invocation

Pledge of Allegiance to the Flag led by Commissioner McCray

Roll Call

Agenda Approval

1. Deletions, Corrections

2. Approval of Agenda

Powerpoint Presentation by Staff

Public Audience

Recess - Commission Meeting

Call to Order CRA Meeting

1. CRA Business

Recess CRA Meeting

Resume Commission Meeting

- B. **PUBLIC HEARING** to acknowledge appropriate advertising in accordance with Internal Revenue Code of 1986, as amended, Section 147(f) for the purposes of acknowledging the proposed issuance by Public Finance Authority of its Capital Improvement Revenue Bonds, Series 2018 in one or more taxable or tax-exempt series, in an amount not to exceed \$78,000,000 and to conduct a public hearing as referenced in the advertising.
- C. **PROPOSED RESOLUTION NO R18-041** - Authorize the Mayor to sign an Interlocal Agreement with the Boynton Beach Community Redevelopment Agency for the funding for certain portions of the Town Square Project.
- D. **PROPOSED RESOLUTION NO. R18-042** - Amend the adopted FY 2017-2018 General Fund Budget from \$89,752,645 to \$93,253,628, an increase of \$3,500,983.
- E. **PROPOSED RESOLUTION NO. R18-043** - Authorize the Mayor to sign the Town Square

Redevelopment Phase 2 Services Agreement with E2L Real Estate Solutions, LLC of Winter Park, FL.

- F. **PROPOSED RESOLUTION NO. R18-044** - Authorize the Mayor to sign a Master Development Agreement with CFP Boynton Beach Town Square, LLC for the development of certain improvements within the Town Square Project and approval for the purposes of Section 147(F) of the Internal Revenue Code and general authorization to obtain permanent financing for the CFP improvements and providing for other related matters.
- G. Motion to approve general terms of Ground Lease Agreement and Facilities Lease Agreement between the City and CFP subject to approval by City Attorney.
- H. **PROPOSED RESOLUTION NO. R18-045** - Authorize the Mayor to sign the New Markets Tax Credit (NMTC) Consulting agreement with Atwater Infrastructure Partners, LLC to provide consulting services in connection with the potential allocation of New Market Tax Credits to fund the redevelopment of the Old High School and related services.
- I. **PROPOSED RESOLUTION R18-046** - Authorize the Mayor to sign the following agreements with JKM Developers/Blackrock or its successors and assigns, for (1) The sale and purchase of real property owned by the city, and (2) A Development Agreement for Multi-Family rental housing with associated parking facilities, and (3) a parking license to provide parking for city facilities; and (4) an option agreement City re-acquisition of real property, all in furtherance of development of the City's Town Square Project.

2. ADJOURN

The Board may only conduct public business after a quorum has been established. If no quorum is established within twenty minutes of the noticed start time of the meeting the City Clerk of her designee will so note the failure to establish a quorum and the meeting shall be concluded. Board members may not participate further even when purportedly acting in an informal capacity.

NOTICE

NOTICE IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING, HE/SHE WILL NEED A RECORD OF THE PROCEEDINGS AND, FOR SUCH PURPOSE, HE/SHE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. (F.S. 286.0105)

THE CITY SHALL FURNISH APPROPRIATE AUXILIARY AIDS AND SERVICES WHERE NECESSARY TO AFFORD AN INDIVIDUAL WITH A DISABILITY AN EQUAL OPPORTUNITY TO PARTICIPATE IN AND ENJOY THE BENEFITS OF A SERVICE, PROGRAM, OR ACTIVITY CONDUCTED BY THE CITY. PLEASE CONTACT THE CITY CLERK'S OFFICE, (561) 742-6060 OR (TTY) 1-800-955-8771, AT LEAST 48 HOURS PRIOR TO THE PROGRAM OR ACTIVITY IN ORDER FOR THE CITY TO REASONABLY ACCOMMODATE YOUR REQUEST. ADDITIONAL AGENDA ITEMS MAY BE ADDED SUBSEQUENT TO THE PUBLICATION OF THE AGENDA ON THE CITY'S WEB SITE. INFORMATION REGARDING ITEMS ADDED TO THE AGENDA AFTER IT IS PUBLISHED ON THE CITY'S WEB SITE CAN BE OBTAINED FROM THE OFFICE OF THE CITY CLERK.



CITY OF BOYNTON BEACH AGENDA ITEM REQUEST FORM

REQUESTED ACTION BY COMMISSION: OPENING:

Call to Order by Steven B. Grant Mayor

Invocation

Pledge of Allegiance to the Flag led by Commissioner McCray

Roll Call

Agenda Approval

1. Deletions, Corrections

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Recess - Commission Meeting

Call to Order CRA Meeting

1. CRA Business

Recess CRA Meeting

Resume Commission Meeting

EXPLANATION OF REQUEST:

HOW WILL THIS AFFECT CITY PROGRAMS OR SERVICES?

FISCAL IMPACT:

ALTERNATIVES:

STRATEGIC PLAN:

STRATEGIC PLAN APPLICATION:

CLIMATE ACTION:

CLIMATE ACTION DISCUSSION:

Is this a grant?

Grant Amount:



CITY OF BOYNTON BEACH AGENDA ITEM REQUEST FORM

REQUESTED ACTION BY COMMISSION: **PUBLIC HEARING** to acknowledge appropriate advertising in accordance with Internal Revenue Code of 1986, as amended, Section 147(f) for the purposes of acknowledging the proposed issuance by Public Finance Authority of its Capital Improvement Revenue Bonds, Series 2018 in one or more taxable or tax-exempt series, in an amount not to exceed \$78,000,000 and to conduct a public hearing as referenced in the advertising.

EXPLANATION OF REQUEST: In accordance with Internal Revenue Code of 1986, Section 147(f) a notice is required to be published 14 days prior to a public hearing to receive comments from interested persons in connection with the proposed issuance by Public Finance Authority of its Capital Improvement Revenue Bonds (City of Boynton Beach Municipal Improvement Project, series 2018 in the amount not to exceed \$78,000,000.

HOW WILL THIS AFFECT CITY PROGRAMS OR SERVICES? N/A

FISCAL IMPACT: N/A

ALTERNATIVES: N/A

STRATEGIC PLAN:

STRATEGIC PLAN APPLICATION:

CLIMATE ACTION: No

CLIMATE ACTION DISCUSSION:

Is this a grant? No

Grant Amount:

ATTACHMENTS:

Type	Description
<input type="checkbox"/> Attachment	Proof of Publication TEFRA

reserves the right to accept or reject any or all Bid submittals, in whole or in part, with or without cause, to waive any irregularities and/or technicalities, and to award the contract on such coverage and terms it deems will best serve the interests of the City. CITY OF PALM BEACH GARDENS Patricia Snider, CMC, City Clerk Publish: Palm Beach Post 2- 27. 2018

Palm Beach Post, The

Feb. 27, 2018

Miscellaneous Notices

Notice of Lien Sale Legal "In accordance with the provisions of State law, there being due and unpaid charges for which the undersigned is entitled to satisfy an owner and/or manager's lien of the goods hereinafter described and stored at the Life Storage location(s) listed below. And, due notice having been given, to the owner of said property and all parties known to claim an interest therein, and the time specified in such notice for payment of such having expired, the goods will be sold at public auction at the below stated location(s) to the highest bidder or otherwise disposed of on Friday 3/16/2018 @ 9:00am. Life Storage #486 6800 N Military Trail West Palm Beach , FL 33407 Phone 561-845-8711 Donald St. A Cunningham = Hsld gds/ Furn/Boxes Sondra Millman = Account Records/ Clothes, Sales Samples/Christmas Roderick Hunt = Hsld gds/Furn Alexandra Russo = Hsld gds/Furn /Clothes Joel Nunez = Hsld gds/Furn Jenisa Kenty = Boxes/Bins Felicia Slappy = Hsld gds/Furn Shakena Miller = Toys/Clothes/Bed Cheralyn Joseph = Hsld gds/Furn Kynan Mc Donald = Car Parts 2 -27, 3-6/ 2018

Palm Beach Post, The

Feb. 27, 2018

Miscellaneous Notices

CITY OF BOYNTON BEACH, FLORIDA NOTICE OF PUBLIC HEARING For the purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended, notice is hereby given that the City Commission of the City of Boynton Beach, Florida (the "City Commission") will hold a public hearing on March 13, 2018 at 4:00 p.m., or at a time as soon thereafter as practicable, in the Library Program Room located at the City Library, 208 S. Seacrest Blvd., Boynton Beach, Florida 33435, Palm Beach County, in connection with the proposed issuance by Public Finance Authority, a commission organized under and pursuant to the provisions of Sections 66.0301, 66.0303 and 66.0304 of the Wisconsin Statutes, as amended (the "Issuer"), of its Capital Improvement Revenue Bonds (City of Boynton Beach Municipal Improvement Project), Series 2018, in one or more taxable or tax-exempt series (the "Bonds"), in an amount not to exceed \$78,000,000. The Bonds are expected to be issued pursuant to Section 66.0304 of the Wisconsin Statutes, as amended. The proceeds of the Bonds will be loaned to CFP Boynton Beach Town Square, LLC, a Florida limited liability company ("CFP"). CFP will use the proceeds of the Bonds to provide permanent financing and/or refinancing for the acquisition, construction and equipping of all or a portion of the Project, which will be leased to the City of Boynton Beach, Florida (the "City"). The Project will include the following components including, without limitation, any and all design, planning, surveying, engineering, permitting, and pre-development services and expenditures related thereto, and all related and supporting infrastructure (together, the "CFP Improvements"): (1) The Town Square Property Improvements: The Town Square Property consists of approximately 16 acres, and is bounded by East Boynton Beach Boulevard, South Seacrest Boulevard, SE 2nd Avenue, and SE 1st Street, in the City. The improvements to be constructed within the Town Square Property are anticipated to include, but not be limited to: (a) the construction of a combined City Hall and Library, to consist of approximately 65,000 square feet for the City Hall needs, and approximately 44,000 square feet for the Library needs; (b) the construction of parks, to consist of approximately 0.90 acres and approximately 0.22 acres, and other open space enhancements; and (c) the reconstruction of Kids Kingdom Playground, to consist of approximately 15,000 square feet. (2) High Ridge Road Property Improvements. The High Ridge Road Property consists of approximately 5.46 acres, and is bounded by West Gateway Boulevard, High Ridge Road, and I-95 in the City. The portion of the improvements to be constructed within the High Ridge Road Property shall include a new Police Station, consisting of approximately 56,000 square feet and related improvements. (3) North-East 1st Street Property. The North-East 1st Street Property consists of

approximately 1 acre, and is located at North-East 1st Street, in the City, and is bounded by NE 1st Avenue. The portion of the improvements to be constructed within the North-East 1st Street Property shall include Fire Station #1, consisting of approximately 10,000 square feet and related improvements. (4) Infrastructure Improvements. The Infrastructure Improvements includes construction of all infrastructure necessary to support the CFP Improvements and future development. CFP will also use the proceeds of the Bonds to fund necessary debt service reserves, and/or capitalized interest on the Bonds, if any, and to pay costs associated with the issuance of the Bonds. The Project will be financed as part of an ongoing plan of financing for the Project. The CFP Improvements will be initially managed and/or operated by the City. The Bonds shall be payable solely from the revenues derived from a loan and other financing documents to be executed between the Issuer and CFP prior to or contemporaneously with the issuance of the Bonds. The Issuer will not be obligated to pay the principal of, premium, if any, or interest on the Bonds except from the payments of CFP, respectively. Neither the Bonds, nor any interest thereon, shall constitute an indebtedness or pledge of the general credit or taxing power of the State of Florida, the City of Boynton Beach, Florida, or any political subdivision or agency thereof. The Issuer has no taxing power. Issuance of the Bonds is subject to several conditions including satisfactory documentation and receipt of necessary approvals for the financing. The aforementioned meeting shall be a public meeting and all persons who may be interested will be given an opportunity to be heard concerning the same. Written comments may also be submitted prior to the hearing to the City Clerk's Office, 100 E. Boynton Beach Blvd., Boynton Beach, Florida 33435, directed to the City Clerk. ALL PERSONS FOR OR AGAINST SAID APPROVAL CAN BE HEARD AT SAID TIME AND PLACE. IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COMMISSION WITH RESPECT TO SUCH HEARING OR MEETING (S) HE WILL NEED TO ENSURE THAT A VERBATIM RECORD OF SUCH HEARING OR MEETING IS MADE WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED (F.S. 286.0105) THE CITY SHALL FURNISH APPROPRIATE AUXILIARY AIDS AND SERVICES WHERE NECESSARY TO AFFORD AN INDIVIDUAL WITH A DISABILITY AN EQUAL OPPORTUNITY TO PARTICIPATE IN AND ENJOY THE BENEFITS OF A SERVICE, PROGRAM, OR ACTIVITY CONDUCTED BY THE CITY. PLEASE CONTACT THE CITY CLERK'S OFFICE, (561) 742-6060 OR (TTY) 1-800-955-8771 AT LEAST FORTY-EIGHT HOURS PRIOR TO THE PROGRAM OR ACTIVITY IN ORDER FOR THE CITY TO REASONABLY ACCOMMODATE YOUR REQUEST. CITY OF BOYNTON BEACH, FLORIDA 2-27/ 2018

Palm Beach Post, The

Feb. 27, 2018

Miscellaneous Notices

Notice Under Fictitious Name Law Pursuant to Section 865.09 Florida Statutes NOTICE IS HEREBY GIVEN that the undersigned desiring to engage in business under the fictitious name of Thrive Earth located at 340 Royal Poinciana Way, Ste 317 #323 in the County of PALM BEACH in the City of Palm Beach Florida 33480 intends to register the said name with the Division of Corporations of the Florida Department of State Tallahassee Florida. Dated at West Palm Beach Florida this 1 day of February, 2018. Kelly Cain 2-9/2018

Show results beginning at page:

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CITY OF BOYNTON BEACH AGENDA ITEM REQUEST FORM

REQUESTED ACTION BY COMMISSION:

PROPOSED RESOLUTION NO R18-041 - Authorize the Mayor to sign an Interlocal Agreement with the Boynton Beach Community Redevelopment Agency for the funding for certain portions of the Town Square Project.

EXPLANATION OF REQUEST:

The ILA outlines CRA annual funding commitment for the Town Square Project beginning with FY 18/19 thru FY 43/44.

Town Square Project is a mixed use project on approximately 16 acres of land in downtown. The project will include a Hotel, residential properties, two parking garages, City Hall/Library, Refurbished High School, Fire Station, open space, new Police Headquarters off 95/Gateway.

HOW WILL THIS AFFECT CITY PROGRAMS OR SERVICES?**FISCAL IMPACT:****ALTERNATIVES:**

STRATEGIC PLAN: Energetic Downtown: Focal Point for Boynton Beach

STRATEGIC PLAN APPLICATION: Provides funding in support of redevelopment of Town Square into a Mixed Use center.

CLIMATE ACTION: No

CLIMATE ACTION DISCUSSION:

Is this a grant? No

Grant Amount:

ATTACHMENTS:

Type	Description
<input type="checkbox"/> Resolution	Resolution approving the ILA with CRA for Town Square Funding
<input type="checkbox"/> Attachment	ILA with CRA

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RESOLUTION NO. R18-__

A RESOLUTION OF THE CITY OF BOYNTON BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR TO SIGN AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF BOYNTON BEACH AND THE BOYNTON BEACH COMMUNITY REDEVELOPMENT AGENCY FOR FUNDING CERTAIN PORTIONS OF THE TOWN SQUARE PROJECT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS; the City and the CRA desire to provide funding for a project known as Town Square Redevelopment Project which falls within the CRA boundaries and more specifically within the Cultural District and the Boynton beach Boulevard Districts; and

WHEREAS, the Town Square project furthers the CRA’s Community Redevelopment Plan to prevent and eliminate slum and blight within the Redevelopment Area; and

WHEREAS, the this Interlocal Agreement outlines the CRA annual funding commitment for the Town Square Proeject beginning with fiscal year 2018/19 through 2043/44.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

Section 1. Each Whereas clause set forth above is true and correct and incorporated herein by this reference.

Section 2. The City Commission of the City of Boynton Beach, Florida does hereby approve and authorize the Mayor to sign the Interlocal Agreement between the City of Boynton Beach and the Boynton Beach Community Redevelopment Agency for CRA funding of portions of the Town Square Project, a copy of said Interlocal Agreement is attached hereto as Exhibit “A”.

Section 3. That this Resolution shall become effective immediately upon passage.

26 **PASSED AND ADOPTED** this ____ day of _____, 2018.

27 CITY OF BOYNTON BEACH, FLORIDA

28		YES	NO
29			
30			
31	Mayor – Steven B. Grant	_____	_____
32			
33	Vice Mayor – Justin Katz	_____	_____
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35	Commissioner – Mack McCray	_____	_____
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37	Commissioner – Christina L. Romelus	_____	_____
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39	Commissioner – Joe Casello	_____	_____
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ATTEST:

Judith A. Pyle, CMC
City Clerk

(City Seal)

**INTERLOCAL AGREEMENT BETWEEN THE CITY
OF BOYNTON BEACH AND THE BOYNTON
BEACH COMMUNITY REDEVELOPMENT
AGENCY FOR THE FUNDING OF CERTAIN
PORTIONS OF THE TOWN SQUARE PROJECT**

THIS AGREEMENT is made this ____ day of _____, 2018 by and between the **CITY OF BOYNTON BEACH**, a Florida Municipal Corporation, (“City”), and the **BOYNTON BEACH COMMUNITY REDEVELOPMENT AGENCY**, (“CRA”) (individually and collectively, the “Party” or “Parties”).

W I T N E S S E T H:

WHEREAS, the 2016 Boynton Beach Community Redevelopment Plan (“Plan”) calls for the redevelopment of the Cultural District and the Boynton Beach Boulevard District as those Districts are described in the Plan; and

WHEREAS, the City and the CRA desire to provide funding for a project known as the Town Square Redevelopment Project (“Project”), which falls within the CRA boundaries, and more specifically, in the Cultural District and the Boynton Beach Boulevard District; and

WHEREAS, the City contracted with E2L, LLC for the Project under the “Town Square Project-Phase 1 Services Agreement;” and that is now completed; and

WHEREAS, the City has decided to move forward with Town Square-Phase 2, which includes construction and financing of the Project; and

WHEREAS, the Project furthers the CRA’s Community Redevelopment Plan (“Plan”) because the Project will help prevent and eliminate slum and blight within the Redevelopment Area, and will provide the opportunity to redevelop the area within the Project (“Project Area”) in accordance with the Plan; and

WHEREAS, the CRA is limited by § 163.370(3), Florida Statutes from making certain expenditures; and

WHEREAS, the Palm Beach Board of County Commissioners at their January 17, 2018 meeting, approved the City and CRA's request to permit CRA funds to be used for the Project; and

WHEREAS, the CRA desires to reimburse the City for certain expenses related to the Project that are not prohibited by the Florida Statutes; and

WHEREAS, the CRA Board finds that this Agreement, and the use of the CRA's funds to implement the Project to be consistent with the Plan and Florida Statutes; and

WHEREAS, the CRA and the City find that this funding agreement serves a municipal and public purpose, furthers the Plan, and is in the best interest of the health, safety, and welfare of the residents and business owners within the Community Redevelopment Area; and

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

- 1. Recitals.** The recitals set forth above are hereby incorporated herein.
- 2. Obligations of the CRA.**
 - a.** The CRA shall provide funding to the City in an amount not too exceed \$3,700,000 per fiscal year beginning with FY 2018/19 thru FY 2043/44, consistent with the terms of this Agreement, to be used for reimbursement of certain costs not prohibited by § 163.370(3), Florida Statutes.
 - b.** The CRA's obligation to provide funding to the City is contingent upon

- i. The inclusion of the funding in the CRA's approved Budget for the given fiscal year, and
- ii. The CRA's receipt of sufficient Tax Increment Revenue each fiscal year to fund the Project up to \$3,700,000 in any given fiscal year after all preexisting funding obligations of the CRA are met.

3. Obligations of the City.

- a. The City shall ensure funds provided by the CRA are not used for any purposes prohibited by § 163.370(3), Florida Statutes, or otherwise prohibited by law.
- b. The City shall ensure that the Project is designed and constructed in compliance with the Plan.
- c. The City shall be responsible for overseeing the Project and contracting with E2L, LLC and other entities as necessary to effectuate the Project, but shall coordinate with the CRA concerning compliance with the Plan.
- d. Upon request from the CRA, or an authorized agent of the CRA, including the Executive Director and the CRA Attorney, the City shall provide all documents reasonably requested by the CRA or CRA's agent concerning compliance with this Agreement, specifically including any documentation concerning compliance with § 163.370(3), Florida Statutes.

4. Annual Budget Request.

- a. As a prerequisite for receiving funding in any given year pursuant to this Agreement, no later than the last day of April every year through the life of this Agreement, the City shall provide the CRA with an Annual Budget Request.
- b. Consistent with the terms of this Agreement, the Annual Budget Request shall state the amount of funding the City is requesting the CRA include for the Project in its budget for the subsequent fiscal year.
- c. The Annual Budget Request shall also include a summary of the portions of the Project for which the funding is requested to ensure CRA funds are not used for any purposes prohibited by § 163.370(3), Florida Statutes, or any other law.
- d. The first Annual Budget Request shall be due on April 30, 2018, for funds to be include in the CRA's budget for the 2018/2019 fiscal year.
- e. Upon receipt of the timely submitted Annual Budget Request, the CRA shall include the funding amount requested in its proposed Budget to be considered for approval by the CRA Board.

5. Reimbursement of Funds

- a. The CRA shall disburse funding to the City annually for the reimbursement of direct expenses related to the Project consistent with the Plan and the terms of this Agreement.
- b. The amount of funding disbursed to the City shall not exceed the amount included for the Project in the CRA's approved Budget for the given fiscal year.

- c. The City shall provide a written request for reimbursement (“Reimbursement Request”) to the CRA no later than September 1st of each year, which shall include the following information:
 - i. A summary of the status of the Project;
 - ii. A statement and evidence that the Project is in compliance with the Plan.
 - iii. Copies of all invoices, receipts, and any other documentation necessary to evidence the amount and purpose for each payment made by the City for the Project for which the City is seeking reimbursement that year.
- d. Upon receipt of a Request for Reimbursement from the City meeting the requirements of this Agreement, the CRA shall remit funding in the amount requested, consistent with this Agreement, to the City within thirty (30) days of receipt of the Request for Reimbursement.

6. Limits of CRA Obligations for the Project. The Parties agree that the CRA shall be responsible to the City for providing reimbursement for eligible expenses for the Project only, and shall not otherwise be responsible for effectuating the Project.

7. Indemnification. The City shall indemnify, save, and hold harmless the CRA, its agents, and its employees from any liability, claim, demand, suit, loss, cost, expense or damage which may be asserted, claimed, or recovered against or from the CRA, its agents, or its employees, by reason of any property damages or personal injury, including death, sustained by any person whomsoever, which damage is incidental to, occurs as a result of, arises out of, or is otherwise related to the negligent or wrongful conduct or the faulty equipment (including equipment installation and removal) of the

Project. Nothing in this Agreement shall be deemed to affect the rights, privileges, and sovereign immunities of the CRA or the City as set forth in Section 768.28, Florida Statutes. This paragraph shall not be construed to require the City to indemnify the CRA for its own negligence, or intentional acts of the CRA, its agents or employees. Each party assumes the risk of personal injury and property damage attributable to the acts or omissions of that party and its officers, employees and agents.

8. Term of the Agreement. This Agreement shall become valid and commence upon execution by the last Party to this Agreement, and shall terminate on September 30, 2044 (“Termination Date”). The CRA shall not be required to reimburse the City for any requests submitted after the Termination Date. The term of the Agreement may be extended one time for a period of one year and may only be extended upon approval by the CRA Board and upon the appropriation of CRA funds for intended purposes of this Agreement in the subsequent fiscal year’s budget. Such extension is only effective upon the execution of a written amendment signed by both Parties. Nothing in this paragraph shall be construed so as to affect a Party’s right to terminate this Agreement in accordance with other provisions in this Agreement.

9. Records. The City and the CRA each shall maintain their own records and documents associated with this Agreement in accordance with the requirements set forth in Chapter 119, Florida Statutes. All such records shall be adequate to justify all charges, expenses, and costs incurred in accordance with generally accepted accounting principles. Each Party shall have access to the other Party’s books, records and documents as required in this Agreement for the purpose of inspection or audit during normal business hours during the term of this Agreement and at least 1 year after the termination of the Agreement.

10. Filing. The City shall file this Interlocal Agreement pursuant to the requirements of Section 163.01(11) of the Florida Statutes

11. Default. If either Party defaults by failing to perform or observe any of the material terms and conditions of this Agreement for a period of ten (10) calendar days after receipt of written notice of such default from the other Party, the Party giving notice of default may terminate this Agreement through written notice to the other Party, and may be entitled, but is not required, to seek specific performance of this Agreement on an expedited basis, as the performance of the material terms and conditions contained herein relate to the health, safety, and welfare of the residents of the City and Redevelopment Area. Failure of any Party to exercise its right in the event of any default by the other Party shall not constitute a waiver of such rights. No Party shall be deemed to have waived any rights related to the other Party's failure to perform unless such waiver is in writing and signed by both Parties. Such waiver shall be limited to the terms specifically contained therein. This section shall be without prejudice to the rights of any Party to seek a legal remedy for any breach of the other Party as may be available to it in law or equity.

12. No Third Party Beneficiaries. Nothing in this Agreement shall be deemed to create any rights in any third parties that are not signatories to this Agreement.

13. Compliance with Laws. The City and the CRA shall comply with all statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida and of any other public authority which may be applicable.

14. Entire Agreement. This Agreement represents the entire and sole agreement and understanding between the Parties concerning the subject matter expressed herein. No terms herein may be altered, except in writing and then only if

signed by all the Parties hereto. All prior and contemporaneous agreements, understandings, communications, conditions or representations, of any kind or nature, oral or written, concerning the subject matter expressed herein, are merged into this Agreement and the terms of this Agreement supersede all such other agreements. No extraneous information may be used to alter the terms of this Agreement.

15. Severability. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of the Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be achieved. To that end, this Agreement is declared severable.

16. Governing Law and Venue. The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. Any and all legal actions necessary to enforce the terms of this Agreement shall be conducted in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, or, if in federal court, in the United States District Court for the Southern District of Florida, to which the Parties expressly agree and submit.

17. No Discrimination. Parties shall not discriminate against any person on the basis of race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation or disability for any reason in its hiring or contracting practices associated with this Agreement.

18. Notice. Whenever either Party desires to give notice to the other, such notice must be in writing and sent by United States mail, return receipt requested, courier, evidenced by a delivery receipt, or by overnight express delivery service, evidenced by a delivery receipt, addressed to the Party for whom it is intended at the place last specified;

and the place for giving of notice shall remain until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving of notice.

CITY:	Lori LaVerriere, City Manager City of Boynton Beach 100 E. Boynton Beach Boulevard Boynton Beach, FL 33435
CRA:	Michael Simon, Executive Director Boynton Beach CRA 710 N. Federal Highway Boynton Beach, Florida 33435
Copies To:	James A. Cherof Goren, Cherof, Doody & Ezrol, P.A. 3099 East Commercial Boulevard, Suite 200 Fort Lauderdale, Florida 33308 Tara Duhy, Esquire Lewis, Longman & Walker, P.A. 515 North Flagler Drive, Suite 1500 West Palm Beach, Florida 33401

19. No Transfer. The Parties shall not, in whole or in part, subcontract, assign, or otherwise transfer this Agreement or any rights, interests, or obligations hereunder to any individual, group, agency, government, non-profit or for-profit corporation, or other entity without first obtaining the written consent of the other Party.

20. Interpretation. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties.

IN WITNESS WHEREOF, the City and the CRA hereto have executed this Agreement as of the date set forth above.

ATTEST:

CITY OF BOYNTON BEACH,
a Florida municipal corporation

Judith Pyle, City Clerk

By: _____
Steven B. Grant, Mayor

Approved as to Form:

(SEAL)

Office of the City Attorney

Approved as to Form:

BOYNTON BEACH COMMUNITY
REDEVELOPMENT AGENCY

Office of the CRA Attorney

By: _____
Steven B. Grant, Chair

EXHIBIT
“A”

Anticipated Town Square Funding

<u>Fiscal Yr</u>	<u>CRA</u>
2018/19	3,700,000
2019/20	3,700,000
2020/21	3,700,000
2021/22	3,550,000
2022/23	3,550,000
2023/24	3,550,000
2024/25	3,550,000
2025/26	3,550,000
2026/27	2,800,000
2027/28	2,800,000
2028/29	2,800,000
2029/30	2,800,000
2030/31	2,800,000
2031/32	2,800,000
2032/33	2,800,000
2033/34	2,800,000
2034/35	2,800,000
2035/36	2,800,000
2036/37	2,800,000
2037/38	2,800,000
2038/39	2,800,000
2039/40	2,800,000
2040/41	2,800,000
2041/42	2,800,000
2042/43	2,800,000
2043/44	2,800,000
2044/45	<u>0</u>
	79,250,000



CITY OF BOYNTON BEACH AGENDA ITEM REQUEST FORM

REQUESTED ACTION BY COMMISSION: PROPOSED RESOLUTION NO. R18-042 - Amend the adopted FY 2017-2018 General Fund Budget from \$89,752,645 to \$93,253,628, an increase of \$3,500,983.

EXPLANATION OF REQUEST:

The General Fund FY 2017-18 Budget was adopted in September of 2017, via resolution R17-088 and amended in December 2017 with resolution R17-120. The FY17/18 Amended Budget for the General Fund (Fund 001) has to be adjusted to appropriate funds for the for the Town Square Redevelopment Phase 2 Services Agreement with E2L Real Estate Solutions, LLC..

Part of Phase 2 of the Town Square project is the issuance of permanent financing for the public building and infrastructure. There is a need to continue design and development work prior to the issuance of the bonds, the amendment is needed to provide appropriations for those additional costs in the unlikely event that the bonds are not issued. When the bonds are issued the costs incurred for Phase I and additional design and development costs in Phase 2 will be paid for by the bond proceeds.

The budget amendment to amend the General Fund requires City Commission approval.

- The General Fund (001) will be amended from \$89,752,645 to \$93,253,628 to appropriate an additional \$3,500,983 for Town Square Redevelopment Phase 2.
- The fund balance in the General Fund is approximately:
 - \$16,005,000
 - (8,324,108) Emergency Reserve
 - (2,383,523)Appropriated in FY17/18 Amended Budget
 - \$ 5,297,369 Unassigned Fund Balance

HOW WILL THIS AFFECT CITY PROGRAMS OR SERVICES?

The City would continue to follow good and appropriate budgeting practices.

FISCAL IMPACT:

See Exhibit A for a summary of the fiscal impact.

ALTERNATIVES: Do not approve budget amendment.

STRATEGIC PLAN:

STRATEGIC PLAN APPLICATION:

CLIMATE ACTION:

CLIMATE ACTION DISCUSSION:

Is this a grant? No

Grant Amount:

ATTACHMENTS:

Type	Description
<input type="checkbox"/> Resolution	Reso Budget Amendment E2L Phase 2
<input type="checkbox"/> Exhibit	Exhibit A

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29 or invalid part shall be considered as eliminated and shall in no way affect the validity of the
30 remaining portions of this Resolution.

31 Section 5. All Resolutions or parts of Resolutions in conflict herewith are hereby
32 repealed to the extent of such conflict.

33 Section 6. This Resolution shall become effective immediately upon passage.

34 **PASSED AND ADOPTED** this 13th day of March, 2018.

35 CITY OF BOYNTON BEACH, FLORIDA

36		YES	NO
37			
38			
39	Mayor – Steven Grant	_____	_____
40			
41	Vice Mayor – Justin Katz	_____	_____
42			
43	Commissioner – Mack McCray	_____	_____
44			
45	Commissioner – Christina Romelus	_____	_____
46			
47	Commissioner – Joe Casello	_____	_____
48			
49			
50		VOTE	_____

51 ATTEST:

52
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54 _____
55 Judith A. Pyle, CMC
56 City Clerk

57
58
59
60 (Corporate Seal)

CITY OF BOYNTON BEACH
EXPENDITURE & REVENUE AMENDMENTS
BUDGET YEAR 2017-18

Exhibit A

<u>GENERAL FUND DEPARTMENTS</u>		2017/18 CURRENT BUDGET	Amendment		2017/18 AMENDED BUDGET
			<u>Revenue</u>	<u>Expenditures</u>	
001-0000-369-22-00	CRA Reimbursement	0	0		0
001-0000-389-91-00	Fund Balance Appropriated	2,383,523	3,500,983		5,884,506
Adopted Fund Total Revenues		89,752,645	3,500,983		93,253,628
001-1211-512-34-55	Other Cont Svc/Town Sq Agreement	6,511,568		3,500,983	10,012,551
Adopted Fund Total Expenditures		89,752,645		3,500,983	93,253,628



CITY OF BOYNTON BEACH AGENDA ITEM REQUEST FORM

REQUESTED ACTION BY COMMISSION: PROPOSED RESOLUTION NO. R18-043 - Authorize the Mayor to sign the Town Square Redevelopment Phase 2 Services Agreement with E2L Real Estate Solutions, LLC of Winter Park, FL.

EXPLANATION OF REQUEST:

On April 18, 2017 the Commission approved the selection of the top ranked qualifier as determined by the Evaluation Committee from the Part II responses and oral presentations to the Request for Qualifications for City of Boynton Beach Town Square Redevelopment, RFQ No. 004-1210-17/JMA; and authorized City Staff to conduct negotiations for a Master Development Contract for Phase I of the project with E2L Real Estate Solutions of Winter Park, FL, the top ranked firm according to Florida State Statute 287.55, Consultants' Competitive Negotiation Act (CCNA).

Staff has negotiated a Phase I Services Agreement with E2L Real Estate Solutions, LLC for the Town Square Redevelopment Project. Phase I Services generally consists of;

- Services to prepare final plans and specifications for construction of Municipal improvements;
- Confirming programmatic scope of each component of the municipal improvements;
- Preparation of guaranteed maximum fixed price for municipal improvements for the City to consider;
- Financing plan for the project for City to consider;
- Community outreach.

Phase 1 is completed and the City is being asked to continue into the construction phase of the project.

Part of the next phase of the project is for CFP to issue bonds for the construction and associated infrastructure costs for the public buildings and open space. This is anticipated to be complete in 90 - 120 days from date of authorization.

During this time work needs to continue on design and development costs for the projects, Phase 2 agreement will allow contractors to continue working until the permanent financing is issued.

Some additional refinement of this agreement may occur prior to adoption.

HOW WILL THIS AFFECT CITY PROGRAMS OR SERVICES?

This agreement will provide the continuation of design and development of the construction plans for Town Square until CFP issues permanent financing for the project.

FISCAL IMPACT:

If at the end of Phase I the City decides not to proceed with E2L Real Estate Solutions, LLC as provided for in the agreement, the City agrees to pay an amount not to exceed \$4,365,423 (City has ILA with CRA for \$2,100,000 funding) so net cost to the City would be \$2,265,423.

ALTERNATIVES: Do not approve agreement with E2L Real Estate Solutions, LLC.

STRATEGIC PLAN:

STRATEGIC PLAN APPLICATION:

CLIMATE ACTION: No

CLIMATE ACTION DISCUSSION:

Is this a grant? No

Grant Amount:

ATTACHMENTS:

Type	Description
<input type="checkbox"/> Resolution	Reso-Town Square Phase 2
<input type="checkbox"/> Agreement	Phase 2 Agreement E2L

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30 the City (the “High School Improvements”); and

31 **WHEREAS**, the RFQ included a request to provide other privately owned
32 commercial and residential developments to be constructed on land in the Project currently
33 owned or controlled by the City (the “Private Improvements”); and

34 **WHEREAS**, as part of the Agreement, the City Commission agrees, by separate
35 resolution, to budget and appropriate as a separate budgetary line item, funds sufficient to
36 pay the Company for the Phase 2 Services, which include the development of plans for the
37 Municipal Improvements, High School Improvements, Private Improvements, as well as
38 stabilization of the High School, as provided in the Agreement; and

39 **WHEREAS**, City Staff has reviewed the Company’s response and the Agreement,
40 and recommends that the Commission approve the service agreement.

41 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF**
42 **THE CITY OF BOYNTON BEACH, FLORIDA, THAT:**

43 Section 1. The foregoing "WHEREAS" clauses are true and correct and hereby
44 ratified and confirmed by the City Commission.

45 Section 2. The City Commission hereby approves the Town Square
46 Redevelopment Phase 1 Services Agreement with E2L Real Estate Solutions, LLC (the
47 “Agreement”).

48 Section 3. The Mayor is authorized to sign the Agreement with E2L Real Estate
49 Solutions, LLC, and to take any and all actions necessary to implement the Agreement, a
50 copy of which is attached hereto as Exhibit “A”.

51 Section 4. That this Resolution will become effective immediately upon passage.

52

TOWN SQUARE REDEVELOPMENT PHASE 2 SERVICES AGREEMENT

THIS TOWN SQUARE REDEVELOPMENT PHASE 2 SERVICES AGREEMENT (this "**Agreement**"), made effective as of the ____ day of March 2018, by and between the City of Boynton Beach, Florida (hereinafter referred to as the "**City**"), and having its principal office at 100 East Boynton Beach Boulevard, Boynton Beach, Florida 33425-0310, and E2L Real Estate Solutions, LLC, a Florida Limited Liability Company (the "**Company**"), having its principal office at 1400 W. Fairbanks Ave., Winter Park, Florida 32789.

WITNESSETH:

WHEREAS, the City is a body politic and corporate under the laws of the State of Florida; and

WHEREAS, the Company leads a development team formed to undertake, in partnership with the City, certain public improvements and private improvements to redevelop an approximately sixteen (16) acre site described as the Boynton Beach Town Square Project plus an approximately four (4) acre site for a new police station (collectively, the "**Project**"); and

WHEREAS, part of the public improvements in the Project include renovations and improvements to a historic High School Building located on East Ocean Avenue east of Seacrest Boulevard in the City (the "**High School Improvements**") and the construction of a district energy plant (the "**DEP Improvements**") all as more specifically described on **Exhibit A**, which is attached hereto and incorporated herein by reference; and

WHEREAS, REG Architects ("**REG**") is the architect and designer of the High School Improvements and Straticon, Inc. ("**Straticon**") is the contractor for the High School Improvements; and

WHEREAS, Baker Barrios Architects ("**Baker**") is the architect and designer of the DEP Improvements and The Haskell Company ("**Haskell**") is the contractor and Sims Wilkerson Cartier Engineering, Inc. ("**Sims**") is the engineer for the DEP Improvements; and

WHEREAS, part of the public improvements in the Project include a new City Hall, Library improvements, a new Police Station, a new Fire Station #1, a joint use public private parking garage to be designed and built by JKM BTS South, LLC or an affiliate thereof, public park and open space improvements and infrastructure improvements throughout the Project (collectively, the "**Municipal Improvements**," and individually each constituting a "**Component**" of the Municipal Improvements); and

WHEREAS, Kimley Horn Engineers ("**Kimley Horn**") is the civil engineer for the infrastructure improvements; Haskell is the contractor for the City Hall, Library, infrastructure

and public park improvements; Baker is the architect and designer of the City Hall, Library and public park improvements; H. J. High Construction ("**HJ High**") is the contractor for the Police Station and the Fire Station; and ADG Architects ("**ADG**") is the architect and designer of the Police Station and the Fire Station; and

WHEREAS, REG, Straticon, Baker, Haskell, Kimley Horn, HJ High, ADG and Sims are collectively referred to in this Agreement as the "**Development Team**;" and

WHEREAS, the High School Improvements, the DEP Improvements and the Municipal Improvements are collectively referred to herein as the "**Improvements**;" and

WHEREAS, on June 21, 2017, the City Commission and the Company entered into that certain Town Square Redevelopment Phase 1 Services Agreement, as amended pursuant to that First Amendment dated August 21, 2017 and that Second Amendment dated December 14, 2017 (collectively, the "**Phase 1 Agreement**") setting forth the parties' obligations relative to the performance of pre-development services relating to the Project, including, but not limited to, the development of preliminary design proposals, preliminary project scheduling, the development of guaranteed maximum fixed priced construction contracts, and the coordination of the financing of the Project (the "**Phase 1 Services**"); and

WHEREAS, Dougherty Funding LLC, a Delaware limited liability company (the "**Lender**") has loaned the Company \$2,875,000 (the "**Loan**") for the purposes of financing the Phase 1 Services and related costs and expenses, pursuant to which the Company assigned to the Lender its rights in and under the Phase 1 Agreement; and

WHEREAS, the City is currently paying the monthly interest on the Loan, and has agreed to repay the Loan if the Project doesn't move forward to the next phase; and

WHEREAS, the Company has completed the Phase 1 Services and provided the City Commission with the deliverables required under the Phase 1 Agreement, and the City has acknowledged its receipt and approval of the deliverables; and

WHEREAS, the City and the Development Team have agreed that the design and construction of the DEP Improvements shall be completed for the guaranteed maximum price of \$[____], all in accordance with that certain Design Build Contract dated as of [____] (a "**Design Build Contract**"), between the Company and Haskell/Sims (a "**Design-Builder**"); and

WHEREAS, the City and the Development Team have agreed that the design and construction of the High School Improvements shall be completed for the guaranteed maximum price of \$[____], all in accordance with that certain Design Build Contract dated as of [____] (a "**Design Build Contract**"), between the Company and Straticon (a "**Design-Builder**"); and

WHEREAS, the City and the Development Team have agreed that the design and construction of each Component of the Municipal Improvements shall be completed for a guaranteed maximum price, all in accordance with those certain contracts (each a "**Design Build Contract**," and together with each other Design Build Contract, the "**Design Build Contracts**") between the Company and certain members of the Development Team (each a "**Design-**

Builder," and together with each other Design-Builder, the "**Design-Builders**"), identified on **Exhibit B**, which is attached hereto and incorporated herein by reference; and

WHEREAS, the City desires the Company to continue to oversee and manage the completion of the design, permitting and construction of the Improvements, all as more specifically set forth in Article III of this Agreement (the "**Phase 2 Services**"); and

WHEREAS, subject to the terms and conditions hereof, the Company desires to perform the Phase 2 Services; and

WHEREAS, the City understands that the Company will perform no design or construction services, and that the parties intend for the Company to contract directly and separately with: (i) the Design-Builders who have been, or will, be engaged to design and construct the Improvements, and (ii) such other contractors or consultants who may be engaged to perform discrete elements of design or construction work on the Improvements to the extent not covered by the Design-Build Contracts (collectively, the "**Construction Contracts**"); and

WHEREAS, the Company desires to borrow from the Lender up to an additional \$3,500,000 for the purpose of financing the Phase 2 Services relating solely to the Municipal Improvements, including certain costs, fees and expenses relating thereto (the "**Phase 2 Loan**," and together with the Loan, the "**Project Loans**"); and

WHEREAS, the City agrees to pay the monthly interest on the Project Loans and guarantee the repayment of the outstanding principal under the Project Loans in accordance with the terms of this Agreement; and

WHEREAS, in addition to the Phase 2 Services, the City is working with Atwater Boynton Beach Project LLC, Florida limited liability company ("**Atwater**"), to cause the issuance of new market tax credits in order to provide funding for the High School Improvements (the "**New Market Tax Credits**"); and

WHEREAS, the City is also working with CFP Boynton Beach Town Square, LLC, a Florida limited liability company to cause the issuance of the Capital Improvement Revenue Bonds (City of Boynton Beach Municipal Improvements Project), Series 2017, in order to provide permanent financing for the costs associated with the construction and completion of the public improvements, to pay off the Project Loans, and to pay certain costs of issuance in connection with the permanent financing (the "**Permanent Financing**"); and

WHEREAS, the City and the Company each acknowledge and agree that the guaranteed maximum price amount set forth in the Design Build Contracts (the "**GMPs**") shall not change prior to the earlier of: (a) June 15, 2018 or (b) closing on the Permanent financing; and

WHEREAS, the City and the Company each acknowledge that the final scope of work and associated design shall not exceed the GMPs set forth in the Phase 1 Agreement deliverables.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I SCOPE OF SERVICES

Section 1.1. Services Rendered by the Company. The Company agrees to perform (or, to the extent the services are to be provided by the Development Team to cause the appropriate member of the Development Team to perform) the Phase 2 Services. The Company shall cooperate with the City and any other attorneys, consultants or contractors providing services to the City as needed in the performance of the Phase 2 Services. The Company may recommend replacement of a current member of the Development Team with another professional service provider and/or consultant as determined in the Company's sole discretion; provided, however, the Company may not do so without the prior approval of the City. The City will not contract with or engage any member of the Development Team for any professional services related to or in connection with the Project without the prior approval of the Company.

Section 1.2. Standard of Care. The Company hereby represents and warrants that each person providing Phase 2 Services, including the Company and each member of the Development Team, has the requisite skills and expertise necessary to perform the Phase 2 Services. Accordingly, the Company and each such person shall be obligated to perform the Phase 2 Services with the same degree of, care, skill and diligence as would be ordinarily exercised by a competent practitioner of the same profession in which such person is engaged in providing similar services in major United States metropolitan areas under the same or similar circumstances. If any member of the Development Team fails to perform to the City's reasonable expectations during the term of this Agreement, the City shall have the right to request that the Company replace that Development Team member with another Development Team member having equal or better requisite skills and expertise than the member being replaced, and the Company shall comply with the City's request. The City shall be liable for any and all costs, expenses and fees associated with, related to or as a result the City's request to replace any Development Team member in accordance with this Agreement.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City represents and warrants that:

(a) The City is a municipal corporation of the State of Florida, duly created and validly existing under the laws of the State of Florida and has all requisite power and authority to enter into the transactions contemplated by this Agreement, and to carry out its obligations hereunder.

(b) The City is not in default under any provisions of applicable law material to the performance of its obligations under this Agreement.

(c) The City has duly authorized the execution and delivery of this Agreement, and assuming the due authorization, execution and delivery by the other parties hereto and thereto, this Agreement constitutes a valid and legally binding obligation of the City, enforceable in accordance with its respective terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar

laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(d) The authorization, execution and delivery of this Agreement, and the compliance by the City with the provisions hereof will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State of Florida relating to the City or its affairs, or any ordinance, resolution, agreement, mortgage, lease or other instrument to which the City is subject or by which it is bound.

(e) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of the City, threatened against or affecting the City, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby, or which, in any way, would materially adversely affect the validity of this Agreement, or any agreement or instrument to which the City is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

Section 2.2. Representations and Warranties of the Company. The Company represents and warrants that:

(a) The Company, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement and, as such, this Agreement is legally binding upon and enforceable against the Company in accordance with its terms;

(b) The Company is not under any obligation to any other party that would be inconsistent with or in conflict with this Agreement or that would prevent, limit or impair in any way its performance of any obligations hereunder;

(c) The Company and each person selected by the Company to perform the Phase 2 Services in connection with the Project has the requisite expertise, qualifications, staff, materials and equipment in place and available to enable it to fully perform the Phase 2 Services and the Company and such third persons, along with their respective employees, as required, and all sub-contractors, if any and as required, possess all necessary permits, licenses, consents, registrations and/or certifications required under federal, state and/or local law to perform the Phase 2 Services; and

(d) The Company has read and fully understands the terms, covenants and conditions set forth in this Agreement and is executing the same willingly and voluntarily of its own volition.

Section 2.3. Reliance on Representations, Warranties and Covenants. All representations, warranties, covenants and agreements made in this Agreement are intended to be material and shall be conclusively deemed to have been relied upon by the receiving party.

ARTICLE III

SCOPE AND FUNDING OF PHASE 2 SERVICES

Section 3.1. General. The Company agrees to provide the Phase 2 Services as contained in this Agreement.

Section 3.2. Phase 2 Services. The Phase 2 Services to be performed hereunder will be rendered and paid for as provided herein. The execution of this Agreement constitutes the City's authorization for the Company to perform the Phase 2 Services. The Company is not authorized to proceed with any additional services or work unless and until it receives a written notice to proceed from the City. The Phase 2 Services include oversight and management, for the benefit and on behalf of the City, of the services required by the Design-Build Contracts, including the following:

- (a) Consult with the City and act as the City's representative during design and/or construction phases of the Improvements;
- (b) Participate in conferences between the City and Design-Builders;
- (c) Review submittals prepared by or for Design-Builders including drawings, specifications, shop drawings and samples and other submittals required by the Construction Contracts for acceptability and conformance with the Construction Contracts;
- (d) Visit the Improvements' sites during construction for general inspection and observation, meetings with the parties, and to determine in general if the work is proceeding in accordance with the Construction Contracts;
- (e) Assist the City in issuing clarifications and interpretations of the Construction Contracts;
- (f) Advise the City on claims between the City and Design-Builders;
- (g) Review and approve requests for payment pursuant to the Construction Contracts; and
- (h) Accompany the City with pre-occupancy and/or final inspections of the completed work.

The Phase 2 Services shall be considered complete when the Improvements have been finally accepted under the Design-Build Contracts and final payment authorized to the Design-Builders.

Section 3.3. Fees; Payment of Expenses.

(a) Phase 2 Fee. The Company will perform the Phase 2 Services for the amount as more specifically described on **Exhibit C**, which is attached hereto and incorporated herein by reference (the "**Phase 2 Fee**"). The Phase 2 Fee will be full compensation for all Phase 2 Services performed by the Company. The Phase 2 Fee will be earned and payable by the City, including any third party expenses incurred by the Company for the benefit of the Project, to the Company monthly on a pro rata basis as described on **Exhibit C**. The total of the Phase 2 Fee shall not exceed the amount described herein, unless the City requests additional services and approves such additional services in writing. The City acknowledges and agrees that the Phase 2 Loan will be issued to finance the Phase 2 Fee.

(b) Phase 2 Loan. The City acknowledges and agrees that the Company shall coordinate with the Lender to facilitate the funding of the Phase 2 Loan in order to provide the interim financing for the costs of the Phase 2 Services, including the Phase 2 Fee, to pay certain professional fees and costs incurred in connection with and for the benefit of the Project, and to pay certain costs associated with the Phase 2 Loan (collectively, the "**Phase 2 Costs**"). Notwithstanding anything contained herein to the contrary, the Company shall not proceed with the Phase 2 Services until the date the Phase 2 Loan is closed.

(c) Payment of Invoices for Services. The Company shall review any and all invoices for Phase 2 Costs. The Company shall be responsible for determining that any such invoiced services have been duly performed and invoiced in accordance with the agreements for the provision of such third party Phase 2 Costs.

(d) Project Loans. The City acknowledges and agrees that it is responsible for the payment of, and it hereby agrees to pay to such person or entity as directed by the Company, without delay: (i) all monthly interest costs when and as due and payable in accordance with the terms of the Project Loans; (ii) all costs and fees incurred by the Company in connection with obtaining and maintaining the Project Loans; and (iii) all outstanding principal and accrued and unpaid interest under the Project Loans no later than July 2, 2018.

Section 3.4. Proof of Funding for the Improvements. The City acknowledges and agrees that proof of its ability to fully fund all costs associated with the design and construction of the Improvements must be provided to the Company's reasonable satisfaction ("**Proof of Funding**") before the Company can perform any Phase 2 Services. Proof of Funding shall include, without limitation, the following:

(a) High School Improvements. The City shall, with the help of Atwater, obtain and close on the New Market Tax Credits within forty-five (45) days after March 13, 2018.

(b) Phase 2 Loan. On or before March 13, 2018: (i) the City shall pass a resolution providing for the City to use its best efforts to assist the Company in obtaining the Phase 2 Loan; and (ii) the City and the Lender shall provide the Company with drafts of the material agreements relating to the Phase 2 Loan.

(c) DEP Improvements. Within forty-five (45) days after March 13, 2018, the City shall: (i) pass a resolution providing for the City, or an affiliate of the City, to undertake the necessary steps to obtain the funds to pay the full amount of the GMP for the DEP Improvements; and (ii) obtain the written consent or approval of any third party required in order to obtain such funding. Completion of the scope of work for the DEP Improvements is subject to finalization of the site location and establishment of the public district which must be accomplished within the overall proposed schedule. Notwithstanding anything contained herein to the contrary, if the DEP Improvements are not completed, the Company's fees for services provided in connection with the Project, including the Phase 2 Fee, shall not be less than the current agreed upon amount; provided, however, if completion of the DEP Improvements is delayed for any reason beyond the current schedule, such fees shall be

increased, pro-rata, to adequately reflect any such delay in completion beyond the current schedule.

ARTICLE IV TERM

Section 4.1. Term. This Agreement shall commence on the date hereof, and shall continue until the earlier of: (a) the completion of the Phase 2 Services and the payment of the Phase 2 Fee; or (b) the termination of this Agreement by either party as provided herein or by law.

ARTICLE V NON-DISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY

Section 5.1. Company Shall Not Discriminate. In the performance of this Agreement, the Company agrees not to discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability or AIDS- or HIV-status against:

(a) Any employee of the City or any employee working with the Company in any of the Company's operations involving the Project; or

(b) Any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Company. The Company agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

Section 5.2. Equal Employment Opportunity. The Company further agrees not to discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability or AIDS- or HIV-status against any applicant for employment with the Company. Further, the Company agrees to take affirmative action to ensure that that the applicants are considered for employment and that employees are treated during employment without unlawful regard to such person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability or AIDS- or HIV-status. Such action shall include, without limitation, the following areas: employment, promotion, demotion, transfer or layoff; recruitment or recruitment compensation; and selection for training. The Company agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Further, the Company agrees all solicitations or advertisements for employees placed by or on behalf of the Company shall state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.

ARTICLE VI

INDEMNIFICATION

Section 6.1. Duty to Indemnify the City Against Loss. The Company agrees to protect, defend, indemnify and hold harmless the City, its elected officials and employees (collectively, the "**Indemnified Parties**") from and against all claims, actions, liabilities, losses (including, without limitation, economic losses) and costs, arising out of or related to a breach or default by the Company of its obligations under this Agreement. The indemnification shall include any reasonable attorney's fees and paralegal expenses, and court costs incurred at both the trial and appellate levels.

Section 6.2. Limit on Duty to Indemnify. Notwithstanding anything to the contrary herein, the Company shall not be required to indemnify the Indemnified Parties to the extent of their fault for any loss that results from the negligence or breach of contract of any of the Indemnified Parties.

Section 6.3. City's Duty to Indemnify and Hold Harmless the Company. The City agrees to protect, defend, indemnify and hold harmless the Company, its managers, officers, employees, members and affiliates (collectively, the "**Company Indemnified Parties**") from and against all claims, actions, liabilities, losses (including, without limitation, economic losses) and costs incurred by any of the Company Indemnified Parties as a result of, arising out of or related to: (a) a breach or default by the City of its obligations under this Agreement; (b) non-payment by the City of any interest, principal and any other fees, costs and expenses due and payable under the Project Loans; (c) any Design Build Contract; or (d) the City's negligence or willful misconduct. The City's indemnification obligations under this Agreement shall include any reasonable attorney's fees and paralegal expenses, and court costs incurred at both the trial and appellate levels.

Section 6.4. Limit on Duty to Indemnify. Notwithstanding anything to the contrary herein, the City shall not be required to indemnify the Company Indemnified Parties to the extent of their fault for any loss that results from the negligence or breach of contract of any of the Company Indemnified Parties.

Section 6.5. City Insurance Coverages. In connection with the City's obligations under this Agreement, including this Article VI, the City shall maintain commercially reasonable insurance coverage on the Project, including errors and omissions and general liability insurance. The City shall also list the Company as an additional insured on each insurance policy, and provide the Company with a Certificate of Insurance to that effect.

Section 6.6. Survival. The provisions of this Article VI will survive the termination of this Agreement until the earlier of completion of the Project or three (3) years.

ARTICLE VII INDEPENDENT CONTRACTOR STATUS

Section 7.1 Independent Company Status. The Company shall not be deemed an employee of the City. As such, the Company agrees that it shall not hold itself or any of its employees, subcontractors or agents to be an employee of the City. Further, the Company acknowledges and agrees that, as an independent contractor, neither the Company nor any of its employees shall be entitled to receive any benefits that employees of the City are entitled to receive, including, without limitation, workers' compensation coverage, unemployment compensation

coverage, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

Section 7.2. No Withholding; Form 1099 Reporting. The Company understands and agrees that:

(a) The City will not withhold on behalf of the Company any sums for any federal, state or local income tax, unemployment insurance, social security, or any other withholding pursuant to any law or requirement of any governmental body, and that the City will not make available to the Company any of the benefits afforded to employees of the City;

(b) All of such withholdings and benefits, if applicable, are the sole responsibility of the Company; and

(c) The Company will indemnify and hold the City harmless from any and all loss or liability arising with respect to any such withholdings and benefits. The parties agree that if the Internal Revenue Service questions or challenges the Company's independent contractor status, both the Company and the City shall have the right to participate in any discussion or negotiation with the Internal Revenue Service. The Company acknowledges that all compensation paid to the Company pursuant to this Agreement will be reported annually by the City to the Internal Revenue Service on Form 1099.

ARTICLE VIII GOVERNING LAW; VENUE

This Agreement shall be construed and enforced in accordance with the laws of the State of Florida, excepting its conflict of law provisions. Venue for any litigation filed to enforce any right, obligation, or responsibility of either party under this Agreement shall be filed in the appropriate state or federal court located in Palm Beach County, Florida.

ARTICLE IX RETENTION, ACCESS AND OWNERSHIP OF RECORDS

Section 9.1. Florida Public Records Law. Pursuant Section 119.07, Florida Statutes, as may be amended from time to time, the Company shall keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the Company's obligations pursuant to the terms of this Agreement, including all information provided by the Company in connection with the Phase 1 Agreement (collectively, the "**Project Records**"). The Company agrees to comply with the following requirements:

(a) Upon request from the City's custodian of public records, provide the City with a copy of the Project Records or allow the Project 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.

(b) Ensure that the Project Records that are exempt or confidential and exempt from public records disclosure requirements (the "**Exempt Records**") are not disclosed except as

authorized by law for the duration of this Agreement term and following completion of this Agreement if the Company does not transfer the Project Records to the City.

(c) Upon completion of this Agreement, transfer, at no cost, to the City all Project Records in possession of the Company or keep and maintain the Project Records required by the City to perform the services required pursuant to this Agreement. If the Company transfers all Project Records to the City upon completion of this Agreement, the Company shall destroy any duplicate Exempt Records. Notwithstanding the foregoing, the Company shall be permitted to retain: (i) one (1) copy of the Exempt Records in the Company's required by law, regulation or compliance policies to be retained; and (ii) any copies stored pursuant to an electronic back-up system in accordance with records management policies. If the Company keeps and maintains Project Records upon completion of this Agreement, the Company shall meet all applicable requirements for retaining public records. All Project Records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(d) Failure of the Company to abide by the terms of this provision shall be deemed a material breach of this Agreement. This provision shall survive any termination or expiration of this Agreement.

IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE COMPANY, ITS OFFICERS, REPRESENTATIVES, AND EMPLOYEES MUST CONTACT THE CITY OF BOYNTON BEACH'S RECORDS CUSTODIAN AT 561-629-8585, PYLEJ@BBFL.US, OR 100 EAST BOYNTON BEACH BOULEVARD, BOYNTON BEACH, FL 33425.

Section 9.2. Right to Audit; Access. At any time during normal business hours, upon receipt of reasonable notice and as often as the City may deem necessary, the Company shall make all data, records, reports and all other materials relating to this Agreement available to the City for examination and copying. In addition, the Company shall permit the City to audit, and shall cooperate fully in any such audit of, all invoices, materials, payrolls, work papers, personnel records and other data necessary to enable the City to verify the accuracy of the Company's invoices for payment for the performance of the Phase 2 Services.

Section 9.3. Ownership of Project Records, Confidential Information. Notwithstanding anything to the contrary set forth in this Agreement, the City acknowledges and agrees that the Project Records, including Work Product and the Exempt Records, and the information contained therein, is confidential and proprietary information belonging exclusively to the Company ("**Confidential Information**"). As such, the City and its commissioners, other elected officials, staff, employees and consultants shall not use or disclose, directly or indirectly, the Confidential Information in any way or to anyone, or permit anyone access to the Confidential Information, other than directly in connection with the Project during the term of this Agreement, without the prior written consent of the Company. "**Work Product**" means any and all plans, designs, project drawings, notes, tables, graphs, reports, files, documents, records, disks, or other such material, regardless of form and whether finished or unfinished, of the Company or members of the Development Team.

ARTICLE X DEFAULT

Section 10.1 Default. If any party (the "**Defaulting Party**") materially breaches or defaults on any of its obligations under this Agreement, the non-defaulting party may give notice that remedial action must be taken by the Defaulting Party within thirty (30) days of the notice. The Defaulting Party shall correct such breach or default within thirty (30) days after such notice; provided, however if (a) the default is one which cannot with due diligence be remedied by the Defaulting Party within thirty (30) days, and (b) the Defaulting Party proceeds as promptly as reasonably possible after such notice with all due diligence to remedy such default, the period after such notice within which to remedy such default shall be extended for such period as may be necessary to remedy the same with due diligence. If such action is not taken, the non-defaulting party may, in pursue all remedies available at law or in equity, including, but not limited to, specific performance and/or recovery of damages.

ARTICLE XI INSURANCE

During the Term of this Agreement, the Company shall, at all times, maintain: (a) adequate worker's compensation and unemployment insurance coverage for its employees, if applicable, in accordance with state law; and (b) comprehensive general liability insurance in amounts not less than \$1,000,000 per occurrence. Company's general liability insurance shall name the City as an additional insured and shall provide that any such policy will not be subject to cancellation or change except after at least thirty (30) days' prior written notice to the City. The policies or duly executed certificates for the same, together with satisfactory evidence of the payment of the premium thereon, shall be provided to the City, and upon renewals of such policies, not less than thirty (30) days prior to the expiration of the term of such policies.

ARTICLE XII NOTICE

Section 12.1. Notice Addresses. Any notice, demand, communication or request required or permitted hereunder shall be in writing and delivered in person or by certified mail, return receipt requested as follows:

(a) in the case of the City, addressed to or delivered personally to the City of Boynton Beach, at 100 East Boynton Beach Boulevard, Boynton Beach, Florida 33425-0310, Attention: City Manager with a copy to James A. Cherof, City Attorney, 100 East Boynton. Beach Boulevard, Boynton Beach, Florida 33425-0310.; and

(b) in the case of the Company, addressed to or delivered personally to the Company at E2L Real Estate Solutions, LLC, 1400 W. Fairbanks Ave., Suite 201, Winter Park, Florida 32789., Attention Mark Hefferin, Manager; with a copy to Jamie Campbell, Esq., 180 Park Avenue North, Suite 2A, Winter Park, Florida 32789.

Section 12.2. Notice Effective Dates. Notices shall be effective when received by each of the above-referenced individuals at the addresses specified above. Each party shall be responsible for notifying the other in writing of any changes in the respective addresses set forth above.

Section 12.3. Routine Communications. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the City and the Company.

ARTICLE XIII GENERAL PROVISIONS

Section 13.1. No Assignment Without Consent. This Agreement is personal to each of the parties hereto, and neither party may assign or delegate any rights or obligations hereunder without first obtaining the written consent of the other party.

Section 13.2. Conflict of Interest. Company agrees to decline any offer of work, whether as an independent contractor or employee, if such work would: affect Company's independent professional judgment with respect to its performance of the Services; or In any way interfere with Company's ability to discharge any of its obligations under this Agreement. The initial determination of whether any offer of work would present such a conflict of interest shall rest with Company. However, Company shall be obligated to notify the City and provide full disclosure as to any possible adverse effects of such work as it relates to Company's independent professional judgment or the discharge of any of its obligations under this Agreement. Final decision as to whether any such work proposes a prohibited conflict of interest shall rest with the City.

Section 13.3. Compliance with Laws; Duty to Notify of Wrongdoing; Cooperation with Investigations. In performing the Services, Company shall, at its own expense, comply with all applicable federal, state and local laws, regulations and codes. Company shall be obligated to immediately notify the City of any notice or allegation of wrongdoing or of any material third-party complaint relating to this Agreement. Upon request of the City, the Company shall fully cooperate in any investigation by furnishing any documents, records or other testimonial evidence pertinent to such investigation.

Section 13.4. Nonwaiver. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect, nor constitute a waiver of, any party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior, contemporaneous or subsequent default or breach.

Section 13.5. Severability. The parties hereto intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, if a court of competent jurisdiction finds any provision to be unenforceable as written, the parties intend and desire that the court will reform the provision so that it is enforceable to the maximum extent permitted by law. If, however, the court finds such provision to be illegal and not subject to reformation, such provision shall be fully severable. In such event, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision was never a part hereof, and the remaining provisions of this Agreement shall remain in full force and effect.

Section 13.6. Schedules and Exhibits. All Schedules and Exhibits attached hereto shall be and hereby are incorporated into this Agreement as if fully rewritten herein.

Section 13.7. Rules of Construction. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Whenever herein the singular number is used, the same shall include the plural, where appropriate, and neutral words and words of any gender shall include the neutral and other gender, where appropriate. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved in favor of or against the City or Company on the basis of which party drafted the uncertain or ambiguous language. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

Section 13.8. Amendment. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

Section 13.9. Third-Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the Company and the City, and the Company and the City expressly disclaim any intent to benefit anyone not a party hereto.

Section 13.10. Time is of the Essence. The City and the Company each acknowledge and agree that time is of the essence in the performance of this Agreement.

Section 13.11. Non-Exclusive. This Agreement shall be non-exclusive. Accordingly, subject to Section 13.2 of this Article XIII, the Company shall be free to provide services to other clients, and City shall be free to engage the services of other contractors unrelated to the Project.

Section 13.12. Prohibition Against Financial Interest in Agreement. No elected official or employee of City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this Section, a financial interest held by the spouse, child or parent of any elected official or employee of City shall be deemed to be a financial interest of such elected official or employee of City.

Section 13.13. Remedies Cumulative. No remedy set forth in this Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

Section 13.14. Complete Agreement. Company specifically acknowledges that in entering into and accepting this Agreement, Company relies solely upon the representations and agreements contained in this Agreement and no others. This Agreement supersedes and replaces any and all prior agreements, negotiations and discussions between the parties hereto with regard to the terms, obligations and conditions herein.

Section 13.15. Representatives Not Individually Liable. No member, official, or employee of either party shall be personally liable to the other party, or any successor in interest, in the event of any default or breach or on any obligations under the terms of this Agreement.

Section 13.16. Disclaimer of Relationships. The City and the Company acknowledge that nothing contained in this Agreement nor any act by the City or the Company shall be deemed or construed by any of them or by any third person to create any relationship of principal and agent, limited or general partner, or joint venture between or among the City, the Company and/or any third party.

Section 13.17. Original Copy. One original of this Agreement will be executed and maintained by the City Clerk of the City. The City Clerk will provide a certified copy to the Company.

Section 13.18. Whereas Clauses. The "Whereas" clauses at the beginning of this Agreement are hereby ratified as being true and correct, and incorporated herein.

IN WITNESS WHEREOF, the City has caused this Phase 2 Services Agreement to be duly executed in its name and behalf and the Company has caused this Agreement to be duly executed in its name and behalf on the dates set forth below.

CITY OF BOYNTON BEACH, FLORIDA

CITY OF BOYNTON BEACH

BY: _____
STEVEN B. GRANT, MAYOR

DATE: _____

ATTEST:

BY: _____
City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

City Attorney

E2L Real Estate Solutions, LLC, a Florida limited liability company

By: _____
Mark Hefferin, Manager

DATE: _____

EXHIBIT A
HIGH SCHOOL AND DEP IMPROVEMENTS

[Insert scope of work for High School and DEP]

EXHIBIT B

DESIGN BUILD CONTRACTS
FOR
MUNICIPAL IMPROVEMENTS

1. DBIA Standard Form of Preliminary Agreement Between Owner and Design-Builder dated August 2, 2017 by and between E2L Real Estate Solutions, LLC and H. J. High Construction regarding the City of Boynton Beach Fire Station One;
2. DBIA Standard Form of Preliminary Agreement Between Owner and Design-Builder dated August 2, 2017 by and between E2L Real Estate Solutions, LLC and H. J. High Construction regarding the City of Boynton Beach Police Station;
3. DBIA Standard Form of Preliminary Agreement Between Owner and Design-Builder dated August 2, 2017 by and between E2L Real Estate Solutions, LLC and The Haskell Company regarding the City of Boynton Beach City Hall and Library Renovations; and
4. DBIA Standard Form of Preliminary Agreement Between Owner and Design-Builder dated August 2, 2017 by and between E2L Real Estate Solutions, LLC and The Haskell Company regarding the City of Boynton Beach Infrastructure Improvements.



CITY OF BOYNTON BEACH AGENDA ITEM REQUEST FORM

REQUESTED ACTION BY COMMISSION: PROPOSED RESOLUTION NO. R18-044 - Authorize the Mayor to sign a Master Development Agreement with CFP Boynton Beach Town Square, LLC for the development of certain improvements within the Town Square Project and approval for the purposes of Section 147(F) of the Internal Revenue Code and general authorization to obtain permanent financing for the CFP improvements and providing for other related matters.

EXPLANATION OF REQUEST:

The master agreement provides for the development of certain public improvements for the Town Square Project. This includes but not limited to construction of City Hall/Library, construction of open space, reconstruction of kids kingdom playground, construction of Police Headquarter on High Ridge Road, construction of Fire Station #1, and related infrastructure improvements.

Also provides approval for the purposes of Section 147(F) of the Internal Revenue Code in regards to TEFRA approval and provides general authorization for issuance of CFP bonds, solely for purposes of Section 147(f) of the Code.

Some additional refinement of this agreement may occur prior to adoption

HOW WILL THIS AFFECT CITY PROGRAMS OR SERVICES?

FISCAL IMPACT:

ALTERNATIVES: Do not approve master development agreement.

STRATEGIC PLAN: Energetic Downtown: Focal Point for Boynton Beach

STRATEGIC PLAN APPLICATION:

Provide authorization to move forward with Town Square Project.

CLIMATE ACTION: No

CLIMATE ACTION DISCUSSION:

Is this a grant? No

Grant Amount:

ATTACHMENTS:

Type		Description
<input type="checkbox"/>	Resolution	RESO - CFP Authorizing
<input type="checkbox"/>	Agreement	Master Agreement CFP

RESOLUTION NO. R18 - _____

A RESOLUTION OF THE CITY OF BOYNTON BEACH, FLORIDA, AUTHORIZING THE EXECUTION OF THE MASTER DEVELOPMENT AGREEMENT WITH CFP BOYNTON BEACH TOWN SQUARE, LLC, A FLORIDA LIMITED LIABILITY COMPANY (“CFP”), FOR THE DEVELOPMENT OF CERTAIN PUBLIC IMPROVEMENTS WITHIN THE TOWN SQUARE PROJECT (THE “CFP IMPROVEMENTS”); PROVIDING FOR A COVENANT TO BUDGET AND APPROPRIATE; PROVIDING FOR AN ANTI-DILUTION COVENANT; PROVIDING APPROVAL FOR THE PURPOSES OF SECTION 147(F) OF THE INTERNAL REVENUE CODE AND GENERAL AUTHORIZATION TO OBTAIN PERMANENT FINANCING FOR THE CFP IMPROVEMENTS; AND PROVIDING FOR OTHER RELATED MATTERS.

WHEREAS, in accordance with Section 255.065, Florida Statutes, the City of Boynton Beach, Florida (the “City”) issued the Request for Qualifications for the City of Boynton Beach Town Square Redevelopment RFQ No. 004-1210-17/JMA (the “RFQ”) for the planning, development, financing, and completion of certain public improvements and private improvements for redevelopment of an approximately 16 acre site described as the Boynton Beach Town Square Project (the “Town Square Project”); and

WHEREAS, E2L Real Estate Solutions, LLC, a Delaware limited liability company (“E2L”) submitted a response to the RFQ on March 9, 2017, and was selected as the successful proposer; and

WHEREAS, a portion of the Town Square Project includes the construction of a new City Hall, Library, Police Station, Fire Station, and related amenities and infrastructure, as more specifically described on **Exhibit “A”** attached hereto (the “CFP Improvements”); and

WHEREAS, pursuant to the Phase 1 Services Agreement dated June 21, 2017 between the City and E2L, as amended to the date hereof (the “Phase 1 Agreement”), E2L provided pre-development services for the CFP Improvements, in the capacity of the master development manager; and

WHEREAS, the Phase 1 Agreement identified the professional service providers and consultants to be utilized in connection with the completion of the CFP Improvements including, but not limited to, CFP Boynton Beach Town Square, LLC, a Florida limited liability company (“CFP”), which is described in the Phase 1 Agreement as the developer of and obligor for the financing of the CFP Improvements; and

WHEREAS, E2L has provided the City with the deliverables required under the Phase 1 Agreement, and the City hereby renders its approval of the deliverables; and

WHEREAS, the Phase 1 Agreement will be supplemented by a Phase 2 Services Agreement dated March 13, 2018 (the “Phase 2 Agreement”), which sets forth the parties’ obligations relative to, among other things, the completion of additional pre-development services for the CFP Improvements, as are more particularly set forth in the Phase 2 Agreement (the “Additional Services”); and

WHEREAS, the City has determined that time is of the essence to complete the CFP Improvements and, as such, has requested that in conjunction with, or upon completion of the Additional Services pursuant to the Phase 2 Agreement, CFP shall proceed with the completion of the planning, design, engineering, surveying, permitting, consulting, construction and other activities for the CFP Improvements, all as more particularly set forth in the Master Development Agreement, the substantial form of which is attached hereto as **Exhibit “B”** (the “CFP Master Development Agreement”); and

WHEREAS, the City has evaluated the CFP Improvements and such other data and information that the City has deemed reasonable and necessary, and in accordance with Section 255.065(5)(d) and (e), Florida Statutes, the City has determined the following:

1. There is a public need for and benefit derived from the CFP Improvements;
2. The estimated cost of the CFP Improvements is reasonable in relation to other similar facilities; and
3. The plans of CFP, working in conjunction with E2L, will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping and maintenance of the CFP Improvements; and

WHEREAS, the City has evaluated each of the factors set forth in Section 255.065(9), Florida Statutes, and in accordance with Section 255.065(3)(d), Florida Statutes, the City hereby makes the following additional findings:

1. The CFP Improvements are in the public's best interest;
2. The CFP Improvements include facilities that are owned by the City and facilities that will be conveyed to the City in the future;
3. The agreements and transactions contemplated herein include adequate safeguards to ensure that additional costs or service disruptions will not be imposed on the public in the event of a material default or cancellation of the agreements or transactions by the City;
4. The CFP Improvements will have adequate safeguards in place to ensure that the City or CFP will have the opportunity to add capacity to the CFP Improvements or other facilities servicing similarly predominantly public purposes;
5. The CFP Improvements will be owned by the City upon completion, expiration, or termination of the agreements and transactions provided for herein and upon payment of the amounts financed by the CFP Bonds; and

WHEREAS, CFP will be requesting Public Finance Authority, a Wisconsin bond issuing commission (the "Issuer") to issue its Capital Improvement Revenue Bonds (City of Boynton Beach Municipal Improvements Project), Series 2018 in an amount not to exceed \$78,000,000 (the "CFP Bonds"), and

WHEREAS, CFP has selected Dougherty & Company LLC, to serve as Underwriter for the CFP Bonds, and Broad and Cassel LLP to serve as Bond Counsel and Disclosure Counsel in connection with the offering and issuance of the CFP Bonds, and the City concurs with such selections; and

WHEREAS, the proceeds of the CFP Bonds will be loaned to CFP for purposes which include, but are not limited to, financing or refinancing the costs of designing, permitting and constructing the CFP Improvements, as well as related reserves, capitalized interest and costs of issuance, including the financing, refinancing or payment of costs incurred in connection with the Phase 1 Services and Additional Services; and

WHEREAS, pursuant to the CFP Master Development Agreement and the forms of the agreements attached thereto, the City intends to lease to CFP a portion of the land upon which the CFP Improvements shall be constructed and lease back the completed CFP Improvements, in exchange for the payment of rent to CFP in an aggregate amount sufficient to pay debt service on the CFP Bonds and other ongoing costs and expenses incurred in connection with the CFP Bonds, all in accordance with the terms and conditions of one or more Ground Lease(s) and Facility Lease(s) (the “Leases”); and

WHEREAS, to secure the amounts due from the City under the Leases, the City shall covenant to budget and appropriate Available Non-Ad Valorem Revenues (as defined below) to pay for the amounts due under the Leases; and

WHEREAS, the issuance of the CFP Bonds requires a public hearing and approval by the City for the purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

Section 1. The foregoing “WHEREAS” clauses are true and correct and are hereby ratified, confirmed and adopted by the City Commission as its legislative findings relative to the subjects and matters set forth in this Resolution.

Section 2. The City Commission hereby approves the CFP Master Development Agreement, in the substantial form attached hereto as **Exhibits “B”**, as well as the forms of the agreements attached thereto, with such changes, corrections, insertions and deletions thereto, or subsequent minor amendments to the CFP Master Development Agreement as shall be approved by the Mayor, Vice-Mayor, or the City Manager (each, an “Authorized Officer”), with the approval of the City Attorney, the execution thereof by an Authorized Officer being deemed conclusive evidence of the approval of such changes.

Section 3. The City Commission acknowledges this Authorizing Resolution and the agreements and transactions contemplated herein will be an integral part of the financing for the CFP Bonds. Consequently, each Authorized Officer and the City Attorney is hereby authorized and directed, either alone or jointly, under the official seal of the City, to execute and deliver certificates of the City certifying such facts as Bond Counsel shall require in connection with the issuance, sale, and delivery of the CFP Bonds, and to execute and deliver such other instruments, including but not limited to, applications, agreements, assignments, financing statements,

mortgage instruments, closing certificates and instruments, and opinions, as shall be necessary or desirable to perform CFP's obligations under the bond, underwriting, and offering documents, and to take any and all actions necessary in order to consummate the transactions authorized herein, subject to the terms and conditions hereunder and the approval of the City Attorney.

Section 4. Security for Amounts due under the Leases; Permanent Financing for the CFP Improvements.

A. CFP shall proceed with causing the completion of the CFP Improvements, all in accordance with the CFP Master Development Agreement and Leases. The City shall be responsible for paying from Available Non- Ad Valorem Revenues (as defined in 5.A. below) rent payment amounts which shall be sufficient to pay the debt service on the CFP Bonds (the "Rent Payments"), until the date the CFP Bonds are paid in full.

B. In connection with the issuance of the CFP Bonds, CFP shall pledge the Rent Payments to secure the repayment of the CFP Bonds.

Section 5. Covenant to Budget and Appropriate.

A. The City Commission covenants that it will budget and appropriate Available Non-Ad Valorem Revenues, in amounts sufficient to pay the amounts (including interest on such amounts) as described in Section 4, above. The phrase "Non-Ad Valorem Revenues" shall mean all revenues of the City not derived from ad valorem taxation. The phrase "Available Non-Ad Valorem Revenues" shall mean all Non-Ad Valorem Revenues other than (A) any revenues which are restricted by a contract in existence on the date hereof, (B) any revenues which are prohibited by law from being used to pay the payments required under the CFP Master Development Agreement and the Leases, and any revenues which are not otherwise legally available to pay the payments required under the CFP Master Development Agreement and the Leases, such as but not limited to, revenues generated by the imposition of special assessments which have been adopted to fund projects which are not part of the CFP Improvements.

B. Such covenant and agreement on the part of the City to budget and appropriate such amounts of Available Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Available Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant

of the City, the City does not covenant to maintain any services or programs, now provided or maintained by the City, which generate Available Non-Ad Valorem Revenues.

C. Such covenant to budget and appropriate does not create any lien or pledge of Available Non-Ad Valorem Revenues, nor does it require the City to levy and collect any particular Available Non-Ad Valorem Revenues, nor does it give the holders of any obligation payable from such covenant to budget and appropriate a prior claim on the Available Non-Ad Valorem Revenues as opposed to claims of general creditors of the City. Such covenant to budget and appropriate is subject in all respects to the payment of obligations secured by a pledge of Available Non-Ad Valorem Revenues heretofore or hereafter entered into (including debt service on bonds and other obligations). However, the covenant to budget and appropriate in its general annual budget or amendments thereto for the purposes and in the manner stated herein shall have the effect of making available for payment of the obligations of the City under the Master Agreement and the Leases, in the manner described herein, the Available Non-Ad Valorem Revenues of the City, and of placing on the City a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations therein; subject, however, to the payment of services and programs which are Essential Government Services or which are legally mandated by applicable law. For purposes of this Section, the phrase "Essential Government Services" means public safety and general governmental services provided by the City, the expenditures for which are currently set forth as the line items entitled "General Government" and Public Safety in the City's Comprehensive Annual Financial Report for the Fiscal Year ended September 30, 2017, and any equivalent line items in any future financial statements of the City.

Section 6. Anti-Dilution Covenant. In addition to its covenant to budget and appropriate as set forth in Section 5, above, the City further covenants that during the period that all or a portion of the CFP Bonds remain outstanding, the City will not incur additional debt that is secured by all or a portion of Available Non-Ad Valorem Revenues unless there shall be filed with the City a report by an independent certified public accountant, demonstrating that the total amount of Available Non-Ad Valorem Revenues for the prior fiscal year is at least 1.50 times (or such other amount as may be agreed to by an Authorized Officer and set forth in the bond documents) the maximum annual debt service of all debt (including all long-term financial obligations appearing on the City's most recent audited financial statements and any additional debt proposed to be incurred) to be paid from

Available Non-Ad Valorem Revenues (collectively, “Debt”), including Debt payable from one or several specific revenue sources.

Section 7. TEFRA Approval. Having considered any and all comments and concerns expressed at the public hearing, the City Commission hereby approves the issuance of the CFP Bonds, solely for purposes of Section 147(f) of the Code.

A. The Issuer is hereby authorized to take all action necessary to do all things necessary to issue the CFP Bonds.

B. Except as otherwise provided for herein, the City shall have no obligation with respect to the CFP Bonds, and, except as otherwise provided in this Resolution, the approval given herein shall not be deemed to create any obligation or liability, pecuniary or otherwise, of the City in any respect whatsoever. The general credit or taxing power of the City and the State of Florida or any political subdivision or public agency thereof shall not be pledged to the payment of the CFP Bonds. No statement, representation or recital made herein shall be deemed to constitute a legal conclusion or a determination by the City that any particular action or proposed action is required, authorized or permitted under the laws of the State of Florida or the United States.

C. The approval given herein shall not be construed as (i) an endorsement of the creditworthiness of CFP, or the financial viability of the CFP Improvements, (ii) a recommendation to any prospective purchaser of the CFP Bonds, (iii) an evaluation of the likelihood of the repayment of the debt service on the CFP Bonds, or (iv) an approval of any necessary zoning applications nor for any development plan approvals or other regulatory permits relating to the CFP Improvements, and the City shall not be construed by reason of its adoption of this resolution to have made any such endorsement, finding or recommendation or to have waived any of the City’s rights or estopping the City from asserting any rights or responsibilities it may have in that regard.

Section 8. In the event that the definitive agreements referenced herein are not executed by the parties, or in the event that the transactions contemplated herein fail to close on or before November 1, 2018, the City agrees to reimburse CFP, the Underwriter, and Bond Counsel for each entity’s reasonable and customary fees and out of pocket expenses incurred in connection with the transactions contemplated herein, all in accordance with the terms, conditions and limitations as are more fully set forth in the Master Agreement.

Section 9. This instrument shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 13th day of March, 2018.

CITY OF BOYNTON BEACH, FLORIDA

		YES	NO
Mayor -	Steven B. Gant	_____	_____
Vice Mayor -	Justin Katz	_____	_____
Commissioner -	Mack McCray	_____	_____
Commissioner -	Christina L. Romelus	_____	_____
Commissioner -	Joe Casello	_____	_____
	VOTE	_____	

ATTEST:

Judith A. Pyle, CMC,
City Clerk

(CORPORATE SEAL)

EXHIBIT A
DESCRIPTION
OF THE
CFP IMPROVEMENTS

CFP will use the proceeds of the CFP Bonds to provide permanent financing and/or refinancing for the acquisition, construction and equipping of all or a portion of the Town Square Project, which will be leased to the City of Boynton Beach, Florida (the “City”), including, without limitation, the following components and any and all design, planning, surveying, engineering, permitting, and pre-development services and expenditures related thereto, and all related and supporting infrastructure (together, the “CFP Improvements”):

(1) The Town Square Property Improvements: The Town Square Property consists of approximately 16 acres, and is bounded by East Boynton Beach Boulevard, South Seacrest Boulevard, SE 2nd Avenue, and SE 1st Street, in the City. The improvements to be constructed within the Town Square Property are anticipated to include, but not be limited to:

(a) the construction of a combined City Hall and Library, to consist of approximately 65,000 square feet for the City Hall needs, and approximately 44,000 square feet for the Library needs;

(b) the construction of improvements to parks, to consist of approximately 0.90 acres and approximately 0.22 acres, and other open space enhancements; and

(c) the reconstruction of Kids Kingdom Playground, to consist of approximately 15,000 square feet.

(2) High Ridge Road Property Improvements. The High Ridge Road Property consists of approximately 5.46 acres, and is bounded by West Gateway Boulevard, High Ridge Road, and I-95 in the City. The portion of the improvements to be constructed within the High Ridge Road Property shall include a new Police Station, consisting of approximately 56,000 square feet and related improvements.

(3) North-East 1st Street Property Improvements. The North-East 1st Street Property consists of approximately 1 acre, and is located at North-East 1st Street, in the City, and is bounded by NE 1st Avenue. The portion of the improvements to be constructed within the North-East 1st Street Property shall include Fire Station #1, consisting of approximately 10,000 square feet and related improvements.

(4) Infrastructure Improvements. The Infrastructure Improvements includes construction of all infrastructure necessary to support the CFP Improvements and future development.

CFP will also use the proceeds of the CFP Bonds to fund necessary debt service reserves, and/or capitalized interest on the CFP Bonds, if any, and to pay costs associated with the issuance of the CFP Bonds.

EXHIBIT B

FORM OF THE MASTER DEVELOPMENT AGREEMENT

MASTER DEVELOPMENT AGREEMENT

THIS MASTER DEVELOPMENT AGREEMENT, made effective as of the ____ day of _____ 2018, by and between the City of Boynton Beach, Florida (the “City”), and having its principal office at 100 East Boynton Beach Boulevard, Boynton Beach, Florida 33425, and CFP Boynton Beach Town Square, LLC, a Florida limited liability company (“CFP”), and having its principal office at 18336 Minnetonka Blvd., Suite #C, Deephaven, Minnesota 55391.

WITNESSETH:

WHEREAS, the City of Boynton Beach (the “City”) issued the Request for Qualifications for the City of Boynton Beach Town Square Redevelopment RFQ No. 004-1210-17/JMA (the “RFQ”) for the planning, development, financing, and completion of certain public improvements and private improvements for redevelopment of an approximately 16 acre site described as the Boynton Beach Town Square Project (the “Town Square Project”); and

WHEREAS, E2L Real Estate Solutions, LLC, a Delaware limited liability company (“E2L”) submitted a response to the RFQ on March 9, 2017 (the “E2L Proposal”), and was selected by the City as the successful proposer; and

WHEREAS, a portion of the Town Square Project includes the construction of a new City Hall, Library, Police Station, Fire Station, and related amenities and infrastructure, as more specifically described in Section 3.01, below (the “CFP Improvements”); and

WHEREAS, E2L has provided certain pre-development services for the CFP Improvements pursuant to that certain Town Square Redevelopment Phase 1 Services Agreement dated June 21, 2017, as amended to the date hereof (the “Phase 1 Agreement”); and

WHEREAS, the Phase 1 Agreement will be supplemented by that certain Phase 2 Services Agreement dated March 13, 2018 between the City and E2L (the “Phase 2 Agreement”), which sets forth the parties’ obligations relative to, among other things, the completion of additional pre-development services for the CFP Improvements, as are more particularly set forth in the Phase 2 Agreement (the “Additional Services”); and

WHEREAS, pursuant to the work performed in conjunction with the Phase 1 Agreement, and upon completion of the Additional Services, the parties have determined that the CFP Improvements shall be constructed on property owned by the City as further described in Section 3.0, below (the “Property” and together with the CFP Improvements, collectively, the “CFP Project”); and

WHEREAS, the City intends to lease the Property to CFP pursuant to one or more Site Lease(s) (as defined herein); and

WHEREAS, CFP along with E2L as an independently engaged project manager, intend to develop and construct the CFP Improvements on the Property, all in accordance with a Development Agreement (as defined herein); and

WHEREAS, CFP intends to lease back the Property and CFP Improvements to the City pursuant to one or more Facilities Lease(s) (as defined herein) for the operation and maintenance of the CFP Improvements, all as set forth herein; and

WHEREAS, the financing for the CFP Project will be pursuant to the issuance of tax-exempt and taxable Bonds (as defined herein) which will be secured, in part, by the rent payments that CFP receives from the City in accordance with the Facilities Lease; and

WHEREAS, upon the defeasance or full payment of the Bonds, CFP shall be obligated to tender to the City unencumbered title to the CFP Project, and the City shall be obligated to accept unencumbered title to the CFP Project; and

WHEREAS, the City hereby legislatively finds and determines that the development and operation of the CFP Project will serve a valid and paramount public purpose; and

WHEREAS, in order to facilitate the financing, construction and operation of the CFP Project, the parties to this Master Agreement are prepared to agree upon their respective obligations and to approve the substantial form of various documents to be executed by the parties.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein and other valuable consideration, receipt of which is hereby acknowledged, the parties hereby covenant and agree as follows:

ARTICLE I RECITALS AND INTERPRETATION

SECTION 1.01. RECITALS. The parties agree that the recitals are true and correct and by this reference incorporated and made a part of this Master Agreement.

SECTION 1.02. INTERPRETATION. Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms “herein”, “hereunder”, “hereby”, “hereof”, and any similar terms, shall refer to this Master Agreement; the term “heretofore” shall mean before the date this

Master Agreement is executed; and the term “hereafter” shall mean after this Agreement is executed. Whenever the word “including” is used herein, it shall be deemed to mean “without limitation.” Each recital, covenant, agreement, representation, and warranty made by a party herein shall be deemed to have been material and to have been relied on by the other parties to this Master Agreement. All parties have participated in the drafting and preparation of this Master Agreement, and the provisions hereof shall not be construed for or against any party by reason of authorship.

SECTION 1.03. SECTION HEADINGS. Any headings preceding the texts of the several Sections of this Master Agreement, shall be solely for convenience of reference and shall neither constitute a part of this Master Agreement nor affect its meaning, construction or effect.

ARTICLE II REPRESENTATIONS

SECTION 2.01. REPRESENTATIONS OF THE CITY. The City makes the following representations as the basis for the undertakings on the part of herein contained:

(A) The City is a municipal corporation of the State of Florida, duly created and validly existing under the laws of the State of Florida and has all requisite power and authority to adopt the City’s Resolution No. [_____] approved on March 13, 2018 (the “Authorizing Resolution”) and to enter into the transactions contemplated by this Master Agreement, the Ground Lease(s), the Facilities Lease(s), and the Development Agreement (collectively, the “CFP Improvement Agreements”), and to carry out its obligations hereunder and thereunder.

(B) The City is not in default under any provisions of applicable law material to the performance of its obligations under the CFP Improvement Agreements and the Authorizing Resolution.

(C) The City has duly authorized the Authorizing Resolution and the execution and delivery of the CFP Improvement Agreements, and assuming the due authorization, execution and delivery by the other parties hereto and thereto, the CFP Improvement Agreements and the Authorizing Resolution constitute valid and legally binding obligations of the City, enforceable in accordance with their respective terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(D) The authorization, execution and delivery of the CFP Improvement Agreements and the Authorizing Resolution, and the compliance by the City with the provisions hereof and thereof will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws

of the State of Florida relating to the City or its affairs, or any ordinance, resolution, agreement, mortgage, lease or other instrument to which the City is subject or by which it is bound.

(E) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of the City, threatened against or affecting the City, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby, or which, in any way, would materially adversely affect the validity of the CFP Improvement Agreements and the Authorizing Resolution, or any agreement or instrument to which the City is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

SECTION 2.02 REPRESENTATIONS OF CFP. CFP makes the following representations as the basis for the undertakings on the part of the City herein contained:

(A) CFP is a Florida limited liability company, authorized to transact business in Florida, and has all requisite power and authority to enter into the transactions contemplated by the CFP Improvement Agreements, and to carry out its obligations hereunder and thereunder.

(B) CFP is not in default under any provisions of applicable law material to the performance of its obligations under the CFP Improvement Agreements.

(C) CFP has duly authorized the execution and delivery of the CFP Improvement Agreements, and assuming the due authorization, execution and delivery by the other parties hereto and thereto, the CFP Improvement Agreements constitute legally binding obligations of CFP, enforceable in accordance with their respective terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(D) The authorization, execution and delivery of the CFP Improvement Agreements, and the compliance by CFP with the provisions hereof and thereof will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State of Florida or any other applicable law relating to CFP or its affairs, any ordinance, resolution, agreement, mortgage, lease or other instrument to which CFP is subject or by which it is bound.

(E) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of CFP, threatened against or affecting CFP, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or which, in any way, would materially adversely affect the validity of the CFP Improvement Agreements, or any agreement or instrument to

which CFP is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

ARTICLE III THE PROJECT

SECTION 3.01 THE PROPERTY AND CFP IMPROVEMENTS. The following improvements including, without limitation, any and all design, planning, surveying, engineering, permitting, and pre-development services and expenditures related thereto, and all related and supporting infrastructure, comprise the CFP Improvements:

(1) The Town Square Property Improvements: The Town Square Property consists of approximately 16 acres, and is bounded by East Boynton Beach Boulevard, South Seacrest Boulevard, SE 2nd Avenue, and SE 1st Street, in the City. The improvements to be constructed within the Town Square Property are anticipated to include, but not be limited to:

(a) the construction of a combined City Hall and Library, to consist of approximately 65,000 square feet for the City Hall needs, and approximately 44,000 square feet for the Library needs;

(b) the construction of improvements to parks, to consist of approximately 0.90 acres and approximately 0.22 acres, and other open space enhancements; and

(c) the reconstruction of Kids Kingdom Playground, to consist of approximately 15,000 square feet.

(2) High Ridge Road Property Improvements. The High Ridge Road Property consists of approximately 5.46 acres, and is bounded by West Gateway Boulevard, High Ridge Road, and I-95 in the City. The portion of the improvements to be constructed within the High Ridge Road Property shall include a new Police Station, consisting of approximately 56,000 square feet and related improvements.

(3) North-East 1st Street Property Improvements. The North-East 1st Street Property consists of approximately 1 acre, and is located at North-East 1st Street, in the City, and is bounded by NE 1st Avenue. The portion of the improvements to be constructed within the North-East 1st Street Property shall include Fire Station #1, consisting of approximately 10,000 square feet and related improvements.

(4) Infrastructure Improvements. The Infrastructure Improvements includes construction of all infrastructure necessary to support the CFP Improvements and future development.

CFP will also use the proceeds of the CFP Bonds (as hereinafter defined) to fund necessary debt service reserves, and/or capitalized interest on the CFP Bonds, if any, and to pay costs associated with the issuance of the CFP Bonds.

SECTION 3.02. DESIGN AND CONSTRUCTION.

(A) The City has received and approved all development documents and other deliverables required under the Phase 1 Agreement, for each component of the CFP Improvements.

(B) In conjunction with, or upon completion of, the Additional Services and approval by the City of all associated deliverables, CFP agrees to cause the completion of the design, permitting, and construction of the CFP Improvements, which services shall include, but shall not be limited to, the following:

(1) building and installing the CFP Improvements and coordinating with the City on the construction and installments;

(2) arranging for and coordinating with the City the supervision of all plans necessary to construct and install the CFP Improvements, including the preparation of budgets for various stages of the CFP Project;

(3) letting all contracts necessary to implement the construction and installation of the CFP Improvements and supervising all improvements so as to assure the prompt completion thereof;

(4) arranging for and coordinating with the City the provision of all insurance necessary in connection with the CFP Project;

(5) performing or causing to be performed, general management and administrative services in connection with the construction and installation of the CFP Improvements; and

(6) contracting for and providing all necessary legal, appraisal and accounting services in connection with the construction and installation of the CFP Improvements.

(C) In furtherance of CFP's obligations set forth herein, CFP will be requesting Public Finance Authority, a Wisconsin bond issuing commission (the "Issuer") to issue its Capital Improvement Revenue Bonds (City of Boynton Beach Municipal Improvements Project), Series 2018 in an amount not to exceed \$78,000,000 (the "CFP Bonds"), the proceeds of which will be loaned to CFP for the purposes of financing or refinancing the costs of designing, permitting and

constructing the CFP Improvements, as well as related reserves, capitalized interest and costs of issuance, including the financing, refinancing or payment of costs incurred in connection with the Phase 1 Services and Additional Services.

(D) On or before the date the CFP Bonds are issued (the “Bond Closing Date”), CFP and E2L shall enter into the Development Agreement, in substantially the form attached hereto as Appendix A, wherein E2L commits to using commercially reasonable efforts to administer, implement and enforce the Design-Build Contracts so that the Design Builders cause substantial completion of the CFP Project and deliver the completed CFP Project to CFP by the “Project Delivery Date” for a fixed price (the “Total Project Price”). The terms of the Development Agreement shall provide that in the event the City provides written notice to CFP that E2L is failing to perform in furtherance of the material obligations of CFP pursuant to this Master Agreement, such notice shall be sufficient grounds for CFP to terminate the Development Agreement, and such termination shall be without liability to CFP or the City.

(E) Following the completion of the Additional Services, and on or before the Bond Closing Date, CFP shall enter into (or accept the assignment of) the guaranteed maximum price construction contract(s) (the “Design-Build Contracts”) with the Design-Builders listed in Appendix B-1, in substantially the forms attached hereto as Appendix B-2. CFP shall require the contractors to provide a performance and payment bond covering the full construction cost of the CFP Improvements, in a form acceptable to the City. Following the execution of the Design-Build Contracts, CFP agrees that it shall not amend or modify the Design-Build Contracts without the prior written consent of the City, which consent shall not be unreasonably delayed, denied or withheld.

(F) Notwithstanding anything contained herein to the contrary, the total project costs associated with the design, permitting, and construction of the CFP Improvements, together with the costs to fund necessary reserves or capitalized interest for the CFP Bonds, if any, and to pay costs associated with the issuance of the CFP Bonds, shall not exceed \$78,000,000 unless another amount is mutually agreed to in writing by the parties.

(G) CFP shall cause the completion of the design, permitting, and the construction of the CFP Improvements to be in compliance with all applicable City ordinances and codes and state and federal statutes, rules and regulations, and in conformance with the terms and conditions of the CFP Improvement Agreements and the Design-Build Contracts.

(H) The City shall assign a dedicated, experienced project manager to work with CFP and E2L to ensure that the design and construction of the CFP Project is on schedule.

(I) CFP hereby appoints Doug Holmberg, President, PPM, Inc., as its dedicated, experienced project manager to act as its representative (the “CFP Project Manager”), who shall

be authorized to act on CFP's behalf with respect to the CFP Project. The duties of, and identification of, the CFP Project Manager may be changed by CFP from time to time, upon written notice to the City. In the event that E2L is terminated pursuant to the provisions of the Development Agreement, CFP agrees to expand the duties of the CFP Project Manager to assume the role of E2L as the project manager, or to take such other action as may be necessary to ensure that CFP satisfies its obligations hereunder and in furtherance of the Leases, in consideration for the payment of the remainder of the Development Fee (as defined in the Development Agreement) not due and owing to E2L.

SECTION 3.03. LAND USE ENTITLEMENTS. On or before the Bond Closing Date, the City shall obtain all land use entitlements necessary to commence construction of the CFP Project. Said entitlements shall include, but not be limited to, comprehensive land use approvals, zoning, site plan and construction plan approvals.

SECTION 3.04. CRA CONVEYANCE. The parties acknowledge that the North-East 1st Street Property is currently owned by the Boynton Beach Community Redevelopment Agency (the "CRA"). The City agrees to acquire fee simple ownership of the North-East 1st Street Property on or before the Bond Closing Date.

ARTICLE IV LEASE AGREEMENTS

SECTION 4.01. GROUND LEASE.

(A) On the Bond Closing Date (defined herein), the City and CFP agree to enter into one or more ground leases, in substantially the form attached hereto as Appendix C (together, or singularly, referred to herein as applicable, as the "Ground Lease"). Unless extended or sooner terminated in accordance with its terms, the Ground Lease will expire on the earlier of September 1, 2044, or the date that the CFP Bonds have been paid or defeased in full.

(B) CFP shall pay for the use of the Property the sum of One Dollar (\$1.00) per year to the City as basic rent, or such other amount as the parties may mutually agree upon, in writing.

(C) CFP's use of the Property shall be solely for the development, operation, use, repair and maintenance of the Project, all as set forth in the Ground Lease.

SECTION 4.02 FACILITIES LEASE.

(A) On the Bond Closing Date, CFP and the City agree to enter into one or more facilities leases, in substantially the form attached hereto as Appendix D (together, or singularly,

referred to herein as applicable, the “Facilities Lease”). Unless extended or sooner terminated in accordance with its terms, the Facilities Lease will expire on the earlier of September 1, 2044, or the date that the Bonds have been paid or defeased in full.

(B) Pursuant to the Facilities Lease, the City shall be obligated to pay Rent, which shall include (i) Periodic Rent (as defined in the Facilities Lease) pursuant to a schedule of payments attached to the Facilities Lease in the aggregate amount sufficient to pay debt service on the Bonds, and (ii) Additional Rent (as defined in the Facilities Lease).

(C) The City shall be obligated to begin paying Rent on the “Rent Commencement Date” as defined in the Facilities Lease. The City has, by the passage of the Authorizing Resolution, covenanted to budget and appropriate non-ad valorem revenues in such sufficient amounts to secure its obligations to pay Rent, as required the Facilities Lease. The City’s obligation to pay Rent when due shall be a general fund obligation of the City and shall not constitute a debt of the City for which the City will be obligated to pledge or levy any form of taxation.

(D) Upon completion of the CFP Improvements, the City shall manage and operate the CFP Improvements. CFP shall not be required to make any expenditures in connection with the CFP Improvements, or to make any repairs, replacements or otherwise maintain the CFP Improvements, except as may be otherwise provided for in the Facilities Lease.

(E) Upon payment of all outstanding Rent obligations, and all other outstanding payments, fees, expenses due with respect to the Bonds, CFP shall be obligated to tender to the City unencumbered title to the Property and the CFP Improvements; and

(F) City shall have the option to prepay any Rent payments and to acquire all interests to the CFP Improvements. Such option shall be subject to the optional prepayment rights for the CFP Bond financing.

ARTICLE V FINANCING

SECTION 5.01. FINANCING OBLIGATIONS OF THE PARTIES

(A) Responsibilities for Financing.

(1) The CFP Improvements shall be financed by CFP with the proceeds of the issuance of the CFP Bonds by the Issuer.

(2) The Indenture, Loan Agreement and any mortgage documents securing the CFP Bonds shall be provided to and shall be approved by an Authorized Officer, as defined in the Authorizing Resolution and such approval and execution shall not be unreasonably withheld or delayed.

(B) Security. The CFP Bonds will be secured by a Trust Estate established under the Indenture. The Trust Estate will be primarily comprised of the revenues of CFP, including without limitation, Rent payments made by the City under the Facilities Lease. The City has covenanted to budget and appropriate non-ad valorem revenues to secure its payment obligations under the Facilities Lease. The CFP Bonds shall not constitute the general obligation of the Public Facilities Authority, or the City, and shall be payable from available monies constituting the Trust Estate. Neither the full faith credit or taxing power of the State of Florida, the Public Facilities Authority, or the City shall be pledged to the repayment of the CFP Bonds.

(C) Bond Closing Date. CFP and the City shall use commercially reasonable efforts to consummate the Bond financing on or before August 30, 2018.

(D) Fees and Expenses. In addition to the obligations and agreements of the City as set forth in the Phase 1 Services Agreement, as amended, and the Phase 2 Agreement as such agreements pertain to the CFP Improvements, the City acknowledges and agrees that in the event that the CFP Bonds are not issued as contemplated herein, or the transactions contemplated herein otherwise fail to close by November 1, 2018, the City shall reimburse CFP, Dougherty & Company LLC, as underwriter, and Broad and Cassel LLP, as Bond Counsel and Disclosure Counsel, for each entity's reasonable and customary fees and out of pocket expenses incurred in connection with the transactions contemplated herein. Each entity shall provide the City with such documentation as it reasonably may require to support its request for reimbursement, but in no event shall such reimbursement exceed the following amounts: \$180,000 for CFP; \$100,000 for Dougherty & Company LLC, and \$200,000 for Broad and Cassel LLP. Upon the payment of the fees and expenses required herein, this Master Agreement shall automatically terminate, and shall be of no further force and effect.

SECTION 5.02. REFINANCING.

(A) Consent Required. CFP shall not enter into any Refinancing without the prior written consent of the City, which consent shall not be unreasonably delayed, denied or withheld. CFP shall provide written notice of any Refinancing no later than 90 days prior to the expected closing date of such Refinancing, which notice shall include all proposed revisions to the applicable Bond documents.

(B) Cooperation. The City shall cooperate, as reasonably requested by CFP in connection with the closing of any Refinancing, including providing customary legal opinions and instruments.

(C) CFP shall pay the City's reasonable internal administrative and personnel costs and all reasonable and properly incurred out-of-pocket professional costs in connection with a Refinancing.

ARTICLE VI NOTICE

SECTION 6.01. NOTICE ADDRESSES. Any notice, demand, communication or request required or permitted hereunder shall be in writing and delivered in person or by certified mail, return receipt requested as follows:

(A) In the case of the City, addressed to or delivered personally to the City of Boynton Beach, at 100 East Boynton Beach Boulevard, Boynton Beach, Florida 33425-0310, Attention: City Manager with a copy to James A. Cherof, City Attorney, 100 East Boynton Beach Boulevard, Boynton Beach, Florida 33425-0310.; and

(B) In the case of CFP, addressed to or delivered personally to CFP at 18336 Minnetonka Blvd., Suite #C, Deephaven, Minnesota 55391, Attention: Steve Collins, President, with a copy to Daniel R. W. Nelson, Esquire, Best and Flanagan LLP, 60 South Sixth Street, Suite 2700, Minneapolis, MN 55402.

SECTION 6.02. NOTICE EFFECTIVE DATES. Notices shall be effective when received by each of the above-referenced individuals at the addresses specified above. Each party shall be responsible for notifying the other in writing of any changes in the respective addresses set forth above.

SECTION 6.03. ROUTINE COMMUNICATIONS. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the City and CFP.

ARTICLE VII GENERAL PROVISIONS

SECTION 7.01. NO ASSIGNMENT WITHOUT CONSENT. Other than the assignment of this Master Agreement to the Trustee for the CFP Bonds, which is hereby approved, this Master Agreement is personal to each of the parties hereto, and neither party may assign or delegate any rights or obligations hereunder without first obtaining the written consent of the other party.

SECTION 7.02. CONFLICT OF INTEREST. CFP agrees to decline any offer of work, whether as an independent contractor or employee, if such work would:

(A) Affect CFP's independent professional judgment with respect to its performance of the Services; or

(B) In any way interfere with CFP's ability to discharge any of its obligations under this Master Agreement. The initial determination of whether any offer of work would present such a conflict of interest shall rest with CFP. However, CFP shall be obligated to notify the City and provide full disclosure as to any possible adverse effects of such work as it relates to CFP's independent professional judgment or the discharge of any of its obligations under this Master Agreement. Final decision as to whether any such work proposes a prohibited conflict of interest shall rest with the City.

SECTION 7.03. COMPLIANCE WITH LAWS. In performing its obligations pursuant to this Master Agreement, CFP shall, at its own expense, comply with all applicable federal, state and local laws, regulations and codes. CFP shall be obligated to immediately notify the City of any notice or allegation of wrongdoing or of any material third-party complaint relating to this Master Agreement. Upon request of the City, the CFP shall fully cooperate in any investigation by furnishing any documents, records or other testimonial evidence pertinent to such investigation.

SECTION 7.04. NONWAIVER. The failure of either party to insist upon strict compliance with any provision of this Master Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect, nor constitute a waiver of, any party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior, contemporaneous or subsequent default or breach.

SECTION 7.05. SEVERABILITY. The parties hereto intend all provisions of this Master Agreement to be enforced to the fullest extent permitted by law. Accordingly, if a court of competent jurisdiction finds any provision to be unenforceable as written, the parties intend and desire that the court will reform the provision so that it is enforceable to the maximum extent permitted by law. If, however, the court finds such provision to be illegal and not subject to reformation, such provision shall be fully severable. In such event, this Master Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision was never a part hereof, and the remaining provisions of this Master Agreement shall remain in full force and effect.

SECTION 7.06. SCHEDULES AND EXHIBITS. All Schedules and Exhibits attached hereto shall be and hereby are incorporated into this Agreement as if fully rewritten herein.

SECTION 7.07. AMENDMENT. No amendment of or modification to this Master Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Master Agreement.

SECTION 7.08. NO THIRD-PARTY BENEFICIARIES. This Master Agreement is entered into for the exclusive benefit of CFP and the City, and CFP and the City expressly disclaim any intent to benefit anyone not a party hereto.

SECTION 7.09. TIME IS OF THE ESSENCE. The City and the CFP each acknowledge and agree that time is of the essence in the performance of this Master Agreement.

SECTION 7.10. NON-EXCLUSIVE. This Master Agreement shall be non-exclusive. Accordingly, CFP shall be free to provide services to other clients, and City shall be free to engage the services of other companies unrelated to CFP.

SECTION 7.11. PROHIBITION AGAINST FINANCIAL INTEREST. No elected official or employee of the City shall have a financial interest, direct or indirect, in this Master Agreement. For purposes of this Section, a financial interest held by the spouse, child or parent of any elected official or employee of City shall be deemed to be a financial interest of such elected official or employee of City.

SECTION 7.12. REMEDIES CUMULATIVE. No remedy set forth in this Master Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

SECTION 7.13. COMPLETE AGREEMENT. CFP specifically acknowledges that in entering into and accepting this Master Agreement, CFP relies solely upon the representations and agreements contained in this Master Agreement and no others. This Master Agreement supersedes and replaces any and all prior agreements, negotiations and discussions between the parties hereto with regard to the terms, obligations and conditions herein.

SECTION 7.14. REPRESENTATIVES NOT INDIVIDUALLY LIABLE. No member, official, or employee of either party shall be personally liable to the other party, or any successor in interest, in the event of any default or breach or on any obligations under the terms of the Master Agreement.

SECTION 7.15. DISCLAIMER OF RELATIONSHIPS. The City and CFP acknowledge that nothing contained in this Master Agreement nor any act by the City or CFP shall be deemed or construed by any of them or by any third person to create any relationship of

principal and agent, limited or general partner, or joint venture between or among the City, CFP and/or any third party.

SECTION 7.16. ORIGINAL COPY. One original of this Master Agreement will be executed and maintained by the City Clerk of the City. The City Clerk will provide a certified copy to CFP.

SECTION 7.17. GOVERNING LAW; VENUE. This Master Agreement shall be construed and enforced in accordance with the laws of the State of Florida, excepting its conflict of law provisions. Venue for any litigation filed to enforce any right, obligation, or responsibility of either party under this Master Agreement shall be filed in the appropriate state or federal court located in Palm Beach County, Florida.

SECTION 7.18. SOVEREIGN IMMUNITY. Nothing in this Master Agreement shall abrogate or waive the City's sovereign immunity or the provisions of Section 768.28, Florida Statutes.

IN WITNESS WHEREOF, the City has caused this Master Agreement to be duly executed in its name and behalf and CFP has caused this Master Agreement to be duly executed in its name and behalf on the dates set forth below.

CITY OF BOYNTON BEACH, FLORIDA

CITY OF BOYNTON BEACH

BY: _____
STEVEN B. GRANT, MAYOR

DATE: _____

ATTEST:

BY: _____
City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

James A. Cherof
City Attorney

CFP BOYNTON BEACH TOWN SQUARE, LLC, a
Florida limited liability company

BY:

By: _____
Thomas Anderson

DATE: _____

(SEAL)

ATTEST:

APPENDIX A
FORM OF DEVELOPMENT AGREEMENT

APPENDIX B-1
DESIGN-BUILDERS

APPENDIX B-2
FORM OF DESIGN-BUILD CONTRACT

APPENDIX C
FORM OF THE SITE LEASE

APPENDIX D
FORM OF THE FACILITIES LEASE



CITY OF BOYNTON BEACH AGENDA ITEM REQUEST FORM

REQUESTED ACTION BY COMMISSION: Motion to approve general terms of Ground Lease Agreement and Facilities Lease Agreement between the City and CFP subject to approval by City Attorney.

EXPLANATION OF REQUEST:

In connection with the Town Square project the City is proposing to enter into the following:

- A ground lease with CFP, for CFP to lease the land being used for public use in order to construct improvements on land; and
- A facilities lease where the City leases back the public buildings from CFP after construction for a period of approximately 25 years and will pay annual lease payments;
- Once lease payments have been satisfied the buildings are turned over to the City.

HOW WILL THIS AFFECT CITY PROGRAMS OR SERVICES?

FISCAL IMPACT:

ALTERNATIVES:

Do not approve agreements

STRATEGIC PLAN:

STRATEGIC PLAN APPLICATION:

CLIMATE ACTION: No

CLIMATE ACTION DISCUSSION:

Is this a grant? No

Grant Amount:

ATTACHMENTS:

Type	Description
<input type="checkbox"/> Attachment	Ground Lease
<input type="checkbox"/> Attachment	Facilities Lease

Working Draft: March 2, 2018

GROUND LEASE AGREEMENT

between

CITY OF BOYNTON BEACH, FLORIDA

and

**CFP BOYNTON BEACH TOWN SQUARE, LLC,
a Florida limited liability company**

as Lessee

[Insert Date]

CITY OF BOYNTON BEACH TOWN SQUARE REDEVELOPMENT PROJECT

For The

[City Hall/Library][Police Station][Fire Station]

Working Draft: March 2, 2018

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT ("Ground Lease") is dated for reference purposes [____], and is made by and between the **CITY OF BOYNTON BEACH, FLORIDA** ("Lessor"), and **CFP BOYNTON BEACH TOWN SQUARE, LLC**, a Florida limited liability company ("CFP" or "Lessee").

RECITALS

A. Lessor is the owner of the real estate described on **EXHIBIT A** attached hereto (the "Property") located in the City of Boynton Beach, Florida.

B. Lessor intends to lease the Property to Lessee pursuant to this Ground Lease, and Lessee intends to construct and equip thereon certain public improvements (the "CFP Improvements"), all as more fully described on the [Preliminary][Final] Plans as shown in Exhibit C of that certain Facilities Lease Agreement between the parties of even date herewith (the "Facilities Lease").

C. Lessee anticipates that financing for the CFP Improvements will be pursuant to its issuance of tax-exempt and taxable obligations, to be issued by the Public Facilities Authority (the "CFP Bonds").

D. All capitalized terms used in this Ground Lease but not otherwise defined herein (including these Recitals hereto) shall have the meanings given to such terms in the Facilities Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. The Demise.

1.1 Demise. In consideration of the rents, covenants and agreements contained in this Ground Lease, Lessor hereby leases the Property to Lessee, and Lessee hereby leases the Property from Lessor upon and subject to the conditions set forth in this Ground Lease, and subject to all encumbrances and matters of record as of the date of this Ground Lease.

1.2 Use of the Property. The Property shall be used and occupied only for the purpose of the development, operation, use, repair and maintenance of the CFP Improvements but, until Lessee commences such use and occupancy, Lessor reserves the right to continue to use and occupy the Property for its purposes at no cost. Lessee shall not use or permit the Property to be used for any other purpose without the prior written approval of Lessor. Lessee is hereby authorized to lease back to Lessor, and Lessor agrees to lease, the Property as improved by the CFP Project pursuant to the Facilities Lease.

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1.3 Access and Utilities. Lessor and Lessee shall mutually cooperate regarding the provision of reciprocal temporary and permanent pedestrian and vehicular access and utilities to, from, and over the Property and the CFP Improvements to, from, and over adjacent lands of Lessor. Lessor and Lessee shall execute such instruments as may be necessary to provide for such pedestrian and vehicular access, and utilities at no additional cost to Lessee and agree to cooperate in the location thereof.

1.4 Leasehold Title Insurance. The leasehold interest in the Property granted to Lessee by Lessor shall be subject only to those exceptions set forth in the attached Exhibit B, based upon a preliminary commitment for title insurance obtained by Lessee, a copy of which has been previously provided to and approved by Lessor. The leasehold interest granted to Lessee by Lessor shall be insured by a title insurance company acceptable to Lessor and Lessee, and the cost of the policy of title insurance shall be a cost of the CFP Improvements.

2. Term.

2.1 Commencement. The term of this Ground Lease shall commence on the “Effective Date,” which is the date that this Ground Lease is fully executed, acknowledged and delivered by Lessor and Lessee.

2.2 Duration. The term of this Ground Lease shall commence on the Effective Date and shall terminate on the earlier of (i) September 1, 2044 or (ii) the date that the CFP Bonds have been paid and retired and the Premises have been conveyed by Lessee to Lessor as set forth in Section 4.4 of the Facilities Lease, unless sooner terminated hereunder (the “Term”).

Notwithstanding the foregoing, if on the Expiration Date of the Facilities Lease, the total Rent (as defined in the Facilities Lease) otherwise payable has not been fully paid as a result of an Abatement of Rent (as defined in the Facilities Lease) and the CFP Bonds have not been fully paid, then, as provided in the Facilities Lease, the term of the Facilities Lease may, at the option of Landlord thereunder, be extended until the total Monthly Rent otherwise payable thereunder shall be fully paid and the Bonds have been fully paid, except that the term of the Facilities Lease shall in no event be extended beyond [_____]. In the event of such an extension, the Term of this Ground Lease shall be deemed extended for the same period of time that the term of the Facilities Lease is extended.

3. Rent. Lessee shall pay to Lessor as rent for the Term the sum of \$1.00 payable in whole in advance on or before the first day of the Term, the sufficiency and receipt of which is hereby acknowledged by the parties.

4. Development of the CFP Improvements.

4.1 Construction. Lessor agrees that Lessee shall cause the CFP Improvements to be constructed and developed on the Property pursuant to the Facilities Lease. Lessee shall not

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permit any development or construction on the Property except as contemplated by the Facilities Lease or as otherwise specifically approved in writing by Lessor.

4.2 Ownership of Improvements. During the Term, the CFP Improvements and all other improvements on the Property paid for by Lessee shall be owned by Lessee. The CFP Improvements include no ownership interest in the Property other than Lessee's leasehold interest hereunder. It is the intention of the parties that separation of the title to the Property from the title to the CFP Improvements shall not change the character of the CFP Improvements as real property.

(a) No Conveyance of Improvements. During the term of this Ground Lease, the CFP Improvements shall not be conveyed, transferred or assigned except for a lien to be granted by the Lessee under the terms of the Leasehold Mortgage for the benefit of the Trustee, as further described in that certain Indenture to be entered into in furtherance of the issuance of the CFP Bonds. In its capacity as the beneficiary of the Leasehold Mortgage herein, the Trustee is hereafter referred to as the "Leasehold Mortgagee." At all times, the owner of the leasehold interest of the Lessee under this Ground Lease shall also be the owner of the CFP Improvements. Any attempted conveyance, transfer or assignment, whether voluntarily or by operation of law or otherwise, to any person or entity not in compliance with the preceding sentence shall be void and of no effect whatsoever. Lessee shall allow no other party to construct any improvements on the Property.

(b) Vesting of Improvements in Lessor. Upon any termination of this Ground Lease and payment in full and retirement of the CFP Bonds, all of Lessee's right, title and interest in and to the CFP Improvements shall terminate and title to the CFP Improvements shall automatically vest in the Lessor and the CFP Improvements shall be surrendered by Lessee to the Lessor. No further deed or other instrument shall be necessary to confirm the vesting in the Lessor of title to the CFP Improvements. However, Lessee shall upon request of the Lessor execute, acknowledge and deliver to Lessor a quitclaim deed to convey all of Lessee's leasehold interest in the Property and its fee ownership of the CFP Improvements constructed by Lessee thereon to Lessor and to confirm that title to the CFP Improvements has vested in the Lessor.

5. Taxes and Utilities. Lessee shall be solely responsible for the payment of and shall pay and discharge all Taxes and Utilities which are incurred as part of Project Costs as defined in the Facilities Lease.

6. Condition of the Property.

6.1 "As Is". Lessee hereby accepts the Property "as is" in its existing condition; provided, however, that except for environmental remediation, if any, specifically covered by the approved Project Budget as defined in the Facilities Lease, Lessor shall be solely responsible for all claims, judgments, damages, penalties, fines, expenses, liabilities or losses relating to the presence, release or disposal of hazardous substances that (i) were present in the soil, groundwater or soil vapor on or under the Property as of the Effective Date of this Ground Lease, (ii) are at any time present on

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any adjacent property owned or controlled by Lessor and which result in contamination of the Property, or (iii) contaminate the Property as a result of the act or omission of Lessor or the act or omission of any party for which Lessor is liable. Lessor's obligation shall include any costs of investigation or remediation of such toxic or hazard substances that may be required by any federal, state or local government agency. Lessor shall not be responsible for any claims, judgments, damages, penalties, fines, expenses, liabilities or losses relating to the release or disposal of hazardous substances on the Property during construction of the Project by Lessee or the act or omission of Lessee's contractors or their subcontractors or any other party for which Lessee is liable, and the responsibility for the same shall remain with Lessee.

6.2 Lessor's Right to Inspect. Lessor shall have the right to inspect the Property at any time.

7. Liens; Security Interest.

7.1 Leasehold Mortgage. Except for a leasehold deed of trust ("Leasehold Mortgage") to be granted by Lessee to Trustee in its capacity as beneficiary under the Leasehold Mortgage as security for the CFP Bonds to be issued to finance the CFP Improvements or as specifically approved in writing by Lessor, Lessee will not directly or indirectly create or permit to be created or to remain, and will discharge any mortgage, lien, security interest, encumbrance or charge on the Property, any part thereof, the CFP Improvements, Lessee's interest therein, or any equipment, fixtures or personalty on the Property that is imposed by or as a result of the actions of Lessee. The term "Leased Premises" as used in this Section 7 shall have the meaning assigned to it in the Leasehold Mortgage.

7.2 Protection of Leasehold Mortgagee. If Lessee shall mortgage its leasehold interest under this Ground Lease, then so long as such Leasehold Mortgage remains in full force and effect the following provisions shall apply:

(a) Notice of Default. Lessor upon serving Lessee any notice of default pursuant to the provisions of this Ground Lease shall also serve a copy of such notice upon Leasehold Mortgagee at the address provided to Lessor. No notice to Lessee under this Ground Lease shall be deemed to have been duly given unless and until a copy thereof has been served on such Leasehold Mortgagee. From and after the date such notice has been given to Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or acts or omissions which are the subject matter of such notice, or causing the same to be remedied, as is given Lessee after the giving of such notice to Lessee under this Ground Lease, plus in each instance the additional periods of time specified in subsections (b) and (c) of this Section 7.2 to remedy, commence remedying or cause to be remedied, the defaults or acts or omissions which are specified in such notice.

(b) Right To Cure. Leasehold Mortgagee shall have the right, but not the obligation, to remedy such default or cause the same to be remedied for a period of ninety (90) days

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after the expiration of the cure period, if any, provided for under this Ground Lease, for Lessee to remedy same and Lessor shall accept such performance by or at the instance of Leasehold Mortgagee as if the same had been made by Lessee.

(c) **Extended Cure Period.** If the default is reasonably susceptible of cure, but cannot reasonably be remedied within ninety (90) days, Lessor shall not terminate this Ground Lease, so long as (i) defaults in the payment of money under this Ground Lease are cured within ninety (90) days and all rent and all other items required to be paid by Lessee under this Ground Lease are paid as and when the same becomes due and payable, and (ii) the cure for any non-monetary default under this Ground Lease has commenced, and is thereafter diligently and in good faith continuously prosecuted to completion. Such cure period shall include any time required to obtain possession of the Leased Premises by foreclosure of the Leasehold Mortgage or by other appropriate means by reasonable diligence, or until such earlier time as all defaults of Lessee are cured. Nothing in this clause (c), however, shall be construed to extend this Ground Lease beyond the Term, nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after all defaults are cured. Once all defaults are cured, this Ground Lease, shall continue in full force and effect as if Lessee had not defaulted.

(d) **New Ground Lease.** In the event of the termination of this Ground Lease prior to the expiration of the Term for any reason, including a termination by reason of a bankruptcy by Lessee, Lessor shall serve upon the Leasehold Mortgagee written notice that the Ground Lease has been terminated together with a statement of any and all sums which would at the time be due under this Ground Lease but for such termination and of all other defaults, if any, under this Ground Lease then known to Lessor. Leasehold Mortgagee shall thereupon have the option, but shall in no event be obligated, to obtain a new lease in accordance with and upon compliance with each of the following terms and conditions:

(1) Leasehold Mortgagee shall within ninety (90) days following service of notice of termination of this Ground Lease, provide written notice to Lessor that it desires to enter into a new lease of the Leased Premises with Lessor; and

(2) Lessor shall enter into a new lease which shall be effective as of the date of the termination of this Ground Lease and shall be for the remainder of the Term of this Ground Lease and at the Rent and upon all other terms, covenants and conditions as this Ground Lease (excluding requirements which are inapplicable or have already been fulfilled).

(e) **Notices.** Any notice or other communication which Lessor shall desire or is required to give or serve upon Leasehold Mortgagee shall be in writing and shall be served by registered mail addressed to Leasehold Mortgagee at the address set forth in such Leasehold Mortgage a copy of which has been provided to Lessor or such other address as shall be designated by Leasehold Mortgagee by notice in writing given to Lessor by registered mail. Any notice or other communication which such Leasehold Mortgagee shall desire or is required to give or serve upon Lessor shall be in writing and shall be served by registered mail addressed to Lessor

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at the address set forth in Section 15 of this Ground Lease or such other address as shall be designated by Lessor by notice in writing given to Leasehold Mortgagee by registered mail.

(f) **Amendments.** No agreement between Lessor and Lessee modifying, canceling or surrendering this Ground Lease shall be effective without (i) the prior written consent of the Leasehold Mortgagee, acting upon the direction of the holders of a majority in aggregate principal amount of the Bonds and (ii) a written opinion from nationally recognized bond counsel that any such modification, cancelation or surrender will not have an adverse effect on the tax exempt status of interest on the Bonds.

(g) **Insurance Clauses.** A standard mortgagee clause naming Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Lessee hereunder and the Leasehold Mortgage shall so provide.

(h) **Leasehold Mortgage Not a Transfer.** For the purposes of Section 16 of this Ground Lease, the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Ground Lease or the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of the Lessee's interest under this Ground Lease or of the leasehold estate created hereby so as to require such Leasehold Mortgagee as such to assume the performance of any of the terms, covenants or conditions on the part of the Lessee to be performed prior to foreclosure of the Leasehold Mortgage; provided, however, that upon foreclosure of the Leasehold Mortgage, the Leasehold Mortgagee or any purchaser at any sale of the Lessee's rights under this Ground Lease in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of the Lessee's rights under this Ground Lease created under any instrument of assignment or transfer in lieu of foreclosure of any Leasehold Mortgage, shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Lessee to be performed hereunder (except any indemnification obligations of the Lessee) from and after the date of such purchase and assignment.

(i) **Leasehold Mortgagee's Right to Assign.** Notwithstanding any provision of this Ground Lease to the contrary, Leasehold Mortgagee may upon acquiring the Lessee's interest under this Ground Lease pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring the Lessee's interest under this Ground Lease, or a new lease as provided above, and without further consent of Lessor sell and assign such leasehold interest on such terms and to such persons and organizations as are acceptable to such Leasehold Mortgagee and thereafter be relieved of all obligations under this Ground Lease, which accrue after the date of such sale or assignment so long as each of the following conditions are met:

(1) There is no default on the part of Leasehold Mortgagee under this Ground Lease and no event that with the giving of notice, the passage of time, or both, would constitute an Event of Default by Leasehold Mortgagee under this Ground Lease, all such defaults having been cured to the reasonable satisfaction of Lessor prior to the effective date of such assignment;

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(2) If such assignee will not itself manage the CFP Improvements, its proposed operator shall have sufficient experienced and competent personnel to operate, manage, maintain and repair the CFP Improvements in accordance with the requirements of this Ground Lease;

(3) As part of such assignment the assignee shall assume the obligations of Lessee under this Ground Lease by executing, acknowledging and recording one or more assumption agreements in form and substance reasonably satisfactory to Lessor. The assignee shall thereafter have all the rights and shall perform all the duties and obligations of Lessee under this Ground Lease; and

(4) No Leasehold Mortgagee or assignee shall have any liability under this Ground Lease beyond its interest in this Ground Lease, even if it becomes Lessee. Any such liability shall: (a) not extend to any defaults that occurred before Leasehold Mortgagee or such Assignee took title to Lessee's interest under this Ground Lease; and (b) terminate if and when any such Leasehold Mortgagee or Assignee assigns (and the assignee assumes) this Ground Lease. Any such sale or assignment shall not release Leasehold Mortgagee or such Assignee from any claims or obligations under this Ground Lease, which arose while Leasehold Mortgagee or any of its affiliates or Assignee held the Lessee's interest under this Ground Lease or was in possession of the Premises.

(j) Rejection of Unexpired Ground Lease by Lessee or Lessee's Bankruptcy Trustee. If Lessee or Lessee's Bankruptcy Trustee rejects this Ground Lease during the Term in a proceeding under Section 365 of the United States Bankruptcy Code or similar or successor statute, such rejection will have no effect on the rights of Leasehold Mortgagee under this Section 7.2, which rights will remain in full force and effect notwithstanding such rejection as if the same were provided for in a separate and independent agreement between Lessor and such Leasehold Mortgagee, and such Leasehold Mortgagee shall have the right to a new Ground Lease on the same terms and conditions set forth in Section 7.2 above. The provisions set forth in Section 7.2 of this Ground Lease granting Leasehold Mortgagee certain rights are for the express benefit of each such Leasehold Mortgagee for the term set forth in this Section 7.2 and are independent of the other provisions of this Ground Lease.

(k) No Merger. So long as any Leasehold Mortgage is in existence, unless the Leasehold Mortgagee otherwise consents in writing at the direction of the holders of a majority in aggregate principal amount of the Bonds, the fee title to the Leased Premises and the leasehold estate of Lessee therein created by this Ground Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Lessor or by Lessee or by a third party, by purchase or otherwise.

(l) Further Assurances. Upon request from Lessee or any Leasehold Mortgagee (prospective or current), Lessor shall promptly and in writing, under documentation

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reasonably satisfactory to Lessor and the requesting party: certify that this Ground Lease is in full force and effect, that to Lessor's knowledge no Default exists, the date through which Rent has been paid, and such other similar matters as may be reasonably requested, all subject to any then exceptions reasonably specified in such certificate.

(m) **Miscellaneous.** Notwithstanding anything to the contrary in this Ground Lease, Leasehold Mortgagee: (a) may exercise its rights through an affiliate, assignee, designee, nominee, subsidiary or other person, acting in its own name or in Leasehold Mortgagee's name (and anyone so acting shall automatically have the same protections, rights, and limitations of liability as Leasehold Mortgagee); (b) shall never be obligated to cure any Lessee Default; (c) may abandon such cure at any time; and (d) may withhold its consent or approval for any reason when acting upon the direction of the holders of a majority in aggregate principal amount of the Bonds. Any such consent or approval must be in writing.

8. Indemnity and Hold Harmless.

8.1 Indemnification by Lessor. Lessor shall indemnify, defend and hold harmless Lessee and its elected and appointed officers, officials, representatives, employees, and agents (the "Indemnified Lessee Parties") from and against any and all liability, demands, liens, damages, claims, causes of action, expenses, and fees (including reasonable attorney's fees and costs and expert witness fees) for bodily injury, property damage, and death (hereinafter collectively referred to as "Liabilities"), arising out of or relating to the negligent acts, errors, or omissions of Lessor including, without limitation, any breach of this Ground Lease except to the extent that such Liabilities are caused by the negligence or willful misconduct of Lessee.

8.2 Indemnification by Lessee. Lessee shall indemnify, defend and hold harmless Lessor and its officers, employees, and agents (the "Indemnified Lessor Parties") from and against any and all Liabilities (as defined in Section 8.1), arising out of or relating to the negligent acts, errors, or omissions of Lessee including, without limitation, any breach of this Ground Lease except to the extent that such Liabilities are caused by the negligence or willful misconduct of Lessor.

8.3 Survival. The indemnification provisions of this Section shall remain in full force and effect and survive the termination and/or expiration of this Lease.

9. Minimum Scope of Insurance Coverage for Lessee. For so long as the Facilities Lease remains in effect, the insurance provisions thereof shall be deemed to be substituted in their entirety for this Section 9. At any other time, the following provisions shall be applicable.

9.1 Property Insurance. In the event that Lessor is not maintaining property insurance with respect to all improvements constructed on the Property, Lessee shall maintain property insurance insuring all improvements constructed on the Property, as well as all of Lessor's personal property and trade fixtures located on the Property as part of the Project, against loss or

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damage by fire and other perils currently covered by a special causes of loss commercial property insurance form. Lessee shall also cause the improvements to be insured against the perils of earthquake and flood, either as part of the aforementioned property insurance, or under a separate policy or policies; provided, however, that such coverage shall be maintained only so long as it is available at a commercially reasonable cost and in coverage amounts which are commercially available, but Lessee shall not be in default under this Ground Lease if coverage is no longer written, is unavailable for comparable properties or is not available at commercially reasonable premium amounts. The property insurance policy shall meet the requirements set forth in this Section and in the Facilities Lease.

9.2 Lessee's Coverages. Lessee shall at a minimum maintain: Commercial General Liability Insurance, covering Commercial General Liability with a limit of not less than \$1,000,000 combined single limit per occurrence; \$2,000,000 aggregate. In addition, Lessee shall maintain workers' compensation coverage as required by the laws of the State of Florida, statutory limits.

9.3 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in insurance coverage maintained by Lessee must be declared to and approved by Lessor. The deductible and/or self-insured retention of the policies shall not limit or apply to Lessor and shall be the sole responsibility of Lessee.

9.4 Other Insurance Provisions. The insurance policies required by this Ground Lease are also to contain or be endorsed to contain the following provisions where applicable:

(a) Liability Policies:

(1) Lessor, Leasehold Mortgagee (i.e., Trustee) and their respective officers, officials, employees and agents are to be covered as an additional insured as respects liability arising out of activities performed by or on behalf of Lessee in connection with this Lease.

(2) Lessee's insurance coverage shall be primary insurance as respects Lessor, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by Lessor, Leasehold Mortgagee (i.e., Trustee) and their respective officers, officials, employees and agents shall not contribute with Lessee's insurance or benefit Lessee in any way.

(3) Lessee's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(b) All Policies. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limits by claims paid, until after thirty (30) days' prior written notice has been given to Lessor.

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(c) **Acceptability of Insurers.** Unless otherwise approved by Lessor:

(1) Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investors Service.

(2) If at any time any of the foregoing policies shall fail to meet the above minimum standards, Lessee shall, upon notice to that effect from Lessor, promptly obtain a new policy and shall submit the same to Lessor with certificates and endorsements for approval.

9.5 Waiver of Subrogation. Lessee shall cause its property insurance carrier(s) to release and waive all rights of subrogation against Lessor to the extent a loss is covered by property insurance in force; provided, however, that this Section 9.5 shall be inapplicable if it would have the effect of invalidating any insurance coverage of Lessee.

10. Eminent Domain. In the event of any taking of the Property, partial or whole, Lessor shall be entitled to the entire award judgment or settlement from the condemning authority for the value of the Property taken by the condemning authority, and any taking of the Improvements, partial or whole, shall be subject to the provisions of Section 20 of the Facilities Lease.

11. Events of Default by Lessee and Lessor's Remedies.

11.1 Events of Default. The following occurrences or acts shall constitute an event of default under this Ground Lease:

(a) **Failure to Perform.** If Lessee shall (i) default in making payment when due of any rent or any other amount payable by Lessee hereunder; or (ii) default in the observance or performance of any other substantial provision of this Ground Lease to be observed or performed by Lessee hereunder; and, in either case, if such default shall continue for thirty (30) days, in each case after Lessor shall have given to Lessee notice specifying such default and demanding that the same be cured, or, with respect to a default under subsection (ii), if by reason of the nature thereof such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such period of thirty (30) days, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default and with all due diligence, it being intended in connection with a default not susceptible of being wholly cured with due diligence within such period that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence; or

(b) **Lessee's Financial Condition.** If Lessee shall make a general assignment for the benefit of creditors, or shall file a petition in bankruptcy, or shall be adjudicated as

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bankrupt or insolvent, or shall file a petition 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 shall fail seasonably to contest the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Lessee or any material part of its properties.

11.2 Remedies Upon Lessee's Default. In the event of any default by Lessee as defined hereinabove which default remains uncured after the expiration of the respective period set forth above, Lessor may exercise any remedy which may be available to Lessor at law or equity, including but not limited to actions for damages, and/or injunctive relief, including termination of this Ground Lease; provided, that, unless the CFP Bonds have been paid in full, Lessor may not terminate this Ground Lease or the Facilities Lease prior to the end of the Term.

11.3 Cumulative Rights and Remedies. The rights and remedies reserved to Lessor herein, including those not specifically described, shall be cumulative, and except as provided by Florida statutory law in effect at the time, Lessor may pursue any and all such rights and remedies at the same time or independently.

11.4 No Waiver. No delay or omission of Lessor to exercise any right or remedy shall, except as expressly provided herein, be construed as a waiver of any such right or remedy or of any default by Lessee hereunder. The acceptance by Lessor of rent shall not be a waiver of any preceding breach or default by Lessee of any provision hereof, other than the failure of Lessee to pay the, particular rent accepted, regardless of Lessor's knowledge of such preceding breach or default at the time of acceptance of such rent, or, except as expressly set forth herein, a waiver of Lessor's right to exercise any remedy available to Lessor by virtue of such breach or default.

11.5 Attorneys' Fees. In the event suit is brought by Lessor or Lessee relating to this Lease, including for the breach of any covenant or condition of this Lease, the prevailing party shall be entitled to a reasonable sum for attorneys' fees, witness fees, and court costs, including costs of appeal.

12. Quiet Enjoyment. If and so long as Lessee shall pay all rent and all other amounts payable by Lessee hereunder whenever the same shall become due and shall keep all of the covenants and conditions required by it to be kept during this Ground Lease and shall perform all of its other obligations hereunder, Lessor covenants and agrees that, except as may otherwise be provided in the Facilities Lease, Lessor will not interfere with the peaceful and quiet occupation and enjoyment of the Property by Lessee, which occupation and enjoyment shall be without hindrance, ejection or molestation by Lessor.

13. Compliance with Laws. Lessee shall not use the Property or permit anything to be done in or about the Property which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated.

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Lessee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and obtain all permits, licenses or other approvals required by governmental agencies or bodies. Lessee shall further comply with the requirements of any board or fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Property.

14. Waiver Limitations. The waiver by either party of any term, covenant or condition herein contained on the part of the other party to be performed shall not be deemed a waiver of such term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance by Lessor of Lessee's performance of any obligations hereunder shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Ground Lease.

15. Notices. All notices or requests required or permitted under this Ground Lease shall be in writing, shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, by nationally recognized overnight courier or by confirmed email transmission and shall be deemed given when so delivered, received or email (provided sender obtains a confirmation of receipt). All notices or requests shall be sent as follows:

If to Lessor: City of Boynton Beach
 Attention: City Manager
 100 East Boynton Beach Boulevard
 Boynton Beach, Florida 33425-0310
 Email: [_____]

If to Lessee: CFP Boynton Beach Town Square, LLC
 18336 Minnetonka Boulevard, Suite #C
 Deephaven, Minnesota 55391
 Email: [_____]

Any party may change the address to which notices shall be sent by notice to the other party in the manner and with the effect set forth in this Section 15.

16. Assignment and Subleasing.

16.1 Subleasing. Lessor and Lessee intend that Lessee shall enter into the Facilities Lease with Lessor. Any other proposed subleases of the Property shall be subject to the review and written approval of Lessor.

16.2 Assignment Except for the Leasehold Mortgage granted by Lessee to the Trustee to secure the repayment of the CFP Bonds for the CFP Improvements, Lessee shall not assign, mortgage, or encumber this Ground Lease or delegate the duties of Lessee under this Ground

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Lease without the prior written consent of Lessor. A consent to one assignment shall not be deemed to be a consent by Lessor to any subsequent assignment by another person. This Ground Lease shall not, nor shall any interest of Lessee herein, be assignable by operation of law, without prior written consent of Lessor.

17. Miscellaneous.

17.1 Time of Essence. Time is of the essence in regard to performance of the covenants and agreements, stated herein.

17.2 No Joint Venture or Agency. Nothing contained in this Ground Lease nor any of the acts of the parties hereto shall be construed nor is it the intent of the parties, to create a joint venture or partnership between Lessor and Lessee, nor is either party the agent or representative of the other, and nothing in this Ground Lease shall be construed to create any such agency relationship or to hold either party liable to anyone for goods delivered or services performed at the request of the other party.

17.3 Amendments. No change in or addition to or waiver or termination of this Ground Lease any part hereof, shall be valid unless made in writing and signed by or on behalf of the party charged therewith. Lessor and Lessee agree to negotiate in good faith any amendments to this Ground Lease that may be requested or required in connection with the issuance of the Bonds to finance the Project.

17.4 Governing Law. This Ground Lease shall be construed in accordance with and governed by the laws of the State of Florida.

17.5 Headings. The article, section and paragraph headings herein contained are for the purposes of identification and reference convenience only and shall not be considered in construing this Ground Lease.

17.6 Successors and Assigns. Subject to the provisions hereof restricting the sublease or assignment by Lessee, all the terms and provisions of this Lease shall be binding upon and to the benefit of and be enforceable by the parties and the successors and assigns of the parties.

17.7 No Merger. In no event shall the leasehold interest of Lessee hereunder merge with any estate of Lessor in or to the Property or the leasehold interest of Lessor under the Facilities Lease. In the event that Lessor acquires the leasehold interest of Lessee, such leasehold interest shall not merge with Lessor's fee interest in the Property or the leasehold interest of Lessor under the Facilities Lease, and this Ground Lease and the Facilities Lease shall remain in full force and effect.

17.8 Counterparts; Recording of Memorandum. This Ground Lease may be executed in several counterparts, each of which shall be deemed an original for all purposes. Either Lessor or Lessee shall have the right to record a memorandum of this Ground Lease in a form

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comparable to that provided in the Facilities Lease and the parties shall cooperate in execution of such memorandum.

17.9 Schedule of Exhibits. This Ground Lease includes the following exhibits attached hereto and incorporated herein by this reference.

EXHIBIT A Property Legal Description

EXHIBIT B Permitted Encumbrances

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IN WITNESS WHEREOF, the City has caused this Ground Lease to be duly executed in its name and behalf and CFP has caused this Ground Lease to be duly executed in its name and behalf on the dates set forth below.

CITY OF BOYNTON BEACH, FLORIDA

CITY OF BOYNTON BEACH

BY: _____
STEVEN B. GRANT, MAYOR

DATE: _____

ATTEST:

BY: _____
City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

James A. Cherof
City Attorney

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CFP BOYNTON BEACH TOWN SQUARE, LLC, a
Florida limited liability company

BY:

By: _____
Thomas Anderson

DATE: _____

(SEAL)

ATTEST:

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

TOWN SQUARE PROPERTY

A PARCEL OF LAND LYING IN SECTION 28, TOWNSHIP 45 SOUTH, RANGE 43 EAST, SAID LAND BEING DESCRIBED AS FOLLOWS:

- 1) LOTS 2 THRU 25, OF THE PLAT OF BOYNTON CENTER, AS RECORDED IN PLAT BOOK 8, PAGE 12, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LESS RIGHT OF WAY FOR N.E. 2ND AVENUE (BOYNTON BEACH BLVD) AND SEACREST BLVD.
- 2) ALL OF LOTS 1 THRU 6, AND THAT PORTION OF PUBLIC SCHOOL TRACT SHOWN IN BLOCK 14; ALL OF LOTS 1-6, BLOCK 15; AND ALL OF LOTS 1-6, BLOCK 16, LESS THE RIGHT-OF-WAY FOR SEACREST BOULEVARD, AND SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD, LYING IN THE PLAT OF SAWYER'S ADDITION TO THE TOWN OF BOYNTON IN PLAT BOOK 1, PAGE 69, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

NORTH-EAST 1ST STREET PROPERTY (Fire Station)

LOTS 11, 12, 13 AND 14 OF BLOCK 3, TOWN OF BOYNTON BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 23 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

HIGH RIDGE ROAD PROPERTY (Police Station)

[To Be Provided]

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EXHIBIT B

PERMITTED ENCUMBRANCES

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**FACILITIES
LEASE AGREEMENT**

between

**CFP BOYNTON BEACH TOWN SQUARE, LLC,
a Florida limited liability company**

as Landlord

and

CITY OF BOYNTON BEACH, FLORIDA

as Tenant

[Insert Date]

CITY OF BOYNTON BEACH TOWN SQUARE REDEVELOPMENT PROJECT

For The

[City Hall/Library][Police Station][Fire Station]

**FACILITIES
LEASE AGREEMENT**

THIS FACILITIES LEASE AGREEMENT ("Lease") is dated for reference purposes [] and is made by and between **CFP BOYNTON BEACH TOWN SQUARE, LLC**, a Florida limited liability company ("CFP" or "Landlord") and the **CITY OF BOYNTON BEACH, FLORIDA** ("Tenant"). Landlord and Tenant agree as follows:

RECITALS

A. Landlord is the lessee under that certain Ground Lease dated [] (the "Ground Lease"), with Tenant as lessor, pursuant to which Landlord leases that certain real property located in the City of Boynton Beach, Florida (the "Property"), more specifically described on the attached **EXHIBIT A**.

B. Tenant desires to have Landlord construct on the Property, municipal buildings and associated improvements (the "CFP Improvements" and together with the Property, collectively, the "Project"). The following improvements including, without limitation, any and all design, planning, surveying, engineering, permitting, and pre-development services and expenditures related thereto, and all related and supporting infrastructure, comprise the CFP Improvements:

[City Hall/Library Description][Police Station Description][Fire Station Description]

C. Landlord and Tenant desire to enter into this Lease whereby Tenant shall lease and, upon substantial completion, shall occupy the Premises (as defined below) at the rent and subject to all of the terms, covenants and conditions set forth herein.

D. Landlord will engage E2L Real Estate Solutions, LLC, a Delaware limited liability company, as Developer to develop, oversee and manage the design, permitting and construction phases of the Project in accordance with the terms and conditions of a Development Agreement and for a Total Project Price as provided herein, all of which shall be subject to Tenant's Concurrence as provided herein.

E. Landlord anticipates that financing for the Project will be pursuant to its issuance of tax-exempt and taxable bonds (the "Bonds"). Upon payment in full of the Bonds, or earlier defeasance thereof, Landlord will convey the Premises to Tenant for no additional consideration.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein and other valuable consideration, receipt of which is hereby acknowledged, the parties hereby covenant and agree as follows:

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1. Definitions. As used in this Lease, the following capitalized terms shall have the following meanings:

1.1 “Abatement” means a reduction in the Rent payable by Tenant hereunder as a result of damage, destruction or partial condemnation of the Premises or a defect in Landlord’s title to the Premises not resulting from Tenant’s ownership of the Property, any of which results in substantial interference with Tenant’s right to use and occupancy of the Premises.

1.2 “ADA” means the Americans With Disabilities Act of 1990, as amended from time to time.

1.3 “Additional Rent” means any and all sums of money or other charges required to be paid by Tenant under this Lease other than Periodic Rent, regardless how designated hereunder, and shall include any applicable sales tax thereon.

1.4 “Administrative Fees and Expenses” shall have the meaning set forth in the Indenture.

1.5 “Architect” means Baker Barrios, the architect for the Project selected by Haskell Construction, pursuant to that certain Design Build Construction Contract dated [____], with the Tenant's Concurrence (as defined in Section 1.70 below).

1.6 “Bond Closing” refers to the date the Bond proceeds are available to the Trustee.

1.7 “Bonds” means those tax-exempt and taxable obligations to be issued by Landlord for design, permitting and construction of the Project pursuant to the Indenture. From the proceeds of such Bonds, Landlord intends to pay all costs associated with the Ground Lease of the Property, the development of the Project for the Total Project Price, all costs of issuing the CFP Bonds, [and capitalized interest during the construction period].

1.8 “Business Day” shall have the meaning set forth in the Indenture.

1.9 “Calendar Year” means a calendar year commencing with January 1 and ending with December 31.

1.10 “Code” means the Internal Revenue Code of 1986, as amended, or any successor federal income tax statute or code. Any reference to a provision of the Code shall include the applicable Department of Treasury regulations.

1.11 “Construction Contracts” means (i) the Design-Build Contract and (ii) all other contracts for construction services entered into between Landlord, or Developer, on behalf of and acting as agent for Landlord, and any Contractor, for construction of any portion of the Project not covered by the Design-Build Contract.

1.12 “Construction Documents” mean the Construction Drawings and Detailed Specifications approved, in writing, by Landlord with Tenant's Concurrence, for the

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construction of the Project, including technical drawings, schedules, diagrams, plans and specifications setting forth in detail the requirements for construction of the Project and providing information customarily required for the use of the building trades.

1.13 “Construction Drawings” means drawings setting forth in detail the requirements for the construction of the Project. As used herein, “Construction Drawings” include all graphic and pictorial documents depicting the design, location and dimensions of the elements of the Project (including Tenant Improvements) and include plans, elevations, sections, details, schedules and diagrams for the Project, all of which shall be consistent with the Project Requirements. The general design and location of the improvements are based upon the general design and concepts presented to Tenant by Landlord in Tenant's Request for Proposal process.

1.14 “Contract Documents” means the contract with the Architect, Construction Documents, the Construction Contracts and the other documents identified as Contract Documents in the Design-Build Contract, all of which shall be subject to Tenant's Concurrence as defined herein.

1.15 “Contractors” means the Design-Builder and any other construction contractors with whom Landlord enters into direct contracts upon the written recommendation of Developer, or with whom Developer on behalf of and acting as the Landlord's agent, enters into contracts; provided, however, that all such contracts shall be entered into with Tenant's Concurrence.

1.16 “Design-Build Contract” means the DBIA Document No. 530, Standard Form of Agreement between Owner and Design Builder – Cost plus Fee with an option for Guaranteed Maximum Price (2010 Edition), dated [_____] between Owner and Design-Builder for construction of the Project.

1.17 “Design-Builder” means: Haskell Construction, for the City Hall and Library; HJ High Construction for the High Ridge Road Property Improvements; HJ High Construction for the North East 1st Street Property Improvements; and Haskell Construction for the Infrastructure Improvements.

1.18 “Detailed Specifications” means all written detailed requirements for materials, equipment, construction systems, standards and workmanship for the construction of the Project.

1.19 “Developer” means E2L Real Estate Solutions, LLC, a Delaware limited liability company, and its successors and permitted assigns under the Development Agreement.

1.20 “Development Agreement” means that certain Development Agreement of even date herewith, as amended from time to time, between Developer and Landlord which provides for the development, design, permitting and construction of the Project, and which has received Tenant's Concurrence.

1.21 “Effective Date” means the date that this Lease is fully executed, acknowledged and delivered by Landlord and Tenant.

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1.22 “Environmental Laws” means all federal, state, and local laws, statutes, rules, regulations, ordinances, and codes relating to the regulation or protection of human health, safety, the environment, and natural resources, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. §§ 5101 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*), the Solid Waste Disposal Act (42 U.S.C. §§ 6901 *et seq.*), the Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), the Emergency Planning and Community Right-To-Know Act (42 U.S.C. §§ 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*), and any similar or comparable state or local laws, as such federal, state, and local laws exist as of the Effective Date and as amended in the future.

1.23 “Event(s) of Default” has the meaning set forth in Section 22 of this Lease.

1.24 “Expiration Date” means the earlier of September 1, 2044, or the date on which this Lease terminates in accordance with its terms; provided, however, that the Expiration Date may be extended as provided in Section 3 in the event of an Abatement of Rent under Section 19.4 or Section 20.2 below.

1.25 “Fair Market Rent” means the fair market rent (other than rent to cover current operating expenses) payable for office premises in Boynton Beach, Florida comparable to the Premises hereunder, determined as of the Effective Date. The Fair Market Rent shall be determined by a qualified MAI appraiser selected by Tenant and reasonably acceptable to Landlord. The Fair Market Rent shall be calculated as of the Effective Date and thereafter shall be re-calculated in the event of damage, destruction or partial condemnation of the Premises as contemplated in Sections 19 and 20, or in the event of a defect in Landlord’s title to the Premises not resulting from Tenant’s ownership of the Property and resulting in substantial interference with Tenant’s right to use and occupancy of the Premises.

1.26 “Final Acceptance” means that the following events have occurred with respect to the Project:

(a) The City of Boynton Beach, Florida has issued all certificates of occupancy for the Project.

(b) Each Contractor has issued its “Certificate of Substantial Completion” together with its “Affidavit of Payment of Debts and Claims” (AIA Forms 706 and 706A), together with final waivers and releases of lien, in form satisfactory to Landlord, from Contractors and all subcontractors who have performed work on site.

(c) All Punch List items for the Project have been completed to the reasonable satisfaction of Landlord with Tenant's Concurrence, but if Landlord consents to Final Acceptance, with Tenant's Concurrence, without completion of all Punch List items, Landlord and Design-Builder shall have agreed upon the estimated cost of any Punch List items remaining to be completed and [150% of such estimated costs] shall be withheld by the Trustee in the Project Costs Account until the Punch List items have been completed to the

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reasonable satisfaction of Landlord with Tenant's Concurrence. When the Punch List items have been completed, and Design-Builder has so notified Landlord, upon Landlord's reasonable satisfaction (with Tenant's Concurrence) that such Punch List items have been completed, Landlord shall deliver its requisition to the Trustee for payment of such funds being withheld by Trustee.

(d) Design-Builder has submitted its application for Final Payment together with evidence reasonably satisfactory to Landlord that all construction costs for the Project have been paid in full including evidence of full payment for any personal property installed on the Property as part of the Project Costs.

(e) The period for filing construction liens for the Project has expired and none have been filed or releases or discharges of construction liens in form and substance satisfactory to Landlord have been obtained by Design-Builder from all Contractors in accordance with all Construction Contracts and from such laborers, Contractors and subcontractors performing work on site as Landlord, with Tenant's Concurrence, may require.

(f) Architect has issued its "Certificate of Final Completion" for the Project and Landlord has received the certificate of any other architect or engineer reasonably requested by Landlord.

(g) Design-Builder has issued a certificate that (i) the Project has been finally completed in substantial accordance with the Contract Documents and (ii) no Hazardous Substances were incorporated into the structure of the Project.

(h) Design-Builder has delivered to Landlord a written report showing the allocation of Project Costs among the categories of the Project Budget and the remaining specified dollar amount of the Project Contingency and the undisbursed portion of the Developer's Fee (as defined in the Development Agreement).

(i) Landlord has received an endorsement to its title policy and Trustee shall have received an endorsement to its title policy, each dated as of and issued on the date of Final Acceptance, which shall (i) insure Landlord and Trustee, respectively, against any liens for labor or materials, whether or not of record, which may have arisen in connection with the construction of the Project, and (ii) show no additional exceptions to such title policy other than those approved by or arising through Landlord.

1.27 "Final Payment" means payment to the Developer, the Architect, Design-Builder and any other Contractors by Landlord following Final Acceptance.

1.28 "Financed FF&E" means furniture, fixtures, equipment and movable property as set forth on **EXHIBIT N** attached hereto, the costs of which will (i) be included in Project Costs, but only to the extent of the Financed FF&E Allowance set forth in the approved Project Budget, and (ii) financed through the Bonds. Any cost of Financed FF&E that is in excess of the Financed FF&E Allowance set forth in the approved Project Budget shall not be part of the Total Project Price. The Financed FF&E will be designed, provided and installed as set forth on **EXHIBIT N**.

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1.29 “Total Project Price” means an amount not to exceed \$[To Be Determined at Final Design Approval by City], the total amount to be paid by Landlord for Project Costs. A detailed description of Project Costs by line item and category is set forth in the Project Budget.

1.30 “Ground Lease” means the long-term ground lease entered into, or to be entered into, by the City of Boynton Beach, Florida, as lessor for the Property, and CFP Boynton Beach Town Square, LLC, as lessee for the Property.

1.31 “Hazardous Substance” means any material, waste, substance, industrial waste, toxic waste, chemical contaminant, petroleum, asbestos, polychlorinated biphenyls, radioactive materials, or other substances regulated or classified by Environmental Laws as hazardous, toxic or lethal to persons or property.

1.32 “Indenture” means the trust indenture pursuant to which Landlord will cause the issuance of the Bonds.

1.33 “Landlord” means CFP Boynton Beach Town Square, LLC, a Florida limited liability company, and its successors and permitted assigns.

1.34 “Laws” means any constitution, statute, ordinance, regulation, rule, resolution, judicial decision, administrative order or other requirement of any federal, state, county, municipal or other governmental agency or authority having jurisdiction over the parties or the Premises, or both, in effect either at the time of execution of this Lease or at any time during the Term, including without limitation, any regulation or order of a quasi-official entity or body (e.g., board of public utilities) and all rules, laws and regulations issued thereunder, as the same may be amended from time to time.

1.35 “Leasehold Mortgage” means the (a) Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing; (b) Assignment of Leases and Cash Collateral; (c) applicable Uniform Commercial Code financing statements; and (d) other security documents executed by Landlord in connection with or to secure the Bonds.

1.36 “Liens” means any lien, charge, security interest or encumbrance, except the Indenture and the Leasehold Mortgage, which may be attached to, upon or against the Premises or any portion thereof.

1.37 “Notice Address” means, as to each of the Notice Parties, its respective address as specified in or pursuant to Section 32.8 of this Lease.

1.38 “Notice Parties” means each of Landlord, Tenant and Trustee.

1.39 “Periodic Rent” means the rent payable by Tenant under this Lease from the Rent Commencement Date to and including the Expiration Date in the amounts set forth on the Schedule of Periodic Rent, annexed hereto as **EXHIBIT B** and by this reference incorporated herein. Periodic Rent is the amount necessary to pay principal and interest with respect to the Bonds in accordance with the Indenture.

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1.40 “Permitted Use” means use of the Premises by Tenant for its municipal operations and/or any other lawful use consistent with the provisions of Section 7.

1.41 “Preliminary Plans” are the initial renditions for the CFP Improvements pursuant to site plan approvals issued with respect to the Project by the City of Boynton Beach, a schedule of which Preliminary Plans is attached hereto as **EXHIBIT C** and incorporated herein by this reference. The Preliminary Plans include a design intent summary regarding the quality of construction, and general intent of design.

1.42 “Premises” means the entirety of the CFP Improvements and any other improvements on the Property, together with a leasehold interest in the Property pursuant to the Ground Lease

1.43 “Project” means the total design, permitting and construction, all design and other professional services, and all labor, materials and equipment used or incorporated in such design and construction of the CFP Improvements on the Property. The Project shall be consistent with and reasonably inferable from the approved Project Requirements as being necessary to produce the intended results.

1.44 “Project Budget” means the budget for development of the Project attached hereto as **EXHIBIT D-2** and as revised from time to time by Developer, Design-Builder, and Landlord with Tenant's Concurrence, and in accordance with the Development Agreement.

1.45 “Project Contingency” means the contingency by that name set forth in the Project Budget and further defined in the Development Agreement.

1.46 “Project Costs” means all costs for the completion of the development, design, permitting and construction of the Project, including, without limitation, all site work, including utility relocation and installation of utilities as required to serve the Project, all roadway improvements (if any), sidewalks and landscaping, all permit fees, all costs of the CFP Improvements, HVAC, electrical and other building systems, including but not limited to conduit rough-in for data, telephone, and security, all costs of Tenant Improvements including HVAC thermostats and operating controls, all costs of Financed FF&E (but only to the extent of the Financed FF&E Allowance set forth in the approved Project Budget), all costs of architectural services provided by the Architect under the Architect's Agreement, all other professional design services and other services provided by Contractors or other professionals engaged by Developer or Design-Builder, costs of reproductions of plans, specification, reports, manuals and similar materials, all amounts paid to Design-Builder under the Design-Build Contract including all labor, material, and equipment used or incorporated in such design and construction, all amounts paid to other Contractors and subcontractors, if any, under any other Construction Contract or subcontract entered into by Landlord upon the written approval of Design-Builder or by Developer on behalf of and acting as the Landlord's agent in connection with the Project, including all labor, material, equipment used or incorporated in such design and construction, services provided by engineers, environmental consultants, surveyors and other professionals and consultants retained by Landlord in connection with the Project, reasonable

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travel costs incurred by Developer in connection with the performance of its services, including, but not limited to mileage charges, meals and lodging, the Developer's Fee (as defined in the Development Agreement)], insurance (other than Bond insurance and other than builders risk insurance which shall be purchased by Landlord and not by Developer or Design-Builder), payment and performance bonds, applicable state and local retail sales taxes, and the Project Contingency.

Notwithstanding anything to the contrary herein, Project Costs do not include and Landlord has no responsibility for (a) Tenant's Personal Property and any taxes thereon (which shall be paid by Tenant at its sole cost and expense); (b) Owner Discretionary Costs; (c) Costs Resulting from Tenant-Caused Delay; (d) any increase in the cost of the Project resulting from Tenant-initiated change orders; (e) real property taxes and assessments with respect to the Property and the improvements thereon; and (f) Other Costs. [Owner Discretionary Costs, Costs Resulting from Tenant-Caused Delay and Other Costs each shall have the meaning assigned to them in the Development Agreement.

1.47 “Project Requirements” means the Preliminary Plans, Construction Documents, Requirements of Law, and any other requirements for the Project specifically agreed to by Landlord and Developer with Tenant's Concurrence.

1.48 “Project Schedule” means the schedule for development and construction of the Project as revised from time to time by Developer and Landlord in accordance with the Development Agreement, and with Tenant's Concurrence. The initial Project Schedule is set forth in **EXHIBIT D-1** attached hereto and by this reference incorporated herein.

1.49 “Punch List” means a list of items required to be completed prior to Final Acceptance that are minor items which do not affect Landlord's ability to lease the Premises to Tenant and do not affect Tenant's ability to use the Premises for their Permitted Use. The Punch List shall be subject to Tenant's Concurrence.

1.50 “Rent” means the sum of Periodic Rent and Additional Rent.

1.51 “Rent Commencement Date” means the date that Tenant's obligation to pay Periodic Rent commences, which is [____], 2018.

1.52 “Requirements of Law” means all requirements relating to land and building construction (including those specifically applicable to Tenant's contemplated use of the Premises for the Permitted Use, and planning, zoning, subdivision, environmental, air quality, flood hazard, fire safety, accessibility, and other governmental approvals, permits, licenses and/or certificates as may be necessary from time to time to comply with all the foregoing and other applicable statutes, rules, orders, regulations, laws, ordinances, and covenants, conditions and restrictions, which now apply to and/or affect the design, construction, existence, intended use, operation and/or occupancy of the Property, and the Premises or any part thereof.

1.53 “Substantial Completion Date” means the date of Substantial Completion of the Project.

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1.54 “Substantial Completion of the Project” means that each of the following events has occurred with respect to the Project:

(a) Design-Builder has notified Landlord and Tenant in writing that the Project, including all Tenant Improvements, are Substantially Complete in substantial accordance with the Contract Documents, subject only to the completion of normal Punch List items (or as otherwise agreed by Landlord and Tenant);

(b) Architect has issued its “Certificate of Substantial Completion” (AIA Document G704) stating that the work under the Construction Contracts is sufficiently complete in substantial accordance with the Contract Documents to permit Tenant to occupy or utilize the Premises for its Permitted Use;

(c) The City of Boynton Beach, Florida has issued a temporary or final certificate of occupancy or other approval sufficient for initial occupancy of the Premises and the City's Fire Department has also issued its approval for occupancy such that Tenant is permitted to and could, pursuant to such issued certificate of occupancy, physically occupy the Premises for its Permitted Use; provided, however, if the delay in the issuance of the certificate of occupancy is attributable to the Tenant's work, including, without limitation Tenant's installation of Tenant's Personal Property [and any portion of the Financed FF&E that is to be provided or installed by Tenant in accordance with **EXHIBIT N**], then this condition shall be deemed satisfied;

(d) Each Contractor has issued its “Certificate of Substantial Completion” together with its “Affidavit of Payment of Debts and Claims” (AIA Forms 706 and 706A), together with partial waivers and releases of lien for work performed prior to the date of its “Certificate of Substantial Completion” in form satisfactory to Landlord, with Tenant's Concurrence, from such materialmen, laborers, contractors and subcontractors as Landlord, with Tenant's Concurrence, may reasonably require;

(f) Landlord, with Tenant's Concurrence, has accepted the Project as Substantially Complete, subject to completion of the Punch List items agreed upon by Landlord, with Tenant's Concurrence; and

(g) Landlord shall, or shall cause Developer to, have caused a Notice of Completion to be recorded.

1.55 “Substantially Complete” means that the Project has been constructed in substantial accordance with the Contract Documents and: (a) all elements required for the functioning of the Project are operational and in good working order and condition including satisfying applicable ADA building requirements, as well as regulations adopted thereunder; (b) the fire and life safety systems within the Project are operational and in good working order and condition; (d) the Municipal Improvement elevators operate and function in good working order and condition, but may still require minor touch up installation and cleaning; (e) the mechanical and electrical systems, including but not limited to the HVAC systems, have been individually tested and verified that they are in good working order and able to support the Permitted Use of the Project by the Tenant, and have been tested to assure that the Project systems operate on an integrated basis; (f) the finish work has been substantially completed, including, but not limited to public lobby, elevator, HVAC, plumbing, fire and life safety, sprinkler and electrical systems,

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doors, partitions, cabinetry, carpet and base, including removal of all construction debris; and (g) all roadway improvements, site utilities, sidewalks and landscaping have been substantially completed and construction barricades and equipment have been removed, except in each case minor Punch List items which do not materially affect use and occupancy of the Project for its Permitted Use.

1.56 “Taxes” means all real and personal property taxes and assessments (including assessments for special assessment district improvements), supplemental assessments, license and permit fees, leasehold excise taxes, other excise taxes, levies, sales, use and occupancy taxes, any tax or charge assessed against the Rent or fair market value of the Premises and any taxes levied or assessed in addition to or in lieu of, in whole or in part, such taxes, assessments or other charges and all other governmental impositions and charges of every kind and nature, general and special, ordinary and extraordinary, foreseen and unforeseen of every character which at any time from and after the Substantial Completion Date may be imposed, levied upon or assessed against or which arise with respect to or constitute a lien upon the Property, the Premises (or any part thereof), the leasehold estate created by this Lease or any part thereof, or any estate, right or interest therein, or any occupancy, use or possession of or activity conducted on the Premises or any part thereof. Taxes shall not include any tax computed on the basis of Landlord's net income.

1.57 “Tenant” means the City of Boynton Beach, Florida, and its successors and permitted assigns, as the tenant under this Lease.

1.58 “Tenant Improvements” means any improvements to the interior buildings of the CFP Improvements including but not limited to HVAC thermostats, operating controls and conduit rough-in for data, telephone, and security wiring, all of which are more specifically described in the Construction Documents and subject to Tenant's Concurrence.

1.59 “Tenant's Concurrence” means, with respect to any Contract Documents or any action to be taken by Landlord with respect to the Project for which Tenant's concurrence is specified, the written approval of Tenant to such Contract Document or action following (i) written notice to Tenant from Landlord requesting such concurrence and (ii) the period of time expressly stated in days for Tenant to consider such request either as specified herein or, if not specified, a commercially reasonable period of time. If Tenant fails to respond within such period, Tenant's Concurrence shall be deemed granted. Tenant's Concurrence shall not be unreasonably withheld or delayed.

1.60 “Tenant's Construction Representative” means the designee of [To Be Provided by the City], or such other individual named in a notice from Tenant to Landlord given from time to time.

1.61 “Tenant's Personal Property” means Tenant's furniture, equipment and movable property placed in the Premises. Tenant shall provide and install Tenant's Personal Property at Tenant's sole cost and expense. [Tenant's Personal Property does not include Financed FF&E.]

1.62 “Term” means the period beginning on the Effective Date and ending on the Expiration Date.

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1.63 “Trustee” means a national bank or other financial institution with trust powers selected by Landlord to serve as the bond trustee under the Indenture or any duly authorized successor thereto appointed pursuant to the Indenture.

1.64 “Utilities” means all utilities and services furnished to the Premises, after the Substantial Completion Date including without limitation, gas, electricity, water and sewer.

2. Premises. Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term. Tenant shall not, however, be entitled to occupy the Premises until the date of Substantial Completion of the Project.

3. Term. The Term shall commence on the Effective Date and shall expire on the Expiration Date; provided, however, that the right of Tenant to occupy the Premises shall not commence until the Substantial Completion Date.

If on the Expiration Date, the total Periodic Rent otherwise payable hereunder has not been fully paid as a result of an Abatement of Rent under Section 19.4 or Section 20.2 below and the Bonds have not been fully paid, then the Term of this Lease may, at the option of Landlord, be extended until the total Periodic Rent otherwise payable hereunder shall be fully paid and the Bonds have been fully paid, except that the Term of this Lease shall in no event be extended beyond [____]. In the event of any such extension of the Term, the Periodic Rent shall be the amount payable by Tenant immediately prior to such extension period.

Notwithstanding that the right of Tenant to occupy the Premises shall not commence until the Substantial Completion Date, all of the other terms and provisions of this Lease shall be effective from and after the Effective Date (except as otherwise provided herein, such as provisions related to Tenant's obligation to pay Rent and to procure insurance).

4. Periodic Rent; Conveyance of Premises.

4.1 Obligation to Pay Periodic Rent. Tenant shall pay the Periodic Rent to the Trustee at the Trustee's address set forth in Section 32.8 and without deduction, offset, prior notice or demand, in advance on the Rent Commencement Date and thereafter in advance on the first day of [____] and [____], throughout the Term. [Tenant may elect to offset against its obligation to pay Periodic Rent amounts in the Capitalized Interest Fund (as defined in the Indenture) or otherwise held by Trustee and that are available to pay principal of and/or interest on the Bonds, all to the extent permitted under the Indenture.] Tenant acknowledges that time is of the essence in payment of Periodic Rent since Landlord intends to use Periodic Rent to make principal and interest payments on the Bonds.

4.2 Defeasance. In the event that money and/or “Government Obligations,” as such obligations are now or may hereafter be defined in the Indenture, maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to pay or prepay all Periodic Rent then due under this Lease in accordance with the terms of this Lease, are irrevocably set aside and pledged in a special account created pursuant to the requirements of the Indenture to effect such payment or prepayment and defeasance of the Bonds, then upon such pledge, and provided that Tenant has fulfilled all other obligations under this Lease,

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Landlord shall convey unencumbered title to the Premises to Tenant (subject to Section 4.4), this Lease shall automatically terminate, no further payments need be made of any Rent under this Lease and Landlord shall not be entitled to any lien, benefit or security in the Premises, except the right to receive the funds so set aside and pledged, and neither Landlord nor Tenant shall have any further obligation to the other hereunder. Landlord shall apply such prepaid Periodic Rent to the defeasance or redemption of Bonds in accordance with the Indenture. In the event the Premises are conveyed to Tenant pursuant to this Section, the Ground Lease executed between the parties shall automatically terminate.

4.3 Options to Prepay Rent and Purchase Premises; Conveyance of Title.

(a) Option to Purchase. Tenant shall have the option to purchase the Premises and thereby terminate this Lease and the Ground Lease at any time on or after [____], subject to the provisions of [Article VI] of the Indenture. The purchase price of the Premises shall be the amount required to fully redeem or defease all outstanding Bonds, plus accrued interest, as set forth in [Section 6.01] of the Indenture, plus all costs associated with such purchase.

(b) Exercise of Option. Tenant shall give Landlord not less than forty-five (45) days' prior written notice of its irrevocable election to exercise its option to purchase under Section 4.3(a) in the form set forth on the attached **EXHIBIT G**. Within fifteen (15) days thereafter and in accordance with Section 4.30 hereof, Landlord shall provide Tenant with an accounting of the amounts necessary to complete the purchase on the date set forth in such notice. The purchase price shall be paid in cash or same-day available funds by 12:00 noon Eastern Standard Time on the payment date specified in such notice (or such other earlier date as Tenant and Landlord may mutually agree).

(c) Option to Partially Prepay Lease. Tenant shall have the option to partially prepay the principal component of Periodic Rent, in \$[____] increments for periods to be determined by Tenant (as represented by the principal components of Periodic Rent due each year as set forth on the attached **EXHIBIT B**). Notice of Tenant's intent to prepay shall be given to Landlord in writing not less than forty-five (45) days in advance of the intended prepayment date. Such prepayment may be at any time on or after [____]. The notice of partial prepayment shall be substantially in the form set forth on the attached **EXHIBIT H**. By 10:00 a.m. Eastern Time on the date set for such prepayment, Tenant shall pay to Trustee in cash or same-day available funds, an amount equal to the principal component of Periodic Rent to be prepaid, together with interest thereon to the date of prepayment, with instructions that such funds shall be used to optionally redeem Bonds. Upon such prepayment, **EXHIBIT B** attached hereto shall be amended to reflect the reduction in Periodic Rent resulting from such prepayment. Tenant shall be responsible for paying all costs associated with the partial prepayment.

(d) Defeasance of a Portion of Bonds. Tenant shall have the option to have Landlord defease a portion of the Bonds in accordance with the applicable requirements of the Indenture. Upon written notice from Tenant and deposit by Tenant with Trustee of funds sufficient to accomplish the defeasance in accordance with the Indenture, Landlord shall take all reasonable steps in an expedited manner to effect such defeasance. Tenant shall be responsible for paying all costs associated with the defeasance. Upon such

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defeasance, **EXHIBIT B** attached hereto shall be amended to reflect the reduction in Periodic Rent resulting from such defeasance.

(e) **No Requirement to Purchase.** Nothing herein shall be construed to require Tenant to exercise the purchase option herein granted.

(f) **Accounting; Disputed Amounts.** Within fifteen (15) days of its receipt of notice under Section 4.3(b), Landlord shall provide Tenant with an accounting of all Additional Rent then due and expected to be due on the purchase date set forth in the notice. If Tenant does not dispute such accounting, Tenant shall pay all such Additional Rent and other amounts due and owing on the purchase date. If Tenant disputes the amounts set forth in the accounting provided by Landlord and an agreement cannot be reached within twenty (20) days of receipt of the accounting, then Tenant shall pay all undisputed amounts on the purchase date, and any amounts remaining in dispute are not waived by Landlord, and, notwithstanding the conveyance of the Premises, Landlord may seek those amounts per the Dispute Resolution Procedure in **EXHIBIT F**. It is contemplated that amounts remaining in controversy, if any, will relate to Additional Rent, including but limited to prorations of expenses, reserve accounts, ongoing or estimated expenses. Amounts paid by Tenant to defease the Bonds and casue conveyance of the Premises shall be used only for that purpose and shall not be first applied to Additional Rent. Payment may, to the extent permitted by the Indenture, be partially made by demand to use amounts remaining in any operating, capital, or replacement reserve accounts not already allocated to work actually performed or equipment purchased.

4.4 Conveyance of Premises. Landlord shall convey to Tenant unencumbered title to the Premises without recourse or warranty (except by assignment of warrantees provided by Contractors and their equipment suppliers) and in its then condition, upon (i) the termination of this Lease, as a result of the full payment and retirement or defeasance of all outstanding Bonds pursuant to the terms of the Indenture and (ii) discharge of the Indenture. The deed by which Landlord conveys the Premises to Tenant may list as exceptions all covenants, conditions and restrictions then recorded against the Premises so long as such exceptions: (i) were approved by Tenant prior to the Substantial Completion Date; (ii) consist of non-delinquent real estate taxes and assessments or (iii) arise by reason of Tenant's activities. Tenant shall pay the cost for any owner's policy of title insurance it elects to obtain in connection with such conveyance. Landlord shall not be required to make any representations regarding the conditions of the Premises, and Tenant agrees to accept the Premises in an "as is" condition. Upon conveyance, the Ground Lease executed between the parties shall automatically terminate, and, upon request by either party, the parties shall execute and record a termination of Ground Lease and this Lease in the real property records of Palm Beach County. In addition, prior to the conveyance, maintenance records, management records and records of contracts and payments with vendors for the entire Lease period shall be made available to Tenant, or transferred into the Tenant's possession. Complete transfer of records is not required until disputes, if any, are resolved.

4.5 Covenant to Budget and Appropriate for Rent. Tenant covenants that it will appropriate in its annual budget, by amendment if required, from the Available Non-Ad Valorem Revenues, amounts sufficient to pay Rent when due. The phrase "Non-Ad Valorem Revenues" shall mean all revenues of the City not derived from ad valorem taxation. The phrase

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“Available Non-Ad Valorem Revenues” shall mean all Non-Ad Valorem Revenues other than (A) any revenues which are restricted by a contract in existence on the date hereof, and (B) any revenues which are prohibited by law from being used to pay Rent.

Such covenant and agreement on the part of the City to budget and appropriate such amounts of Available Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Available Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the City, the City does not covenant to maintain any services or programs, now provided or maintained by the City, which generate Available Non-Ad Valorem Revenues.

Such covenant to budget and appropriate does not create any lien or pledge of Available Non-Ad Valorem Revenues, nor does it preclude the City from pledging in the future Available Non-Ad Valorem Revenues, nor does it require the City to levy and collect any particular Available Non-Ad Valorem Revenues, nor does it give the Bondholders (as defined in the Indenture) a prior claim on the Available Non-Ad Valorem Revenues as opposed to claims of general creditors of the City. Such covenant to budget and appropriate is subject in all respects to the payment of obligations secured by a pledge of Available Non-Ad Valorem Revenues heretofore or hereafter entered into (including debt service on bonds and other obligations). However, the covenant to budget and appropriate in its general annual budget or amendments thereto for the purposes and in the manner stated herein shall have the effect of making available for payment of Rent, in the manner described herein, the Available Non-Ad Valorem Revenues of the City, and of placing on the City a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations herein; subject, however, to the payment of services and programs which are Essential Government Services or which are legally mandated by applicable law. For purposes of this Section 4.5, the phrase “Essential Government Services” means public safety and general governmental services provided by the City, the expenditures for which are currently set forth as the line items entitled [“General Government”] and [“Public Safety”] in the City’s Comprehensive Annual Financial Report for the Fiscal Year ended September 30, 2017, and any equivalent line items in any future financial statements of the City.

4.6 Anti-Dilution Covenant. In addition to its covenant to budget and appropriate as set forth in Section 4.5, above, Tenant further covenants that during the period that all or a portion of the CFP Bonds remain outstanding, Tenant will not incur additional debt that is secured by all or a portion of Available Non-Ad Valorem Revenues unless there shall be filed with Tenant a report by an independent certified public accountant, demonstrating that the total amount of Available Non-Ad Valorem Revenues for the prior fiscal year is at least 2.0 times the maximum annual debt service of all debt (including all long-term financial obligations appearing on the Tenant’s most recent audited financial statements and any additional debt proposed to be incurred) to be paid from Available Non-Ad Valorem Revenues (collectively, “Debt”), including Debt payable from one or several specific revenue sources. Tenant agrees to deliver to CFP and the Trustee for the CFP Bonds a certification, in a form and at such intervals as shall be mutually agreed upon by CFP and Tenant (but in no event more frequently than on a

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semi-annual basis), which demonstrates the Tenant's compliance with the Anti-Dilution Covenant set forth herein.

5. Triple Net Lease; Additional Rent.

5.1 Triple Net Lease. Tenant acknowledges that this Lease is a triple net lease, it being understood that Landlord shall receive all Rent, as provided in this Lease, free and clear of any and all impositions, encumbrances, charges, obligations or expenses of any nature whatsoever in connection with the ownership and operation of the Property. In addition to the payment of all Periodic Rent and Additional Rent required by this Lease, the Tenant shall pay to the parties respectively entitled thereto all Taxes, assessments, insurance premiums, operating costs, maintenance costs, repair costs, construction costs, and any other charges, costs and expenses which may arise or may be contemplated under any provisions of this Lease during the Term. All of such charges, costs, charges and expenses shall constitute Additional Rent, and upon the failure of the Tenant to pay any such charges, costs and expenses, the Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of the Tenant to pay Periodic Rent.

5.2 Right to Audit. Tenant shall have the right either before or after Final Acceptance to cause Landlord to undertake an audit of the books and records of Developer and Design-Builder, or any Project contractor in accordance with Section 18 of the Development Agreement, in a method and at a budget approved by Tenant, and to submit the results of any such audit to Tenant. Costs incurred by Landlord in connection with any such audit shall be reimbursed by Tenant except to the extent otherwise reimbursed under Section 19 of the Development Agreement.

6. Utilities. Landlord shall be solely responsible for and shall pay for all charges for Utilities used or consumed in the Premises from the Effective Date until the Substantial Completion Date, and Landlord shall make any necessary arrangements to have all such Utilities billed directly to and paid for directly by Landlord during this time. Upon written notice from Tenant following the Substantial Completion Date, Landlord shall arrange for the transfer of any specified Utility account into Tenant's name. Thereafter, Tenant shall be responsible for and shall pay for all charges for such Utility or Utilities used or consumed on the Premises. Notwithstanding anything to the contrary herein, until Substantial Completion of the Project has occurred, Landlord shall be solely responsible for and shall pay for all charges for Utilities used or consumed in the Premises.

7. Use. Tenant intends to use the Premises for the Permitted Use. Any sublease by Tenant to private persons as defined in the Code shall require that Landlord, Trustee and Tenant receive an opinion of nationally recognized bond counsel that any such sublease will not adversely affect the tax-exempt status of interest payable on the Bonds. Furthermore, no such sublease shall adversely affect the status of Landlord as a 501(c)(3) organization as defined in the Code. Tenant has determined to its satisfaction that the Premises can be used for the Permitted Use. Tenant's use of the Premises shall be in accordance with the following:

7.1 No Insurance Cancellation. Tenant shall not do, bring, or keep anything in or about the Premises that will cause a cancellation of any insurance covering the Premises.

7.2 Compliance with Laws. From and after the Substantial Completion Date,

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Tenant shall comply with all Laws concerning the Premises and Tenant's use of the Premises, including without limitation, Environmental Laws. Tenant shall not use the Premises for the transportation, storage or generation of any Hazardous Substances in violation of Environmental Laws. From and after the Substantial Completion Date, and to the extent permitted by law, Tenant shall absolutely and unconditionally indemnify, defend and hold Landlord harmless from and against any and all debts, demands, obligations, liens, judgments, claims, liabilities, losses, damages, cleanup costs and expenses (including reasonable attorneys' fees) now or hereafter arising in connection with the presence, transportation, storage, disposal or handling of Hazardous Substances located in, on or about the Premises or Land which are proven to be caused by or resulting from the actions of Tenant, its agents or employees after the Substantial Completion Date, excluding (a) any Hazardous Substances introduced on the Land or the Premises by Landlord or its agents prior to the Substantial Completion Date or which migrate onto the Land from property not owned by Tenant through any act or omission of Landlord or its agents; (b) any such debt, demand, obligation, lien, judgment, claim, liability, loss, damage, cleanup cost or expense resulting from the actions or omissions of Landlord, Developer, Design-Builder and their respective agents, employees, contractors, subcontractors or invitees; or (c) any debt, demand, obligation, lien, judgment, claim, liability, loss, damage, cleanup cost or expense as a result of Landlord's violation of any contractual obligation under this Lease, the Indenture, or any other document executed by Landlord in connection with a Leasehold Mortgage incurred in connection with Section 11. This indemnification shall survive the Expiration Date.

7.3 No Waste, Nuisance or Damage. Tenant shall not use the Premises in any manner that will constitute waste of the Premises or nuisance and Tenant shall not do anything on the Premises that will cause damage to the Premises.

7.4 Tax Covenants. At all times from and after the Effective Date, Landlord (a) shall maintain its purposes and engage only in activities which are in furtherance of its purposes; will maintain its status as a nonprofit corporation and as an organization described in Section 501(c)(3) of the Code whose income does not inure to the benefit of any private person; (b) shall not encumber, pledge, hypothecate or grant a security interest in all or any part of the Premises (except for the Indenture and the Leasehold Mortgage which comply with the provisions of Section 11) or except as consented to in writing by Tenant and, if so directed in writing by holders of a majority in aggregate principal amount of the Bonds, Trustee; (d) shall not engage in any activities related to the Premises or the Leasehold Mortgage (except those specifically set forth in Sections 9 and 11) which would cause the transaction contemplated under this Lease to constitute an unrelated trade or business determined by applying Section 513(a) of the Code; and (e) will not take any action or omit to take any action which, if taken or omitted, would adversely affect the tax-exempt status of interest payable on the Bonds. At all times during the Term, Landlord shall not assign its rights under this Lease (except to Trustee pursuant to the Indenture and the Leasehold Mortgage) without the prior written consent of Tenant and, if so directed in writing by holders of a majority in aggregate principal amount of the Bonds, Trustee and the opinion of nationally recognized bond counsel to the effect that such assignment will not adversely affect the tax-exempt status of interest payable on the Bonds. Such consent shall not be unreasonably denied by the Tenant. At all times from and after the Effective Date, Tenant covenants that it will not take any action or omit to take any action which, if taken or omitted, would adversely affect the tax-exempt status of interest payable on the Bonds.

8. Liens.

8.1 Covenant Against Liens. Except for the Indenture and the Leasehold Mortgage incurred by Landlord in compliance with the provision of Section 11 to secure the Bonds, Landlord covenants and agrees that it shall not during the Term suffer or permit any Liens to be attached to, upon or against the Premises, or any portion thereof or any Rent payable under this Lease for any reason, including without limitation, Liens arising out of the possession, use, occupancy, acquisition, construction, repair, or rebuilding of the Premises or by reason of the furnishing of labor, services, materials, or equipment to the Premises or to Landlord. Tenant acknowledges that Landlord shall cause Design-Builder to keep the Premises free and clear of all construction liens resulting from the construction of the Project (including the right to contest same by appropriate proceedings conducted in good faith with due diligence) under the terms of the Development Agreement prior to the Substantial Completion Date. If Design-Builder shall fail to do so, Landlord shall protect, defend, indemnify and hold Tenant harmless against any such liens. Landlord agrees to indemnify, protect, defend and hold Tenant harmless from and against all liabilities, losses, damages, expenses and costs (including reasonable attorneys' fees and costs) incurred in connection with any such Lien. Landlord's obligations pursuant to this Section 8.1 shall survive the Expiration Date. Tenant covenants and agrees that, from and after the Substantial Completion Date, it shall not during the Term suffer or permit any Liens to be attached to, upon or against the Premises, or any portion thereof or its leasehold interest in the Premises for any reason, including without limitation, Liens arising out of the possession, use, occupancy, acquisition, maintenance, operation, repair, or rebuilding of the Premises or by reason of the furnishing of labor, services, materials, or equipment to the Premises or to Tenant.

8.2 Covenant to Remove Liens. Landlord will promptly, and in all events within thirty (30) days following the attachment of same, remove and discharge any and all Liens which attach to, upon or against the Premises or any portion thereof, or any leasehold interest of Tenant created under this Lease (other than liens or encumbrances arising through the actions of Tenant). Landlord reserves the right to contest the validity or amount of any such Lien in good faith provided that, within thirty (30) days after the filing of such Lien, Landlord discharges such Lien of record or records a bond which complies with the requirements of applicable law eliminating such Lien as an encumbrance against the Premises. In the event Landlord shall fail to so remove any such Lien, Tenant may take such action as Tenant shall reasonably determine to remove such Lien and all costs and expenses incurred by Tenant including, without limitation, amounts paid in good faith settlement of such Lien and attorneys' fees and costs shall be paid by Landlord to Tenant together with interest thereon at the rate of twelve percent (12%) interest per annum from the date advanced until paid. Landlord's obligations pursuant to this Section 8.2 shall survive the Expiration Date and, unless properly incurred under other provisions of this Lease, the costs of such obligations shall not be included as Operating Costs hereunder.

8.3 Tenant's Disclaimer. Notwithstanding the consent or request of Tenant, express or implied, for the performance of any labor or services or for the furnishing of any materials or equipment for any construction, alteration, addition, or repair to the Premises (or any part thereof), Landlord and Tenant agree and notice is hereby given that Tenant will not be liable for any labor, services, materials or equipment furnished or to be furnished to Landlord, Design-Builder or anyone holding an interest in the Premises (or any part thereof) through or under Landlord or Design-Builder, and that no construction or other liens for any such labor, services, materials or equipment shall attach to or affect the interest of Tenant in the Premises. Nothing in this Section shall relieve Tenant of its obligation to pay Rent hereunder.

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9. Construction of Project. Tenant would not have entered into this Lease but for the agreement by Landlord to undertake the Project, including without limitation (i) the obtaining of financing for the Project, (ii) the acquisition of a leasehold interest in the Land by way of the Ground Lease, and (iii) the construction and equipping of the Premises for use by Tenant for the Permitted Use. It is of critical importance to Tenant that the construction of the Project be completed in a timely manner and within the Project Budget. Accordingly, Landlord shall diligently cause the Project to be designed, permitted and constructed in a good and workmanlike manner and delivered to Tenant Substantially Complete by the date set forth in the approved Project Schedule. Upon Final Acceptance, the Project shall be free of patent or latent defects, free and clear of all Liens and otherwise in accordance with the requirements of this Lease. In order to assure timely communications between Landlord and Tenant during the construction process, any notice to Tenant requiring or permitting a response by Tenant shall specify the outside date by which Tenant's response must be received to be effective, which response date shall not be less than three (3) Business Days.

9.1 Development Agreement. To meet the requirements of this Lease for completion of the Project, Landlord shall, simultaneously with the execution of this Lease by the parties, enter into the Development Agreement with Developer, that has received Tenant's Concurrence. Landlord shall also cause Developer to procure and maintain, at a minimum, for the duration of the Development Agreement, insurance as more particularly described in the attached **EXHIBIT I**, against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work pursuant to the Development Agreement by Developer, its agents, representatives, employees and/or subcontractors. The cost of such insurance shall be paid by the Developer or its subcontractors.

9.2 Schedule for Design and Construction. The dates set forth in the initial Project Schedule attached hereto as **EXHIBIT D-1** and by this reference incorporated herein, and as revised from time to time, with Tenant's Concurrence, shall serve as target dates for achieving the matters set forth therein. Landlord shall require Design-Builder to agree that time is of the essence and Substantial Completion of the Project must occur by the date set forth in the approved Project Schedule, subject to Unavoidable Delays as defined the Development Agreement. In order to ensure to the greatest extent practicable that the Project is designed, permitted and completed on or before the dates set forth in the Project Schedule, Landlord and Tenant shall each proceed with all necessary due diligence and in good faith to complete such matters as require action or approval on the part of Tenant and Landlord. Landlord shall, following consultation with Tenant's Construction Representative, promptly and diligently respond to all questions and concerns raised by Developer, Design-Builder or by the Architect, Contractors, engineers or other consultants.

(a) Notices from Developer to Landlord. To ensure that Tenant is fully apprised of decisions required of Landlord pursuant to the Development Agreement, Landlord shall require Design-Builder (if specifically requested by Tenant in writing) to simultaneously provide to Tenant a copy of notices, plans and specifications or other documents required to be delivered by Design-Builder to Landlord under the Development Agreement and Landlord shall also simultaneously provide to Tenant a copy of notices, plans and specifications or other documents required to be delivered by Landlord to Design-Builder under the Development Agreement. In addition, Tenant shall have the right, but not the obligation, to attend design meetings with Developer, Design-Builder, Architect, and other design professionals as appropriate in the course of development of Construction Documents.

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(b) Notices by Tenant to Landlord and Design-Builder. To ensure that Design-Builder is fully apprised of Tenant's position on Project decisions to be made by Landlord, Tenant shall have the right to simultaneously provide to Design-Builder and Developer, a copy of any notice Tenant issues to Landlord hereunder. Such notice shall be sent to Developer at the following address by messenger or fax:

To Developer:

1400 W. Fairbanks Avenue, Suite 201
Winter Park, Florida 32789
Attention: Mark Hefferin
Email: MarkHefferin@E2LHoldings.com

To Design-Builder

[_____]

(c) Tenant's Construction Representative. Landlord shall, and shall direct Design-Builder and Developer to, direct all notices and submittals required to be sent to Tenant hereunder to the attention of Tenant's Construction Representative.

9.3 Plans and Specifications.

(a) Preliminary Plans. As of the date of this Lease, Tenant has reviewed and accepted the Project Requirements for the Project to be constructed on the Land, including the Preliminary Plans, a list of which is attached to this Lease as **EXHIBIT C**. In addition, Tenant has reviewed and accepted the Project Budget, which is attached as **EXHIBIT D-2**, which sets forth a detailed itemization by line item and category for all Project Costs.

(b) Construction Drawings and Detailed Specifications. Landlord will cause the preparation by Architect of Construction Drawings and Detailed Specifications for the Project and plans and specifications for Tenant Improvements, in each case for review and acceptance by Tenant. Landlord shall, following consultation with Tenant, cooperate in good faith with Design-Builder to cause a completed design which meets all Requirements of Law and is consistent with all Project Requirements and the building quality reflected therein, in an amount not to exceed the Project Budget, as expeditiously as possible to ensure the Substantial Completion of the Project by the date set forth in the approved Project Schedule. Accordingly, as provided above, Design-Builder will provide Tenant a copy of all submittals requiring Landlord's review and approval pursuant to the Development Agreement, as and when such submittals are provided to Landlord. Tenant shall only have the right to withhold Tenant's Concurrence to interim and final sets of such Construction Drawings and Detailed Specifications which (i) do not meet the Project Requirements, or (ii) do not comply with Requirements of Law, or (iii) do not comply with previous iterations of the Construction Drawings and Detailed Specifications in all material respects, or (iv) propose changes in work or materials that would result in a material change in appearance or diminution in quality of the Project. Tenant shall have the right to give notice to Landlord disapproving any such iterations of the Construction Drawings and Detailed Specifications and Landlord shall notify Design Builder and Developer in the manner and within the time period set forth in the Development Agreement. Tenant's written Concurrence, objection or comments shall be provided within five (5) Business Days of receiving iterations of the Construction Drawings and Detailed

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Specifications. Tenant's failure to respond within such time period shall be deemed a Concurrence. The final Construction Drawings and Detailed Specifications setting forth in detail the requirements for the construction of the entire Project which have been approved by Landlord, with Tenant's Concurrence, are called the Construction Documents.

(c) Changes to Construction Documents. Landlord has directed that Design-Builder provide Tenant a copy of all proposed changes in the Construction Documents requiring Landlord's review and/or approval pursuant to the Development Agreement, as and when such proposed changes are provided to Landlord. Tenant shall have the right to give notice to Landlord disapproving any such proposed change in the Construction Documents within the time period set forth in the notice of any such proposed change, but in no event shall the time period be less than seven (7) days. If Tenant fails to issue such notice so as to allow Landlord to make timely objection or comment, any such change shall be deemed approved by Tenant. If Tenant timely disapproves any such proposed change, Tenant shall notify Landlord in writing specifying the reason for its disapproval and Landlord shall so notify Design-Builder. Tenant shall only have the right to disapprove changes which (i) are not a consistent development of the Project Requirements, (ii) do not meet Project Requirements, (iii) do not comply with Requirements of Law, (iv) would violate the terms of any permits for the Project, (v) would cause the Project Schedule to be adversely impacted or the Project Budget to be exceeded, or (vi) involve proposed changes in work or materials which would result in a material change in appearance or diminution in quality of the Project. Disputes regarding a proposed change in the Construction Documents shall be subject to the dispute resolution process set forth in Section 9.5.

9.4 Tenant Improvements. The Total Project Price shall include the design, permitting and construction of Tenant Improvements. As is the case for the Project in general, the aspects of the Construction Documents, the Project Schedule and the Project Budget that relate to the Tenant Improvements shall be subject to Tenant's Concurrence. Final plans for the Tenant Improvements must be completed within the applicable period set forth in the Project Schedule. The Tenant Improvements must not exceed the amount budgeted in **EXHIBIT D-2**.

9.5 Dispute Resolution Process. Tenant and Landlord have the option to follow the independent resolution process set forth in this Section 9.5 to resolve disputes regarding preparation of the Construction Drawings and Detailed Specifications and changes to Construction Documents in an economic and time efficient manner so that such documents conform to the requirements of this Lease, the Project Schedule is not adversely impacted, and the Project as constructed will satisfy the Project Requirements. In the event that a dispute arises between Tenant and Landlord during the design or construction of the Project regarding the adequacy of any Drawings or Specifications or the responsibility for any costs associated with any design development, addition or change (e.g., whether any design development is consistent with and reasonably inferable from the Project Requirements), the parties shall attempt to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of the design and construction of the Project is not delayed. If, however, the parties are unable to resolve the dispute within three (3) Business Days, either party may, by delivering written notice to the other and Trustee, refer the matter to a dispute resolution mediator as set forth on the attached **EXHIBIT F**.

9.6 Project Contingency. To the extent the actual Project Costs in any line item of the Project Budget exceed the amount shown for such line item, Design-Builder shall

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first allocate amounts in other line items, in which the actual known Project Costs will be less than the amount of the Project Budget, to the line item in which the excess Project Costs have been incurred. However, Design-Builder must first provide a written explanation to Landlord and Tenant explaining why, with documentary support, the budgeted amount was exceeded. Following the allocation by Design-Builder as set forth in the preceding sentence with respect to all line items, Design-Builder is entitled to draw upon the Project Contingency for such excess Project Costs; provided, however, Design-Builder must first provide a written explanation to Landlord and Tenant explaining why, with documentary support, the Project Contingency must be drawn upon. If the Project Contingency is not sufficient to pay such excess Project Costs, Design-Builder shall be responsible therefor in accordance with Section 9.6 of the Development Agreement.

9.7 Permits; Costs; Compliance with Legal Requirements. Landlord shall cause Design-Builder to secure all permits for the Project, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Project pursuant to Requirements of Law. Tenant shall join in the application for such permits or authorizations whenever such joinder is required; provided, however, Tenant shall incur no expense or liability in connection therewith. Landlord shall cause all work on the Project to be performed in accordance with (i) the Development Agreement, and (ii) all Requirements of Law and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction over the Project and/or the Premises.

9.8 Construction Contracts. Landlord intends to contract for the construction of the Project directly with the Design-Builder and to cause Developer to serve as construction manager in connection therewith pursuant to the provisions of the Development Agreement. Prior to its execution, Landlord shall provide Tenant with a copy of the Design-Build Contract for Tenant's Concurrence. In addition, Tenant shall have the right to view, for its own information, all Construction Contracts and the bids submitted by potential Contractors and subcontractors.

(a) Design-Builder's Insurance. By the date of the execution of the Design-Build Contract, Landlord shall cause the Design-Builder to procure and maintain, at a minimum, for the duration of that Design-Build Contract the insurance more particularly described in the attached **EXHIBIT J** against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work thereunder by the Design-Builder, its agents, representatives, employees and/or subcontractors. The cost of such insurance shall be paid by the Design-Builder or its subcontractor.

(b) No Assumption of Risk. By requiring such minimum insurance, Landlord shall not be deemed to, or construed to, have assumed the risks that may be applicable to the Design-Builder in the Design-Build Contract.

9.9 Construction of Project. Landlord shall use its reasonable best efforts to commence initial construction of the Project following receipt of the clearing and grading permits. Thereafter, following receipt of the building permits for the Project, Landlord shall use its best efforts to cause construction of the Project to be diligently and continuously prosecuted. All work shall be performed in a good and workmanlike manner, shall be free of defects in the

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work and materials and shall be constructed in substantial accordance with the Contract Documents, the requirements of this Lease and Requirements of Law. Landlord shall use its best efforts to cause Substantial Completion of the Project in accordance with the Project Schedule attached hereto as **EXHIBIT D-1**. In addition, Landlord shall use its best efforts to cause all Project Costs to be paid within the Total Project Price; provided, however, that (i) Landlord shall have no obligation to pay Project Costs in excess of the Total Project Price, and (ii) Tenant, whose only payment obligation hereunder is the payment of Rent and other amounts specifically set forth herein, shall have no obligation for the payment of any Project Costs. [As reflected in **EXHIBIT N**, Tenant may directly procure certain Financed FF&E. In such event, upon written request by Tenant (including such supporting documentation as Landlord may reasonably require), Landlord shall reimburse Tenant as a Project Cost for Tenant's costs of procuring such Financed FF&E; provided that such reimbursement shall not exceed the amount of the Financed FF&E Allowance as set forth in the Project Budget, and any costs in excess of such FF&E Allowance shall be borne by Tenant and are not part of the Total Project Price.]

9.10 Payment of Project Costs and Other Costs Associated with the Project. Throughout the course of construction of the Project, Design-Builder shall submit to Landlord on a monthly basis Project Applications for Payment, as defined in, and in the manner, and with all supporting documentation described in, the Development Agreement. Pursuant to Section 9.2(a) above, Landlord shall require Design-Builder to simultaneously provide Tenant with a copy of all such Project Applications for Payment and supporting documentation. Tenant shall have the right, but not the obligation, to give notice to Landlord objecting to any aspect of such submittals and Landlord shall notify Design-Builder in the manner and within the time period set forth in the Development Agreement. If Tenant fails to give such notice so as to allow Landlord to make timely objection, Landlord shall be free to approve or to take such other action as it deems appropriate with respect to any such submittal. Any dispute with respect to Project Applications for Payment may be subject to dispute resolution pursuant to Section 9.5 above. [In no event shall Landlord approve any Project Application for payment unless and until the Project is in balance in accordance with Section 9.6 of the Development Agreement.]

9.11 Savings. Upon Final Acceptance, Landlord shall provide Tenant and Trustee notice of the unexpended amount, if any, of the Project Contingency. Subject to the payment to Developer of the incentive fee specified in Section 12.7 of the Development Agreement [and Share savings clauses in the Design Build Contract(s)], one hundred percent (100%) of the remaining savings shall be used, at the direction of the Tenant with approval from bond counsel and consistent with the Indenture, to finance other capital improvements related to the Project or to pay or redeem Bonds, which shall result in a corresponding reduction to the Periodic Rent due from the Tenant.

9.12 Substantial Completion of Project. Substantial Completion of the Project shall have occurred when all of the events described in Section 1.65 have occurred.

9.13 Final Acceptance. Final Acceptance shall have occurred when all of the events set forth in Section 1.31 have occurred.

9.14 As-Constructed Plans and Specifications; Manuals; Warranties; Permits and Licenses; and Survey. On or before Final Acceptance, Landlord shall provide Tenant with a complete and detailed set of “as constructed” plans and specifications for the Project (Tenant Improvements to be provided in a CAD—computer-aided design—format),

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together with copies of all other materials received from Design-Builder pursuant to the Development Agreement including manuals, warranties, permits and licenses and a survey. Landlord shall ensure that Tenant has the right and irrevocable license to use the Construction Documents for repairs and additions to the Project following Final Acceptance.

9.15 Inspection by Tenant. Tenant shall have the right to inspect the ongoing construction of the Project and the Contract Documents upon reasonable prior notice to Landlord.

9.16 No Amendment of Documents. In the event Landlord desires to amend the agreement with the Architect, the Design-Build Contract, any Contract Document, the Development Agreement, the Indenture, the Leasehold Mortgage, or any other document, contract or agreement entered into in connection with the Project or the Bonds, Landlord shall submit a copy of such proposed amendment to Tenant. In the event Tenant notifies Landlord within fifteen (15) days following receipt of such proposed amendment of its objection to such proposed amendment, stating any conditions for assent and reasons for the objections, Landlord shall not enter into the proposed amendment unless Landlord first (i) responds to the concerns expressed by Tenant, (ii) determines that any such amendment does not materially and adversely affect the Project, and (iii) confirms that any such amendment complies with the provisions of the Indenture. Landlord agrees not to enter into any amendment without Tenant's Concurrence.

9.17 Tenant's Construction Representative. Tenant's Construction Representative shall have the right, but not the obligation, to (i) review and suggest revisions to the Construction Contracts prior to their execution, (ii) review and suggest revisions to the Construction Documents prior to or during construction in order to clarify, correct or properly reflect the intent of design (as defined below), (iii) review, comment on, or suggest actions with respect to all submittals and change orders concurrently with the Architect's review and with a reasonable time for such comments prior to final approval of the change order or submittal, and (iv) provide written notice to Landlord of any known or suspected failure of the Project to comply with the Construction Documents, or any other construction related defects in the Project or construction means and methods.

(a) Copies of Review Items. Landlord shall require Design-Builder to provide, or make available, to the Tenant's Construction Representative copies of all potential Construction Contracts, Construction Documents, submittals and change orders. Tenant Construction Representative's efforts shall be coordinated with Landlord and Design-Builder so as to not interfere with or delay design, development or construction of the Project.

(b) Notices to Landlord. If during the course of such construction Tenant Construction Representative notifies Landlord that it believes that the Project is not proceeding in accordance with the Contract Documents, Landlord shall provide a copy of such notice to Design-Builder for review and response and Landlord shall thereafter require Design-Builder to take, or cause to be taken, any steps necessary to correct any deficiency or omission that is determined to exist. The failure of Tenant's Construction Representative or Tenant to give such notice or to take advantage of such rights listed above shall not give rise to any liability for Tenant and shall not be considered a waiver of any right of Tenant under this Lease.

(c) Intent of Design. As of the Effective Date of this Lease, the Construction Documents are in development and are not complete. Accordingly, to the extent

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such Contract Documents are silent or internally inconsistent as to various design and construction matters, Tenant Construction Representative may issue notice to Landlord and Design-Builder as to what it considers to be the intent of design. For purposes of this Section, "intent of design" shall mean what would be naturally and reasonably inferable from the Contract Documents by an experienced professional in the construction industry accustomed to projects similar to the Project as being necessary for the construction of a fully complete and operational project.

10. Maintenance and Alterations.

10.1 Maintenance and Repair. Tenant shall, at Tenant's sole cost and expense, and in accordance with this Lease, maintain, repair and replace in an attractive condition, good order and function throughout the Term the Premises, including but not limited to the following: (a) the structural portions of the Premises (understood to include the roof, foundation and load bearing walls); (b) the non structural portions of the Premises (understood to include the roof covering and membrane), including but not limited to all improvements, alterations and fixtures, but excluding furnishings; (c) all systems and equipment, including but not limited to electrical, plumbing, fire sprinkler, fire suppression system, fire/life/safety system, elevators, security systems, flooring, ceiling, doorways, windows, hardware, fixtures, lighting, heating, ventilating and air conditioning system ("HVAC"), and loading doors; (d) the exterior of the Premises including, but not limited to, landscaping, driveways, sidewalks, lighting and parking facilities, and storm water maintenance servicing the Premises. Tenant shall take all action and will perform all interior and exterior, structural and non-structural, foreseen and unforeseen, ordinary and extraordinary, maintenance and repairs required to keep all parts of the Premises in good repair and condition, subject only to ordinary wear and tear. It is the intent of this Section that Tenant agrees to perform all maintenance and make all repairs to the Premises that may become necessary by reason of industry standard for age, wear and tear.

10.2 Alterations by Tenant. During the Term, Tenant shall, at its own expense, have the right to make repairs to the Premises, and to make repairs, replacements, substitutions and modifications to all or any parts thereof. All such work and any part of component used or installed to make a repair, or as a replacement substitution or modification shall thereafter comprise part of the Premises and be subject to the provisions of this Lease. Such work shall not in any way damage the Premises or cause them to be used for purposes other than those authorized under the provisions of law or those contemplated by this Lease, and upon completion of any such work, the value of the Premises shall not be less than the value of the Premises prior to the commencement of the work.

11. Landlord Financing of Project. Landlord shall not have the right to mortgage, pledge, encumber or assign the Premises in whole or in part except in connection with its financing of the Project through the Bonds issued by Landlord. Copies of the Indenture and the Leasehold Mortgage securing the Bonds shall be provided to and shall be approved by Tenant, which approval shall not be unreasonably denied, withheld or delayed. Pursuant to a subordination, non-disturbance and attornment agreement entered into by Landlord and Tenant with the Trustee as the beneficiary under the Leasehold Mortgage, so long as Tenant is not in default under any of the terms, covenants or conditions of this Lease, the beneficiary under the Leasehold Mortgage shall not disturb Tenant's possessory rights in the Premises in the event such beneficiary should foreclose the Leasehold Mortgage.

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12. Construction Liens. From and after the Substantial Completion Date, Tenant shall pay all costs for modifications, alterations and additions done by it or caused to be done by it on the Premises as permitted or required by this Lease (other than the construction of the Project) and Tenant shall keep the Premises free and clear of all Liens resulting from modifications, alterations and additions done by or for Tenant; provided, however, Tenant shall have the right to contest the correctness or validity of any such Lien by appropriate proceedings conducted in good faith with due diligence. Within thirty (30) days following written notice from Landlord, Tenant shall discharge such Lien of record or record a bond which complies with the requirements of law for eliminating such Lien as an encumbrance against the Premises if in the reasonable exercise of Landlord's judgment the protection of the Premises or Landlord's interest therein shall require such payment. In the event Tenant shall fail to so remove any such Lien, Landlord may take such action as Landlord shall reasonably determine to remove such Lien and all costs and expenses incurred by Landlord including, without limitation, amounts paid in good faith settlement of such Lien and attorneys' fees and costs shall be paid by Tenant to Landlord. Tenant's obligations pursuant to this Section shall survive the Expiration Date.

13. Indemnity and Hold Harmless.

13.1 Indemnification by Landlord. Landlord shall indemnify, defend and hold harmless Tenant and its elected and appointed officers, officials, representatives, employees, and agents (the "Indemnified Tenant Parties") from and against any and all liability, demands, liens, damages, claims, causes of action, expenses, and fees (including reasonable attorneys' fees and costs and expert witness fees) for bodily injury, property damage, and death (hereinafter collectively referred to as "Liabilities"), arising out of or relating to the negligence, acts, errors, or omissions of Landlord including, without limitation, any breach of this Lease except to the extent that such Liabilities are caused by the negligence or willful misconduct of Tenant.

Landlord shall require the Developer, Design-BUILDER and Contractors to agree to and abide by the indemnification requirements set forth in this Section in favor of Tenant, as such may be applicable to the work and/or services being provided by Landlord's contractors and consultants.

13.2 Indemnification by Tenant. Tenant shall indemnify, defend and hold harmless Landlord and its officers, employees, and agents (the "Indemnified Landlord Parties") from and against any and all Liabilities (as defined in Section 13.1), arising out of or relating to the negligent acts, errors, or omissions of Tenant including, without limitation, any breach of this Lease except to the extent that such Liabilities are caused by the negligence or willful misconduct of Landlord, Developer, the Design-BUILDER, or their consultants, agents or employees.

13.3 Survival. The indemnification provisions of this Section shall remain in full force and effect and survive the termination and/or expiration of this Lease.

14. Minimum Scope of Insurance Coverage for Landlord. After the Effective Date, Landlord shall at a minimum maintain insurance coverage of the type and amount specified on the attached **EXHIBIT K**.

15. Minimum Scope of Insurance Coverage for Tenant.

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15.1 General Liability. After the Substantial Completion Date, Tenant shall have the right to self-insure under Section 15.2 or, at its sole cost and expense, shall obtain and keep in force throughout the Term a Commercial General Liability insurance policy on an occurrence basis insuring Tenant against claims for injuries to persons and property damage liability. "Commercial General Liability" insurance shall mean Insurance Services Office form number (CGOO 001) with a limit of not less than \$1,000,000 combined single limit per occurrence, \$5,000,000 aggregate. Tenant agrees to add Landlord and Trustee as additional insureds to any Commercial General Liability insurance policy.

15.2 Self-Insurance by Tenant. Notwithstanding anything herein to the contrary, Tenant may self-insure for general liability coverage. Upon request by Landlord or Trustee (the Trustee having no obligation to make such request) to Tenant's Risk Manager, Tenant shall provide Landlord and Trustee with at least thirty (30) days' prior written notice of any change in Tenant's self-insured status and will provide Landlord and Trustee with a certificate of self-insurance as adequate proof of insurance. If Tenant elects to self-insure as set forth in this Section, Tenant acknowledges and agrees that Landlord shall have no liability for such losses or damage which would otherwise have been covered by the general liability insurance which Tenant could have provided in accordance with Section 15.1, nor shall Tenant's failure to obtain commercial general liability insurance have any effect on Tenant's obligations under this Lease.

15.3 Workers' Compensation. [Tenant is self-insured for all of its workers' compensation liability exposure. Tenant shall, at its own expense, maintain through its self-insurance program coverage for its workers' compensation liability exposure for the duration of the Term. Tenant shall provide Landlord and Trustee with at least thirty (30) days' prior written notice of any change in the Tenant's self-insured status and will provide Landlord and Trustee with a certificate of self-insurance as adequate proof of insurance.]

16. Property Insurance.

16.1 Coverage for Premises. From and after the Substantial Completion Date, Landlord shall cause the Premises to be insured for fire and other perils currently covered by a special causes of loss commercial property insurance form. Such coverage shall include eighteen (18) months of rental interruption coverage for the costs of Periodic Rent and Additional Rent, with Extra Expense coverage and shall name Trustee and Tenant as loss payee as each of their interests may appear. Landlord shall further cause the Premises to be insured against the perils of earth movement and flood, either as part of the aforementioned commercial property policy, or under a separate policy or policies. Such earth movement and flood insurance shall include eighteen (18) months of rental interruption coverage and shall name Trustee as loss payee as its interests may appear. Landlord shall cause coverage to be maintained against loss arising from earth movement and flood so long as such coverage is available at a commercially reasonable cost and in coverage amounts which are commercially available, but shall not be in default under this Lease if coverage is no longer written, is unavailable for properties comparable to the Premises or is not available at commercially reasonable premium amounts. Landlord will provide Tenant and Trustee with thirty (30) days' prior written notification of material changes in coverage. Landlord will, upon request, furnish Tenant and Trustee with satisfactory evidence that such coverage is in effect.

16.2 Coverage for Tenant's Personal Property. Landlord shall have no obligation to insure any of Tenant's Personal Property.

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17. Waiver of Subrogation. Landlord and Tenant shall cause their respective property insurance carriers to release and waive all rights of subrogation against the other to the extent a loss is covered by property insurance in force. Landlord and Tenant hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance policies, including any extended coverage endorsements hereto; provided, that this provision shall be inapplicable if it would have the effect of invalidating any insurance coverage of Landlord or Tenant.

18. [Intentionally Omitted.]

19. Destruction.

19.1 Insured Damage. If during the Term, the Premises are partially or totally destroyed by any casualty that is covered by insurance described in Section 16, rendering the Premises partially or totally inaccessible or unusable, Landlord shall restore the Premises to substantially the same condition as they were in immediately before such destruction, if (i) the insurance proceeds available to Landlord equal or exceed the cost of such restoration, (ii) such restoration can be completed within a period which is not longer than eighteen (18) months from date of such destruction, and (iii) such restoration is permitted under then existing Laws to be done in such a manner as to return the Premises to substantially the same condition as it was immediately before the destruction. Landlord will advise Tenant and Trustee with respect to the preceding conditions and, accordingly, whether such restoration of the Premises can proceed, on or before that date which is ninety (90) days after the date of destruction. If the foregoing conditions cannot be met, such destruction shall be treated as "Underinsured Damage" in accordance with the provisions of Section 19.2. The insurance proceeds shall be retained by Trustee who shall disburse same to Landlord from time to time as the restoration work progresses, provided, however, that Landlord shall complete such restoration as soon as reasonably practical, but in any event not longer than that period which is eighteen (18) months from the date of such destruction.

19.2 Underinsured Damage. If during the Term the Premises are partially or totally destroyed by any casualty and the conditions set forth in Section 19.1, captioned "Insured Damage" cannot be met, Landlord shall provide written notice to Tenant and Trustee within ninety (90) days after the date of destruction. Such notice shall describe the extent of the destruction, which of the conditions(s) cannot be met, and the estimated time necessary for restoration of the Premises. Within thirty (30) days of Tenant's receipt of Landlord's notice, Tenant shall notify Landlord in writing whether Tenant will proceed to satisfy the conditions which cannot be met, including the deposit of funds with the Trustee sufficient to restore any Underinsured Damage.

(a) If Tenant so fulfills such conditions, then Landlord shall proceed to restore the Premises in accordance with the terms agreed between Landlord and Tenant. In that event, the insurance proceeds shall be retained by Trustee who shall disburse same to Landlord from time to time as the restoration work progresses.

(b) If Tenant elects not to fulfill such conditions and the Premises are totally destroyed, this Lease shall terminate and the entire amount of the insurance proceeds held by

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Trustee shall be used to repay or defease Bonds and to reimburse Trustee for any costs incurred by Trustee for which it is entitled to reimbursement under the Indenture.

(c) If Tenant elects not to fulfill such conditions and the Premises are partially destroyed, this Lease shall not terminate, Tenant shall continue to pay Rent subject to Abatement and the amount of the insurance proceeds held by Trustee shall be disbursed to Landlord to complete such restoration as Landlord reasonably determines to be practicable to allow for Tenant's partial use of the Premises for its intended purposes. Any insurance proceeds not disbursed for such restoration shall be used to repay or defease Bonds and to reimburse Trustee for any costs incurred by Trustee for which it is entitled to reimbursement under the Indenture.

(d) If any monies deposited by Tenant in connection with any restoration pursuant to this Section 19.2 remain after the Premises have been restored, those monies shall be returned to Tenant.

19.3 Extent of Landlord's Obligation to Restore. If Landlord is required or elects to restore the Premises or such portion thereof which has been destroyed as provided in this Section 19, Landlord shall not be required to restore Tenant's Personal Property, such excluded items being the sole responsibility of Tenant to restore.

19.4 Abatement of Rent. In the event that (i) the Premises are (i) damaged or destroyed by fire or other casualty following the Rent Commencement Date resulting in substantial interference with Tenant's right to the use and occupancy of the Premises or (ii) a defect in Landlord's title occurs, other than a defect that results from Tenant's ownership of the Land resulting in substantial interference with Tenant's right to the use and occupancy of the Premises, this Lease shall not terminate (except as provided in Section 19.2), but the Rent otherwise payable by Tenant hereunder shall be subject to Abatement during the period of such interference.

20. Condemnation.

20.1 Total Condemnation. If there is a taking or damaging of all or any portion of the Premises by the exercise of any governmental power, whether by legal proceedings or otherwise, by a governmental agency with jurisdiction over the Premises or a transfer by Landlord either under threat of condemnation or while legal proceedings for condemnation are pending (a "Condemnation") such that there can be no reasonable use of the Premises by Tenant, as reasonably determined by Tenant, this Lease shall terminate on the date the condemnor has the right to possession of the Premises. The entire award with respect to a taking of the Premises (including Tenant's leasehold estate under this Lease) shall be paid to Trustee and applied at Tenant's direction to repay or defease Bonds or to reimburse Trustee for any costs incurred by Trustee for which it is entitled to reimbursement under the Indenture. Any Condemnation proceeds remaining after Bonds have been paid in full shall be paid to Tenant.

20.2 Partial Condemnation. If, prior to Substantial Completion of the Project, there is a partial taking of the Premises by Condemnation but the Project can be completed substantially in accordance with the Project Requirements, such condemnation proceeds shall be paid to Trustee who shall deposit such condemnation proceeds into the **Non-Bond Proceeds Account** established under the Indenture for purposes of paying Project Costs. Following Substantial Completion of the Project, if there is a partial taking of the Premises by

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Condemnation, and Tenant determines that restoration is possible or a reasonable use can be made of the Premises without restoration, then the condemnation proceeds shall be paid to Trustee who shall, as applicable, (i) deposit such condemnation proceeds [into the Capital Repairs Fund and shall disburse such condemnation proceeds to Landlord from time to time as restoration progresses, or (ii) deposit such condemnation proceeds in the Bond Fund to be used to repay or defease Bonds]. In no event shall this Lease terminate as a result of a partial taking (except a partial taking which results in no reasonable use of the Premises by Tenant as determined pursuant to Section 20.1), but Rent hereunder shall be subject to Abatement to the extent and during the period that the partial condemnation results in substantial interference with Tenant's right to the use and occupancy of the Premises.

21. Assignment of Project; Subletting. Except as provided in the Indenture including as described in Section 32.13 below, Landlord shall not sell, transfer, convey or assign all or any portion of its interest in this Lease or in the Premises (except to Trustee) without the prior written consent of Tenant and, at the written direction of the holders of a majority in aggregate principal amount of the Bonds, Trustee and a written opinion from nationally recognized bond counsel that any such sale, transfer, conveyance or assignment will not have an adverse effect on the tax exempt status of interest payable on the Bonds. Tenant shall not sell, transfer, convey or assign all or any portion of its interest in this Lease or in the Premises without the prior written consent of Landlord and, at the written direction of the holders of a majority in aggregate principal amount of the Bonds, Trustee together with an opinion of nationally recognized bond counsel that any such sale, transfer, conveyance or assignment will not adversely affect the tax exempt status of interest payable on the Bonds. Notwithstanding the foregoing sentence, Tenant may sublease the Premises or any portion thereof without the consent of Landlord or Trustee, to the extent and on the terms and conditions set forth under Section 7 so long as the execution of such sublease would not violate the provisions of Section 7; provided, however, that under no circumstances shall Tenant be released or relieved from any of its obligations hereunder.

Any sale, transfer, conveyance, assignment or sublease permitted under this Section shall be in writing and shall require the purchaser, transferee, grantee, assignee or subtenant to comply fully with the terms of this Lease, including, without limitation, the provisions of Section 7 regarding use of the Premises. Tenant shall provide Landlord and Trustee with written notice of any such sale, transfer, conveyance, assignment or sublease and a copy of all documentation relating thereto. Any attempted sale, transfer, conveyance, assignment or sublease in material violation of the requirements set forth in this Section 21 shall be null and void and shall constitute an event of default under the Indenture.

22. Default by Tenant. The occurrence of any of the following shall constitute an Event of Default by Tenant under this Lease:

22.1 Payment; Insurance. Failure (a) to make any Periodic Rent or Additional Rent payments due under this Lease if the failure to pay is not cured within ten (10) Business Days after written notice of such failure has been given by Trustee or Landlord to Tenant, (b) failure to make any other payment required if the failure to pay is not cured within fifteen (15) Business Days after written notice of such failure has been given by Landlord to Tenant, or (c) failure to maintain insurance coverage as required herein if the failure to maintain such insurance is not cured within fifteen (15) Business Days after written notice of such failure has been given by Landlord to Tenant.

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22.2 Other Failure to Perform. Failure to materially perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after written notice of such default has been given by Trustee or Landlord to Tenant. If the default cannot reasonably be cured within thirty (30) days, then such default shall not constitute an Event of Default if Tenant commences to cure the default within thirty (30) days and diligently and in good faith continues to cure the default within one hundred eighty (180) days from the delivery of such default notice.

22.3 Remedies for Tenant Default. If Tenant commits an Event of Default under this Section 22 and fails to cure such default within the time period provided therein, then Landlord shall have the right to pursue any and all remedies available at law or in equity, including without limitation, the right to (i) terminate this Lease or, with the consent of Tenant, which consent shall not be unreasonably withheld, to keep this Lease in full force and effect and, in either event, to re-enter the Premises and eject all parties in possession therefrom and re-let the Premises as the agent and for the account of Tenant upon such terms and conditions as Landlord may deem advisable, in which event the rents received on such re-letting will be applied first to the expenses of re-letting and collection, including expenses necessary for repair or restoration of the Premises to its condition as of the Rent Commencement Date (taking into account normal wear and tear), reasonable attorneys' fees and any real estate commissions actually paid, and second to the [Revenue Fund for the payment of Periodic Rent] and to Landlord for the payment of Additional Rent, both in accordance with this Lease and the Indenture; or (ii) in lieu of the above, so long as Landlord or its assignee does not terminate Tenant's right to possession, this Lease shall continue in effect and Landlord or its assignee shall have the right enforce all of its rights and remedies under this Lease.

[Notwithstanding the foregoing, in no event shall Landlord have the right to accelerate any payments owing by Tenant under this Lease].

Notwithstanding anything to the contrary herein, in the event Tenant commits an Event of Default under Section 5.11 and fails to cure such default within the time period provided herein, Landlord shall have no right to cancel and terminate this Lease or evict Tenant and re-enter the Premises through an unlawful detainer action or otherwise.

23. Default by Landlord. Landlord shall be in default if Landlord fails to perform its obligations (i) within five (5) Business Days after notice by Tenant specifying the obligation which Landlord has failed to perform if such failure occurs prior to the Substantial Completion Date and (ii) within thirty (30) days after notice by Tenant specifying the obligation which Landlord has failed to perform if such failure occurs after the Substantial Completion Date; provided, that if the nature of Landlord's obligation is such that more than five (5) Business Days or thirty (30) days, as applicable, are required for performance, Landlord shall not be in default if Landlord commences diligent performance within such period following Tenant's notice and thereafter completes performance within a reasonable time. In the event that Landlord fails to cure any such default within the time periods permitted, Tenant shall have the right to pursue any and all remedies available at law or in equity, or have the option to pursue such remedies after resort to the procedure in **EXHIBIT F**; provided, however, that Tenant shall have (i) no right to offset against Rent payable under this Lease and (ii) no right to terminate this Lease or the Ground Lease so long as the Bonds remain outstanding.

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24. Signs. Tenant shall have the right to place identification signage, other signage, advertisements, awnings, banners or other exterior decorations on the exterior of the Premises without any further consent or approval from Landlord. Any sign that Tenant has the right to place, construct and maintain shall comply with all laws, and Tenant shall obtain any approval required by such laws. Landlord makes no representation with respect to Tenant's ability to obtain such approval.

25. Landlord's Right to Enter the Premises. Landlord shall have the right to enter the Premises at reasonable times during Tenant's normal business hours for the purposes listed below; provided, however, Landlord acknowledges and agrees to comply with Tenant's requests regarding security. Landlord shall conduct its activities on the Premises as allowed in this Section in a manner that will cause the least possible inconvenience, annoyance or disturbance to Tenant. Should any disturbance or security violation occur, then Tenant may require that all future entries into the Premises be only during working hours after twenty-four (24) hours' written notice from Landlord to Tenant. This does not affect Landlord's right to enter in case of emergency. Landlord shall not be liable in any manner for any inconvenience, annoyance, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises as provided in this Section, except damage resulting from the negligent acts, willful misconduct or omissions of Landlord. Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any right reserved in this Section.

25.1 Condition. To determine whether the Premises are in good condition, whether Tenant is complying with its obligations under this Lease and to perform any maintenance, repair or replacement obligations of Landlord pursuant to Section 10.

25.2 Notices. To serve, post or keep posted any notices required or allowed under the provisions of this Lease.

26. No Encumbrances by Landlord. Except to the extent expressly authorized in Sections 11 and 21, Landlord shall not at any time during the Term sell, transfer, lease (other than to Tenant pursuant to this Lease), convey, encumber (other than to Trustee pursuant to the Leasehold Mortgage), pledge (other than to Trustee pursuant to the Indenture), hypothecate or otherwise grant a security interest in the Premises or any portion thereof.

27. Right to Estoppel Certificates. Each party, within fifteen (15) days after notice from the other party, shall, unless it is in default hereunder, execute and deliver to the other party, in recordable form, a certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified and stating the modifications. Unless the party requested to provide such a certificate is in default, failure to deliver the certificate within such fifteen (15) day period shall be conclusive upon the party failing to deliver the certificate for the benefit of the party requesting the certificate and any successor to the party requesting the certificate, that this Lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate.

28. Limitation on Landlord's Liability. Notwithstanding any provision in this Lease to the contrary, Tenant shall look solely to the estate and property of Landlord in the Property and buildings constituting the Premises, any insurance proceeds or condemnation proceeds payable to Landlord under this Lease, any sums paid to Landlord under the Development Agreement and any amounts payable to Landlord under any warranty or other

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contract with respect to the Project for the collection of any judgment requiring the payment of money by Landlord or for the enforcement of any other judgment or remedy against Landlord and no other assets of Landlord shall be subject to levy, execution or other procedure for the satisfaction of Tenant's remedies.

29. Attorneys' Fees. In the event suit is brought by Landlord or Tenant relating to this Lease, including for the breach of any covenant or condition of this Lease, the party prevailing on a majority of the issues shall be entitled to a reasonable sum for attorney' fees, witness fees, and court costs, including costs of appeal.

30. Surrender. Tenant shall, on the Expiration Date, surrender and deliver up the Premises, including all improvements then located thereon and the appurtenances thereto, into the possession of Landlord, in good order, condition and repair, free and clear of all lettings and occupancies, and free and clear of all liens and encumbrances other than those existing on the date of this Lease and those, if any, created by Landlord, without any payment or allowance whatsoever by Landlord, unless Tenant exercises the Option to Purchase as set forth in Section 4.3 and 4.4 of this Facilities Lease Agreement. Tenant shall execute, acknowledge and deliver to Landlord such instruments of further assurance as in the opinion of Landlord are necessary or desirable to confirm or perfect Landlord's right, title and interest in and to all of the above-described property.

30.1 Conveyance of Premises. Notwithstanding Tenant's obligation to surrender the Premises on the Expiration Date, Landlord shall nonetheless be obligated to convey the Premises to Tenant pursuant to Sections 4.3 and 4.4 above.

30.2 Survival. The provisions of this Section shall survive the expiration or termination of this Lease.

31. Broker. Landlord and Tenant each represent to the other that neither is represented by any broker, agent or finder with respect to this Lease in any manner. Each party agrees to indemnify and hold the other party harmless from and against any and all liability, costs, damages, causes of action or other proceedings instituted by any other broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying party in any manner whatsoever in connection with this Lease.

32. Miscellaneous Provisions.

32.1 Entire Agreement. This Lease sets forth the entire agreement of the parties as to the subject matter hereof and supersede all prior discussions and understandings between them. This Lease may not be amended or rescinded in any manner except by an instrument in writing signed by a duly authorized officer or representative of each party hereto and the consent of the Bondholders if required pursuant to the provisions of Section 32.13. Furthermore, Landlord shall not assign nor amend the Development Agreement without the Tenant's prior approval, which approval shall not be unreasonably withheld.

32.2 Quiet Enjoyment So long as Tenant pays the Periodic Rent, Additional Rent, and all other sums payable under this Lease as and when due and performs

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Tenant's covenants and complies with all of the terms and provisions of this Lease, Landlord covenants that Tenant shall at all times during the Term of this Lease peaceably and quietly have, hold and enjoy the use of the Premises.

32.3 Governing Law. This Lease shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

32.4 Severability/Construction of Lease. Should any of the provisions of this Lease be found to be invalid, illegal, unconstitutional or unenforceable by any court of competent jurisdiction, such provision shall be stricken and the remainder of this Lease shall nonetheless remain in full force and effect unless striking such provision shall materially alter the intention of the parties. The parties hereby acknowledge and agree that each was represented by counsel and this Lease was negotiated and drafted at arms' length. Accordingly, the judicial rule of construction that any ambiguities are to be construed against the drafting party shall be inapplicable in the interpretation of this Lease. The provisions of this Lease shall be construed as a whole according to their common meaning and consistent with the other provisions contained herein in order to achieve the objectives and purposes of this Lease.

32.5 Jurisdiction/Venue. In the event any action is brought to enforce any of the provisions of this Lease, the parties agree to be subject to exclusive jurisdiction [_____]

32.6 Waiver. No waiver of any right under this Lease shall be effective unless contained in writing signed by a duly authorized officer or representative of the party sought to be charged with the waiver and no waiver of any right arising from any breach or failure to perform shall be deemed to be a waiver of any future right or of any other right arising under this Lease.

32.7 Captions. Section captions contained in this Lease are included for convenience only and form no part of the agreement between the parties.

32.8 Notices. All notices or requests required or permitted under this Lease shall be in writing, shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, by nationally recognized overnight courier or by email and shall be deemed given when so delivered, received or emailed (provided sender obtains a confirmation of receipt). All notices or requests to any party shall be sent to all other parties as follows:

If to Landlord:

[_____]

If to Tenant:

[_____]

If to Trustee:

[_____]

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Any party may change the address to which notices shall be sent by notice to the other party in the manner and with the effect set forth in this Section.

32.9 Binding Effect. Subject to the provisions of Sections 11 and 21, this Lease shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. No permitted assignment of this Lease or Tenant's rights hereunder shall be effective against Landlord unless and until an executed counterpart of the instrument of assignment shall have been delivered to Landlord and Landlord shall have been furnished with the name and address of the assignee. The term "Tenant" shall be deemed to include the assignee under any such permitted assignment. The term "Landlord" shall include any successors to or assigns of the Landlord's interest in the Premises following any foreclosure of the Leasehold Mortgage, including Trustee (except with respect to the Landlord's obligations and representations hereunder) or any purchaser at a trustee's or sheriff's sale of the Premises. Notwithstanding anything to the contrary herein, Landlord and Tenant agree that Trustee, in acting under this Lease, acts not in its individual capacity but solely as Trustee under the Indenture and Trustee shall be entitled to the same rights, protections and immunities hereunder to which it is entitled as Trustee under the Indenture. In furtherance and not in limitation of the foregoing, the exercise of the rights of Trustee and the duties of Trustee hereunder, or under any assignment hereof to Trustee, shall be, in each and every case, subject to the express provisions of Articles VII and VIII of the Indenture; provided, that the Indenture shall not operate to limit Trustee's rights to compensation and indemnification provided hereunder.

32.10 Gender and Number. As used in this Lease, the masculine shall include the feminine and neuter, the feminine shall include the masculine and neuter, the neuter shall include the masculine and feminine, the singular shall include the plural and the plural shall include the singular, as the context may require.

32.11 Recording; Memorandum of Lease. Neither Landlord nor Tenant shall record this Lease without the written consent of the other; provided, however, that a Memorandum of this Lease in the form attached hereto as **EXHIBIT E** and by this reference incorporated herein shall be recorded upon the Effective Date.

32.12 Amendment of Lease. So long as the Bonds remain outstanding, any amendment of this Lease must comply with applicable provisions of the Indenture. Without limitation, Landlord and Tenant may, from time to time, amend this Lease to exclude any surplus portion of the Property in accordance with Section 9.06 of the Indenture.

32.13 Time Is of the Essence. Time is of the essence in the performance of each party's obligations under this Lease. Each party will carry out its obligations under this Lease diligently and in good faith.

33. Reserved.

34. Force Majeure. Landlord and Tenant shall not be deemed in default with respect to the performance of any of the terms, conditions and covenants of this Lease (other than the payment of Rent or other amounts due hereunder) if Landlord's or Tenant's failure to perform shall be due to any strike, lockout, war, sabotage, governmental action, Unavoidable Delays as defined in the Development Agreement, or act of God or other cause beyond the reasonable control of Landlord or Tenant, providing such cause is not due to the willful act or

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neglect of Landlord or Tenant. In the event either party is delayed or prevented from performing any of its respective obligations under this Lease (other than the payment of Rent or other amounts due hereunder) due to force majeure, then the time period for performance of such obligations shall be extended for the period of such delay. Nothing contained in this Section 34 shall be deemed to extend the Rent Commencement Date nor to excuse Tenant's obligation to pay Rent as and when required by the terms of this Lease.

35. Failure to Achieve Substantial Completion of Project by the Project Delivery Date. In the event that Substantial Completion of the Project is not achieved by the Project Delivery Date (as defined in the Development Agreement), the following provisions shall apply until such time as Substantial Completion is achieved.

35.1 Enforcement of Development Agreement. Landlord shall vigorously enforce the provisions of the Design-Build Contract with regard to the failure of the Design Builder to cause Substantial Completion of the Project to occur by the Project Delivery Date. Amounts received from Design-Builder thereunder for the payment of debt service on the Bonds shall be deposited with the Trustee as provided under the Indenture.

35.2 Enforcement of Design-Build Contract. Landlord shall vigorously enforce the provisions of the Design-Build Contract including, without limitation, provisions requiring the payment of liquidated damages in the event Design-Builder fails to achieve completion of construction of the Project by the date set forth therein. Amounts received from Design-Builder and available for payment of debt service on the Bonds shall be deposited with the Trustee as provided under the Indenture.

IN WITNESS WHEREOF, the City has caused this Facilities Lease to be duly executed in its name and behalf and CFP has caused this Facilities Lease to be duly executed in its name and behalf on the dates set forth below.

CITY OF BOYNTON BEACH, FLORIDA

CITY OF BOYNTON BEACH

BY: _____
STEVEN B. GRANT, MAYOR

DATE: _____

ATTEST:

BY: _____
City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Working Draft: March 2, 2018

James A. Cherof
City Attorney

Working Draft: March 2, 2018

CFP BOYNTON BEACH TOWN SQUARE, LLC, a
Florida limited liability company

BY:

By: _____
Thomas Anderson

DATE: _____

(SEAL)

ATTEST:

Working Draft: March 2, 2018

EXHIBIT A LEGAL DESCRIPTION OF THE PROPERTY

TOWN SQUARE PROPERTY

A PARCEL OF LAND LYING IN SECTION 28, TOWNSHIP 45 SOUTH, RANGE 43 EAST, SAID LAND BEING DESCRIBED AS FOLLOWS:

- 1) LOTS 2 THRU 25, OF THE PLAT OF BOYNTON CENTER, AS RECORDED IN PLAT BOOK 8, PAGE 12, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LESS RIGHT OF WAY FOR N.E. 2ND AVENUE (BOYNTON BEACH BLVD) AND SEACREST BLVD.
- 2) ALL OF LOTS 1 THRU 6, AND THAT PORTION OF PUBLIC SCHOOL TRACT SHOWN IN BLOCK 14; ALL OF LOTS 1-6, BLOCK 15; AND ALL OF LOTS 1-6, BLOCK 16, LESS THE RIGHT-OF-WAY FOR SEACREST BOULEVARD, AND SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD, LYING IN THE PLAT OF SAWYER'S ADDITION TO THE TOWN OF BOYNTON IN PLAT BOOK 1, PAGE 69, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

NORTH-EAST 1ST STREET PROPERTY (Fire Station)

LOTS 11, 12, 13 AND 14 OF BLOCK 3, TOWN OF BOYNTON BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 23 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

HIGH RIDGE ROAD PROPERTY (Police Station)

[To Be Provided]

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EXHIBIT B
SCHEDULE OF PERIODIC RENT

Working Draft: March 2, 2018

EXHIBIT C
PRELIMINARY PLANS

Working Draft: March 2, 2018

EXHIBIT D-1
PROJECT SCHEDULE

Working Draft: March 2, 2018

EXHIBIT D-2
PROJECT BUDGET

Working Draft: March 2, 2018

EXHIBIT E
MEMORANDUM OF FACILITIES LEASE

Working Draft: March 2, 2018

EXHIBIT F
DISPUTE RESOLUTION PROCEDURE

Working Draft: March 2, 2018

EXHIBIT G
FORM OF ELECTION: OPTION TO PURCHASE

Working Draft: March 2, 2018

EXHIBIT H
FORM OF NOTICE ELECTION: PARTIALLY PREPAY PERIODIC RENT

Working Draft: March 2, 2018

EXHIBIT I
MINIMUM INSURANCE REQUIREMENTS: DEVELOPER

Working Draft: March 2, 2018

EXHIBIT J
MINIMUM INSURANCE REQUIREMENTS: DESIGN-BUILDER

Working Draft: March 2, 2018

EXHIBIT K
MINIMUM INSURANCE REQUIREMENTS: LANDLORD

Working Draft: March 2, 2018

EXHIBIT N
FINANCED FF&E



CITY OF BOYNTON BEACH AGENDA ITEM REQUEST FORM

REQUESTED ACTION BY COMMISSION: PROPOSED RESOLUTION NO. R18-045 - Authorize the Mayor to sign the New Markets Tax Credit (NMTC) Consulting agreement with Atwater Infrastructure Partners, LLC to provide consulting services in connection with the potential allocation of New Market Tax Credits to fund the redevelopment of the Old High School and related services.

EXPLANATION OF REQUEST:

The consulting agreement will allow Atwater to assist the City in the marketing the project and securing New Market Tax Credits funding. Based on initial project costs and research, Atwater is anticipating the project will qualify for approximately \$2.5M worth of NMTC's.

This funding will reduce the amount of project funding that the City will need to allocate. In addition the City will be eligible for a low interest leverage loan for the remainder of the construction costs. Atwater will review potential financial institutions for this and coordinate with the City. The leverage loan does not have a pre-payment penalty so the City can pay it off at any time. The intent is to pay off the loan with City and CRA funds within the next 12-18 months.

HOW WILL THIS AFFECT CITY PROGRAMS OR SERVICES?

FISCAL IMPACT:

The allocation of New Market Tax Credits can provide approximately \$2.5M worth of funding that can be used for the rehabilitation of the High School.

ALTERNATIVES: Do not approve consulting agreement

STRATEGIC PLAN: Energetic Downtown: Focal Point for Boynton Beach

STRATEGIC PLAN APPLICATION:

CLIMATE ACTION: No

CLIMATE ACTION DISCUSSION:

Is this a grant? No

Grant Amount:

ATTACHMENTS:

Type	Description
▣ Resolution	Resolution approving NMTC Consultant Agreement with Atwater
▣ Agreement	NMTC Consulting Agreement

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RESOLUTION NO. R18-__

A RESOLUTION OF THE CITY OF BOYNTON BEACH, FLORIDA, APPROVING AND AUTHORIZE THE MAYOR TO SIGN THE NEW MARKETS TAX CREDIT (NMTC) CONSULTING AGREEMENT WITH ATWATER INFRASTRUCTURE PARTNERS, LLC TO PROVIDE CONSULTING SERVICES IN CONNECTION WITH THE POTENTIAL ALLOCATION OF NEW MARKET TAX CREDITS TO FUND THE REDEVELOPMENT OF THE HIGH SCHOOL AND RELATED SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS; the Consulting Agreement will allow Atwater to assist the City in the marketing the project and securing New Market Tax Credits funding; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

Section 1. Each Whereas clause set forth above is true and correct and incorporated herein by this reference.

Section 2. The City Commission of the City of Boynton Beach, Florida does hereby approve and authorize the Mayor to sign the NMTC Consulting Agreement with Atwater Infrastructure Partners, LLC., which sets forth the exclusive understanding for Atwater to provide consulting services in connection with potential allocation and monetization of New Market Tax Credits to fund the redevelopment of the facility located at 126 East Ocean Avenue, Boynton Beach, a copy of said Agreement is attached hereto as Exhibit “A”.

Section 3. That this Resolution shall become effective immediately upon passage.

25 **PASSED AND ADOPTED** this ____ day of _____, 2018.

26 CITY OF BOYNTON BEACH, FLORIDA

27		YES	NO
28			
29			
30	Mayor – Steven B. Grant	_____	_____
31			
32	Vice Mayor – Justin Katz	_____	_____
33			
34	Commissioner – Mack McCray	_____	_____
35			
36	Commissioner – Christina L. Romelus	_____	_____
37			
38	Commissioner – Joe Casello	_____	_____
39			
40		VOTE	_____

41 ATTEST:

42
43
44
45 _____
46 Judith A. Pyle, CMC
47 City Clerk

48
49 (City Seal)

50

NMTC Consulting Agreement

This New Markets Tax Credit (“NMTC”) Consulting Agreement (the “Agreement”) dated March 9, 2018 (the “Effective Date”) is by and between City of Boynton Beach, FL, a Florida municipality (“Sponsor”), and Atwater Infrastructure Partners, LLC, a Florida Corporation (“Atwater”). This Agreement sets forth the exclusive understanding between Sponsor and Atwater with respect to Atwater’s agreement to provide certain consulting services to Sponsor in connection with the potential allocation and monetization of NMTCs to fund the redevelopment of the facility located at 126 E Ocean Ave., Boynton Beach, FL (collectively, the “Project”).

Description of Transaction

Atwater has expertise with New Markets Tax Credits (“NMTC”), including but not limited to relationships with Community Development Entities (“CDEs”) that have received allocations of NMTCs and debt and equity investors interested in participating in NMTC transactions. Sponsor desires to engage Atwater to perform consulting work respect to the possible allocation, and monetization of NMTCs necessary to fully fund the Project.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sponsor and Atwater hereby agree as follows:

1. **Services to be provided by Atwater.** Sponsor hereby engages Atwater on an exclusive basis, as the Sponsor’s NMTC consultant, to assist in determining if the development of the Project will qualify for NMTCs, and to provide certain additional consulting services described in Section 2 and in the Scope of Work attached hereto as Exhibit A (collectively, the “Services”). Atwater hereby accepts such engagement in accordance with the terms and conditions set forth in this Agreement. Atwater shall have no duty or obligation to provide any services other than the Services, and no work beyond the Services shall be performed by Atwater unless such services (and any additional compensation for such services) have been approved in by Sponsor and Atwater by duly approved amendment to this Agreement or duly approved separate agreement.

Specifically, Atwater will be responsible for identifying or securing a “leverage loan” for the Project. The source for any leverage loan for the Project will be identified by the Atwater. Furthermore, the Sponsor requires and desires support from Atwater in finding and securing a leverage lender for the leverage loan, the compensation for this service is fully covered under this agreement.

Atwater shall be solely responsible for determining the details, method and means of performing the Services. Atwater shall devote sufficient time to perform the Services required by this Agreement in a competent and timely manner.

Nothing in this Agreement shall preclude (i) Atwater from representing any other party involved in transactions similar to those described in this Agreement and earning a fee for such services, or (ii) Atwater or its affiliates from earning additional compensation in

connection with services provided to or in connection with the Project (other than the Services).

2. **Structure.** The process of obtaining NMTC is dependent on many factors, including, without limitation, a CDE providing its allocation of NMTCs to the Project. As described on Exhibit A, Atwater will assist Sponsor in securing an allocation of NMTCs for the Project on terms acceptable to Sponsor, in structuring the Project financing so as to utilize NMTCs, and in monetizing the NMTCs through participation of an NMTC tax credit investor.
3. **Compensation to Atwater.** Except as otherwise provided herein, Atwater will be compensated only if the Project is funded directly with the benefit of NMTCs, with the exception of a \$25,000 retainer (“Retainer Fee”), which will be credited back to the project Sponsor when the NMTC Loans fund. The fee payable to Atwater (the “**Performance Fee**”) shall be equal to \$250,000. The Performance Fee shall be paid in full in a single payment from the proceeds of monetizing the NMTCs at the QEI closing. In the event that the Sponsor determines at any time prior to QEI closing, in its sole and absolute discretion, not to proceed with the transaction or is unsuccessful in securing NMTC allocation, then Atwater shall only be entitled to retain the \$25,000 Retainer Fee for its time and services. Atwater shall not be entitled to retain the Retainer Fee if Sponsor terminates this Agreement pursuant to Section 21 (Term and Termination), herein below for Cause. The Retainer Fee will be earned and payable by Sponsor at such time Atwater presents Sponsor with a commitments, non-binding letters or memoranda of intent or similar documents from a CDE with Allocation.

In addition, in any action initiated by Atwater in connection with the enforcement of its rights under this Agreement, the prevailing party shall be entitled to its reasonable attorneys’ fees, costs and expenses.

4. **Exclusivity.** During the period beginning on the Effective Date and ending **180 calendar days** later, or such earlier date on which this Agreement shall have been terminated for Cause, as defined herein below, Atwater shall be the exclusive representative of Sponsor in seeking NMTC financing or equity for the Project.

Atwater will have 180 calendar days to obtain commitments, non-binding letters or memoranda of intent or similar documents (“Commitments”) for NMTC Allocation and/or a NMTC equity investor for the Project. If Atwater can secure Commitments, the parties will proceed to close the transaction in a reasonable amount of time (as determined by NMTC investors and CDEs). However, Sponsor may, at any time prior to QEI closing, in its sole and absolute discretion, determine not to proceed with transaction. Should Atwater obtain Commitments from particular CDEs at any time during the term of this Agreement, then those CDEs shall remain exclusive to Atwater, and Atwater shall be entitled to a Performance Fee in connection with the closing of any NMTC transaction with such CDEs with respect to the Project (payable immediately at the time of such closing), unless Sponsor shall have terminated this Agreement for Cause. In addition, Atwater shall be entitled to the Performance Fee with respect to any NMTC transaction

that occurs with respect to the Project with any CDE or CDEs introduced to Sponsor (but for which a Commitment is not actually obtained) by Atwater for a period of eighteen (18) months commencing from the date of any such introduction provided that Sponsor is given written notice identifying such CDE or CDEs within 30 calendar days of such introduction. For purposes of the previous sentence, the term “introduce(d)” or “introduction” shall include the discussion (e.g., e-mail exchanges, in-person meetings, teleconferences, etc., in which the Project was discussed between Atwater and the CDE) of the Project by Atwater, on behalf of the Sponsor, with the CDE, irrespective of whether the Sponsor had any prior contact with or knowledge of the CDE in any context other than with respect to the Project.

5. **Third Party Professional Services.** If and when Atwater concludes that it is advisable that Sponsor retain third party professional services, such as legal and accounting services, in order to more thoroughly evaluate or otherwise facilitate the financing described in this Agreement, Atwater shall so advise Sponsor and shall make referrals to such third party providers. Sponsor is not obligated to engage the referred third party providers and can engage third party providers of their choosing. If and when Sponsor chooses to engage such professional services, Sponsor agrees to pay for such services from transaction proceeds, contingent upon the successful QEI closing. Atwater shall have no responsibility or obligation to assume payment of any third party professional services fees, costs or expenses associated with the Services set forth in this section.
6. **Confidentiality.** All opinions and advice (written or oral) given by Atwater to Sponsor in connection with this engagement are intended solely for the benefit of and use by Sponsor in considering the transaction to which they relate, and Sponsor agrees that no person or entity other than Sponsor, its accountants, lenders, lawyers and other advisors shall be entitled to make use of or rely upon the advice of Atwater to be given hereunder, and no such opinion or advice shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time, in any manner or for any other purpose without Atwater’s prior written consent. The public approval of this Agreement by the Sponsor, or any subsequent approval of a modification or extension of this Agreement shall not create a breach of confidentiality defined herein. Any obligation of Sponsor in this section is subject to Sponsor’s obligations created by any law, rule, regulation or other authority related to public records, including without limitation, the Florida Public Records Act and/or Statutes and any judicial or administrative order or rule.
7. **Independent Contractor.** Sponsor acknowledges that Atwater shall perform its services hereunder as an independent contractor and not as a partner, employee or an affiliate of Sponsor. It is expressly understood and agreed to by the parties hereto that Atwater shall have no authority to act for or bind Sponsor, and that Atwater owes no duty or obligation to Sponsor except as specifically described in this Agreement. However, Atwater shall, in carrying out its responsibilities hereunder, have a fiduciary duty to act on behalf of the Sponsor and represent its interests. Sponsor assumes no liability for Atwater’s actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for Atwater. Atwater acknowledges that it is aware that because it

is an independent contractor, Sponsor is making no deductions from its fee and is not contributing to any fund on its behalf. Atwater disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

8. **Reliance.** Sponsor recognizes and confirms that, in fulfilling its engagement hereunder, Atwater will use and rely on data, material and other information furnished to Atwater by Sponsor and its advisors. Sponsor acknowledges and agrees that in performing its services under this Agreement, Atwater may rely upon the data, material and other information supplied by Sponsor without independently verifying the accuracy, completeness or veracity of the data, material and other information.
9. **Investment Agreement.** Sponsor understands and agrees that any NMTC investment for the Project will be pursuant to additional contractual arrangements between Sponsor, affiliates, and Atwater and/or the CDE's. The terms of such agreements may incorporate many or all of the terms contained in this Agreement, as well as additional provisions to be agreed upon by the parties to an Investment Agreement. However, Sponsor may, at any time prior to QEI closing, in its sole and absolute discretion, determine not to proceed with transaction.
10. **No Insurer of Project Success.** Atwater represents that it has a proven record of success in obtaining NMTCs, is aware of the Project, has determined that such Project is preliminarily eligible for NMTC, based on its census tract, and shall use its best efforts to obtain such financing. Sponsor acknowledges and agrees that, although Atwater shall act responsibly and faithfully in using its best efforts in performing the services required pursuant to this Agreement, Atwater does not ensure or guarantee the success of the Project, economically or otherwise. Sponsor agrees and acknowledges that Atwater is not providing legal, tax or accounting advice and that Sponsor will rely on legal advice of its own tax, legal and accounting advisors and counsel for such matters, and will make its own independent analysis and decision regarding any transaction involving the Project.

The Services provided by Atwater pursuant to this Agreement are intended to assist Sponsor with obtaining funding to develop the Project however, this Agreement does not transfer to Atwater the obligation to develop the Project. Sponsor remains the exclusive decision-making authority over all matters relating to the construction and renovation of the Project and the transactions contemplated by this Agreement. Atwater shall have no responsibility for any action or inaction taken by Sponsor relating to a Project. In no event shall Sponsor be deemed to have delegated to either Atwater, or to any other person or entity (including, without limitation, any investor, co-general partner, property manager, lender, state tax credit agency, partner or other third party) any of Sponsor's duties, obligations or responsibilities with respect to development of the Project.

11. **Representations, Warranties and Covenants.** Each party to this Agreement represents and warrants to the other that: (i) it has the requisite power and authority to execute, deliver and perform their respective obligations under this Agreement, (ii) this Agreement is valid, binding and enforceable against it in accordance with the terms of this Agreement, except

as may be subject to applicable bankruptcy, insolvency, moratorium or other similar laws, now or hereinafter in effect, relating to or affecting the rights of creditors generally and by legal and equitable limitations, and (iii) to the knowledge of such party, there is no litigation, proceeding or investigation pending or threatened against such party (or any director, manager, officer, owner or employee of such party) which would negatively impact such party's ability in to perform its obligations under this Agreement.

12. **Counterparts.** This Agreement may be executed in any number of counterparts, which together shall constitute one and the same original document.
13. **Assignment; Amendment.** This Agreement is not assignable and cannot be modified or changed, nor can any of its provisions be waived, except by the mutual agreement in writing of both parties.
14. **Severability.** Each paragraph, term or provision of this Agreement shall be considered severed and if, for any reason, any paragraph, term or provision is determined to be invalid or contrary to any existing or future law or regulation, such will not impair the operation, or affect the remaining portions, of this Agreement.
15. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties concerning the subject matter hereof, and any additional conditions or terms must be agreed to by both parties and expressed in a written agreement executed by the parties.
16. **Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of Florida including all matters of construction, performance and validity without giving effect to the principles of conflicts of law.
17. **Joint Preparation; Advice of Counsel.** The parties acknowledge that they have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by such parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood the terms and provisions of this Agreement.
18. **Cooperation.** The parties shall cooperate with each other and furnish each other with all reasonably available information needed to apply for and obtain all financing, tax credits and approvals, and Sponsor shall execute whatever instruments are reasonably necessary and take whatever action is reasonably necessary to obtain such financing, tax credits, and/or approvals.
19. **Limited Liability.** Atwater shall have no liability to Sponsor or any affiliate or successor of Sponsor for any reason if it is determined that the Project fails to

qualify for NMTCs, or if the Project is unable to be developed or renovated with NMTC financing for any reason.

20. **Term and Termination.** This Agreement will be effective as of the Effective Date and shall remain in effect until all Services required hereunder shall have been performed within the time frames established herein and all compensation earned hereunder shall have been paid. Notwithstanding the foregoing, Sponsor shall have the right to terminate this Agreement for by providing written notice to Atwater. In the event that this Agreement is terminated for any reason other than for Cause, the Sponsor shall immediately pay any and all expenses incurred by Atwater in connection with this this Agreement, but only to the extent such expenses are in accordance with Section 3, herein, and in addition to any other amounts that due to Atwater under this Agreement.

Atwater – City of Boynton Beach, FL

NMTC Consulting Agreement

Signature Page

Executed as of the date first written above.

CITY OF BOYNTON BEACH,
FLORIDA

ATWATER INFRASTRUCTURE
PARTNERS, LLC

By: _____

By:
Title:

By:  _____

J. Albert Lemus,
Partner

Exhibit A: Scope of Work

- Atwater understands that the Project will have a total project cost of between approximately \$12,000,000 to \$15,000,000 dollars

Project Milestones & Timeline

- Within 7 days of the Effective Date, Sponsor shall assign a Project Manager to work exclusively with Atwater.
- Atwater will work with the Project Manager to ascertain all Project details, including, but not limited to:
 - Construction Costs
 - Sources of Funds
 - Construction Timeline
 - Identify Community Outcomes
 - ***To Be Completed:*** 30 Days after a Project Manager is assigned, Atwater will prepare a written memo summarizing the potential NMTC Structure customized to reflect actual Project information (it being understood that the failure of the Sponsor to provide information requested by Atwater within 21 days of such request shall constitute a breach of this Agreement by the Sponsor)
- Atwater will prepare a Project summary and no less than two NMTC Community Development Entities (“CDEs”) Intake Forms
 - ***To Be Completed:*** 60 Days after a Project Manager is Assigned and all information requested by Atwater is provided by the Sponsor or Project Manager (it being understood that the failure of the Sponsor to provide information requested by Atwater within 21 days of such request shall constitute a breach of this Agreement by the Sponsor)
- Atwater will secure NMTC Commitments from CDEs for the Project.
 - ***To Be Completed:*** 90 Days after the Effective Date
- Throughout the term of this Agreement, Atwater will be available at Sponsor’s request to consult with, or present to, Sponsor’s staff, Commissioners, and consultants, concerning NMTC transactions, including by phone and in-person meetings.



CITY OF BOYNTON BEACH AGENDA ITEM REQUEST FORM

REQUESTED ACTION BY COMMISSION: PROPOSED RESOLUTION R18-046 - Authorize the Mayor to sign the following agreements with JKM Developers/Blackrock or its successors and assigns, for (1) The sale and purchase of real property owned by the city, and (2) A Development Agreement for Multi-Family rental housing with associated parking facilities, and (3) a parking license to provide parking for city facilities; and (4) an option agreement City re-acquisition of real property, all in furtherance of development of the City's Town Square Project.

EXPLANATION OF REQUEST:

In connection with construction phase of Town Square project.

Agreements will be available in advance of the Commission meeting.

HOW WILL THIS AFFECT CITY PROGRAMS OR SERVICES?

FISCAL IMPACT:

ALTERNATIVES:

STRATEGIC PLAN:

STRATEGIC PLAN APPLICATION:

CLIMATE ACTION:

CLIMATE ACTION DISCUSSION:

Is this a grant? No

Grant Amount:

ATTACHMENTS:

Type	Description
<input type="checkbox"/> Resolution	RESO - JKM

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RESOLUTION NO. R18-__

A RESOLUTION OF THE CITY OF BOYNTON BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR TO SIGN THE FOLLOWING AGREEMENTS WITH JKM DEVELOPERS/BLACKROCK OR ITS SUCCESSORS AND ASSIGNS, FOR (1) THE SALE AND PURCHASE OF REAL PROPERTY OWNED BY THE CITY, AND (2) A DEVELOPMENT AGREEMENT FOR MULTI-FAMILY RENTAL HOUSE WITH ASSOCIATED PARKING FACILITIES, AND (3) A PARKING LICENSE TO PROVIDE PARKING FOR CITY FACILITIES; AND (4) AN OPTION AGREEMENT FOR CITY RE-ACQUISITION OF REAL PROPERTY, ALL IN FURTHERANCE OF THE DEVELOPMENT OF THE CITY’S TOWN SQUARE PROJECT; AND PROVIDING AN EFFECTIVE DATE.

Whereas; the City and JKM Developers/Blackrock, a development team member of the town square development team have negotiated the terms and conditions necessary to facilitate the (1) the sale and purchase of real property owned by the city, and (2) a development agreement for multi-family rental house with associated parking facilities, and (3) a parking license to provide parking for city facilities; and (4) an option agreement for city re-acquisition of real property, all in furtherance of the development of the City’s Town Square project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

Section 1. Each Whereas clause set forth above is true and correct and incorporated herein by this reference.

Section 2. The City Commission of the City of Boynton Beach, Florida does hereby approve and authorize the Mayor to sign the following documents and such other collateral documents necessary thereto with JKM Developer/Blackrock or its successors and

29 assigns at such time as they are finalized to the satisfaction of the City Manager and City
30 Attorney:

31 (1) The sale and purchase of real property owned by the city, a copy of which is attached as
32 Exhibit "A", and

33 (2) A development agreement for multi-family rental house with associated parking facilities,
34 a copy of which is attached as Exhibit "B", and

35 (3) A parking license, a copy of which is attached as Exhibit "C", to provide parking for City
36 facilities; and

37 (4) an option agreement, a copy of which is attached as Exhibit "D" for City re-acquisition of
38 real property;

39 all in furtherance of the development of the City's Town Square project

40 **Section 3.** That this Resolution shall become effective immediately upon passage.

41 **PASSED AND ADOPTED** this ____ day of _____, 2018.

42 CITY OF BOYNTON BEACH, FLORIDA

43		YES	NO
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45			
46	Mayor – Steven B. Grant	_____	_____
47			
48	Vice Mayor – Justin Katz	_____	_____
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50	Commissioner – Mack McCray	_____	_____
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52	Commissioner – Christina L. Romelus	_____	_____
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54	Commissioner – Joe Casello	_____	_____
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56		VOTE	_____

57 ATTEST:

58
59
60 _____
61 Judith A. Pyle, CMC
62 City Clerk
63

64
65 (City Seal)