

1 Introduced by the Council President at the request of the DIA:  
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3

4 **ORDINANCE 2019-**

5 AN ORDINANCE MAKING CERTAIN FINDINGS AND  
6 AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO  
7 EXECUTE: (1) A REDEVELOPMENT AGREEMENT  
8 ("REDEVELOPMENT AGREEMENT") AMONG THE CITY OF  
9 JACKSONVILLE ("CITY"), DOWNTOWN INVESTMENT  
10 AUTHORITY ("DIA"), AND 500 EAST BAY LLC  
11 ("DEVELOPER"), WHICH REDEVELOPMENT AGREEMENT  
12 PROVIDES FOR THE DESIGN AND CONSTRUCTION OF A  
13 HOTEL, WATER PARK, FAMILY ENTERTAINMENT  
14 AMENITIES, PARKING GARAGE AND RIVERWALK  
15 IMPROVEMENTS BY THE DEVELOPER ON THE NORTHBANK  
16 OF THE ST. JOHNS RIVER WITHIN THE NORTHBANK  
17 DOWNTOWN COMMUNITY REDEVELOPMENT AREA  
18 ("PROJECT"); (2) A QUITCLAIM DEED CONVEYING AN  
19 APPROXIMATELY 2.8 ACRE PARCEL OF CITY-OWNED  
20 LAND TO THE DEVELOPER AT THE COST OF \$584,000  
21 PER ACRE, SUBJECT TO ADJUSTMENTS AS SET FORTH  
22 IN THE REDEVELOPMENT AGREEMENT; (3) A  
23 RIVERWALK IMPROVEMENTS COSTS DISBURSEMENT  
24 AGREEMENT BY WHICH THE DEVELOPER SHALL  
25 CONSTRUCT ON BEHALF OF THE CITY AND AT THE  
26 CITY'S EXPENSE CERTAIN RIVERWALK IMPROVEMENTS  
27 TO BE OWNED BY THE CITY AND RELATED TO THE  
28 PROJECT; (4) A RESTRICTIVE COVENANTS AND  
29 PARKING RIGHTS AGREEMENT THAT REQUIRES A  
30 MINIMUM OF 200 SHORT TERM PUBLIC PARKING  
31 SPACES DEDICATED TO PUBLIC USE; AND (5)

1 RELATED AGREEMENTS AS DESCRIBED IN THE  
2 REDEVELOPMENT AGREEMENT; AUTHORIZING A  
3 \$3,500,000 PARKING GARAGE GRANT UPON  
4 COMPLETION OF THE PARKING GARAGE; AUTHORIZING  
5 A \$3,250,000 COMPLETION GRANT PAYABLE UPON  
6 COMPLETION OF THE PROJECT; AUTHORIZING AN  
7 \$8,250,000 OPERATIONAL PERFORMANCE GRANT  
8 PAYABLE OVER 15 YEARS AFTER COMPLETION OF THE  
9 PROJECT; AUTHORIZING A RECAPTURE ENHANCED  
10 VALUE (REV) GRANT NOT TO EXCEED \$20,000,000 IN  
11 CONNECTION WITH THE PROJECT; WAIVING  
12 PROVISIONS OF CHAPTER 122, (PUBLIC PROPERTY),  
13 PART 4 (REAL PROPERTY), SUBPART C, (COMMUNITY  
14 REDEVELOPMENT REAL PROPERTY DISPOSITIONS),  
15 ORDINANCE CODE, TO AUTHORIZE SALE OF CITY  
16 OWNED REAL PROPERTY WITHOUT AN APPRAISAL TO  
17 DEVELOPER AT LESS THAN FAIR MARKET VALUE;  
18 DESIGNATING THE DIA AS CONTRACT MONITOR FOR  
19 THE REDEVELOPMENT AGREEMENT; AMENDING THE  
20 2019-2023 FIVE-YEAR CAPITAL IMPROVEMENT  
21 PROGRAM APPROVED BY ORDINANCE 2018-505-E TO  
22 ADD AND PROVIDE FUNDING FOR THE PROJECT  
23 ENTITLED "NORTH BANK RIVERWALK EXTENSION -  
24 BERKMAN II"; PROVIDING FOR CITY OVERSIGHT OF  
25 THE PROJECT BY THE DEPARTMENT OF PUBLIC WORKS;  
26 AUTHORIZING THE EXECUTION OF ALL DOCUMENTS  
27 RELATING TO THE ABOVE AGREEMENTS AND  
28 TRANSACTIONS, AND AUTHORIZING TECHNICAL  
29 CHANGES TO THE DOCUMENTS; PROVIDING A DEADLINE  
30 FOR THE DEVELOPER TO EXECUTE THE AGREEMENTS  
31 AFTER THEY ARE DELIVERED TO THE DEVELOPER;

1 WAIVER OF THAT PORTION OF THE PUBLIC  
2 INVESTMENT POLICY ADOPTED BY ORDINANCE 2016-  
3 382-E, WHICH REQUIRES THAT IN ORDER FOR THE  
4 DEVELOPER TO RECEIVE A REV GRANT, IT MUST BE  
5 IN A TARGETED INDUSTRY CATEGORY, MUST CREATE  
6 AT LEAST 10 NEW FULL-TIME JOBS, AND THAT THE  
7 WAGES THEREFORE MUST BE GREATER THAN OR EQUAL  
8 TO ONE HUNDRED PERCENT OF THE STATE OF FLORIDA  
9 AVERAGE WAGE, AND TO AUTHORIZE THE PARKING  
10 GARAGE GRANT, COMPLETION GRANT, AND  
11 OPERATIONAL PERFORMANCE GRANT; PROVIDING AN  
12 EFFECTIVE DATE.

13  
14 **WHEREAS**, 500 East Bay LLC (the "Developer") owns a parcel of  
15 land located generally at 500 East Bay Street on the Northbank of  
16 the St. Johns River in downtown, Jacksonville, known generally as  
17 the Berkman II site (together with approximately 2.8 easterly and  
18 adjacent acres the Developer intends to purchase from the City, the  
19 "Project Parcel"); and

20 **WHEREAS**, Developer intends to renovate the existing, partially  
21 constructed 17-story condominium building into an approximately 340  
22 room hotel, and to construct additional improvements on the Project  
23 Parcel, including Riverwalk improvements, a water playground, an  
24 indoor family entertainment amenities building, outdoor  
25 entertainment amenities, and a parking garage (collectively, the  
26 "Project"), at an estimated cost of \$122,000,000; and

27 **WHEREAS**, the Developer is seeking: (1) a \$3,250,000 grant  
28 ("Completion Grant") payable upon substantial completion of the  
29 Project; (2) a \$3,500,000 parking garage grant ("Parking Garage  
30 Grant") payable upon substantial completion of the parking garage;  
31 (3) an \$8,250,000 Operational Performance Grant ("Operational

1 Performance Grant") payable in annual installments over a 15 period  
2 after substantial completion of the Project; (4) and a REV Grant in  
3 the up to amount of \$20,000,000, all in support of the Project  
4 (cumulatively, the "Grant Funds"), and the City has also agreed to  
5 sell to Developer an approximately 3 acre parcel of City-owned land  
6 for \$584,000 per acre (subject to offsets as set forth in and as  
7 defined in the Redevelopment Agreement, the "City Parcel") so  
8 Developer may construct at its cost a parking garage and other  
9 improvements to support the Project; and

10 **WHEREAS**, the Developer will also construct on behalf of the  
11 City and at the City's expense, certain Riverwalk Improvements (as  
12 defined in the Redevelopment Agreement) along the southerly border  
13 of the Developer-owned parcel and the City Parcel; and

14 **WHEREAS**, the DIA has considered the Developer's requests and  
15 has determined that the Grant Funds authorized hereby will enable  
16 the Developer to renovate and complete the existing building on the  
17 Project Parcel and construct the Project as described in the  
18 Redevelopment Agreement; and

19 **WHEREAS**, the Project is consistent with the DIA BID Plan, and  
20 furthers Redevelopment Goal 1, Reinforce Downtown as the City's  
21 unique epicenter for business, history, culture, education and  
22 entertainment, Redevelopment Goal 4, improve  
23 walkability/bikeability and connectivity to adjacent neighborhoods  
24 and the St. John River while creating highly walkable nodes; and  
25 Redevelopment Goal 5, establish a waterfront design framework to  
26 ensure a unique experience and sense of place; and

27 **WHEREAS**, on September 19, 2018, the DIA approved a resolution  
28 (the "Resolution") to enter into the Redevelopment Agreement, said  
29 Resolution being attached hereto as **Exhibit 1**; and

30 **WHEREAS**, it has been determined to be in the interest of the  
31 City to enter into the Redevelopment Agreement and approve of and

1 adopt the matters set forth in this Ordinance; now, therefore,

2 **BE IT ORDAINED** by the Council of the City of Jacksonville:

3 **Section 1. Findings.** It is hereby ascertained,  
4 determined, found and declared as follows:

5 (a) The recitals set forth herein are true and correct.

6 (b) The Project will greatly enhance the City and otherwise  
7 promote and further the municipal purposes of the City.

8 (c) The City's assistance for the Project will enable and  
9 facilitate the Project, the Project will enhance and increase the  
10 City's tax base and revenues, and the Project will improve the  
11 quality of life necessary to encourage and attract business  
12 expansion in the City.

13 (d) Enhancement of the City's tax base and revenues are  
14 matters of State and City concern.

15 (e) The Developer is qualified to carry out the Project.

16 (f) The authorizations provided by this Ordinance are for  
17 public uses and purposes for which the City may use its powers as a  
18 municipality and as a political subdivision of the State of Florida  
19 and may expend public funds, and the necessity in the public  
20 interest for the provisions herein enacted is hereby declared as a  
21 matter of legislative determination.

22 (g) This Ordinance is adopted pursuant to the provisions of  
23 Chapters 163, 166 and 125, Florida Statutes, as amended, the City's  
24 Charter, and other applicable provisions of law.

25 **Section 2. Execution of Agreements.** The Mayor (or his  
26 authorized designee) and the Corporation Secretary are hereby  
27 authorized to execute and deliver the Redevelopment Agreement,  
28 Riverwalk Improvements Costs Disbursement Agreement, Restrictive  
29 Covenants and Parking Rights Agreement, quitclaim deed and related  
30 documents described in the Redevelopment Agreement (collectively,  
31 the "Agreements") substantially in the form placed **On File** with the

1 Legislative Services Division (with such "technical" changes as  
2 herein authorized), for the purpose of implementing the  
3 recommendations of the DIA as further described in the  
4 Redevelopment Agreement.

5 The Agreements may include such additions, deletions and  
6 changes as may be reasonable, necessary and incidental for carrying  
7 out the purposes thereof, as may be acceptable to the Mayor, or his  
8 designee, with such inclusion and acceptance being evidenced by  
9 execution of the Agreements by the Mayor or his designee. No  
10 modification to the Agreements may increase the financial  
11 obligations or the liability of the City and any such modification  
12 shall be technical only and shall be subject to appropriate legal  
13 review and approval of the General Counsel, or his or her designee,  
14 and all other appropriate action required by law. "Technical" is  
15 herein defined as including, but not limited to, changes in legal  
16 descriptions and surveys, descriptions of infrastructure  
17 improvements and/or any road project, ingress and egress, easements  
18 and rights of way, performance schedules (provided that no  
19 performance schedule may be extended for more than six months  
20 without Council approval), design standards, access and site plan,  
21 which have no financial impact.

22 **Section 3. Payment of Completion Grant to Developer.** The  
23 City is authorized to and shall make, subject to subsequent  
24 appropriation by Council, the Completion Grant to the Developer in  
25 an amount not to exceed \$3,250,000, pursuant to and as set forth in  
26 the Redevelopment Agreement.

27 **Section 4. Payment of Parking Garage Grant to Developer.**  
28 The Parking Garage Grant is hereby authorized, and, subject to  
29 subsequent appropriation by Council, the City is authorized to  
30 disburse the Parking Garage Grant to the Developer in an amount not  
31 to exceed \$3,500,000, pursuant to and as set forth in the

1 Redevelopment Agreement.

2           **Section 5.           Payment of Operational Performance Grant to**  
3 **Developer.** The Operational Performance Grant Grant is hereby  
4 authorized, and, subject to subsequent appropriation by Council,  
5 the City is authorized to disburse the Operational Performance  
6 Grant to the Developer in an amount not to exceed \$8,250,000,  
7 pursuant to and as set forth in the Redevelopment Agreement.

8           **Section 6.           Payment of REV Grant.**

9           (a) The REV Grant in the amount not to exceed \$20,000,000,  
10 the terms of which are more specifically described in the  
11 Redevelopment Agreement, shall not be deemed to constitute a debt,  
12 liability, or obligation of the City or of the State of Florida or  
13 any political subdivision thereof within the meaning of any  
14 constitutional or statutory limitation, or a pledge of the faith  
15 and credit or taxing power of the City or of the State of Florida  
16 or any political subdivision thereof, but shall be payable solely  
17 from the funds provided therefor as provided in this Section. The  
18 Redevelopment Agreement shall contain a statement to the effect  
19 that the City shall not be obligated to pay any installment of its  
20 financial assistance to the Developer except from the non-ad  
21 valorem revenues or other legally available funds provided for that  
22 purpose, that neither the faith and credit nor the taxing power of  
23 the City or of the State of Florida or any political subdivision  
24 thereof is pledged to the payment of any portion of such financial  
25 assistance, and that the Developer, or any person, firm or entity  
26 claiming by, through or under the Developer, or any other person  
27 whomsoever, shall never have any right, directly or indirectly, to  
28 compel the exercise of the ad valorem taxing power of the City or  
29 of the State of Florida or any political subdivision thereof for  
30 the payment of any portion of such financial assistance.

31           (b) The Mayor, or his designee, is hereby authorized to and

1 shall disburse the annual installments of the REV Grant to the  
2 Developer as provided in this Section in accordance with this  
3 Ordinance and the Redevelopment Agreement.

4 **Section 7. Waiver of Chapter 122 (Public Property), Part**  
5 **4 (Real Property), Subpart C (Community Redevelopment Real Property**  
6 **Dispositions), Section 122.432 (Appraisal of Property).** Section  
7 122.432, *Ordinance Code*, is hereby waived to eliminate the  
8 requirement of an appraisal in connection with the sale of the City  
9 Parcel to the Developer.

10 **Section 8. CIP Amendment.** Ordinance 2018-505-E, being  
11 the 2019-2023 Five-Year Capital Improvement Program for the City  
12 and certain of its independent agencies ("CIP"), is hereby amended  
13 to add the project entitled "North Bank Riverwalk Extension -  
14 Berkman II" (for the purposes of this Section, the "Project"). The  
15 Project is more fully described in the Project Information Sheet  
16 attached hereto as **Exhibit 2** and incorporated herein. The Council  
17 finds that the deferral of this amendment of the CIP until the next  
18 annual budget and CIP review will be detrimental to the best  
19 interests of the community because such deferral will result in a  
20 delay in the redevelopment of the Project Parcel and returning the  
21 property to productive use. Pursuant to Section 122.605(c),  
22 *Ordinance Code*, enactment of this ordinance requires approval by a  
23 two-thirds vote of the Council members present at the meeting  
24 because of the CIP amendment set forth in this Section. Except as  
25 amended herein, the Five-Year Capital Improvement Program approved  
26 by Ordinance 2018-505-E shall continue in full force and effect.  
27 Funding for the Project shall be as authorized in subsequent  
28 legislation.

29 **Section 9. Designation of Authorized Official and DIA as**  
30 **Contract Monitor.** The Mayor is designated as the authorized  
31 official of the City for the purpose of executing and delivering



1 any contracts and documents and furnishing such information, data  
2 and documents for the Agreements and related documents as may be  
3 required and otherwise to act as the authorized official of the  
4 City in connection with the Agreements, and is further authorized  
5 to designate one or more other officials of the City to exercise  
6 any of the foregoing authorizations and to furnish or cause to be  
7 furnished such information and take or cause to be taken such  
8 action as may be necessary to enable the City to implement the  
9 Agreements according to their terms. The DIA is hereby required to  
10 administer and monitor the Redevelopment Agreement and to handle  
11 the City's responsibilities thereunder, including the City's  
12 responsibilities under such agreement working with and supported by  
13 all relevant City departments.

14 **Section 10. Oversight Department.** The Department of  
15 Public Works shall oversee the project described herein.

16 **Section 11. Further Authorizations.** The Mayor, or his  
17 designee, and the Corporation Secretary, are hereby authorized to  
18 execute the Agreements and all other contracts and documents and  
19 otherwise take all necessary action in connection therewith and  
20 herewith. The Chief Executive Officer of the DIA, as contract  
21 administrator, is authorized to negotiate and execute all necessary  
22 changes and amendments to the Agreements and other contracts and  
23 documents, to effectuate the purposes of this Ordinance, without  
24 further Council action, provided such changes and amendments are  
25 limited to amendments that are technical in nature (as described in  
26 Section 2 hereof), and further provided that all such amendments  
27 shall be subject to appropriate legal review and approval by the  
28 General Counsel, or his or her designee, and all other appropriate  
29 official action required by law.

30 **Section 12. Execution of Agreements.** If the Redevelopment  
31 Agreement approved by this ordinance has not been signed by the

1 Developers and other parties other than the City and DIA within  
2 ninety (90) days after the City delivers or mails the unexecuted  
3 Redevelopment Agreement to the Developers for execution, then the  
4 City Council approvals in this Ordinance and authorization for the  
5 Mayor to execute the Agreements are automatically revoked, provided  
6 however, that the Chief Executive Officer of the DIA shall have the  
7 authority to extend such ninety (90) day period in writing at his  
8 discretion for up to an additional ninety (90) days.

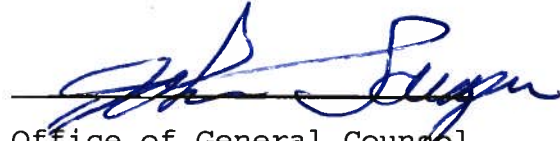
9       **Section 13. Waiver of Public Investment Policy.** The  
10 following requirements of the Public Investment Policy adopted by  
11 City Council Ordinance 2016-382-E, are hereby waived: the REV Grant  
12 requirements that the Developers are in a Targeted Industry  
13 Category, and will create at least ten new full-time jobs at  
14 greater than or equal to one hundred percent of the State of  
15 Florida average wage. The 75%, twenty (20) year term of the REV  
16 Grant is in compliance with the Public Investment Policy, which  
17 contemplates higher tax increment percentages and REV Grant time  
18 periods in connection with high capital investment projects (over  
19 \$10,000,000). The reason for the waivers is that the grants are  
20 necessary to make the Project financially feasible, will cause an  
21 estimated \$122,000,000 in private capital investment in the  
22 Project, and the Project will facilitate further development in the  
23 Downtown area.

24       **Section 14. Effective Date.** This Ordinance shall become  
25 effective upon signature by the Mayor or upon becoming effective  
26 without the Mayor's signature.  
27  
28  
29  
30  
31

1 Form Approved:

2

3



4 Office of General Counsel

5 Legislation Prepared By: John Sawyer

6 GC-#1266948-V2-2019\_-\_500\_East\_Bay\_Berkman\_II\_RDA\_Legislation.Doc

**Redevelopment Agreement**

**by and among**

**The City of Jacksonville,**

**The Downtown Investment Authority,**

**and**

**500 East Bay LLC**

## **REDEVELOPMENT AGREEMENT**

This **REDEVELOPMENT AGREEMENT** (this “Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”), by and among the **CITY OF JACKSONVILLE**, a municipal corporation and a political subdivision of the State of Florida (the “City”), the **DOWNTOWN INVESTMENT AUTHORITY**, a community redevelopment agency on behalf of the City (the “DIA”) and **500 EAST BAY LLC**, a Florida limited liability company (the “Developer”).

### **Article 1. PRELIMINARY STATEMENTS**

#### **1.1 The Project.**

The Developer and/or its principals and Affiliates (defined below) have submitted a proposal to the DIA (the “Proposal”) to acquire and renovate the real property and improvements thereon known generally as the Berkman Plaza II (the “Building”), which is an abandoned, partially constructed building located generally at 500 E. Bay Street in Jacksonville, Florida, located within the Northbank Community Redevelopment Area. The Developer will oversee and manage the completion and construction of the Building, a Parking Garage (defined below) and the construction of other family amenity entertainment improvements on the Project Parcel (defined below). The completion of construction of the Building, and construction of the Parking Garage and other improvements is expected to cause private Capital Investment (defined below) in the amount of \$122,000,000 by or on behalf of the Developer. In consideration of Developer’s acquisition, stabilization and redevelopment of the Project (defined below), the DIA has recommended and the City agrees to provide, upon substantial completion of certain portions of the Project, the following: (A) a \$20,000,000 REV Grant payable to the developer over a twenty (20) year period; (B) an \$8,250,000 Operational Performance Grant payable over a fifteen (15) year period; (C) a \$3,250,000 Completion Grant payable upon Substantial Completion of the Project; (D) a \$3,500,000 Parking Garage Grant payable upon Substantial Completion of the Parking Garage with the Public Parking Spaces; and (E) a Riverwalk Improvements Contribution in the amount of \$1,800,000 (inclusive of a \$300,000 contingency amount) to support the design and construction of the Riverwalk Improvements by the Developer. In addition, upon payment of the Purchase Price (defined below) from Developer to the City therefor, and upon satisfaction of the conditions to the conveyance contained in this Agreement, conveyance by the City to the Developer of an approximately 3 acre parcel of City-owned land (the “City Parcel” defined below) to Developer subject to the deed restrictions further addressed herein.

#### **1.2 Authority.**

The DIA was created by the City Council of the City of Jacksonville pursuant to Ordinance 2012-364-E. Pursuant to Chapter 163, Florida Statutes, and Section 55.104, Ordinance Code, the DIA is the sole development and community redevelopment agency for Downtown, as defined by Section 55.105, Ordinance Code and has also been designated as the public economic development agency as defined in Section 288.075, Florida Statutes, to promote the general business interests in Downtown. The DIA has approved this Agreement pursuant to

its Resolution 2018-09-02 (“Resolution”) and the City Council has authorized execution of this Agreement pursuant to City Ordinance 2019-\_\_-E (the “Ordinance”).

### **1.3 City/DIA Determination.**

(a) The City has determined that the Project is consistent with the goals of the City in that the Project will, among other things:

- (i) increase capital investment in Downtown Jacksonville;
- (ii) generate significant new ad valorem taxes, including significant new tax revenues for the public school system;
- (iii) help meet the overall community goal of residential and business development and growth in Downtown Jacksonville; and
- (iv) promote and encourage private Capital Investment of \$122,000,000.

(b) The DIA has determined that the Project is consistent with the following North Bank Downtown and Southside Community Redevelopment Area Plan Redevelopment Goals:

- (i) Goal 1. Reinforce Downtown as the City’s unique epicenter for business, history, culture, education, and entertainment by increasing the opportunities for employment within Downtown; and supporting the expansion of entertainment, restaurant and retail/commercial within proximity to adjacent residential redevelopment;
- (ii) Goal 4. Improve walkability/bikeability and connectivity to adjacent neighborhoods and the St. John River while creating highly walkable nodes; and
- (iii) Goal 5. Establish a waterfront design framework to ensure a unique experience and sense of place.

### **1.4 Jacksonville Small and Emerging Business Program.**

As more fully described in City Ordinance 2004-602-E, the City has determined that it is important to the economic health of the community that whenever a company receives incentives from the City, that company provides contracting opportunities to the maximum extent possible to small and emerging businesses in Duval County as described in Section 13.1.

### **1.5 Coordination by City.**

The City hereby designates the Chief Executive Officer (“CEO”) of the DIA or his or her designee to be the project coordinator (“Project Coordinator”) who will, on behalf of the DIA and City, coordinate with the Developer and administer this Agreement according to the terms and conditions contained herein and in the Exhibit(s) attached hereto and made a part hereof. It

shall be the responsibility of the Developer to coordinate all project related activities with the designated Project Coordinator, unless otherwise stated herein.

**1.6 Maximum Indebtedness.**

The maximum indebtedness of the City for all fees, grants, reimbursable items or other costs pursuant to this Agreement (excluding the obligations contemplated for the Garage Lease) shall not exceed the sum of THIRTY FIVE MILLION AND NO/100 DOLLARS (\$35,000,000.00).

**1.7 Availability of Funds.**

Notwithstanding anything to the contrary herein, the City's and DIA's financial obligations under this Agreement are subject to and contingent upon the availability of lawfully appropriated funds for their respective obligations under this Agreement.

**1.8 Quitclaim Deed Clearing Fee Simple Title.**

The City previously conveyed certain portions of the Project Parcel to DB Holdings, L.L.C., a prior Developer of the Project Parcel, by way of that certain Special Warranty Deed recorded in Official Records Book 9501, Page 546 in the current public records of Duval County, Florida (the "Prior Deed"). The Prior Deed contains certain reverter rights in favor of the City and the Developer has requested the City to release the reverter rights to eliminate any title issues. Accordingly, on or about the Effective Date hereof, City shall execute and record, at Developer's expense, that certain Quitclaim Deed in substantially the form attached hereto as **Exhibit P** releasing the reverter rights in the Prior Deed in the Developer Parcel. A precondition to the City's execution of this Agreement shall be that there are no liens on the Developer Parcel at the time of City execution, other than a purchase money mortgage and/or a Project construction loan.

**NOW THEREFORE**, in consideration of the mutual undertakings and agreements herein of City, DIA, and Developer, and for Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are acknowledged, City, DIA and the Developer agree that the above Preliminary Statements are true and correct, and represent, warrant, covenant and agree as follows:

**Article 2.  
DEFINITIONS**

As used in this Agreement, the following terms shall have the meaning set opposite each:

**2.1 Affiliate.**

A person or entity, directly or indirectly, controlling, controlled by or under common control with a person or entity.

## **2.2 Annual Lodging Revenue.**

“Annual Lodging Revenue” means the annual rental charges or room rates paid for the right to use or occupy transient living or sleeping accommodations in the Building. The term “rental charges or room rates” includes any charge or surcharge to guests or tenants for the use of items or services that is required to be paid by the guest or tenant as a condition of the use or possession, or the right to the use or possession, of any transient accommodation within the Building. Such charges or surcharges are included even when the charges to the transient guest are: (i) separately itemized on a guest’s or tenant’s bill, invoice, or other tangible evidence of sale; or (ii) made by the owner or the owner’s representative to the guest or tenant for items or services provided by a third party. Rental charges or room rates do not include charges or surcharges to guests or tenants for the use of items or services for transient accommodations when: (x) the charges or surcharges are separately itemized on a guest’s or tenant’s bill, invoice, or other tangible evidence of sale; and (y) the items or services are withheld when a guest or tenant refuses to pay the charge or surcharge. Rental charges or room rates include charges or surcharges for the use of items or services when all guests or tenants receive the use of such items or services.

## **2.3 Base Year.**

The base year for purposes of this Agreement shall be the 2019 tax year.

## **2.4 Building.**

That certain building located generally at 500 E. Bay Street, Jacksonville, Florida and located on the Project Parcel.

## **2.5 Building Improvements.**

Improvements to the interior and exterior of the Building as generally set forth on **Exhibit A** attached hereto.

## **2.6 Capital Investment.**

All money expended or invested by the Developer in connection with the Project that may normally be capitalized by a developer in the normal conduct of its business to design, construct and develop and operate a project, including but not limited to land and building acquisition costs, legal fees, engineering, construction and design costs, all costs of any Project improvements, fixtures, and equipment, including but not limited to all indoor and outdoor family entertainment, water park, or other amenities and improvements, all Project financing costs, any costs of the Riverwalk Improvements not reimbursed to the Developer, and all remediation costs incurred by the Developer.

## **2.7 Catherine Street Improvements.**

The rebuilding and enhancement of the existing pedestrian access walkway by the Developer to be located on the Catherine Street Parcel (defined in Section 5.3(c)(vi) below) in accordance with this Agreement.



## **2.8 City Council.**

The body politic, as the same shall be from time to time constituted, charged with the duty of governing the City.

## **2.9 City Parcel.**

That certain parcel of real property located adjacent and east to the Building parcel of approximately 3 acres in size, as generally described on **Exhibit B** attached hereto, which City Parcel is subject to the repurchase rights in favor of the City as contained in the deed attached hereto as **Exhibit K**.

## **2.10 Commence Construction.**

The terms “Commence” or “Commenced” or “Commencing” Construction as used herein when referencing the Project or any portion thereof means the date when Developer: (i) has completed all pre-construction engineering and design and has obtained all necessary licenses, permits and governmental approvals, has engaged a general contractor and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Project (or applicable phase thereof) may begin and proceed to completion without foreseeable interruption; (ii) has demonstrated it has the financial commitments and resources to complete the construction of the Project; and (iii) has “broken ground” and begun physical, material renovation and construction (e.g., removal of vegetation or site preparation work or such other evidence of commencement of construction as may be approved by the DIA in its reasonable discretion) of such improvements on an ongoing basis without any Impermissible Delays. Commencing Construction shall not include cleaning of the Project Parcel or other general pre-construction site work.

## **2.11 Consolidated Downtown DRI.**

The Southside Development of Regional Impact (“**DRI**”) created pursuant to Resolution 82-802-378 adopted by the Jacksonville City Council on January 10, 1983, which was the original Development Order for the Southside DRI, which was consolidated with the Northside East Development of Regional Impact and the Northside West Development of Regional Impact by Ordinance 92-392-489, adopted June 9, 1992, into the Consolidated Downtown Development of Regional Impact, as subsequently amended from time to time.

## **2.12 Developer Parcel.**

That certain parcel of real property owned by the Developer upon which the Building is located, having an address of 500 East Bay Street, as generally described on **Exhibit C** attached hereto.

## **2.13 Direct Costs.**

The direct design, engineering, permitting and construction costs incurred by Developer in connection with the Riverwalk Improvements, including, without limitation, soft and hard costs associated with the financing, design, engineering, legal, permitting and construction of the

Riverwalk Improvements, surveys, geotechnical, environmental and construction testing, all pertaining only to the Riverwalk Improvements and as itemized in the Plans and budget therefore, as the budget may be revised from time to time with the written approval of City Director of Public Works and CEO of the DIA.

**2.14 Family Amenity Entertainment Improvements.**

Those certain family entertainment amenities to be constructed on the Project Parcel as set forth on composite **Exhibit E** attached hereto and incorporated herein by this reference.

**2.15 Garage Parcel.**

That certain real property within the City Parcel and/or Project Parcel upon which the Parking Garage will be located.

**2.16 Impermissible Delay**

The term “Impermissible Delay” means, subject to the provisions of Section 17.3, failure of Developer to proceed with reasonable diligence with the construction of the applicable Improvements within the timeframe for completion contemplated in this Agreement, or after commencement of the applicable Improvements, abandonment of or cessation of work on any portion of the Improvements at any time prior to the Completion of such improvements for a period of more than forty (40) consecutive business days, except in cases of force majeure as described in Section 17.3. Notwithstanding the foregoing, any delay or cessation of any of the Improvements as to which Developer has been unable to secure the necessary permits and approvals after diligent efforts shall not be an Impermissible Delay, as long as Developer continues its diligent efforts to obtain such permits and approvals.

**2.17 Improvements.**

The Building Improvements, Family Amenity Entertainment Improvements, the Parking Garage Improvements, the Riverwalk Improvements, and the Catherine Street Improvements.

**2.18 Parking Garage.**

That certain, to-be-constructed structured parking facility containing no less than three hundred fifty (350) spaces (or 630 spaces in the event the Developer elects to construct the Public Parking Spaces as part of the Parking Garage) on the City Parcel or Project Parcel to be used as contemplated in this Agreement.

**2.19 Parking Garage Improvements.**

The construction of the Parking Garage Improvements containing no less than three hundred fifty (350) spaces (and no less than 630 spaces if the Developer elects to construct the Public Parking Spaces as part of the Parking Garage), as set forth on **Exhibit F** attached hereto, by the Developer or its Affiliate on the City Parcel or Project Parcel in accordance with this Agreement.

**2.20 Performance Schedule.**

The Performance Schedule, as defined in Article 4 hereof.

**2.21 Project.**

The Improvements located on or to be located on the Project Parcel and City Parcel, respectively, and the obligations of the Developer under this Agreement, as more specifically described herein.

**2.22 Project Parcel.**

The Developer Parcel, the City Parcel if acquired by the Developer, and the Catherine Street right-of-way after it is abandoned by the City.

**2.23 Public Parking Spaces.**

The construction of an additional two hundred (200) short term public parking spaces as part of the Parking Garage in conjunction with the construction of the Parking Garage Improvements, as set forth on **Exhibit F** attached hereto, by the Developer or its Affiliate on the City Parcel or Project Parcel in accordance with this Agreement.

**2.24 Restrictive Covenants.**

That certain Restrictive Covenants and Parking Rights Agreement attached hereto as **Exhibit G**, which shall be executed and recorded in the Public Records of Duval County in accordance with this Agreement, pursuant to which Developer shall provide at least 200 short term, hourly public parking spaces in the Parking Garage during all operating hours of the Parking Garage. Notwithstanding anything in this Agreement to the contrary, the Restrictive Covenants and Parking Rights Agreement shall only be required in the event (i) the Parking Garage is constructed to contain not less than six hundred thirty (630) spaces inclusive of the Public Parking Spaces; and (ii) the Developer receives the Parking Garage Grant. Except as set forth above, the Restrictive Covenants and Parking Rights Agreement shall not otherwise restrict Developer's rights to develop, use or enjoy the City Parcel.

**2.25 Riverwalk Design Criteria.**

The design criteria that will govern the construction of the Riverwalk Improvements, a copy of which is attached hereto as **Exhibit H**.

**2.26 Riverwalk Improvements.**

Those certain Riverwalk Improvements to be constructed by Developer on the Riverwalk Parcel, as further described on **Exhibit I** attached hereto and incorporated herein by this reference, and also on the Riverwalk Easement as further described in Section 6.4 below.

**2.27 Riverwalk Parcel.**

That certain parcel of City owned real property located adjacent and south of the City Parcel, as further described on **Exhibit J** attached hereto.

**2.28 Substantial Completion.**

“Substantially Complete”, “Substantially Completed”, “Substantial Completion” “Complete” or “Completion” means that all permits have been finalized, a certificate of substantial completion has been issued by the contractor and verified by the architect of record, and the applicable Improvements are available for use in accordance with their intended purpose; subject to commercially reasonable punch list items, completion of tenant improvements and similar items.

Other capitalized terms not defined in this Article shall have the meanings assigned to them elsewhere in this Agreement.

**Article 3.  
APPROVAL OF AGREEMENT**

**3.1 Approval of Agreement.**

By the execution hereof, the parties certify as follows:

- (a) Developer warrants, represents, and covenants with City and DIA that:
  - (i) the execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents creating the Developer entity;
  - (ii) this Agreement does not violate any of the terms or conditions of such governing documents and the Agreement is binding upon the Developer and enforceable against it in accordance with its terms;
  - (iii) the person or persons executing this Agreement on behalf of the Developer are duly authorized and fully empowered to execute the same for and on behalf of the Developer;
  - (iv) the Developer and each entity composing the Developer is, to the extent required by applicable law, duly authorized to transact business in the State of Florida; and
  - (v) the Developer, its business operations, and each person or entity composing the Developer are in material compliance with all federal, state and local laws, to the extent applicable to the Project and which could have a material adverse effect on the Project and the Developer’s ability to complete the Project in accordance with this Agreement.

(b) The DIA certifies to Developer that the execution and delivery hereof has been approved at a duly convened meeting of the DIA and the same is binding upon the DIA and enforceable against it in accordance with its terms.

(c) The City certifies to Developer that the execution and delivery hereof is binding upon the City to the extent provided herein and enforceable against the City in accordance with the terms hereof.

#### **Article 4.** **PERFORMANCE SCHEDULE**

##### **4.1 Project Performance Schedule.**

The City, the DIA and the Developer have jointly established the following dates for the Developer's obligations under this Agreement (collectively, the "Performance Schedule"):

Developer shall provide written notice to the DIA of the Commencement of Construction date within the later of: (i) six (6) months from the Effective Date of this Agreement; or (ii) two (2) months after receipt of all environmental or regulatory approvals from the Florida Department of Environmental Protection ("FDEP") necessary for the construction of the Improvements on the Project Parcel, but not later than eighteen (18) months from the Effective Date (the "Commencement of Construction Date"). Within twenty-four (24) months after the Commencement of Construction Date, Developer shall Complete construction of the Improvements (the "Completion Date"). The City's and DIA's obligation to fund the REV Grant, RC Grant, OP Grant, and Parking Garage Grant (all as defined below) is subject to the condition that the Improvements be Substantially Completed by the Completion Date, subject to extension due to a Force Majeure Event as authorized by this Agreement.

The City, DIA and the Developer have approved this Performance Schedule. By the execution hereof, and subject to the terms of this Agreement, the Developer hereby agrees to undertake and complete the construction and development of the Project in accordance with this Agreement and the Performance Schedule, and to comply with all of the Developer's obligations set forth herein. The CEO of the DIA may extend the Performance Schedule for up to six (6) months in his sole discretion for good cause shown by Developer. For purposes of clarity, each of the Commencement of Construction Date and Completion Date may receive up to a six month extension by the CEO.

#### **Article 5.** **PURCHASE AND SALE OF CITY PARCEL BY DEVELOPER**

##### **5.1 Property Conveyed.**

Subject to the terms and conditions of this Agreement and the Permitted Exceptions (as hereafter defined), the City hereby agrees to sell and convey to Developer, and Developer hereby agrees to purchase from the City, the City Parcel for the sum of FIVE HUNDRED EIGHTY-FOUR THOUSAND AND NO/100 DOLLARS (\$584,000.00) per acre (the "Purchase Price"), pursuant to the terms and conditions of this Article 5. The final Purchase Price shall be calculated based upon the site plan for the Project and the actual acreage of the City Parcel to be

conveyed as determined by survey. The Developer acknowledges that the City would not convey the City Parcel to Developer pursuant to this Article 5 without Developer's commitment to construct the Project and Improvements as called for in this Agreement, and the Developer acknowledges that by taking title to the City Parcel, it agrees to construct the Parking Garage Improvements, inclusive of the Public Parking Spaces, on the City Parcel in accordance with the terms and conditions of this Agreement. The Purchase Price will be reduced by the Environmental Condition Offset as set forth in Section 5.2 below.

### **5.2 Environmental Condition Offset.**

The Purchase Price shall be reduced by up to \$1,000,000 (the "Environmental Condition Offset") in acknowledgment of certain costs and obligations in connection with certain hazardous materials that may be present on the City Parcel. In the event the City Parcel conveyed is less than three (3) acres, the Environmental Condition Offset will reduce on a prorata basis. For example, if the City Parcel is determined to be three acres, the final Purchase Price would be calculated as 3 acres x \$584,000 per acre = \$1,752,000, reduced by \$1,000,000 = \$752,000 final Purchase Price.

### **5.3 Waiver of Fees.**

The City hereby waives the applicable tipping fees at the Trail Ridge Landfill, located at 5110 U.S. Highway 301 S., Baldwin, Florida 32234, for disposal of contaminated soils removed from the City Parcel during construction of the Improvements that meet the requirements for use as initial daily cover at the landfill. Developer shall hire an environmental consultant to coordinate with the City's Environmental Programs Manager to document and verify costs attendant to contaminated soils removed from the City Parcel during construction of the Improvements that are proposed to go to the landfill as daily cover. Developer shall remain responsible for the \$5 per ton handling charge on contaminated daily cover materials imposed by the operator of Trail Ridge Landfill with respect to the same.

### **5.4 Conditions to Closing.**

(a) Title Commitment and Survey. Within 30 days after the Effective Date, Developer shall at its own expense obtain a survey of the City Parcel (the "Survey") and a commitment for title insurance (the "Title Commitment") for an Owner's Policy of Title Insurance for the City Parcel, and provide copies of each to the City. The Developer shall have thirty (30) days thereafter (the "Approval Period") within which to review the Title Commitment and Survey and to object to any exception to title shown on the Title Commitment or any matter shown on the Survey. If Developer fails to object to any such title exception or Survey matter by written notice to City within the Approval Period, Developer shall be deemed to have approved the Title Commitment and the Survey. If Developer objects to any such exception or Survey matter by written notice to City during the Approval Period, City shall have the right to cure or attempt to cure Developer's objection to such exception or Survey matter within thirty (30) days after Developer's notice of objection, or, if sooner, by the Closing Date, as hereinafter defined; provided however that the City shall not have any obligation to cure any such objected to exception or objection to title or Survey or to bring suit to cure any or all title or Survey exceptions or defects; further provided that the City will use reasonable efforts to do so without

incurring any out of pocket costs. In the event City is unable to or elects not to cure any one or more of Developer's objections, City shall notify Developer in writing of such election (the "Election Notice"), and Developer may at its option terminate its obligations to acquire the City Parcel under this Article 5 by notifying City in writing within thirty (30) days after receiving the Election Notice, in which event the parties shall have no further liability to one another hereunder, except as specifically set forth herein. If Developer fails to terminate its obligations under this Article 5 within thirty (30) days after receiving the Election Notice, Developer shall be deemed to have waived such objection and the sale of the City Parcel shall proceed to Closing, subject to the terms of this Agreement. The term "Permitted Exceptions", as used herein, shall mean the title exceptions listed in Schedule B, Section 2 (and Section 1 if Section 1 requires the cure or release of items typically inserted on Section 2) of the Title Commitment that Developer approves or is deemed to approve pursuant to this Section 5.3.

(b) Condition of City Parcel. The City Parcel shall be conveyed to Developer in its "as-is" condition, with all faults. It shall be the sole responsibility of the Developer, at Developer's expense, to investigate and determine the soil conditions of the City Parcel and their suitability for the improvements to be constructed by the Developer. If the condition of the City Parcel is not, in the opinion of the Developer, suitable for such improvements, then it is the sole responsibility of Developer to take all actions and do all things required to render such City Parcel suitable, or to terminate its obligations under this Article 5 prior to Developer's Acceptance Date. DIA shall make the City Parcel available for inspection by Developer, Developer's employees, agents and contractors, during regular business hours and upon twenty-four (24) hours notice. Developer may, at Developer's sole risk and expense, undertake a complete physical inspection of the City Parcel as Developer deems appropriate, including but not limited to soil tests and environmental audits; provided, however, that any such inspection does not cause any permanent damage to the City Parcel. In addition, Developer shall have the right to review, and DIA shall make available to Developer all reports, studies, projections, or other materials relating to the ownership, use, operation, management, maintenance or physical and environmental condition of the City Parcel to the extent in DIA's or City's possession or control. Developer's right to inspect the City Parcel shall include the right to conduct such investigations, tests, surveys, interviews and other analyses as Developer determines is necessary, including, without limitation, entry into or upon every portion of the City Parcel including those portions leased to tenants. All such inspections, investigations and examinations shall be undertaken at Developer's sole cost and expense. Developer will coordinate all on-site inspections with the DIA so that the DIA shall have the option of having one of DIA's representatives present at any and all such on-site inspections. After completing any such inspections, Developer shall restore and repair any damage caused by Developer's inspections to substantially the same condition that existed immediately prior to such inspection, and Developer hereby agrees to indemnify and hold DIA and City harmless from any and all claims made or causes of action brought against DIA, City or the City Parcel resulting from the activities of Developer or any of Developer's agents or servants in conducting any of such inspections on the City Parcel. Notwithstanding the foregoing, Developer's indemnity shall not cover any loss, claim or damage to the City Parcel or to any person directly related (i) to any conditions or environmental issues which existed prior to Developer's inspection or to the existence of any hazardous materials or substances which is discovered during Developer's inspection or (ii) resulting from City's or DIA's negligent acts or omissions. The terms of this Section shall survive the Closing or the termination of this Article 5, as applicable. Furthermore, Developer

agrees to maintain and cause all of its contractors and other representatives conducting any inspections to maintain and have in effect workers' compensation insurance, with statutory limits of coverage, and comprehensive general liability insurance with (i) appropriate coverages, (ii) waiver of subrogation, and (iii) limits of not less than Two Million Dollars (\$2,000,000), combined single limit, for personal injury, including bodily injury and death, and property damage. Such insurance shall name City and DIA and affiliates identified by City and DIA as additional insured parties and shall be in a form reasonably acceptable to City and DIA, and shall not be modified or terminated without thirty (30) days' prior written notice to City and DIA. Developer shall deliver to City and DIA, prior to entry upon the City Parcel, evidence reasonably satisfactory to City and DIA that the insurance required hereunder is in full force and effect.

(c) City/DIA Pre-closing Obligations.

(i) Release and Relocation of Easements. The DIA and the City shall use reasonable efforts to assist Developer in causing the release or relocation of any existing access, utility or other easements encumbering the City Parcel as may be required for the development of the Improvements. The DIA will use reasonable efforts to see that the release or relocation of such existing easements is completed and finalized in accordance with the Performance Schedule. The Developer, the DIA and the City shall consult together in identifying and implementing any such easement release or relocation requirements prior to the Developer's Acceptance Date. In the event the Developer is not reasonably satisfied, prior to the Developer's Acceptance Date, that all such easements encumbering any portion of the City Parcel will be relocated or released as may be required for the development of the Improvements or other improvements contemplated by the Developer on the City Parcel and authorized by this Agreement, the Developer may terminate its obligations under this Article 5. Upon such termination, the parties' respective rights and obligations under this Article 5 only shall terminate, except as otherwise set forth herein. Developer may extend the Closing for a period of six (6) months to permit DIA additional time to obtain the release or relocation of such existing easements.

(ii) Site Preparation. Prior to Closing, the DIA and City shall make reasonable efforts to assist the Developer in obtaining permission for Developer to cause all buildings, structures and other improvements, both above-ground and underground, to be removed from the City Parcel and the DIA and the City shall provide reasonable assistance to Developer in obtaining all necessary utilities for the City Parcel (including without limitation electricity, natural gas, potable water, sanitary sewer and telephone service in capacities acceptable to the Developer in its reasonable discretion) in the streets abutting the City Parcel.

(iii) Zoning Change Assistance. Developer has requested, and the City and DIA hereby agree, within thirty days of the Effective Date if not sooner filed by the City, to submit zoning change legislation to its City Council to have the City Parcel and Catherine Street Parcel (defined below) rezoned to Commercial Central Business District ("CCBD"). The Developer shall reasonably cooperate in the preparation of the zoning application and filing of the legislation. The City and DIA make no representation or warranty as to whether such zoning will be sufficient for Developer's intended use of the City Parcel, and the City and DIA make no representation or warranty regarding the approval or denial of such legislation by City Council.



(iv) Allocation of Development Rights. Upon the Effective Date of this Agreement, the Developer shall convey the existing 222 Phase I Multi-family units to the Northside East Component Area of the Consolidated Downtown DRI. The DIA hereby assigns to Developer, its respective successors and assigns, for the development of all or any portion of the Project Parcel and subject to the conditions and limitations set forth in this Agreement, the right to develop the following Northside East Component Area DRI uses: (A) 350 Hotel Rooms through the conversion of 143,266 square feet of Government/Institutional Phase I development rights; and (B) 67,000 square feet of Phase I Commercial/Retail (collectively, the “Development Rights”). Should the Developer fail to Commence construction of the Improvements in accordance with the Performance Schedule, the Development Rights shall become null and void and revert back to the Consolidated Downtown DRI and the existing 222 Phase I Multi-family units herein conveyed to the Northside East Component Area of the Consolidated Downtown DRI shall be automatically reassigned to the Developer, all without further action. Upon issuance of a final certificate of occupancy for the Project, any unused Development Rights shall become null and void and automatically revert back to the Consolidated Downtown DRI. Any proposed assignment by Developer of the Development Rights shall be subject to the prior written approval of the CEO, not to be unreasonably withheld, conditioned or delayed and shall only be made in connection with the sale or conveyance of the Project Parcel and assignment of this Agreement as authorized by Section 16.2 below. In the event the DIA amends the Consolidated Downtown DRI Development Order by filing an NOPC or some other form of modification to extend the Phase I duration past November 29, 2019, to modify any other aspect of the Consolidated Downtown DRI Phasing Schedule or any other modification to the Consolidated Downtown DRI Development Order, such modification shall not impact the allocation of Development Rights set forth herein, the required mitigation associated with the Development Rights as set forth herein, or operate in a manner to prevent the development of the Improvements as provided for herein. No rescission, expiration, termination or abandonment of the Consolidated Downtown DRI Development Order by the City, DIA or the State of Florida shall constitute a termination of the right to develop the Project Parcel with the Development Rights and associated density and intensity assigned or to be assigned in this Agreement or otherwise impair such rights, so long as the development of the Project Parcel with the Development Rights is consistent with the applicable zoning, the Comprehensive Plan land use requirements, the DIA’s Business Investment and Development Plan (“BID Plan”) dated February 2015 (except as to any deviation authorized under Section 656.361.22, Zoning Code), and this Agreement. In the event the City and DIA do not rescind or abandon the Consolidated Downtown DRI Development Order by the Consolidated Downtown DRI Phase I expiration date (currently November 29, 2019), or extend the Consolidated Downtown DRI Phase I past November 29, 2019, such extension of the Consolidated Downtown DRI Phase I or continued existence of the Consolidated Downtown DRI Development Order shall not constitute a termination of the right to develop the Project Parcel with the Development Rights and associated density and intensity assigned or to be assigned in this Agreement or otherwise impair such rights so long as the development of the Project Parcel with the Development Rights is consistent with this Agreement.

(v) Water Quality Compensatory Credits. The City and DIA will work with the Developer in good faith to permit the Developer to utilize the City’s stormwater resources and to acquire water quality compensatory credits (for storage capacity and/or treatment) for development and operation of the Project Parcel, subject to approval by City and

DIA and in accordance with Chapter 55, Part of the City's *Ordinance Code* and in accordance with the City's standard rules, regulations, conditions and compensation imposed by City and DIA.

(vi) Catherine Street Right-of-Way Abandonment. Within 30 days of the Effective Date of this Agreement, if not sooner filed by the City, the City agrees to file legislation with its City Council to have the Catherine Street right-of-way south of Bay Street and adjacent to the Developer Parcel abandoned (the "Catherine Street Parcel" or "Easement Area"). The City and DIA make no representation or warranty regarding the approval or denial of such legislation by City Council. In the event the abandonment of Catherine Street is authorized by City Council (the "Abandonment Ordinance"), the City will abandon the Catherine Street Parcel and quitclaim the Catherine Street Parcel to Developer but will retain an all utilities easement and an easement for ingress and egress for public pedestrian access to the St. Johns River (the "Reserved Easements"). The Developer shall have the right at its sole cost and expense to rebuild and enhance the Walkway (as defined in Section 6.3 below), consistent with the requirements of Section 6.3 below and otherwise consistent with the terms of the Abandonment Ordinance and the Maintenance Agreement ("Maintenance Agreement") to be entered into between the City and the Developer pursuant to the Abandonment Ordinance. The Maintenance Agreement will provide for the Developer to maintain and repair as necessary the public pedestrian access facilities located in the Easement Area. Such improvements shall include wayfinding signage consistent with City wayfinding signage, with the signage and location thereof as approved by the CEO of the DIA. In the event the Catherine Street Improvements expand beyond the footprint of the Catherine Street Parcel, the parties will enter into an easement agreement to include the footprint of such improvements within the City's easement area. It shall be a condition to the Abandonment Ordinance and this Agreement that the abandonment of Catherine Street does not become effective until there is recorded in the public records of Duval County the quitclaim deed conveying the City Parcel to Developer, which must occur within six months from the effective date of the Abandonment Ordinance.

(vii) No cost to DIA. All of City's and DIA's assistance as set forth in this Section 5.3(c) shall be at no external cost to the City or DIA.

(d) Termination. In addition to the specific termination rights contained herein, Developer may terminate its obligations under this Article 5 at any time prior to One Hundred and Twenty (120) days from the Effective Date, at which time Developer shall accept or reject the physical and environmental condition of the City Parcel. Upon accepting the condition of the City Parcel, Developer shall give written notice to DIA. The date of such notice shall be the "Developer Acceptance Date". If this Article 5 is terminated as set forth herein, this Agreement shall remain in full force and effect in accordance with its terms, except that the Developer shall have no further rights under this Article 5. Developer shall, within ten (10) days of such termination, deliver to City and DIA, without representation or warranty of any kind, copies of all documents received from City or DIA, including without limitation all feasibility studies, engineering reports, surveys and all other information obtained or generated by Developer in connection with the City Parcel.

(e) No Representations or Warranties by City or DIA; Acceptance of City Parcel "As Is".

Disclaimer. DEVELOPER ACKNOWLEDGES AND AGREES THAT CITY AND DIA HAVE NOT MADE, DO NOT MAKE AND SPECIFICALLY NEGATE AND DISCLAIM ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE CITY PARCEL INCLUDING WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) ANY INCOME TO BE DERIVED FROM THE CITY PARCEL, (C) THE SUITABILITY OF THE CITY PARCEL FOR ANY AND ALL ACTIVITIES AND USES WHICH DEVELOPER MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE CITY PARCEL OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CITY PARCEL, (F) GOVERNMENTAL RIGHTS OF POLICE POWER OR EMINENT DOMAIN, (G) DEFECTS, LIENS, ENCUMBRANCES, ADVERSE CLAIMS OR OTHER MATTERS: (1) NOT KNOWN TO DEVELOPER AND NOT SHOWN BY THE PUBLIC RECORDS BUT KNOWN TO CITY OR DIA AND NOT DISCLOSED IN WRITING BY CITY AND DIA TO THE DEVELOPER PRIOR TO THE CLOSING, (2) RESULTING IN NO LOSS OR DAMAGE TO DEVELOPER OR (3) ATTACHING OR CREATED SUBSEQUENT TO THE DATE OF THE CLOSING, (H) VISIBLE AND APPARENT EASEMENTS AND ALL UNDERGROUND EASEMENTS, THE EXISTENCE OF WHICH MAY ARISE BY UNRECORDED GRANT OR BY USE, (I) ALL MATTERS THAT WOULD BE DISCLOSED BY A CURRENT SURVEY OF THE CITY PARCEL, (J) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE CITY PARCEL, (K) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE CITY PARCEL, OR (L) ANY OTHER MATTER WITH RESPECT TO THE CITY PARCEL, AND SPECIFICALLY, THAT CITY OR DIA HAVE NOT MADE, DO NOT MAKE AND SPECIFICALLY DISCLAIM ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE, ZONING OR DEVELOPMENT OF REGIONAL IMPACT LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE CITY PARCEL OF HAZARDOUS MATERIALS (AS DEFINED BELOW). DEVELOPER FURTHER ACKNOWLEDGES THAT DEVELOPER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE CITY PARCEL AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY CITY OR DIA. AT THE CLOSING DEVELOPER AGREES TO ACCEPT THE CITY PARCEL AND WAIVE ALL OBJECTIONS OR CLAIMS AGAINST CITY AND DIA (INCLUDING, BUT NOT LIMITED TO, ANY RIGHT OR CLAIM OF CONTRIBUTION) ARISING FROM OR RELATED TO THE CITY PARCEL OR TO ANY HAZARDOUS MATERIALS ON THE CITY PARCEL. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE CITY PARCEL WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT CITY AND DIA HAVE NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKE NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. CITY AND DIA

ARE NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE CITY PARCEL, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, OFFICER, EMPLOYEE, AGENT, SERVANT OR OTHER PERSON. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE CITY PARCEL AS PROVIDED FOR HEREIN IS MADE IN AN “AS IS” CONDITION AND BASIS WITH ALL FAULTS. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE CITY PARCEL IS SOLD BY CITY AND PURCHASED BY DEVELOPER SUBJECT TO THE FOREGOING. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING, TERMINATION OR EXPIRATION OF THIS AGREEMENT.

(f) Hazardous Materials. “Hazardous Materials” shall mean any substance which is or contains (i) any “hazardous substance” as now or hereafter defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.) (“CERCLA”) or any regulations promulgated under or pursuant to CERCLA; (ii) any “hazardous waste” as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) (“RCRA”) or regulations promulgated under or pursuant to RCRA; (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); (iv) gasoline, diesel fuel, or other petroleum hydrocarbons; (v) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (vi) polychlorinated biphenyls; (vii) radon gas; and (viii) any additional substances or materials which are now or hereafter classified or considered to hazardous or toxic under the common law. Hazardous Materials shall include, without limitation, any substance, the presence of which on the City Parcel, (A) requires reporting, investigation or remediation under Environmental Requirements; (B) causes or threatens to cause a nuisance on the City Parcel or adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the City Parcel or adjacent property; or (C) which, if it emanated or migrated from the City Parcel, could constitute a trespass.

(g) Environmental Risks. The City, the DIA, and the Developer acknowledge that there are, or may be, certain environmental obligations and risks with respect to the City Parcel. Specifically, but without limitation, the parties acknowledge that the City Parcel is a “brownfield site” and is subject to a Brownfield Site Rehabilitation Agreement, Site ID #BF160001002, which references Florida Department of Environmental Protection (“FDEP”) Consent Order (OGC Case 96-2444) (“Consent Order”), between the FDEP and the City, as may be amended pursuant to the provisions of Section 5.3(h) below (the “BSRA”), together with various requirements included in or imposed by FDEP’s or other agency’s approval of plans, reports, petitions, institutional controls, and engineering controls pursuant to the BSRA or other environmental laws, as such requirements now exist or may be added or amended in the future. The parties acknowledge that under the BSRA and Environmental Laws and other applicable environmental laws and requirements, the City Parcel is subject to various requirements including approval of plans, reports, institutional controls, and engineering controls, which requirements may be subject to change by the appropriate regulatory agencies (“BSRA Requirements”) and the BSRA Requirements, as may be amended in connection with the Amended BSRA described in Section 5.3(h) below, are herein referred to as the “Amended

BSRA Requirements". In connection with the BSRA and BSRA Requirements, the following documents, if any, were recorded in the public records of Duval County, Florida and encumber the City Parcel: \_\_\_\_\_ (to be confirmed by title commitment, if left blank none) (collectively, the "BSRA Declaration") and the BSRA Declaration as may be amended in connection with the Amended BSRA are herein referred to as the "Amended BSRA Declaration". The parties intend for the BSRA to be amended and restated on or prior to Closing and executed by the City and the Developer effective as of the date of the Developer's Closing on the City Parcel as provided for in Section 5.3 (h) below (or such other date if agreed upon by the parties, subject to FDEP approval). From and after the Developer's Closing on the City Parcel, for so long thereafter as the City Parcel is subject to the Amended BSRA, the Developer shall comply with all requirements of the Amended BSRA (or the BSRA, if the parties are unable to reach agreement with FDEP for an amended BSRA), Environmental Laws, Amended BSRA Requirements and Amended BSRA Declaration solely as applicable to the City Parcel. The City and DIA make no representation or warranty as to whether the Developer's intended use of the City Parcel as set forth herein will violate or comply with any of the Amended BSRA (or BSRA) Requirements, the Amended BSRA Declaration or Environmental Laws. All financial and other obligations applicable to the City Parcel from and after the Developer's acquisition of the City Parcel and entry into the Amended BSRA (or subject to the BSRA, if not amended) in the foregoing documents, as between the City and DIA on one hand, and the Developer on the other hand, shall be the obligation of the Developer as to the City Parcel and shall be the obligation of the City as to the City Retained BSRA Parcel (as defined below). Notwithstanding anything to the contrary in the Amended BSRA (or BSRA, if not amended), the Developer's obligations in connection with environmental matters and under this Section 5.3 are limited to those associated with the City Parcel only as set forth in this Agreement and the Developer, as between the Developer and the City, shall have no liability or responsibility under Environmental Laws to FDEP, to the City, or to third parties with respect to the City Retained BSRA Parcel. Subject to the provisions and limitations of Section 768.28, Florida Statutes, which are not hereby altered, expanded or waived, the City agrees to indemnify, defend and hold the Developer harmless from any costs, expenses, obligations or claims related to the City's obligations with respect to the City Retained BSRA Parcel under this Agreement, under the Amended BSRA (or BSRA, if not amended), Environmental Laws, Amended BSRA Requirements and Amended BSRA Declaration or otherwise with respect to the ownership or operation of the City Retained BSRA Parcel.

(h) BSRA Amendment. Effective as of the Developer's Closing on the City Parcel (or such other date if agreed upon by the parties, subject to FDEP approval), the City intends to amend and restate the BSRA as provided for herein and otherwise as agreed upon by the parties (the "Amended BSRA"), wherein the City shall have all of the obligations under the Amended BSRA, Amended BSRA Requirements and Amended BSRA Declaration solely as to the City Retained BSRA Parcel, and the Developer shall have all of the obligations under the Amended BSRA, Amended BSRA Requirements and Amended BSRA Declaration solely as to the City Parcel. The Amended BSRA shall include but not be limited to the following terms and provisions or the substantial equivalent thereof: (i) provide for separate schedules of site rehabilitation for the City Parcel, and for the remainder of the City lands subject to the BSRA but not included within the boundaries of the City Parcel (the "City Retained BSRA Parcel"); (ii) address and provide for the issuance of separate voluntary cleanup no further action orders ("VCNFA") to be issued by the FDEP as to the City Parcel upon the Developer's completion of

the site rehabilitation of the City Parcel, and as to the City Retained BSRA Parcel upon the City's completion of the site rehabilitation of the City Retained BSRA Parcel; (iii) shall impose liability for compliance with the Amended BSRA obligations on the Developer only as to the City Parcel, and on the City only as to the City Retained BSRA Parcel; (iv) shall recognize that the Developer as to the City Parcel and the City as to the City Retained BSRA Parcel shall each be entitled, subject to Section 5.3(i) below, to file separate applications (or if the parties agree, combined application(s)) for voluntary cleanup tax credit annual, solid waste, and bonus ("VCTC") applications to FDEP ("VCTC Applications"), subject to the applicable annual, one time site rehabilitation completion order bonus, and one time solid waste tax credit limits as applied to the overall lands subject to the Amended BSRA, consisting of the City Parcel and the City Retained BSRA Parcel (the "BSRA Lands"), and the City and the Developer agree to coordinate each year and provide each other with reasonable advance notice and copies of their respective annual, site rehabilitation completion order bonus, and solid waste VCTC Applications, in accordance with Paragraph 5.3(i) below; (v) provide for the City's entry into a site access agreement ("City Retained BSRA Parcel Site Access Agreement") with the FDEP as to the City Retained BSRA Parcel and for the Developer's entry into a site access agreement ("City Parcel Site Access Agreement") as to the City Parcel; and, (vi) provide for all of the BSRA Lands, upon the later of (aa) completion of all of the required site rehabilitation for the City Parcel by the Developer and (bb) completion all of the required site rehabilitation for the City Retained BSRA Parcel by the City, to be included in the same SRCO. The Developer and the City shall both agree upon the terms and conditions of the Amended BSRA, Amended BSRA Requirements and Amended BSRA Declaration and such consent shall not be unreasonably withheld or delayed, and the City and the Developer agree to cooperate in good faith to provide all required documentation and schedules required for the Amended BSRA, Amended BSRA Requirements and Amended BSRA Declaration. The City agrees to cooperate in good faith with the Developer (and not to oppose) Developer submissions and requests to FDEP to seek a VCNFA and/or other closure(s) from FDEP with respect to the City Parcel if such submissions or requests are consistent with the Amended BSRA and this Agreement. Prior to Closing, the City reserves the right to restrict or provide for access to or contact with groundwater under the City Parcel, protect, manage, or amend the soil cover, manage or limit exposure to contaminated soils under the soil cover, manage or maintain any engineering or institutional controls or otherwise to meet the requirements of the BSRA, subject to agency approval and provided the City shall keep the Developer informed of any of the same and the Developer shall be required to approve any of the same to the extent it materially affects the City Parcel or would otherwise materially affect the Developer's obligations under this Agreement or the Developer's development of the City Parcel, and such Developer consent shall not be unreasonably withheld or delayed. The Amended BSRA, Amended BSRA Requirements and Amended BSRA Declaration and any associated covenants, restrictions, and provisions in the Amended BSRA Declaration, or any restrictive covenants recorded in accordance with this Section, shall constitute Permitted Exceptions. The City agrees, at no cost to City, to reasonably assist the Developer in pursuit of the matters set forth in this Section. The substantially final forms of the Amended BSRA, Amended BSRA Requirements and Amended BSRA Declaration and any applicable Site Access Agreement described in this Section as between the City and the Developer shall be agreed upon by the City and the Developer on or before the expiration of the Developer Acceptance Date. Notwithstanding any other provision herein to the contrary, the

terms and conditions of the fully executed Amended BSRA shall supersede and have control over any contrary provisions herein.

If the City is unable to amend the BSRA as set forth above, then Developer shall have all obligations under the BSRA as to the City Parcel, and Developer shall grant an easement over the City Parcel to City so City can confirm compliance with the BSRA and otherwise fulfill its obligations thereunder.

(i) VCTC Applications. The parties agree that the City's (or any third-party developer's) VCTC Application and site rehabilitation completion order issued by FDEP ("SRCO") bonus credits in any given year shall have priority over any Developer VCTC Application for that same year, and the Developer shall only be eligible to make a VCTC application in the same year as the City to the extent that the City does not exhaust the maximum tax credit award available under the Amended BSRA for such year. For example, if the City performed \$800,000 of work eligible for tax credits and made a VCTC Application attendant thereto, the Developer would be eligible to make a VCTC Application in the maximum amount of \$200,000 of eligible work performed and paid. Further, with respect to any VCTC application regarding solid waste removal and/or the bonus for receipt of a Site Rehabilitation Completion Order, the City's application(s) shall have priority over any Developer application in this regard and the Developer shall only have any eligibility to such VCTCs if the City's application does not exhaust the tax credits available. Upon Substantial Completion of the Project by the Developer and the issuance of a VCNFA letter or its functional equivalent by the FDEP on the City Parcel, the Developer shall have no further eligibility to make a VCTC application in connection with the City Parcel/Amended BSRA.

(j) Developer Indemnity. Developer hereby expressly acknowledges that from and after the Closing, Developer shall be responsible for the proper maintenance and handling of any and all Hazardous Materials, if any, located in or on the City Parcel or in the Improvements in accordance with all Environmental Requirements, including but not limited to the BSRA, Consent Order, and the regulations at 40 C.F.R. Section 61 as authorized under the Clean Air Act and all regulations promulgated or to be promulgated under all other applicable local, state or federal laws, rules or regulations, as same may be amended from time to time. Furthermore, from and after Closing, Developer shall indemnify and hold DIA, the City, and their respective members, officials, officers, employees and agents harmless from and against any and all claims, costs, damages or other liability, including attorney's fees, incurred by DIA, the City, its members, officials, officers, employees and agents as a result of Developer's failure to comply with the requirements of this Section in connection with Developer's proper maintenance and handling of any and all Hazardous Materials, if any, located in or on the City Parcel. This Indemnification shall survive the Closing and the expiration or earlier termination of this Agreement.

(k) Release. Developer, on behalf of itself and its heirs, successors and assigns hereby waives, releases, acquits and forever discharges City and DIA, and their respective members, officials, officers, directors, employees, agents, attorneys, representatives, and any other persons acting on behalf of City or DIA and the successors and assigns of any of the preceding, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or

unforeseen, which Developer or any of its heirs, successors or assigns now has or which may arise in the future on account of or in any way related to or in connection with any past, present, or future physical characteristic or condition of the City Parcel including, without limitation, any Hazardous Materials in, at, on, under or related to the City Parcel, or any violation or potential violation of any Environmental Requirement applicable thereto. Notwithstanding anything to the contrary set forth herein, this release shall survive the Closing, and the termination or expiration of this Agreement.

## **5.5 Closing.**

(a) Closing. The closing (the “Closing”) shall be held at the offices of DIA’s counsel via mail-away closing commencing not earlier than 10 a.m. and concluding no later than 5:00 p.m. (unless the closing time is otherwise extended in writing by the DIA and the Developer) on or before that date designated by DIA which is not less than thirty (30) days after Developer’s Acceptance Date, as defined in Section 5.3(d), but not more than sixty (60) days after Developer’s Acceptance Date (the “Closing Date”), unless the parties mutually agree upon another time or date.

(b) Possession. Exclusive possession of the City Parcel shall be delivered to Developer at the Closing and it shall be a condition to Developer’s obligation to Close that the physical and environmental condition shall not have changed after the Developer’s Acceptance Date.

(c) Prorations. At Closing, pro-rations of expenses and the apportionment of taxes shall be as follows:

(i) All utilities and all other operating expenses with respect to the City Parcel, if any, for the month in which the Closing occurs, and all taxes, if any, and other assessments with respect to the City Parcel for the year in which the Closing occurs, shall be prorated as of the date of Closing. Developer shall be responsible for all property taxes and other assessments related to the City Parcel on and after the Closing Date without adjustment for any changes in assessed values or taxes after the Closing Date.

(ii) The agreements of City, DIA and Developer set forth in this Section 5.4(c) shall survive the Closing.

(d) Closing Costs. Except as otherwise expressly provided herein, DIA shall pay, on the Closing Date, DIA’s attorney’s fees. Developer shall pay, on the Closing Date, the premium for an owner’s title policy, all recording costs, any documentary stamps on the deed, intangible tax on any mortgage, documentary stamps on any note, any and all other costs related to any loan obtained by Developer in connection with the City Parcel or improvements thereon, the cost of any inspections, the cost of surveys, Developer’s attorney’s fees, and all other closing costs except for the above-described closing costs to be paid by Seller.

(e) City/DIA’s Obligations at the Closing. At the Closing, DIA shall deliver to Developer each of the following documents:



(i) Deed. Quitclaim Deed (the “Deed”) executed by City quit-claiming the City Parcel to Developer with a repurchase right in the form attached hereto as **Exhibit K**.

(ii) Evidence of Authority. Copy of such documents and resolutions as may be acceptable to the Title Company, so as to evidence the authority of the person signing the Deed and other documents to be executed by City at the Closing and the power and authority of City to quit-claim the City Parcel to Developer in accordance with this Agreement.

(iii) Foreign Person. An affidavit of City certifying that City is not a “foreign person”, as defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act, as amended.

(iv) Owner’s Affidavit. An executed affidavit or other document acceptable to the Title Company in issuing the Owner’s Policy without exception for the “gap” exception, possible lien claims of mechanics, laborers and materialmen or for parties in possession.

(v) Closing Statement. A closing statement setting forth the allocation of closing costs and the purchase price due.

(vi) Amended BSRA and Related Documents. The City executed counterpart of the Amended BSRA and any applicable Amended BSRA Requirements documents and any applicable Amended BSRA Declaration.

(vii) Other Documentation. Such other documents as may be reasonable and necessary in the opinion of the Developer or its counsel and DIA or its counsel to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions of this Agreement.

(f) Developer’s Obligations at the Closing. At the Closing, Developer shall deliver to DIA the following:

(i) Purchase Price. The Purchase Price by wire transfer of immediately available U.S. funds.

(ii) Evidence of Authority. Such corporate resolutions, consents and authorizations as DIA may reasonably deem necessary to evidence authorization of Developer for the purchase of the City Parcel, the execution and delivery of any documents required in connection with Closing and the taking of all action to be taken by the Developer in connection with Closing.

(iii) Closing Statement. A closing statement setting forth the allocation of closings costs and the purchase price due.

(iv) Amended BSRA and Related Documents. The Developer executed counterpart of the Amended BSRA and any applicable Amended BSRA Requirements documents and any applicable Amended BSRA Declaration.

(v) Other Documentation. Such other documents as may be reasonable and necessary in the opinion of the DIA or its counsel to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions of this Agreement.

**Article 6.**  
**CONSTRUCTION OF RIVERWALK IMPROVEMENTS BY DEVELOPER;  
ADDITIONAL RIVERWALK EASEMENT TO CITY; TEMPORARY  
CONSTRUCTION EASEMENT TO DEVELOPER; DRAINAGE EASEMENT TO  
DEVELOPER**

**6.1 Developer Construction of Riverwalk Improvements.**

Pursuant to the terms and conditions of this Agreement and related agreements attached thereto, and in consideration for the grants authorized hereby, Developer agrees to construct and Complete or cause to be Completed the Riverwalk Improvements. The Riverwalk Improvements will be funded by the City on a work performed and invoiced basis pursuant to the Riverwalk Improvements Costs Disbursement Agreement in substantially the form attached hereto as **Exhibit D** (the “Disbursement Agreement”), to be executed between the City and Developer prior to Commencement of the Riverwalk Improvements. Developer shall complete or cause to be completed the Riverwalk Improvements in accordance with the Performance Schedule set forth in Section 4.1 of this Agreement.

**6.2 Riverwalk Improvements Design and Construction Approval.**

Prior to the construction of the Riverwalk Improvements, the City shall have received and approved the plans, specifications and budget (the “Plans”) prepared by the Developer’s design team for the Riverwalk Improvements. The Plans shall be complete working drawings and specifications for construction of the Riverwalk Improvements, and in connection with the development of the Riverwalk Improvements, the Developer shall follow the applicable permitting, review and approval process as set forth in the Jacksonville Ordinance Code, and in accordance with the City’s Riverwalk Design Criteria specifications. In addition, the Plans shall be subject to the review and approval of the CEO in his reasonable discretion. City representatives shall have access to the Riverwalk Improvements during construction to confirm the Riverwalk Improvements are constructed consistent with the approved Plans. It is the mutual understanding of the parties that the Riverwalk Improvements will be in the nature of resurfacing, paving work, landscaping, installation of benches and lighting, and similar surface improvements and it is not contemplated that the Riverwalk Improvements include bulkhead or other structural improvements necessary to support the Riverwalk Improvements. In the event it is determined that bulkhead or structural improvements are necessary in connection with and to support the construction of the Riverwalk Improvements, the parties agree to negotiate in good faith to create a scope of work and approved budget for the same.

**6.3 Pedestrian Public Access Walkway.**

The City, as part of the Catherine Street Abandonment Ordinance, shall retain a non-exclusive, unobstructed thirty-foot (30’) easement over the Catherine Street Parcel for, in part, public pedestrian ingress and egress between Bay Street and the Riverwalk/St. Johns River. The

Developer may, at its sole cost and expense, rebuild and enhance the existing walkway within the Easement Area (the “Walkway”) to a standard reasonably acceptable to the City Engineer and in accordance with the City’s Riverwalk Design Criteria specifications, but in no event less than comparable to the existing walkway. The Developer may also construct a covered or uncovered breezeway and related improvements within the Easement Area provided the breezeway is at least as wide as the Easement Area and the unobstructed height over the finished grade of the Easement Area is no less than 14’6” and that such improvements are otherwise consistent with the terms of the Abandonment Ordinance and Maintenance Agreement authorized thereby. The plans and specifications for the Walkway are subject to review and approval of the CEO in his reasonable discretion in accordance with City standards and shall be generally consistent with the improvements on the Catherine Street Parcel in existence as of the Effective Date, and shall also be subject to the review and approval by the Downtown Development Review Board (“DDRB”). The Walkway shall be of a color scheme and materials to complement existing portions of the Northbank Riverwalk such that it is obvious that the Walkway is for the benefit of and open to the public.

#### **6.4 Additional Riverwalk Easement on Developer Parcel.**

On or before the commencement of construction of the Riverwalk Improvements, Developer will grant to the City a five-foot (5’) unobstructed pedestrian access easement abutting the City’s Riverwalk property along the southerly border of the Developer Parcel, and a twenty-five foot (25’) unobstructed pedestrian access easement along the southerly twenty-five feet (25’) of the Catherine Street Parcel abutting the St. Johns River (the “Riverwalk Easement”) subject only as to the Catherine Street portion thereof to the Developer acquiring title to the Catherine Street Parcel from the City as called for in this Agreement, and such Riverwalk Easement shall be substantially in the form attached hereto as **Exhibit L** and incorporated herein by this reference.

#### **6.5 Temporary Construction Easement to Developer.**

City shall grant Developer a temporary construction easement substantially in the form attached hereto as **Exhibit M**, over that portion of City land to be included within the Riverwalk Improvements or immediately adjacent thereto, for the purposes of constructing, installing and maintaining the Riverwalk Improvements, Catherine Street Improvements, and as otherwise may be necessary for the construction of the Project. Developer shall pay any recording fees and documentary stamp taxes as may be due in connection with the easements granted hereby.

#### **6.6 Drainage Easement to Developer.**

Subject to the approval of the location and dimensions thereof by the City Engineer and also subject to the review and approval of the City pursuant to its 10-Set Review site development review process, City shall grant a drainage easement (“Drainage Easement”) through and under its property underlying a portion of the Northbank Riverwalk adjacent to the Project Parcel to Developer. Specific terms and legal description for the Drainage Easement are subject to review and approval by the City’s Office of General Counsel, Risk Management Division, and the Department of Public Works. The Drainage Easement shall require in part that the Developer, at its sole cost and expense, shall promptly repair, restore or replace as necessary

any City-owned improvements within the Drainage Easement area that are damaged or disturbed in connection with Developer's use of the Drainage Easement.

**6.7 Payment and Performance Bonds.**

Prior to commencing any work on the Riverwalk Improvements, the Developer shall cause all primary contractors to furnish payment and performance bonds for the Riverwalk Improvements in compliance with Section 255.05, Florida Statutes. The cost thereof shall be paid by the Developer and is not included in the budget for the Riverwalk Improvements. The payment and performance bonds for the Riverwalk Improvements shall be delivered to the CEO prior to Commencement of Construction thereof.

**6.8 No Warranty by City or DIA**

Nothing contained in this Agreement or any other document attached hereto or contemplated hereby shall constitute or create any duty on or warranty by the City or the DIA regarding: (a) the accuracy or reasonableness of the Riverwalk Improvements budgets; (b) the feasibility or quality of the construction documents for the Riverwalk Improvements; (c) the quality or condition of the work; or (d) the competence or qualifications of any third party furnishing services, labor or materials in connection with the construction of the Riverwalk Improvements. The Developer acknowledges that it has not relied and will not rely upon any experience, awareness or expertise of the City or the DIA, or any City or DIA inspector, regarding the aforesaid matters.

**Article 7.**

**RIVERWALK IMPROVEMENTS CONTRIBUTION**

**7.1 Riverwalk Improvements Contribution.**

After the Developer has Substantially Completed the Riverwalk Improvements in accordance with the Disbursement Agreement, this Agreement and the Performance Schedule, and after Developer has Substantially Completed the Project, the Developer shall be entitled to a Riverwalk Improvements Contribution in the maximum amount of the lesser of (i) the actual Direct Costs of the Riverwalk Improvements, or (ii) \$1,800,000 (which amount includes a \$300,000 contingency, the "Riverwalk Improvements Contribution"). All costs attendant to the Riverwalk Improvements in excess of the Riverwalk Improvements Contribution shall be at the sole cost and expense of the Developer.

**7.2 Disbursement of Riverwalk Improvements Contribution.**

The City's obligation to pay the Riverwalk Improvements Contribution to the Developer is conditioned upon compliance with the terms and conditions of this Agreement and the Disbursement Agreement.

**7.3 Further Disclaimer.**

The Riverwalk Improvements Contribution shall not be deemed to constitute a debt, liability, or obligation of the City, DIA or of the State of Florida or any political subdivision

thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City or of the State of Florida or any political subdivision thereof, but shall be payable solely from the funds provided therefor in this Article 7. The City or DIA shall not be obligated to pay the Riverwalk Improvements Contribution or any installment thereof except from the non-ad valorem revenues or other legally available funds provided for that purpose, and neither the faith and credit nor the taxing power of the City, DIA or of the State of Florida or any political subdivision thereof is pledged to the payment of the Riverwalk Improvements Contribution or any installment thereof. The Developer, or any person, firm or entity claiming by, through or under the Developer, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power of the City, DIA or of the State of Florida or any political subdivision thereof for the payment of the Riverwalk Improvements Contribution.

**Article 8.**  
**OPERATIONAL PERFORMANCE GRANT**

**8.1 Operational Performance Grant; Amount.**

The City shall make an Operational Performance Grant (“OP Grant”) to the Developer in a total amount not to exceed \$8,250,000, partially payable beginning in the first year following the Substantial Completion of the Improvements on the Project Parcel (the “Initial Year”) in accordance with the Performance Schedule and ending 14 years thereafter. The City’s obligation to make the OP Grant is subject to the terms and conditions of this Agreement.

**8.2 Determination of Annual Installment of OP Grant.**

The amount of each annual installment of the OP Grant shall be the sum which is equal to 5% of the Annual Lodging Revenue during the twelve (12) month period ended April 1 preceding the due date of such annual installment. Except as provided below, within thirty (30) days of receipt of Developer’s notice required per Section 8.3(I)(a) below, City shall provide Developer with a calculation as to the amount of the OP Grant. If the Developer does not give written notice to the City of its objection to the City’s calculation within thirty (30) days after its receipt thereof, the City’s calculation shall be considered acceptable. Except as provided below, the City shall make payment of the OP Grant by the later of May 15th of each calendar year or thirty (30) days after City’s receipt of notification by the Developer that it is in agreement with the City’s annual calculation. In the event of a disagreement as to the calculation, the City shall make payment of the amount not in dispute and the parties shall negotiate in good faith any disputed amount.

**8.3 Conditions to Payment of OP Grant.**

(a) The City’s obligation to make the initial disbursement of the \$8,250,000 OP Grant (the “Initial Disbursement”) to Developer is conditioned upon the prior occurrence of the following:

(i) Consistent with Section 14.1 of this Agreement, the Developer shall provide written notice to the City, inclusive of reports and records, including but not limited to its relevant business records and a certification by the Building operator’s chief financial

officer, and such other documentation satisfactory to the DIA in its reasonable discretion, of the Annual Lodging Revenue for the Building.

(ii) The Improvements shall have been Substantially Completed in all respects in accordance with this Agreement, **Exhibits A, E, F and I** attached hereto and in accordance with the Performance Schedule, as verified by a final inspection report satisfactory to the DIA, certifying that the Improvements have been constructed in a good and workmanlike manner and are in satisfactory condition. The Developer shall furnish to the DIA a certificate of occupancy for the Improvements, or such other permits and/or certificates (including a certificate of substantial completion from the architect) as shall be required to establish to the DIA's satisfaction that the Improvements have been properly completed and are not subject to any material violations or uncorrected conditions noted or filed in any City department. In the event the DIA determines that there is a deficiency with the Improvements in its reasonable discretion the DIA reserves the right to require that an escrow be established in an amount satisfactory to the DIA to remedy such deficiency.

(iii) All property taxes on the Project Parcel must be current, and the Developer must be utilizing the Improvements in accordance with the uses described in this Agreement.

(iv) No Event of Default with respect to Developer's obligations under this Agreement or an event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default with respect to Developer's obligations under this Agreement, has occurred and is continuing.

(v) The Developer shall submit to the DIA a general contractor's final affidavit and final releases of liens from each contractor, subcontractor and supplier, or other proof satisfactory to the DIA, confirming that final payment has been made for all materials supplied and labor furnished in connection with the Improvements or that, in the event of a dispute in any amount owed, such amount is properly bonded off pursuant to Florida law so that it will not remain a lien on the Project Parcel;

(vi) Developer shall take all action necessary to have any mechanic's and materialmen's liens, judgment liens or other liens or encumbrances filed against the Project Parcel (other than any consensual mortgage) released or transferred to bond within thirty days of the date Developer receives notice of the filing of such liens or encumbrances. If any such lien or encumbrance is filed, the City shall not be required to make any disbursement of the OP Grant funds until such lien or encumbrance is bonded over or removed and the City receives a copy of the recorded release, as applicable. The City shall not be obligated to disburse any of the OP Grant funds to Developer if, in the reasonable opinion of the City, any such disbursement or the Project or Project Parcel would be subject to a mechanic's or materialmen's lien or any other lien or encumbrance other than inchoate construction liens. Developer shall be fully and solely responsible for compliance in all respects whatsoever with the applicable mechanic's and materialmen's lien laws.

(vii) The Developer shall deliver to the DIA an as-built survey within ninety (90) days after the completion of the Improvements. Any change in the state of facts shown in any such updated survey shall be subject to reasonable approval by the DIA.

(viii) The Developer shall have provided to the DIA, in form and substance reasonably satisfactory to the DIA, any such other document, instrument, information, agreement or certificate the DIA may reasonably require related to the construction or completion of the Improvements.

(b) After the Initial Disbursement, the City's obligation to make each subsequent annual disbursement of the \$8,250,000 OP Grant (each, a "Disbursement") to Developer is conditioned upon the prior occurrence of subparagraphs (a), (c), (d), and (f) of this Section 8.3. In the event the Developer is ineligible for a Disbursement during any year of the fifteen year term of the OP Grant, after all applicable notice and cure periods, the Developer shall remain otherwise eligible for subsequent Disbursements of the OP Grant for the remainder of the OP Grant term in accordance with the terms and conditions of this Agreement, except for an ineligibility occurring in the final year of the OP Grant term.

#### **8.4 Disbursements of OP Grant.**

The OP Grant shall be paid by the City to the Developer by check, in annual installments, pending satisfaction by the Developer of the conditions set forth in Section 8.3, due and payable on or about May 15 of each calendar year, commencing the first May 15 that is at least one year from the date of Substantial Completion of the Improvements, and ending May 15 fourteen years thereafter. The City shall have no liability for any OP Grant in excess of the amount stated in Section 8.1 or after payment of the final installment due May 15 of the final year.

#### **8.5 No Warranty by City or DIA.**

Nothing contained in this Agreement or any other document attached hereto or contemplated hereby shall constitute or create any duty on or warranty by City or the DIA regarding: (a) the accuracy or reasonableness of the project budgets; (b) the feasibility or quality of the construction documents for the Project; (c) the proper application by the Developer of the OP Grant Funds; (d) the quality or condition of the work; or (e) the competence or qualifications of any third party furnishing services, labor or materials in connection with the construction of the Project. Developer acknowledges that it has not relied and will not rely upon any experience, awareness or expertise of the City or DIA, or any City or DIA inspector, regarding the aforesaid matters.

#### **8.6 Further Disclaimer.**

The OP Grant shall not be deemed to constitute a debt, liability, or obligation of the City, DIA or of the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City or of the State of Florida or any political subdivision thereof, but shall be payable solely from the funds provided therefor in this Article 8. The City and DIA shall not be obligated to pay the OP Grant or any installment thereof except from the non-ad valorem revenues or other legally available funds provided for that purpose, and neither the faith and credit nor the taxing

power of the City, DIA or of the State of Florida or any political subdivision thereof is pledged to the payment of the OP Grant or any installment thereof. The Developer, and any person, firm or entity claiming by, through or under the Developer, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power of the City, DIA or of the State of Florida or any political subdivision thereof for the payment of the OP Grant or any installment thereof.

## **Article 9. REV GRANT**

### **9.1 Recapture Enhanced Value Program; Amount.**

The City shall make a Recapture Enhanced Value grant (“REV Grant”) to the Developer, in a total amount not to exceed \$20,000,000, partially payable beginning in the first year following the Substantial Completion of the Improvements on the Project Parcel and its inclusion on the City tax rolls at full assessed value (the “Initial Year”) and ending 20 years thereafter, but not later than 2040 (the “Final Year”), all as more fully described below in this Article 9. In the event the Improvements are not Commenced in accordance with this Agreement and the Performance Schedule, the maximum amount of the REV Grant for which the Developer is eligible shall reduce from \$20,000,000 to \$15,000,000.

### **9.2 Payments of REV Grant.**

The REV Grant shall be paid by the City to the Developer by check, in annual installments determined in accordance with Section 9.3, due and payable on or before May 15 of each calendar year, commencing May 15 of the Initial Year and ending May 15 of the Final Year, or when the maximum amount of the REV Grant shall have been paid to the Developer, whichever occurs first. The City shall have no liability for any REV Grant in excess of the amount stated in Section 9.1 or after payment of the final installment due May 15 of the Final Year, and, except as expressly provided in this Agreement, the REV Grant payments as determined pursuant to Section 9.3 shall not be subject to reduction or repayment.

### **9.3 Determination of Annual Installments of REV Grant.**

The amount of each annual installment of the REV Grant shall be the sum which is equal to 75% of the “Annual Project Revenues” (as defined and determined in this Section 9.3) received by the City during the twelve (12) month period ended April 1 preceding the due date of such annual installment. For the purposes of this Agreement, “Annual Project Revenues” means the amount of all municipal and county real and tangible personal property ad valorem taxes, exclusive of any amount from any debt service millage or Business Improvement District (“BID”) millage, actually paid by any taxpayer for that tax year (net of any discount pursuant to Section 197.162, Florida Statutes, or any successor provision, actually taken by the taxpayer) during such period with respect to all real property comprising the Project, less the amount of all municipal and county real and tangible personal property ad valorem taxes that would have been levied or imposed on the Project using the assessed value for the Base Year, which for the purpose of this Agreement shall be \$4,490,046.00 if the Developer acquires the City Parcel from the City pursuant to this Agreement, or \$2,854,846.00 if the Developer does not acquire the City



Parcel as provided for herein, exclusive of any debt service millage. The foregoing references to ad valorem taxes shall be deemed to include any other municipal or county taxes, or other municipal or county fees or charges in the nature of or in lieu of taxes, that may hereafter be levied or imposed on the Developer with respect to real property or tangible personal property comprising the Project, in lieu of or in substitution for the aforesaid taxes and which are levied or imposed for general municipal or county purposes or shall be available for the City's general fund, but not including stormwater or garbage fees or assessments.

By April 1 of each calendar year, commencing April 1, Initial Year and ending April 1, Final Year, Developer shall give written notice to the City of the amount of county ad valorem taxes paid during the preceding twelve (12) month period ending April 1, quantified by real property and tangible personal property amounts. If, by April 1 of any year, the Developer has failed to give notice of taxes paid during the preceding twelve (12) month period, after all applicable notice and cure periods, the Developer shall not be eligible for a REV Grant payment for that year. Provided, however, that if the Developer provides timely notice in future years, the Developer shall be eligible for a REV Grant payment based on the Annual Projected Revenues in such future year's notice.

Except as provided below, within thirty (30) days of receipt of said notice, City shall provide Developer with a calculation as to the annual REV Grant. If the Developer does not give written notice to the City of its objection to the City's calculation within thirty (30) days after its receipt thereof, the City's calculation shall be considered acceptable. Except as provided below, the City shall make payment of the REV Grant by the later of May 15th of each calendar year or thirty (30) days after City's receipt of notification by the Developer that it is in agreement with the City's annual calculation. In the event of a disagreement as to the calculation, the City shall make payment of the amount not in dispute and the parties shall negotiate in good faith any disputed amount.

The foregoing dates for the City to provide the REV Grant calculation and make the REV Grant payment shall be extended if on either of such dates the Developer has a pending proceeding before the City Value Adjustment Board, Circuit Court, or otherwise that could change the amount of the Annual Project Revenues that Developer was obligated to pay for that tax year and upon which the REV Grant payment would be based. In that event, the date that the City is required to provide the REV Grant calculation to Developer shall be extended until 30 days after the date that Developer notifies the City that any such proceeding has been finally resolved (including any appeals) and any adjustment to the Annual Project Revenues for that tax year has been made and paid. Such notice shall include (i) a copy of any final order or final judgment or other evidence of the resolution of such proceeding that sets forth any change to the assessed value of the Property upon which the Annual Project Revenues are based for that tax year, and (ii) the amount of the adjusted Annual Project Revenues paid by the Developer.

#### **9.4 Further disclaimer.**

The REV Grant shall not be deemed to constitute a debt, liability, or obligation of the City, DIA or of the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City, DIA or of the State of Florida or any political subdivision thereof, but shall be payable

solely from the funds provided therefor in this Article 9. The City and DIA shall not be obligated to pay the REV Grant or any installment thereof except from the non-ad valorem revenues or other legally available funds provided for that purpose, and neither the faith and credit nor the taxing power of the City, DIA or of the State of Florida or any political subdivision thereof is pledged to the payment of the REV Grant or any installment thereof. The Developer, or any person, firm or entity claiming by, through or under the Developer, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power of the City, DIA or of the State of Florida or any political subdivision thereof for the payment of the REV Grant or any installment of either.

**Article 10.**  
**REDEVELOPMENT COMPLETION GRANT**

**10.1 Redevelopment Completion Grant; Amount.**

The Developer will become eligible for a Redevelopment Completion Grant (“RC Grant”) in the maximum amount of \$3,250,000, payable upon Substantial Completion of Improvements. The City’s obligation to make each installment of the RC Grant is subject to the terms and conditions of this Agreement.

**10.2 Disbursement of RC Grant.**

Upon Substantial Completion of the Improvements in accordance with the terms and conditions of this Agreement, the Developer is eligible for the \$3,250,000 RC Grant, subject to the terms and conditions of this Agreement. The City’s obligation to make each disbursement of the RC Grant to Developer is conditioned upon the prior occurrence of the following:

(a) The Improvements shall have been Substantially Completed in all respects in accordance with this Agreement and Exhibits A, E, F and I attached hereto and in accordance with the Performance Schedule, as verified by a final inspection report satisfactory to the DIA, certifying that the Improvements have been constructed in a good and workmanlike manner and are in satisfactory condition. The Developer shall furnish to the DIA a certificate of occupancy for the Improvements or such other permits and/or certificates (including a certificate of substantial completion from the architect) as shall be required to establish to the DIA’s satisfaction that the Improvements have been properly completed and are not subject to any material violations or uncorrected conditions noted or filed in any City department. In the event the DIA determines that there is a deficiency with the Improvements in its reasonable discretion the DIA reserves the right to require that an escrow be established in an amount satisfactory to the DIA to remedy such deficiency.

(b) All property taxes on the Project Parcel must be current, and the Developer must be utilizing the Improvements in accordance with the uses described in this Agreement.

(c) No Event of Default with respect to Developer’s obligations under this Agreement or an event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default with respect to Developer’s obligations under this Agreement, has occurred or is continuing.

(d) The Developer shall submit to the DIA a proper contractor's final affidavit and full and complete releases of liens from each contractor, subcontractor and supplier, or other proof satisfactory to the DIA, confirming that final payment has been made for all materials supplied and labor furnished in connection with the Improvements, as applicable, or that, in the event of a dispute in any amount owed, such amount is properly bonded off pursuant to Florida law so that it will not become a lien on the Project Parcel;

(e) Developer shall take all action necessary to have any mechanic's and materialmen's liens, judgment liens or other liens or encumbrances filed against the Project Parcel (other than any consensual mortgage) released or transferred to bond within thirty days of the date Developer receives notice of the filing of such liens or encumbrances. If any such lien or encumbrance is filed, the City shall not be required to make any disbursement of the RC Grant funds until such lien or encumbrance is bonded over or removed and the City receives a copy of the recorded release. The City shall not be obligated to disburse any of the RC Grant funds to Developer if, in the reasonable opinion of the City, any such disbursement or the Project or Project Parcel would be subject to a mechanic's or materialmen's lien or any other lien or encumbrance other than inchoate construction liens. Developer shall be fully and solely responsible for compliance in all respects whatsoever with the applicable mechanic's and materialmen's lien laws.

(f) The Developer shall deliver to the DIA an as-built survey within ninety (90) days after the completion of the Improvements. Any change in the state of facts shown in any such updated survey shall be subject to reasonable approval by the DIA.

(g) The Developer shall have provided to the DIA, in form and substance reasonably satisfactory to the DIA, any such other document, instrument, information, agreement or certificate the DIA may reasonably require related to the construction or completion of the Improvements.

### **10.3 No Warranty by City or DIA**

Nothing contained in this Agreement or any other document attached hereto or contemplated hereby shall constitute or create any duty on or warranty by City or the DIA regarding: (a) the accuracy or reasonableness of the Project budgets; (b) the feasibility or quality of the construction documents for the Project; (c) the proper application by the Developer of the RC Grant funds; (d) the quality or condition of the work; or (e) the competence or qualifications of any third party furnishing services, labor or materials in connection with the construction of the Project. Developer acknowledges that it has not relied and will not rely upon any experience, awareness or expertise of the City or DIA, or any City or DIA inspector, regarding the aforesaid matters.

### **10.4 Further Disclaimer.**

The RC Grant shall not be deemed to constitute a debt, liability, or obligation of the City, DIA or of the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City, DIA or of the State of Florida or any political subdivision thereof, but shall be payable

solely from the funds provided therefor in this Article 10. The City and DIA shall not be obligated to pay the RC Grant or any installment thereof except from the non-ad valorem revenues or other legally available funds provided for that purpose, and neither the faith and credit nor the taxing power of the City, DIA or of the State of Florida or any political subdivision thereof is pledged to the payment of the RC Grant or any installment thereof. The Developer, and any person, firm or entity claiming by, through or under the Developer, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power of the City, DIA or of the State of Florida or any political subdivision thereof for the payment of the RC Grant or any installment thereof.

**Article 11.**  
**PARKING GARAGE GRANT; RESTRICTIVE COVENANTS**

**11.1 Parking Garage Grant; Amount.**

After the Developer has Substantially Completed the Improvements in accordance with this Agreement and the Performance Schedule, and provided the Developer constructed the Public Parking Spaces as part of the Parking Garage, the Developer shall be eligible for a Parking Garage grant in the amount of \$3,500,000 (the "Parking Garage Grant"). The City's obligation to make the Parking Garage Grant is subject to the terms and conditions of this Agreement.

**11.2 Disbursement of Parking Garage Grant.**

The City's obligation to pay the Parking Garage Grant to the Developer is conditioned upon the prior occurrence of the following:

- (a) Developer must have notified the DIA in writing of its election to construct the Public Parking Spaces as a part of the Parking Garage prior to Commencement of Construction of the Improvements.
- (b) the Improvements are Substantially Complete in accordance with the terms and conditions of this Agreement, and the Parking Garage with the Public Parking Spaces is open to the public for parking in all of the short term public parking spaces under the terms of the Restrictive Covenants;
- (c) the Restrictive Covenants binding on the Developer and all future owners of the Garage Parcel must be recorded in the Duval County Public Records, and the Restrictive Covenants must be superior in title to all other liens and encumbrances on the Garage Parcel as shown by a title commitment obtained by Developer at its expense using a title agent chosen by City and in a form reasonably satisfactory to the City.
- (d) Developer must satisfy all the conditions as described in Section 8.3(I)(b) – (h) above at the time of disbursement of the Parking Garage Grant.

### **11.3 Restrictive Covenants.**

The City and Developer shall execute the Restrictive Covenants and they shall be recorded in the Duval County Public Records as a condition of the disbursement of the Parking Garage Grant. The Restrictive Covenants shall bind Developer and all future owners of the Garage Parcel so that the short term public parking spaces shall be continuously available under the terms and conditions of the Restrictive Covenants. The Restrictive Covenants must be superior in title to all other liens and encumbrances on the Garage Parcel as shown by a title commitment obtained by Developer at its expense using a title agent chosen by City and in a form reasonably satisfactory to the City.

### **11.4 No Warranty by City or DIA**

Nothing contained in this Agreement or any other document attached hereto or contemplated hereby shall constitute or create any duty on or warranty by City or the DIA regarding: (a) the accuracy or reasonableness of the Project budgets; (b) the feasibility or quality of the construction documents for the Project; (c) the proper application by the Developer of the Parking Garage Grant funds; (d) the quality or condition of the work; or (e) the competence or qualifications of any third party furnishing services, labor or materials in connection with the construction of the Project. Developer acknowledges that it has not relied and will not rely upon any experience, awareness or expertise of the City or DIA, or any City or DIA inspector, regarding the aforesaid matters.

### **11.5 Further Disclaimer.**

The Parking Garage Grant shall not be deemed to constitute a debt, liability, or obligation of the City, DIA or of the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City, DIA or of the State of Florida or any political subdivision thereof, but shall be payable solely from the funds provided therefor in this Article 11. The City and DIA shall not be obligated to pay the Parking Garage Grant or any installment thereof except from the non-ad valorem revenues or other legally available funds provided for that purpose, and neither the faith and credit nor the taxing power of the City, DIA or of the State of Florida or any political subdivision thereof is pledged to the payment of the Parking Garage Grant or any installment thereof. The Developer, and any person, firm or entity claiming by, through or under the Developer, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power of the City, DIA or of the State of Florida or any political subdivision thereof for the payment of the Parking Garage Grant or any installment thereof.

## **Article 12. THE DEVELOPMENT**

### **12.1 Scope of Development.**

The Developer shall construct and develop or cause to be constructed and developed, the Improvements, which the Developer is obligated to construct and develop in

accordance with the Performance Schedule (subject in all cases to authorized extensions of the applicable Performance Schedules contemplated by this Agreement) and this Agreement.

### **12.2 Cost of Development.**

Except as otherwise set forth in this Agreement, the Developer shall pay all costs of constructing and developing the Improvements incurred by Developer at no cost to the DIA or the City. For purposes of clarity, the City's and DIA's only financial obligations in connection with this Agreement are to disburse the REV Grant, OP Grant, RC Grant and Parking Garage Grant in accordance with the terms and conditions of this Agreement.

### **12.3 Approval by Other Governmental Agencies.**

All of the parties' respective rights and obligations under this Agreement are subject to and conditioned upon approval of the Project and all project documents by such other governmental agencies, whether state, local or federal, as have jurisdiction and may be required or entitled to approve them. Notwithstanding any provision of this Agreement to the contrary, neither the City nor the DIA guarantee approval of this Agreement or any aspect of the Project by any government authorities and agencies that are independent of the City.

### **12.4 Authority of DIA to Monitor Compliance.**

During all periods of design and construction, the CEO of the DIA and the City's Director of Planning and Development shall have the authority to monitor compliance by the Developer with the provisions of this Agreement. Insofar as practicable, the DIA shall coordinate such monitoring and supervising activity with those undertaken by the City so as to minimize duplicate activity. To that end, during the period of construction and with prior notice to the Developer, representatives of the DIA and the City shall have the right of access to the Project Parcel and to every structure on the Project Parcel during normal construction hours.

### **12.5 Timing of Completion.**

The Improvements shall be completed substantially in accordance with the terms of this Agreement and the Performance Schedule subject to extension of such timelines pursuant the terms of this Agreement.

### **12.6 Construction and Operation Management.**

Except as otherwise expressly provided herein, the Developer shall have discretion and control, free from interference, interruption or disturbance, in all matters relating to the management, development, redevelopment, construction and operation of the Project, provided that the same shall, in any event, conform to and comply with the terms and conditions of this Agreement, and all applicable state and local laws, ordinances and regulations (including, without limitation, applicable zoning, subdivision, building and fire codes). The Developer's discretion, control and authority with respect thereto shall include, without limitation, the following matters:

(a) the construction and design of the Project, subject to the express terms and conditions of this Agreement;

(b) the selection, approval, hiring and discharge of engineers, architects, contractors, subcontractors, professionals and other third parties (collectively the “Vendors”) on such terms and conditions as the Developer deems appropriate;

(c) the negotiation and execution of contracts, agreements, easements and other documents with third parties, in form and substance satisfactory to Developer; and

(d) the preparation of such budgets, cost estimates, financial projections, statements, information, and reports as the Developer deems appropriate.

**Article 13.**  
**JSEB PROGRAM**

**13.1 Jacksonville Small and Emerging Businesses (JSEB) Program.**

The Developer, in further recognition of and consideration for the public funds provided to assist the Developer pursuant to this Agreement, hereby acknowledge the importance of affording to small and emerging vendors and contractors the full and reasonable opportunity to provide materials and services. Therefore, the Developer hereby agree as follows:

(a) The Developer shall obtain from the City’s Procurement Division the list of certified Jacksonville Small and Emerging Businesses (“JSEB”), and shall exercise good faith, in accordance with Municipal Ordinance Code Sections 126.608 et seq., to enter into contracts with City certified JSEBs to provide materials or services in an aggregate amount of not less than \$7,000,000 for Improvements, which amount represents 20% of the City’s and DIA’s maximum contribution to the Project with respect to the development activities or operation of the Project over the term of this Agreement.

(b) The Developer shall submit JSEB report(s) regarding their respective actual use of City certified JSEBs on the Project, (i) on the date of any request for City/DIA funds which are payable prior to the Substantial Completion of the Improvements, (ii) upon Substantial Completion of the Project and Improvements and, if the Developer has not reached its goal for use of JSEBs set out in this Section prior to Substantial Completion of the Project, quarterly thereafter until said goal is reached. The form of the report to be used for the purposes of this section is attached hereto as Exhibit N (the “JSEB REPORTING FORM”).

**Article 14.**  
**REPORTING**

**14.1 Reporting.**

On an annual basis, the Developer shall submit reports to the DIA regarding the status of construction of the Project, sleeping room occupancy related to the OP Grant and all other activities affecting the implementation of this Agreement, including a narrative summary of progress on the Project. Samples of the general forms of these reports are attached hereto as

**Exhibit O** (the “Annual Survey”); however, the specific data requested may vary from the forms attached. In addition, the Developer shall submit quarterly construction reports in form and content reasonably acceptable to the DIA regarding the status of construction of the Project.

The Developer’s obligation to submit such reports shall continue until Developer has complied with all of the terms of this Agreement concerning the Project, the Improvements, the REV Grant, OP Grant, RC Grant and Parking Garage Grant and end upon Substantial Completion of the Improvements, except that the Developer shall continue its reporting requirements as required for each of the REV Grant and OP Grant for the remaining term of each of those grants.

Within thirty (30) days following a request of the DIA or the City, the Developer (as applicable) shall provide the DIA or the City with additional documentation and information relating to this Agreement as reasonably requested by the DIA or the City.

**Article 15.**  
**DEFAULTS AND REMEDIES**

**15.1 General.**

An “Event of Default” under this Agreement with respect to any Project shall consist of the breach of any covenant, agreement, representation, provision, or warranty (that has not been cured prior to the expiration of any applicable grace period or notice and cure period contained in this Agreement or such other documents, as applicable) contained in: (i) this Agreement; (ii) the documents executed in connection with the Agreement; (iii) any document provided by either of the Developer to the City or DIA relating to the Project; or (iv) any default beyond the applicable cure periods under any and all financing agreements between or among either of the Developer relating to any portion of the Project (collectively, the “Project Documents”), and the failure to cure any such breach within the cure periods set forth below.

If any such Event of Default occurs under this Agreement, with respect to the Project the City may refuse to pay any portion of the REV Grant, OC Grant, RC Grant, and Parking Garage Grant, and additionally may at any time or from time to time proceed to protect and enforce all rights available to the City and DIA under this Agreement with respect to the Project by suit in equity, action at law or by any other appropriate proceeding whether for specific performance of any covenant or agreement contained in this Agreement, or damages (excluding consequential, speculative, or punitive damages of any kind), or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations. With the exception of defaults in connection with the Performance Schedule, for which no notice or cure period is required, no occurrence shall constitute an Event of Default until the City has given the Developer written notice of the default and thirty (30) calendar days within which to cure the default; provided, however, that the City/DIA may withhold any portion the REV Grant and OC Grant immediately upon the occurrence of a default and throughout any notice or cure period until such default is cured. If any default cannot reasonably be cured within the initial thirty (30) calendar days, no Event of Default shall be deemed to occur so long as the defaulting party has commenced and is diligently implementing a cure within such thirty (30) day period and diligently pursues such cure to a conclusion. Notwithstanding the foregoing, the Developer shall immediately and



automatically be in default with respect to the Project, and the City shall not be required to give the Developer any notice or opportunity to cure such default (and thus the City/DIA shall immediately be entitled to act upon such default), upon the occurrence of any of the following:

(a) Should the Developer make any assignment for the benefit of creditors; or (b) should a receiver, liquidator, or trustee of the Developer of any of the Developer's property be appointed; or (c) should any petition for the adjudication of bankruptcy, reorganization, composition, arrangement or similar relief as to the Developer, pursuant to the Federal Bankruptcy Act or any other law relating to insolvency or relief for debtors, be filed by Developer; or (d) should the Developer be adjudicated as bankrupt or insolvent; or (e) should the Developer be liquidated or dissolved (other than an administrative dissolution arising due to a failure to file the necessary corporate annual report); or (f) should an involuntary petition seeking to adjudicate the Developer as a bankrupt or to reorganize the Developer be filed against the Developer and remain undismissed for a period of ninety (90) days after the filing date thereof.

### **15.2 Breach by City.**

No occurrence shall constitute an Event of Default until the Developer has given the City written notice of the default and thirty (30) calendar days within which to cure the default. If any default cannot reasonably be cured within the initial thirty (30) calendar days, no Event of Default shall be deemed to occur so long as the defaulting party has commenced and is diligently implementing a cure within such thirty (30) day period and diligently pursues such cure to a conclusion. If the City commits an Event of Default under this Agreement, Developer shall have, in addition to the remedies expressly provided herein, all remedies allowed by law or equity; provided, however, that in no event shall the City be liable to Developer for any punitive, speculative, or consequential damages of any kind, and notwithstanding anything herein, in no event shall the City be liable for any costs or damages exceeding the maximum indebtedness amount described in Section 1.6 for any and all City and DIA obligations at issue.

### **15.3 Specific Defaults.**

Additionally, for any of the specific Events of Default described in this Section 15.3 below, the parties agree that the City's and DIA's damages recoverable from the Developer shall include, but not be limited to, the following:

(a) in the event reporting requirements are not met in the time period specified in Article 14 of this Agreement and such default is not cured within the time period provided in Section 15.1 after written notice from the City and DIA will be entitled to withhold any undisbursed amount of the REV Grant, OP Grant, RC Grant and Parking Garage Grant;

(b) in the event the Developer sells, or otherwise transfers the Project Parcel (a "Sale") during the first five years after the disbursement of the RC Grant (with the exception of any Sale to an Affiliate of Developer or other entity in which the principals of Developer have a substantial interest, or a Sale to the franchisor under the franchise agreement of Developer relating to the Project Parcel), the following shall be due and payable from the applicable Developer at closing of the Sale:

(i) fifty percent of the RC Grant, if the Sale occurs within 12 months after disbursement of the grant;

(ii) forty percent of the RC Grant, if the Sale occurs after 12 months but within 24 months of disbursement of the grant;

(iii) thirty percent of the RC Grant, if the Sale occurs after 24 months but within 36 months of disbursement of the grant;

(iv) twenty percent of the RC Grant, if the Sale occurs after 36 months but within 48 months of disbursement of the grant; or

(v) ten percent of the RC Grant, if the Sale occurs after 48 months but within 60 months of disbursement of the grant.

The maximum combined repayment due under this Section 15.3(b) in the event of a Sale of the Project Parcel shall not exceed fifty percent (50%) of the total amount of the RC Grant actually paid to the Developer under this Agreement.

(c) if, within 24 months of the Commencement of Construction Date, the Company fails to invest at least \$122,000,000 of private funding in the Project, the REV Grant will be proportionately reduced. If, within 24 months of the Commencement of Construction Date, the Company fails to invest at least \$90,000,000 of private funding in the Project, the REV Grant will be terminated and the Company will repay the City the entire amount of the REV Grant that has been previously paid to the Company, if any.

(d) In the event that the Developer purchases the City Parcel with application of the Environmental Condition Offset and thereafter either: (i) does not Commence construction of the Improvements in accordance with this Agreement and the Performance Schedule; or (ii) does not Complete construction of the Improvements in accordance with this Agreement and the Performance Schedule, then the Developer shall pay to the City within thirty (30) days of written demand therefore, the full amount of the Environmental Condition Offset previously granted.

(e) In the event that the Developer fails to commence construction of the Improvements in accordance with the terms of this Agreement and the Performance Schedule and such failure continues for more than thirty (30) days after the Developer's receipt of written notice of its failure to do so, the City shall have a repurchase right to the City Parcel. Developer shall cooperate and execute all documents reasonably necessary to demonstrate that its interest in the City Parcel has ceased. The instruments of conveyance shall be substantially the same as those executed and delivered upon conveyance of the City Parcel to the Developer, except that the conveyance shall be made by special warranty deed. If the Developer has encumbered all or any portion of the City Parcel with a mortgage or security agreement, the Developer shall secure a full release of the same and the cost of paying or discharging the same in full shall be at the Developer's sole expense. Developer shall incur all costs incurred in reconveying the City Parcel to the City. Ad valorem taxes will be prorated between the Developer and the City as of the date of reconveyance of title to the City Parcel.

If any streets, roads or alleys within or without the City Parcel have been vacated by the City prior to any conveyance or reconveyance to the City hereunder, then the Developer shall include in such reverter, or if necessary in such conveyance or reconveyance all right, title and interest which the Developer acquired pursuant to such vacation.

Once the Developer has Commenced Construction of the Improvements, the City's right of reversion to the City Parcel shall terminate. Said termination of the reversion shall be evidenced by the recording of a Notice of Commencement by Developer.

#### **15.4 Liens, Security Interests.**

The DIA and City and agree and acknowledge that this Agreement does not create any security interest in the Project.

The City is also entitled to prejudgment interest from the date of default plus costs and reasonable attorney's fees incurred by the City.

#### **15.5 Performance Schedule Default.**

In the event the Developer fail, subject to extensions permitted by this Agreement including without limitation permitting delays and force majeure, to Substantially Complete the Project in accordance with the Performance Schedule set forth in Article 4 and any cure period(s), the City and DIA shall not be obligated to pay any portion of the REV Grant, OP Grant, RC Grant or Parking Garage Grant to the Developer.

### **Article 16.**

#### **ANTI-SPECULATION AND ASSIGNMENT PROVISIONS; LENDER RIGHT TO CURE DEFAULTS**

##### **16.1 Purpose.**

The Developer represents and agrees that its acquisition of the City Parcel and undertakings pursuant to this Agreement are for the purpose of developing the Project Parcel pursuant to this Agreement and not for speculation in land holding. The Developer further recognizes, in view of the importance of the development of the Project Parcel to the general health and welfare of the City, that the qualifications, financial strength and identity of the principal members and executive officers of the Developer are of particular concern to the City and the DIA.

##### **16.2 Assignment; Limitation on Conveyance; Notice of Default.**

Developer agrees that, with respect to the Project, until the (a) Substantial Completion of the Improvements, it shall not, without the prior written consent of the DIA (which consent shall not be unreasonably withheld), assign, transfer or convey (i) the Project, (ii) the Project Parcel, (iii) this Agreement or any provision hereof as it relates to the Project, or (iv) more than a fifty percent (50%) interest in the Developer, or (v) a controlling interest in the Developer such that any of James N. Bergman, Robert Lubin, David Roos, or Greg Stewart or any Affiliate of James N. Bergman, Robert Lubin, David Roos or Greg Stewart is not a managing member of the

Developer. If any such prohibited assignment, transfer or conveyance is made, the obligation of the City to pay any further amounts of the REV Grant, OP Grant, RC Grant or Parking Garage Grant to the Developer shall immediately terminate unless the Developer reverses or cancels such prohibited assignment, transfer or conveyance within ten (10) days of written notice of intent to terminate such rights by the City to Developer. Notwithstanding the foregoing, Developer may assign, transfer or convey items (i)-(iv) above to an entity in which the principals of Developer have a substantial interest without the prior written consent of the City and DIA; provided, however, that no such assignment, transfer or conveyance shall release Developer from any liability or obligation hereunder arising prior to the date of any such permitted assignment, and except that the Developer shall not in any event be released from any obligations to repay any portion of any grants under this Agreement received by the Developer prior to the date of any such permitted assignment hereunder, and provided any assignee of such assignment enters into an assignment and assumption agreement in form and content as acceptable to the DIA in its reasonable discretion. In addition, (a) interests in the Developer may be assigned, transferred or conveyed to tax credit or other investors without limitation, (b) interests in the Developer may be assigned, transferred or conveyed among members (or members' Affiliates) of the Developer existing as of the Effective Date without limitation, (c) Developer may collaterally assign its rights and obligations pursuant to this Agreement to any lender providing financing for the Project and any foreclosure or similar action and subsequent assignment by such lender or its assignees shall constitute a permitted assignment pursuant to this Agreement. In connection with any such collateral assignment and transfers by the lender contemplated herein, DIA and City agree to execute a consent, assignment and assumption agreement reasonably acceptable to such lender, and such lender or assignee shall enter into an assignment and assumption agreement in form and content as reasonably acceptable to City and DIA.

### **16.3 Lender Right to Cure Defaults.**

If any Event of Default under the terms of the Agreement shall occur, then and in any such event, the City shall, give written notice of such default(s) ("Notice of Default") to Developer and any lender who has previously given the City written notice of its security interest in the Project to the City (and provided the City with an address for such notices), at such lender notices address, with such City notice to be made by the City pursuant to Section 17.4 hereof, specifying the event of default and the methods of cure, or declaring that an event of default is incurable. During the period of 120 days commencing upon the date the Notice of Default was given to a lender, such lender may cure any event of default. If a lender reasonably undertakes to cure any event of default during the applicable cure period and diligently pursues such cure, the City shall grant such further reasonable time as is necessary to complete such cure; provided however, in no event shall any extension extend the REV Grant Annual Installments beyond the Annual Installment Due Date for the Final Year, or extend the OP Grant annual installments beyond its final year. and, provided, further, that if the nature of the default is such that the lender cannot cure the default without first succeeding to the Developer's rights under this Agreement, and/or either obtaining title to or obtaining a court appointed receiver in possession of the subject property, then the lender shall have six (6) months from the date of receipt of the Notice of Default in which to succeed to the Developer's rights under this Agreement and/or obtain title to or a court appointed receiver of the subject property, and thereafter to cure the default. If a lender reasonably undertakes to cure any event of default during the applicable cure period and diligently pursues such cure, the City shall grant such further reasonable time as is

necessary to complete such cure. Notwithstanding anything to the contrary herein, the City shall not pursue any remedy available as a result of a default by the Developer (except any remedial actions necessary to respond to any emergency situation) unless and until written notice of the default is provided to all lenders who gave notice to the City as provided herein and each such lender fails to cure or have cured such default, all as provided in this Section.

**Article 17.**  
**GENERAL PROVISIONS**

**17.1 Non-liability of DIA and City Officials.**

No member, official, officer, employee or agent of the DIA or the City shall be personally liable to the Developer or to any person or entity with whom the Developer shall have entered into any contract, or to any other person or entity, in the event of any default or breach by the DIA or the City, or for any amount which may become due to the Developer or any other person or entity under the terms of this Agreement.

**17.2 Force Majeure.**

No party to this Agreement shall be deemed in default hereunder where such a default is based on a delay in performance as a result of war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualty, declared state of emergency, acts of God, acts of public enemy, epidemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, severe weather and other acts or failures beyond the control or without the control of any party (collectively, a “Force Majeure Event”); provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay. A party affected by a Force Majeure Event (the “Affected Party”) shall promptly notify the other party (“Non-Affected Party”) in writing of the event, giving sufficient details thereof and the likely duration of the delay. The Affected Party shall use all commercially reasonable efforts to recommence performance of its obligations under this Agreement as soon as reasonably possible. In no event shall any of the foregoing excuse any financial liability of a party.

**17.3 Notices.**

All notices to be given hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or delivered by an air courier service utilizing return receipts to the parties at the following addresses (or to such other or further addresses as the parties may designate by like notice similarly sent), and such notices shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail, if sent by registered or certified mail, or the date actually received if sent by personal delivery or air courier service, except that notice of a change in address shall be effective only upon receipt.

the DIA and City:

Downtown Investment Authority  
117 W. Duval Street, Suite 300

Jacksonville, Florida 32202  
Attn: Chief Executive Officer

With a copy to:

City of Jacksonville  
Office of General Counsel  
117 W. Duval Street, Suite 480  
Jacksonville, Florida 32202  
Attn: Corporation Secretary

The Developer

500 East Bay LLC  
195 Beach Boulevard  
Biloxi, Mississippi 39530  
Attn: Greg Stewart

With a copy to:

Akerman LLP  
Attn: Robert A. Leapley Jr., Esq.  
50 North Laura Street, Suite 3100  
Jacksonville, Florida 32202

**17.4 Time.**

Time is of the essence in the performance by any party of its obligations hereunder, provided if any date for performance or delivery under this Agreement falls on a Saturday, Sunday or legal holiday, such date for performance or delivery shall automatically be extended to the next business day.

**17.5 Entire Agreement.**

This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

**17.6 Amendment.**

This Agreement may be amended by the parties hereto only upon the execution of a written amendment or modification signed by the parties. Notwithstanding the foregoing, the CEO of the DIA is authorized on behalf of the DIA and the City to approve, in his or her sole discretion, any “technical” changes to this Agreement. Such “technical” changes include, without limitation, non-material modifications to legal descriptions and surveys, ingress and egress, easements and rights of way, Performance Schedule (for up to six months) and design standards, as long as such modifications do not involve any increased financial obligation or liability to the City or the DIA.

### **17.7 Waivers.**

Except as otherwise provided herein, all waivers, amendments or modifications of this Agreement must be in writing and signed by all parties. Any failures or delays by any party in insisting upon strict performance of the provisions hereof, or asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any other party.

### **17.8 Indemnification.**

Developer shall indemnify, hold harmless and defend the City of Jacksonville, DIA and their respective members, officials, officers, employees and agents from and against, without limitation, any loss, claim, suit, action, damage, injury, liability, fine, penalty, cost, and expense of whatsoever kind or nature (including without limitation court, investigation and defense costs and reasonable expert and attorneys' fees and costs) related to any suits and actions of any kind brought against the City, DIA and their respective members, officials, officers, employees and agents or other damages or losses incurred or sustained, or claimed to have been incurred or sustained, by any person or persons arising out of or in connection with: (i) any breach of any representation or warranty of Developer, contained or provided in connection with this Agreement; (ii) any breach or violation of any covenant or other obligation or duty of Developer under this Agreement or under applicable law; (iii) any negligent act, error or omission, or intentionally wrongful conduct on the part of Developer or those under its control that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to Developer's performance under this Agreement or relating to the Project, except to the extent cause by the negligence of the City or DIA. Nothing contained in this paragraph shall be construed as a waiver, expansion or alteration of the City's sovereign immunity beyond the limitations stated in Section 768.28, Florida Statutes.

This indemnification shall survive the expiration or termination (for any reason) of this Agreement and remain in full force and effect. The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to this Agreement or otherwise. The terms "City" and "DIA" as used in this 17.9 shall include all officers, board members, City Council members, employees, representatives, agents, successors and assigns of the City and the DIA, as applicable.

### **17.9 Insurance.**

The Developer agrees to furnish the DIA copies of any insurance policies that the Developer carries covering the Project and such policies shall name the DIA and the City as additional insureds thereunder as their interests may appear.

Anything to the contrary notwithstanding, the liability of the Developer under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration

or termination of insurance coverage. Neither approval nor failure to disapprove insurance furnished by the Developer shall relieve the Developer or their respective subcontractors from responsibility to provide insurance as required by this Agreement.

**17.10 Severability.**

The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect any other provisions of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**17.11 Compliance with State and Other Laws.**

In the performance of this Agreement, the Developer must comply with any and all applicable federal, state and local laws, rules and regulations, as the same exist and may be amended from time to time. Such laws, rules and regulations include, but are not limited to, Chapter 119, Florida Statutes, (the Public Records Act) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

**17.12 Non-Discrimination Provisions.**

In conformity with the requirements of Section 126.404, *Ordinance Code*, the Developer represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employment relations, throughout the term of this Agreement. The Developer agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Human Rights Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the non-discrimination provisions of this Agreement; *provided however*, that the Developer shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written. The Developer agrees that, if any of its obligations to be provided pursuant to this Agreement are to be performed by a subcontractor, the provisions of this Section 17.13 shall be incorporated into and become a part of the subcontract.

**17.13 Contingent Fees Prohibited.**

In conformity with Section 126.306, *Ordinance Code*, Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Developer, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Developer, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of these provisions, the City and DIA shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.



**17.14 Ethics.**

The Developer represents that it has reviewed the provisions of the Jacksonville Ethics Code, as codified in Chapter 602, *Ordinance Code*, and the provisions of the Jacksonville Purchasing Code, as codified in Chapter 126, *Ordinance Code*.

**17.15 Conflict of Interest.**

The parties will follow the provisions of Section 126.110, *Ordinance Code*, with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with the City, to the extent the parties are aware of the same.

**17.16 Public Entity Crimes Notice.**

The parties are aware and understand that a person or affiliate who has been placed on the State of Florida Convicted Vendor List, following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and, may not transact business in excess of \$35,000.00 with any public entity for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

**17.17 Survival.**

Any obligations and duties that by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and remain in effect. Without limiting the foregoing, all obligations for the payment of fees or other sums accruing up to the expiration or termination of this Agreement and all provisions relating to the City's right to conduct an audit shall survive the expiration or termination of this Agreement.

**17.18 Incorporation by Reference.**

All exhibits and other attachments to this Agreement that are referenced in this Agreement are by this reference made a part hereof and are incorporated herein.

**17.19 Order of Precedence.**

In the event of any conflict between or among the provisions of this Agreement and those of any exhibit attached hereto or of any amendment, the priority, in decreasing order of precedence shall be: 1) any fully executed amendment; 2) provisions in this Agreement; and 3) exhibits to this Agreement.

**17.20 Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

### **17.21 Independent Contractor.**

In the performance of this Agreement, the Developer will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or association of the City or the DIA. The Developer and their respective employees or agents shall be solely responsible for the means, method, technique, sequences and procedures utilized by the Developer in the performance of this Agreement.

### **17.22 Retention of Records/Audit**

The Developer agrees:

(a) To establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by the City under this Agreement.

(b) To retain, with respect to each Project, all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of six (6) years after completion of the date of final payment by the City under this Agreement with respect to such Project. If an audit has been initiated and audit findings have not been resolved at the end of six (6) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement, at no additional cost to the City.

(c) Upon demand, at no additional cost to the City, to facilitate the duplication and transfer of any records or documents during the required retention period.

(d) To assure that these records shall be subject at all reasonable times to inspection, review, copying, or audit by personnel duly authorized by the City, including but not limited to the City Council Auditors.

(e) At all reasonable times for as long as records are maintained, to allow persons duly authorized by the City, including but not limited to the City Council Auditors, full access to and the right to examine any of the Developer's contracts and related records and documents, regardless of the form in which kept.

(f) To ensure that all related party transactions are disclosed to the City.

(g) To include the aforementioned audit, inspections, investigations and record keeping requirements in all subcontracts and assignments of this Agreement.

(h) To permit persons duly authorized by the City, including but not limited to the City Council Auditors, to inspect and copy any records, papers, documents, facilities, goods and services of the Developer which are relevant to this Agreement, and to interview any employees and subcontractor employees of the Developer to assure the City of the satisfactory performance of the terms and conditions of this Agreement. Following such review, the City will deliver to the Developer a written report of its findings and request for development by the

Developer of a corrective action plan where appropriate. The Developer hereby agrees to timely correct all deficiencies identified in the corrective action plan.

(i) Additional monies due as a result of any audit or annual reconciliation shall be paid within thirty (30) days of date of the City's invoice.

(j) Should the annual reconciliation or any audit reveal that the Developer owe the City or DIA additional monies, and the Developer do not make restitution within thirty (30) days from the date of receipt of written notice from the City, then, in addition to any other remedies available to the City, the City may terminate this Agreement, solely at its option, by written notice to the Developer.

**17.23 Non-merger.**

None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Project Parcel.

**17.24 Exemption of City and DIA.**

Neither this Agreement nor the obligations imposed upon the City or DIA hereunder shall be or constitute an indebtedness of the City or DIA within the meaning of any constitutional, statutory or charter provisions requiring the City to levy ad valorem taxes, or a lien upon any properties of the City or DIA. Payment or disbursement by the City or DIA of any loan or grant amount hereunder is subject to the availability of lawfully appropriated funds. If funds are not available pursuant to a lawful appropriation thereof by the City Council or DIA Board, this Agreement shall be void and the parties shall have no further obligations hereunder.

**17.25 Parties to Agreement; Successors and Assigns.**

This is an agreement solely between the DIA, the City and Developer. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any person not a party hereto. Subject to the limitations contained in Section 16.2, this Agreement shall be binding upon and benefit Developer, and Developer's successors and assigns, and shall be binding upon and benefit of the City and DIA, and their successors and assigns. However, Developer except as contemplated in Section 16.2, shall not assign, transfer or encumber its rights or obligations hereunder or under any document executed in connection herewith without the prior written consent of the City and the DIA, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Developer may assign, transfer or encumber its rights or obligations hereunder or under any document executed in connection herewith to (i) as provided in Section 16.2 herein, or (ii) an entity in which the principals (or Affiliates of the principals) of Developer have a controlling interest without the prior written consent of City and the DIA; provided, however, that no such assignment, transfer or conveyance shall release Developer from any liability or obligation hereunder unless otherwise provided for in this Agreement or unless otherwise agreed to in writing by the City.

**17.26 Venue; Applicable Law.**

The rights, obligations and remedies of the parties specified under this Agreement shall be interpreted and governed in all respects by the laws of the State of Florida. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Duval County, Florida, or in the U.S. District Court for the Middle District of Florida, Jacksonville Division. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement.

**17.27 Civil Rights.**

The Developer agree to comply with all of the terms and requirements of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1968, as amended, and the antidiscrimination provisions of Chapter 126, Part 4, of the City Ordinance Code, and further agrees that in its operation under this Agreement it will not discriminate against anyone on the basis of race, color, age, disability, sex or national origin.

**17.28 Further Assurances.**

Each party to this Agreement will, on request of any other party,

- (a) promptly correct any defect, error or omission herein;
- (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts reasonably deemed necessary, desirable or proper by the such requesting party to carry out the purposes of this Agreement and to identify and subject to the liens of this Agreement any property intended to be covered thereby, including any renewals, additions, substitutions replacements, or appurtenances to the subject property;
- (c) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts reasonably deemed necessary, desirable or proper by the requesting party to carry out the purposes of this Agreement.

**17.29 Exhibits.**

In the event of a conflict between any provisions of this Agreement and any exhibit attached to or referenced in this Agreement, the provisions of this Agreement shall govern.

**17.30 Construction.**

All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Developer further acknowledges that it has had ample time to review this Agreement and related documents with counsel of its choice. Any doubtful or ambiguous provisions contained herein shall not be construed against the party who drafted the Agreement. Captions and headings in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

**17.31 Further Authorizations.**

The parties acknowledge and agree that the Mayor of the City, or his designee, and the City's Corporation Secretary and the Chief Executive Officer of DIA, or their respective designees, are hereby authorized to execute any and all other contracts and documents and otherwise take all necessary action in connection with this Agreement.

**17.32 Estoppel Certificate.**

Within ten (10) days after request therefor from either Developer, or from the City or DIA to the Developer, the Developer, City and DIA, as applicable, agree to execute and deliver to the applicable parties, or to such other addressee or addressees as a Developer or City or DIA may designate (and any such addressee may rely thereon), a statement in writing certifying (if true) that this Agreement as it relates to the Project is in full force and effect and unmodified or describing any modifications; that the Developer (or City or DIA, as applicable) has performed all of its obligations under this Agreement arising prior to the date of the certificate, and making such other true representations as may be reasonably requested by Developer or City or DIA, as applicable.

**17.33 Cooperation of the Parties.**

City, DIA and Developer, at no cost to the City or DIA, shall reasonably cooperate with each other when requested to do so concerning the development of the Project. The parties agree to take such actions as may be necessary or appropriate, from time to time, to carry out the terms, provisions, and intent of this Agreement and to reasonably aid and assist each other in carrying out said terms, provisions, and intent.

*(the signature of the parties appears on the following page)*

**IN WITNESS WHEREOF**, this Agreement is executed the day and year above written.

ATTEST:

**CITY OF JACKSONVILLE**

By: \_\_\_\_\_  
James R. McCain, Jr.  
Corporation Secretary

By: \_\_\_\_\_  
Lenny Curry, Mayor

WITNESS:

**DOWNTOWN INVESTMENT AUTHORITY**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Brian Hughes, CEO

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**DEVELOPER**

WITNESS:

**500 EAST BAY LLC**, a Florida limited liability company

By: LLI, LLC, a Mississippi limited liability company, Its manager

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: Lori Stewart

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Its: Manager

Date: \_\_\_\_\_

In accordance with Section 24.103(e), of the *Ordinance Code* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; *provided however*, this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance[s] shall be made by subsequent check request[s], as specified in said Contract.

\_\_\_\_\_  
Director of Finance

Form Approved:

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Office of the General Counsel

GC-#1216310-v30-Berkman\_II\_Redevelopment\_Agreement.doc

## LIST OF EXHIBITS

|           |                                                     |
|-----------|-----------------------------------------------------|
| Exhibit A | Building Improvements                               |
| Exhibit B | City Parcel                                         |
| Exhibit C | Developer Parcel                                    |
| Exhibit D | Riverwalk Improvements Costs Disbursement Agreement |
| Exhibit E | Family Amenity Entertainment Improvements           |
| Exhibit F | Parking Garage Improvements                         |
| Exhibit G | Restrictive Covenants and Parking Rights Agreement  |
| Exhibit H | Riverwalk Design Criteria                           |
| Exhibit I | Riverwalk Improvements                              |
| Exhibit J | Riverwalk Parcel                                    |
| Exhibit K | City Parcel Quit Claim Deed with repurchase right   |
| Exhibit L | Riverwalk Easement                                  |
| Exhibit M | Temporary Construction Easement                     |
| Exhibit N | JSEB Reporting Form                                 |
| Exhibit O | Annual Survey                                       |
| Exhibit P | Quitclaim Deed releasing reverter rights            |



## **EXHIBIT A**

### **Building Improvements**

The Developer proposes to renovate an existing unoccupied 17-story condominium building at 500 East Bay Street in downtown Jacksonville, Florida and repurpose the structure for a hotel (“**Hotel**”). The building envelope and footprint will not be modified, and its square footage will remain the same, although there will be links to new construction and improvements on the site for the complex to function as one entity.

The new Hotel will include an expansive lobby, lounge, retail, and street front casual bistro. The ground level experience will activate the street and create a transparent view through the lobby to the river. A new water view restaurant with outdoor dining will flow from the lobby and allow guests to dine along the waterfront.

The second level of the Hotel is programmed for convention and meetings with a fitness center for the Hotel guests.

The upper 15 levels of the building will have 340 rooms and suites. The existing openings and balconies will remain and work within the proposed new Hotel rooms. The rooftop will include an angled architectural feature that will provide a focal point and iconic signature for the property.

Between the Hotel and the Riverwalk, the Hotel will feature a water park with extensive decks for guests, swimming pools, water slides, a lazy river, swim up bar, and dining areas. The Hotel will share a service courtyard with the FEC as described below.

The Site Plan and Conceptual Development Plan Summary submitted by the Developer provide further details on the anticipated nature, type, fit and finish of the Building Improvements, FEC, and related amenities, including the water playground, outside attraction area, and Parking Garage described below. The Site Plan and Conceptual Development Plan are conceptual in nature and are subject to change by the Developer from time to time but provide a good overview of the anticipated proposed development.

## **EXHIBIT B**

### City Parcel

That certain parcel of land comprised of approximately 3 acres adjacent to and east of the Project Parcel, the legal description of which shall be inserted herein after confirmation by title commitment and survey.

## **EXHIBIT C**

### **Developer Parcel**

That certain parcel of land located generally at 500 E. Bay Street, Jacksonville, Florida, and having R.E. number 073358-0200, the legal description of which shall be inserted herein after confirmation from the title commitment and survey.

**EXHIBIT D**

Riverwalk Improvements Costs Disbursement Agreement

## RIVERWALK IMPROVEMENTS COSTS DISBURSEMENT AGREEMENT

**THIS RIVERWALK IMPROVEMENTS COSTS DISBURSEMENT AGREEMENT** (“**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the “**Effective Date**”) between the **CITY OF JACKSONVILLE**, a municipal corporation and a political subdivision of the State of Florida (“**City**”), the **DOWNTOWN INVESTMENT AUTHORITY**, a community redevelopment agency (“**DIA**”) on behalf of the City and **500 EAST BAY LLC**, a Florida limited liability Developer (the “**Developer**”). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Redevelopment Agreement (as defined below).

### ARTICLE 1 PRELIMINARY STATEMENTS

#### 1.1 Background; the Infrastructure Improvements.

1.1.1 City, DIA and Developer have previously entered into that certain Redevelopment Agreement dated \_\_\_\_\_, 2019 (the “**Redevelopment Agreement**”), for the redevelopment by Developer of its property located generally at 500 E. Bay Street, and in conjunction therewith the development of adjacent, City owned land the Developer intends to purchase from the City as shown on Exhibit A attached hereto and incorporated herein by this reference (collectively, the “**Project Parcel**”), which the Developer intends to develop as a mixed use development (the “**Project**”).

1.1.2 City owns certain real property along the southerly border of the Project Parcel that is used as part of the City’s Northbank Riverwalk, and the City desires to make certain Riverwalk Improvements (as defined in the Redevelopment Agreement) to extend and improve the Riverwalk attendant to Developer’s Project.

1.1.3 The City has determined that the design, permitting, and construction of the Riverwalk Improvements can most efficiently and inexpensively be completed by the Developer as a part of its Project. The Developer is willing to design, permit, and construct the Riverwalk Improvements provided the DIA contributes to the cost of such improvements as provided herein.

1.1.4 DIA has requested and Developer has agreed that it will design, permit, and construct the Riverwalk Improvements as specifically described and depicted on Exhibit B attached hereto and incorporated herein by this reference (“**Minimum Design Criteria**”). DIA has agreed to fund the design and construction of the Riverwalk Improvements in the maximum, up to amount of the lesser of: (i) the actual Verified Direct Costs for the construction of the Riverwalk Improvements; or (ii) ONE MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,800,000) (which includes a \$300,000.00 contingency), with the balance, if any, being funded by Developer. The Developer will oversee all aspects involving the design, permitting and construction of the Riverwalk Improvements. City has agreed to reimburse Developer up to \$1,800,000 after completion of construction of the Riverwalk Improvements and dedication and acceptance by City.

1.2 Design & Construction Budget. The total design and construction costs of the Riverwalk Improvements are estimated to be \$1,500,000. A budget setting forth the costs of the Riverwalk Improvements is attached hereto as **Exhibit C**.

1.3 Maximum Indebtedness. The total maximum indebtedness of DIA for the Riverwalk Improvements and all other fees or costs pursuant to this Agreement is ONE MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,800,000.00).

1.4 Availability of Funds. Notwithstanding anything to the contrary herein, all of DIA's financial obligations under this Agreement are subject to the availability of lawfully appropriated funds.

**NOW THEREFORE**, in consideration of the mutual undertakings and agreements herein of DIA and Developer, and for Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are acknowledged, DIA and Developer agree that the above preliminary statements are true and correct, and the parties represent, warrant, covenant, and agree as follows:

## **ARTICLE 2 DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings.

2.1 **“Budget”** means the line item budget of Direct Costs of the Riverwalk Improvements attached hereto as **Exhibit C**, and showing the good faith estimate of total costs for each line item, as the same may be revised from time to time with the written approval of the City's Director of Public Works subject to the restrictions and limitations contained herein.

2.2 **“Complete of Construction”** The terms “Complete Construction” or “Completion of Construction” as used herein when referencing the Riverwalk Improvements or any portion thereof means the Substantial Completion of the Riverwalk Improvements, which date shall be not later than the Completion Date for the Project as set forth in the Redevelopment Agreement.

2.3 **“Completion Date”** The term “Completion Date” as used herein means Completion of Construction.

2.4 **“Construction Contract”** means any contract between Developer and a General Contractor for the construction of the Riverwalk Improvements entered into prior to or after the Effective Date of this Agreement, and any amendments or modifications thereto approved by the Developer.

2.5 **“Construction Documents”** means the Design Professional's Contract(s), the Construction Contract, all construction, engineering, architectural or other design professional contracts and subcontracts, all change orders, all government approvals, the Plans and Specifications, and all other drawings, budgets, and agreements relating to the construction of the Riverwalk Improvements.

2.6 **“Design Professional”** means engineers, architects, or other professional consultants providing technical advice in accordance with the terms of this Agreement.

2.7 **“Design Professional’s Contract(s)”** means any contracts between Developer and a Design Professional for the design of the Riverwalk Improvements, and any amendments or modification thereto.

2.8 **“Direct Costs”** means direct design and construction costs incurred by Developer, incurred both before and after the effective date of this Agreement, in connection with the design and construction of the Riverwalk Improvements, including soft costs associated with the design of the Riverwalk Improvements, surveys, geotechnical, environmental and construction testing, removal of unsuitable soils and also including the construction management fees and construction inspector fees, as itemized in the Budget, as the same may be revised from time to time with the written approval of the City’s Director of Public Works, not exceeding the Maximum Riverwalk Improvements Disbursement Amount. Direct Costs shall not include any Riverwalk Improvements Management Fees or other construction fees of Developer.

2.9 **“Disbursement(s)”** means disbursements to Developer of sums equivalent to Developer’s Direct Costs for the Riverwalk Improvements as approved by the DIA pursuant to this Agreement for the design, engineering, permitting and construction of the Riverwalk Improvements, not to exceed the Maximum Riverwalk Improvements Disbursement Amount. The Disbursements will be made at the times and subject to the conditions set forth in this Agreement. No portion of the foregoing amount allocated for the Improvements as shown in the Budget shall be disbursed to Developer unless such improvements comply in all material respects with the minimum requirements of the Scope, Budget and Schedule attached hereto as **Exhibit C** (which may be modified from time to time pursuant to the terms of this Agreement), as reasonably determined by the Director of Public Works or his or her designee, and the CEO of the DIA.

2.10 **“General Contractor”** means the person or entity licensed as a general contractor under Florida law, providing construction management of the Riverwalk Improvements.

2.11 **“Improvements”** means any parts of the Riverwalk Improvements or other related improvements described herein as determined by the context of the usage of such term.

2.12 **“Maximum Riverwalk Improvements Disbursement Amount”** means a lump sum disbursement to Developer of the sum equivalent to Developer’s Direct Costs for the Riverwalk Improvements as approved by City for the design and construction of the Riverwalk Improvements, not to exceed \$1,800,000. The Disbursement will not be made until construction of the Riverwalk Improvements is Substantially Completed, and the Developer has Substantially Completed (as defined the Redevelopment Agreement) the Project (as defined in the Redevelopment Agreement).

2.13 **“Plans and Specifications”** means the final plans and specifications, including without limitation all maps, sketches, diagrams, surveys, drawings and lists of materials, for the

construction of the Riverwalk Improvements, prepared by the Design Professional(s), and any and all modifications thereof made with the written approval of DIA and the Developer.

2.14 “**Riverwalk Improvements**” has the meaning ascribed in the Redevelopment Agreement.

2.15 “**Riverwalk Improvements Documents**” means this Agreement and any other documents executed in connection herewith between the parties hereto.

2.16 “**Substantial Completion**” means the satisfaction of the Riverwalk Improvements Completion Conditions, as described in Section 6.13. The date of Substantial Completion shall be confirmed by the City to Developer upon request by Developer in a letter from the City to Developer and such letter shall be referred to herein as the “**Substantial Completion Letter**”. The one year warranty as described herein on the Riverwalk Improvements begins on the Substantial Completion date.

2.17 “**Verified Direct Costs**” means the aggregate of Direct Costs actually incurred by Developer for Work in place as part of the Riverwalk Improvements, as certified by the Project’s civil engineer, pursuant to the provisions of this Agreement.

2.18 “**Work**” means workmanship, materials and equipment necessary to this Agreement, and any and all obligations, duties and responsibilities necessary to the successful completion of the Riverwalk Improvements undertaken by Developer under this Agreement, including the furnishing of all labor, materials, and equipment, and any other construction services related thereto.

### **ARTICLE 3 DISBURSEMENT OF FUNDS BY CITY**

3.1 Performance of Work. Developer shall engage appropriately licensed contractor(s) and design professionals (the “Contractors”) to perform, or cause to be performed, the Work pursuant to the Scope, Budget and Schedule attached as **Exhibit C** hereto and workmanship, materials and equipment necessary to this Agreement, and any and all obligations, duties and responsibilities necessary to the successful completion of the Riverwalk Improvements undertaken by Developer under the Redevelopment Agreement according to the Scope, Budget and Schedule attached as **Exhibit C**, including the furnishing of all labor, materials, and equipment, and any other construction services related thereto. As set forth in Section 6.2 of the Redevelopment Agreement, it is the mutual understanding of the parties that the Riverwalk Improvements will be in the nature of resurfacing, paving work, landscaping, installation of benches and lighting, and similar surface improvements and it is not contemplated that the Riverwalk Improvements include bulkhead or other structural improvements necessary to support the Riverwalk Improvements. In the event it is determined that bulkhead or structural improvements are necessary in connection with and to support the construction of the Riverwalk Improvements, the parties agree to negotiate in good faith to create a scope of work and approved budget for the same.

3.2 Terms of Disbursement. Subject to an appropriation of funds therefore, City agrees to reimburse Developer for its Verified Direct Costs incurred and paid for the design and



construction of the Riverwalk Improvements on the terms and conditions hereinafter set forth. The total disbursement amount for the Riverwalk Improvements shall be an up-to, maximum amount of \$1,800,000 (the "Maximum Riverwalk Improvements Disbursement Amount"). Developer shall be responsible for all costs beyond such amount for the Riverwalk Improvements. Should the total Verified Direct Costs incurred by Developer for the Riverwalk Improvements amount to a sum less than the applicable Maximum Riverwalk Improvements Disbursement Amount, City shall only be liable for the actual amount of the Verified Direct Costs for the Riverwalk Improvements.

3.3 Use of Proceeds. All funding authorized for the Riverwalk Improvements pursuant to this Agreement shall be expended solely for the purpose of reimbursing Developer for the Verified Direct Costs for any portion of the Riverwalk Improvements as authorized by this Agreement and for no other purpose.

3.4 Disbursements Directly to Contractors and Vendors. Notwithstanding anything herein, the City may at its option upon the occurrence of an Event of Default, which is not cured within the applicable cure period after notice, and in accordance with the disbursement procedures described in this Article III and in Article IV, disburse directly to the Design Professionals, General Contractor, subcontractors, suppliers, and vendors whom Developer has engaged in connection with the Riverwalk Improvements, the reasonable amounts charged by such persons, upon submission to the City of invoices, receipts or other documents required by the City showing that the services rendered pertain to the Riverwalk Improvements and are included in the Direct Costs. In the event the City makes any Disbursement direct as described in this Section 3.4, City shall, upon request of Developer, deliver to Developer a complete copy of any Disbursement documentation for Developer's records.

3.5 Deficiency in Maximum Riverwalk Improvements Disbursement Amount; Developer Obligation for any Shortfall in any Phase of the Improvements Budgeted Costs. If, prior to any Disbursement, the City reasonably determines that the actual cost to complete construction of the Riverwalk Improvements exceeds the aggregate undisbursed balance of the Maximum Riverwalk Improvements Disbursement Amount, the City shall provide written notice of such to Developer. Developer, the City, the General Contractor and the Design Professionals shall meet and determine how to make adjustments to the Plans and Specifications for such Phase, and Developer shall be responsible for the payment of any amounts in excess of the undisbursed balance of the Maximum Riverwalk Improvements Disbursement Amount. In no event will the City be responsible for any shortfall in the amounts necessary to Complete Construction of the Riverwalk Improvements. If Developer fails to continue such construction at its own cost, or fails to timely complete such construction due to such shortfall or for any other reason, the City in its sole discretion may choose to terminate the City's additional obligations hereunder, and/or complete the remaining portion of the Riverwalk Improvements (on its own or through a third party contractor or developer and in compliance with the Plans and Specifications). If the City completes the Riverwalk Improvements, Developer shall be liable to the City for the costs thereof in excess of the Maximum Riverwalk Improvements Disbursement Amount, and such repayment obligation of Developer shall survive any termination or expiration of this Agreement or the Redevelopment Agreement.

3.6 Project Management Fees/Construction Management Fees. No development fees or project management fees or other fees of Developer (collectively, the “Project Management Fees”) shall be paid to Developer under this Agreement. Nor are any such fees owed to Developer as of the Effective Date. Any construction management fees to be paid to the General Contractor (“Construction Management Fees”) shall be paid only after all conditions to a Disbursement have otherwise been satisfied, and such fees shall be made pro rata (other than fees for preconstruction work) with the progress of the Riverwalk Improvements as determined by the City in its reasonable discretion Construction Inspector and upon approval of the amount of such fees by the City. All requests for Construction Management Fees must be included in a Disbursement Request as a separate line item, and the aggregate amount of such fees shall be set forth in the General Contractor’s contract, which is subject to the City’s approval.

3.7 Procedures for Payment. All Disbursements shall be made from time to time as construction progresses upon written application of Developer pursuant to a Disbursement Request in the form of attached **Exhibit F**. Developer shall file Disbursement Requests with the City no more frequently than twice per month, covering Work performed since the prior Disbursement Request. Disbursements shall be made on a reimbursement basis for work performed, invoiced and paid basis. Each Disbursement Request shall constitute a representation by Developer that the Work done and the materials supplied to the date thereof are in accordance with the Plans and Specifications for the Riverwalk Improvements; that the Work and materials for which payment is requested have been physically incorporated into the Riverwalk Improvements; that the value is as stated; that the Work and materials conform with all applicable rules and regulations of the public authorities having jurisdiction; that such Disbursement Request is consistent with the Budget; that the proceeds of the previous Disbursement have been actually paid by Developer in accordance with the approved Disbursement Request for such previous Disbursement; and that no Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing. City representatives will inspect the status of construction with each Disbursement Request to confirm the foregoing as applicable.

3.8 No Third Party Beneficiaries. The parties hereto do not intend the benefits of this Agreement to inure to any third party. Notwithstanding anything contained herein or any conduct or course of conduct by any of the parties hereto, this Agreement shall not be construed as creating any rights, claims, or causes of action against City or any of their respective officers, agents, or employees, in favor of any contractor, subcontractor, supplier of labor, materials or services, or any of their respective creditors, or any other person or entity other than Developer.

3.9 Progress Reports. During the period of construction of the Riverwalk Improvements, Developer shall provide to the City on a monthly basis (not later than twenty (20) days after the close of each calendar month) progress reports of the status of construction, which shall include (i) certification by Developer’ engineer of (a) the total dollars spent to date, and (b) the percentage of completion of the Riverwalk Improvements, as well as the estimates of the remaining cost to complete such construction; and (ii) evidence of full payment of all invoices or draw requests, to include copies of checks for payment and invoice draw requests, submitted for payment during such monthly reporting period.

3.10 No Warranty by City. Nothing contained in this Agreement or any other Riverwalk Improvements document shall constitute or create any duty or warranty by City regarding (a) the accuracy or reasonableness of the Budget or (b) the competence or qualifications of the General Contractor or Design Professional or any other party furnishing labor or materials in connection with the construction of the Riverwalk Improvements. Developer acknowledges that Developer has not relied and will not rely upon any experience, awareness or expertise of City regarding the aforesaid matters.

#### **ARTICLE 4 CONDITIONS TO DISBURSEMENTS**

4.1 General Conditions. Subject to compliance by Developer with the terms and conditions of this Agreement, the City shall make Disbursements to Developer for reimbursement of the Verified Direct Costs of the Riverwalk Improvements during the period of construction, up to the applicable Maximum Riverwalk Improvements Disbursement Amount, until Completion of Construction; provided, however, that in no event shall the City be obligated to make Disbursements in excess of the sum of Verified Direct Costs applicable to the Riverwalk Improvements. Notwithstanding anything to the contrary herein, the only Disbursements to Developer on or after the Effective Date shall be payment for the costs of the design, permitting, construction and inspection of the Riverwalk Improvements. The City will have no obligation to make any Disbursement (a) unless City is satisfied, in its reasonable discretion, that the conditions precedent to the making of such Disbursement have been satisfied; or (b) if an Event of Default or an event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing. Each Disbursement Request shall be accompanied by the following supporting data: invoices, waivers of mechanic's and materialmen's liens obtained for payments made by Developer on account of Direct Costs as of the date of the Disbursement Request, along with a completed Disbursement Request Form. The City shall pay to Developer the amount of each Disbursement Request submitted by Developer in accordance with the applicable requirements of this Agreement, within thirty (30) calendar days of the City's receipt of such Disbursement Request, provided, however, that if the City reasonably disputes any portion of the Disbursement Request, the City shall provide written notice to Developer of such dispute within ten (10) business days of the City's receipt of such Disbursement Request. Thereafter, the parties shall negotiate in good faith to resolve such dispute. Notwithstanding the City's rights to dispute a Disbursement Request as set forth herein, in the event of such a dispute, the City shall, within such original fifteen (15) business day period, disburse to Developer the non-disputed portion of the funds requested pursuant to such Disbursement Request. Each Disbursement Request shall be accompanied by a certification by Developer's Design Professional of (a) updated budgets showing the amount of expenditures for the Riverwalk Improvements and the improvements made to date, (b) the percentage of completion of the Riverwalk Improvements and (c) estimates of the remaining costs to complete the Riverwalk Improvements. Developer shall also promptly furnish to City such other information concerning the Riverwalk Improvements as City may from time to time reasonably request.

4.2 Conditions to Initial Disbursement. The City's obligation hereunder to make the initial Disbursement with respect to the Riverwalk Improvements is conditioned upon the City's receipt of the following, each in form and substance satisfactory to the City:

4.2.1 each of the Project Documents for the Riverwalk Improvements duly executed as necessary to be enforceable against the parties thereto, and Developer shall not be in default under any of the Project Documents for the Riverwalk Improvements;

4.2.2 additional supporting documentation as reasonably requested by the City;

4.3 Conditions to Subsequent Disbursements. The City's obligations hereunder to make any subsequent Disbursements with respect to the Riverwalk Improvements are conditioned upon City's receipt of the following, each in form and substance reasonably satisfactory to the City:

4.3.1 a Disbursement Request, together with all required supporting documentation;

4.3.2 an updated Budget (showing the amount of money spent or incurred to date on particular items and the remaining Riverwalk Improvements costs.

Additionally, prior to any Disbursement hereunder for the costs of construction of any portion of the Riverwalk Improvements, the City must be satisfied that all necessary approvals from governmental or quasi-governmental authorities having jurisdiction over the Riverwalk Improvements (the "Governmental Approvals"), have been obtained for the Riverwalk Improvements and will remain in full force and effect without restriction or modification.

4.4 Conditions to Final Disbursement. The City's obligation hereunder to make the final Disbursement for the Riverwalk Improvements is conditioned upon City's receipt, as applicable, of the following, each in form and substance reasonably satisfactory to City:

4.4.1 each of the items set forth in Section 4.3 hereof, except as otherwise provided herein;

4.4.2 a final as-built survey showing all of the Riverwalk Improvements and applicable easements in compliance with the requirements of Section 6.8; and

4.4.3 each of the items set forth in the Improvements Completion Conditions set forth in Section 6.13 below.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

Developer represents and warrants to City that, to its knowledge:

5.1 Project Documents. Developer is not in default under the Redevelopment Agreement and no event has occurred that with the passage of time would result in a default by Developer thereunder or any documents executed in connection therewith.

5.2 Authority; Enforceability. (a) The execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents

of the Developer; (b) this Agreement and the other Project Documents do not violate any of the terms or conditions of such governing documents and the Project Documents are binding upon Developer and enforceable against it in accordance with their respective terms; (c) the person(s) executing this Agreement and the other Project Documents on behalf of Developer is (are) duly authorized and fully empowered to execute the same for and on behalf of Developer; and (d) Developer is duly authorized to transact business in the State of Florida and to the knowledge of the Developer, the Developer has received all necessary permits and authorizations required by appropriate governmental agencies as a condition to doing business in the State of Florida.

5.3 Survival. All of the representations and warranties of Developer, as set forth in this Agreement, shall survive the making of this Agreement and shall be continuing for a period of one year after the Completion Date as set forth herein.

## **ARTICLE 6 COVENANTS**

6.1 Manner of Construction of the Riverwalk Improvements. The Riverwalk Improvements shall be constructed in a good and workmanlike manner, in substantial accordance with the Plans and Specifications and in compliance with all state, federal and local laws.

6.2 Plans and Specifications for the Riverwalk Improvements. Prior to the construction of the Riverwalk Improvements, the DIA shall have received and approved the Plans and Specifications and Budget (for the purposes of this Article 5, collectively, the “Plans”) prepared by the Developer’s design team for the Riverwalk Improvements. The Plans shall be complete working drawings and specifications for construction of the Riverwalk Improvements, and in connection with the development of the Riverwalk Improvements, the Developer shall follow the applicable permitting, review and approval process as set forth in the City of Jacksonville Ordinance Code, and in accordance with the City’s Riverwalk Design Criteria specifications. In addition, the Plans shall be subject to the review and approval of the CEO in his reasonable discretion, such approval not to be unreasonably withheld or delayed. City representatives shall have access to the Riverwalk Improvements during construction to confirm the Riverwalk Improvements are constructed consistent with the approved Plans.

6.3 Pre-Construction Surveys. On or before the Riverwalk Improvements Commencement Date, Developer shall deliver to the DIA surveys (meeting Florida minimum technical standards) and legal descriptions, which will cover such improvements as well as the location of utility and drainage easements and utility sites associated with the Riverwalk Improvements. The form and content of the surveys and legal descriptions shall be reasonably satisfactory to DIA which shall indicate their approval in writing after approving of such form and content in accordance with their respective standard practices.

6.4 Developer Responsibilities; Dedication of Improvements. After the Effective Date, Developer shall be responsible for overseeing the design, permitting and construction of the Riverwalk Improvements under the terms and conditions of this Agreement. Upon completion of the Riverwalk Improvements, Developer is responsible for overseeing the dedication and acceptance of the Riverwalk Improvements to and by the City, which dedication

shall not be unreasonably withheld or delayed by the City and which the City shall as expeditiously as possible make good faith efforts to complete.

6.5 Award of Design Professional's Contract(s) and Construction Contract(s). Developer shall be responsible for complying with any applicable state procurement laws prior to entering into any Design Professional's Contract and/or Construction Contract.

6.6 Prosecution of Work. Developer, the Design Professionals and General Contractor, in consideration of the fees set forth in the Budget, shall perform construction contract management, including obtaining of required testing, inspecting the Work and rendering periodic reports to City on the progress of the Riverwalk Improvements if requested by City. Developer shall work diligently to complete construction of the Riverwalk Improvements in a timely and reasonable manner.

6.7 Liens and Lien Waivers. Developer shall take all action necessary to have any mechanic's and materialmen's liens, judgment liens or other liens or encumbrances caused by the Developer related to the Riverwalk Improvements released or transferred to bond within fifteen (15) business days of the date Developer receives notice of the filing of such lines or encumbrances. City and DIA shall not be responsible for any lien or encumbrance related to the Riverwalk Improvements not caused by the City or DIA, but City shall work cooperatively with Developer for the Developer to bond over or remove any such lien or encumbrance. Developer shall be responsible for assuring compliance in all respects whatsoever with the applicable mechanic's and materialmen's lien laws.

6.8 As-Built Survey. Developer shall deliver to DIA, if DIA so requests, an as-built survey of the Riverwalk Improvements within thirty (30) days after completion of construction.

6.9 Compliance with Laws and Restrictions. All construction of the Riverwalk Improvements shall be performed in accordance with all applicable statutes, ordinances, codes, regulations and restrictions. All contractors, subcontractors, mechanics or laborers or other persons providing labor or material in construction of the Riverwalk Improvements shall have or be covered by worker's compensation insurance, if required by applicable law.

6.10 Ownership of Construction Documents. As security for the obligations of Developer under this Agreement, Developer hereby grants, transfers and assigns to DIA all of Developer's right, title, interest (free of any security interests of third parties) and benefits in or under the Construction Documents, including any copyrights thereto. Developer represents and warrants that is has permission and authority to convey ownership of the Construction Documents as set forth herein.

6.11 Certification by Developer. By execution hereof, Developer certifies as follows: (a) the execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents creating Developer; (b) this Agreement does not violate any of the terms or conditions of such governing documents and the same is binding upon Developer and enforceable against it in accordance with its terms; (c) the person(s) executing this Agreement on behalf of Developer is (are) duly authorized and fully empowered to execute the same for and on behalf of Developer; and (d) Developer is duly authorized to transact

business in the State of Florida, and (e) to the knowledge of the Developer, the Developer has received all necessary permits and authorizations required by appropriate governmental agencies as a condition to doing business in the State of Florida.

6.12 Authority of DIA to Monitor Compliance. During all periods of design and construction, Developer shall permit the DIA staff and the City's Director of Public Work or their respective designated personnel, to monitor compliance by Developer with the provisions of this Agreement and the Riverwalk Improvements Documents. During the period of construction and with prior notice to Developer, representatives of City and DIA shall have the right of access to Developer's records and employees, as they relate to the construction of the Riverwalk Improvements, during normal business hours, provided, however, that Developer shall have the right to have a representative of Developer present during any such inspection.

6.13 Completion of the Riverwalk Improvements. Subject to the terms of this Agreement, Developer shall Complete Construction of the Riverwalk Improvements by no later than the Completion Date. For purposes of this Agreement, completion of the Riverwalk Improvements shall be deemed to have occurred only when the following conditions (the "Riverwalk Improvements Completion Conditions") shall have been satisfied as to the Riverwalk Improvements:

6.13.1 Developer shall furnish to DIA such permits and/or certificates (including a certificate of substantial completion from the Design Professional) as shall be required to establish to DIA's satisfaction that the Riverwalk Improvements have been properly completed and are not subject to any violations or uncorrected conditions noted or filed in any municipal department, and that such improvements are ready for immediate use;

6.13.2 Upon Completion of all of the Riverwalk Improvements, Developer shall submit to DIA a contractor's final affidavit and releases of liens from each contractor, subcontractor and supplier, or other proof satisfactory to DIA, confirming that payment has been made for all materials supplied and labor furnished in connection with such Riverwalk Improvements through the date of Work reflected in the final Disbursement Request;

6.13.3 The Riverwalk Improvements shall have been finally completed in all material respects in substantial accordance with the Plans and Specifications, as verified by a final inspection report satisfactory to DIA from Developer's construction inspector, certifying that the Riverwalk Improvements have been constructed in a good and workmanlike manner and are in satisfactory condition and are ready for immediate use; and

6.13.4 The DIA shall have issued the Substantial Completion Letter as to the Riverwalk Improvements stating that the Riverwalk Improvements are Substantially Complete and may be used for their intended purpose.

6.13.5 The Completion of any portion of the Riverwalk Improvements is subject to Developer's one year warranty on all Completed Improvements as described herein.

6.14 Discrimination. Developer shall not discriminate against any person, or group of persons on account of race, color, creed, sex, age, religion, national origin, marital status, handicap, having children or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure

or enjoyment of all or any part of the Riverwalk Improvements nor shall Developer or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with the reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees or vendees thereof.

6.15 Indemnification.

6.15.1 Developer, its successors and assigns (collectively “**Developer Parties**”) shall indemnify, defend, and hold harmless City and DIA against and from all liabilities, damages, losses, costs, and expenses of whatsoever kind or nature, including, but not limited to, reasonable attorney’s fees, reasonable expert witness fees and court costs (all of which are collectively referred to as “**Damages**”), arising out of or in connection with any act or construction of the Riverwalk Improvements by the Developer (including without limitation Developer Parties’ procurement of contracts for the design and/or construction of the Riverwalk Improvements), which Damages are not paid or reimbursed by or through the Insurance as required under this Agreement. This indemnification shall survive the expiration or termination of this Agreement. The term “City” and “DIA” as used in this Section shall include all officers, board members, City Council members, employees, representatives, agents, successors and assigns of City or DIA. Without limiting the foregoing, the above indemnification provisions extend to Environmental Impact Claims arising from any Environmental Contamination caused by the Developer in connection with the construction of the Riverwalk Improvements.

6.15.2 Environmental Impact Claim is defined as claims, suits, judgments, costs, losses, expenses (including attorney’s fees) which arise out of, are related to, or based on the actual or threatened dispersal, discharge, escape, release, or saturation of chemicals, liquids, gasses, or any other material, irritant, contaminant or pollutant in or into the atmosphere, or on, onto, upon, in or into the surface or subsurface (a) soil, (b) water or water course, (c) objects, or (d) any tangible or intangible matter, whether sudden or not caused by Developer or its contractors and excluding any prior contamination of the lands upon which the Riverwalk Improvements are to be constructed, unless as a result of the Developer or its contractors’ negligence or intentional acts (collectively “**Environmental Contamination**”).

For ten dollars (\$10.00) acknowledged to be included and paid for in Direct Costs and other good and valuable consideration, Developer agrees to indemnify and hold harmless City and DIA, in accordance with the provisions of this Section 6.15.2. The indemnifications provided in this Section 6.13 shall survive the expiration or termination of this Agreement.

6.16 Insurance and Bond Requirements. See Exhibit D attached hereto and incorporated herein by this reference for the insurance requirements of Developer.

6.17 Materials and Workmanship. All workmanship, equipment, materials and articles incorporated in the Work are to be new and in accordance with City’s minimum standards, specification and details to be provided by DIA. Upon request, Developer shall furnish City Inspector copies of test results made of the materials or articles which are to be incorporated in the Work for approval, certified by the Developer as being true and correct to the best of Developer’s knowledge. When so directed, samples of materials shall be submitted for approval by DIA and the City’s Department of Public Works, such approval not to be unreasonably



withheld or delayed. Machinery, equipment, materials and articles installed or used without such approval shall be at the risk of subsequent rejection, removal and replacement at Developer's expense. If not otherwise provided, material or Work called for in this Agreement shall be furnished and performed in accordance with the manufacturer's instructions and established practice and standards recognized by architects, engineers and the trade.

6.18 Warranty and Guarantee of Work.

6.18.1 Developer warrants to City and DIA that all Work will be of good quality, and substantially in compliance with the Riverwalk Improvements Documents and in accordance with the provisions of Section 6.18. All Work not in conformance to the requirements of this Agreement, including substitutions not properly approved and authorized, may be considered defective. If required by DIA, Developer shall provide satisfactory evidence as to the quality, type and kind of equipment and materials furnished. This warranty is not limited by, nor limits any other warranty-related provision in these Riverwalk Improvements Documents.

6.18.2 If, within one year of acceptance of the Riverwalk Improvements by City, or within such longer period of time prescribed by law or by the terms of any special warranty provision of the Riverwalk Improvements Documents, any of the Work is found to be defective or not in conformance with the Riverwalk Improvements Documents, Developer shall correct it promptly after notice of such defect or nonconformance. Corrective Work during the warranty period shall also be warranted for a period of one year, with each corrective effort in turn being warranted as to the corrective item for a period of one year of satisfactory performance. This obligation shall survive termination, expiration or completion of the Agreement. City DIA shall give notice to Developer promptly after discovery of the condition.

6.18.3 Developer shall bear the cost of correcting or removing all defective or nonconforming Work, including the cost for correcting any damage caused to equipment, materials or other Work by such defect or the correcting thereof.

6.18.4 Developer shall correct any defective or nonconforming Work to the reasonable satisfaction of City, and any of the Work, equipment or materials damaged as a result of such condition or the correcting of such condition, within thirty (30) calendar days of notice of such condition after the Developer's receipt of the applicable development and DIA approvals with respect thereto, provided that if a longer period of time is required through no fault of the Developer, the Developer shall have such longer period to correct the same up to ninety (90) days, provided the corrective work is commenced within thirty (30) days after the Developer's receipt of the applicable development and DIA approvals with respect thereto. Should Developer fail to timely correct defective or non-conforming Work under warranty, City, DIA or a third party contractor on behalf of City or DIA, may correct such Work itself and Developer shall reimburse City or DIA, as applicable, for the costs of such corrective Work promptly and no later than 30 days after receipt of an invoice from City or DIA pertaining to such corrective Work undertaken by City or DIA. If Developer fails to correct the nonconforming or defective Work, Developer will be in default hereunder.

6.18.5 Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Developer may have under the Riverwalk Improvements Documents. The establishment of the time period of one year after the date of Substantial Completion, or such longer period of time as may be prescribed by law or by the items of any warranty required by the Riverwalk Improvements Documents, relates only to the specific obligation of Developer to correct the Work and has no relationship to the time within which its obligation to comply with the Riverwalk Improvements Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish Developer's liability with respect to its obligations other than specifically to correct the Work.

6.19 Jacksonville Small and Emerging Businesses (JSEB) Program.

Developer, in further recognition of and consideration for the public funds provided to assist Developer pursuant to this Agreement, hereby acknowledges the importance of affording to small and emerging vendors and contractors the full and reasonable opportunity to provide materials and services ("Opportunity"). Therefore, Developer hereby agrees as follows:

6.19.1 Developer shall obtain from City's Procurement Division the list of certified Jacksonville Small and Emerging Businesses ("JSEB"), and shall, in accordance with Municipal Ordinance Code ("Code") Sections 126.601 et seq., enter into contracts with City certified JSEBs to provide materials or services in an aggregate amount of twenty (20%) of the total Verified Direct Costs of the construction of the Riverwalk Improvements, as determined in accordance with Code Section 126.611, of the applicable portion of City's maximum contribution to the Riverwalk Improvements.

6.19.2 Developer shall submit JSEB report(s) regarding Developer's actual use of City certified JSEBs on the Riverwalk Improvements. The JSEB report(s) shall be submitted on a quarterly basis until Completion of Construction of the Riverwalk Improvements. The form of the report to be used for the purposes of this Section is attached hereto as **Exhibit E** (the "JSEB Reporting Form").

**ARTICLE 7**  
**NO ASSIGNMENT OR CONVEYANCE;**  
**RESTRICTIONS ON ENCUMBRANCE**

7.1 Assignment; Limitation on Conveyance. Developer agrees that, until Completion of Construction of the Riverwalk Improvements, it shall not, without the prior written consent of DIA (except for assignments as authorized under the Redevelopment Agreement) assign, transfer or convey this Agreement or the Riverwalk Improvements Documents or any provision hereof or thereof. The provisions of this section shall not apply to any assignment, transfer or conveyance as collateral to the sale or conveyance to the holder of any mortgage encumbering all or any portion of Developer's property or any other assignment of a type authorized by the Redevelopment Agreement which approved assignment types therein shall also apply to any such assignment of this Agreement. Any such sale, assignment or conveyance in violation of this section shall constitute a default hereunder, and City and DIA may continue to look to Developer to enforce all of the terms and conditions of this Agreement as if such purported sale, assignment or conveyance had not occurred. Any authorized assignment hereunder shall be

pursuant to an assignment and assumption agreement in form and content acceptable to the DIA in its reasonable discretion.

## **ARTICLE 8 EVENTS OF DEFAULT AND REMEDIES**

8.1 **Event of Default.** The following shall constitute an event of default (each, an “Event of Default”) hereunder:

8.1.1 A breach by any party of any other term, covenant, condition, obligation or agreement under this Agreement, and the continuance of such breach for a period of thirty (30) days after written notice thereof shall have been given to such party, provided, however, that if such breach is not reasonably susceptible to cure within thirty (30) days, then the time to cure such breach shall be extended to ninety (90) days so long as the defaulting party is diligently and in good faith pursuing such cure;

8.1.2 Any representation or warranty made by any party in this Agreement or the Riverwalk Improvements Documents shall prove to be false or intentionally misleading in any material respect as of the Effective Date, which is not cured as provided in Section 8.1.3;

8.1.3 A continuing default after any applicable cure period under the Riverwalk Improvements Documents;

8.1.4 Failure of Developer to complete the Riverwalk Improvements in accordance with the Plans and Specifications;

8.1.5 Failure of Developer to Complete Construction of the Riverwalk Improvements, or abandonment of or cessation of Work on any portion of the Riverwalk Improvements at any time prior to completion for a period of more than thirty (30) consecutive business days, except on account of a Force Majeure Event (defined in Section 9.2 below), in which case such period shall be the lesser of the actual period of delay or ninety (90) consecutive days;

8.1.6 The entry of a decree or order by a court having jurisdiction in the premises adjudging the defaulting party bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the such party under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, custodian, assignee, or sequestrator (or other similar official) of such party or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuation of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days; or

8.1.7 The institution by any party of proceedings to be adjudicated bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it to the institution of bankruptcy or insolvency proceedings against it, or the filing of a petition or answer or consent seeking reorganization or relief under the United States Bankruptcy Code or any other similar applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, custodian,

assignee, trustee or sequestrator (or other similar official) of such party of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due.

## **ARTICLE 9 GENERAL PROVISIONS**

9.1 Non-Liability. No member, official or employee of City or DIA shall be personally liable to Developer or to any person with whom Developer shall have entered into any contract, or to any other person in the event of any default or breach of City, DIA or for any amount which may become due to Developer or any other person under the terms of this Agreement.

No director, officer or employee of Developer shall be personally liable to City or DIA or to any person with whom City or DIA shall have entered into any contract, or to any other person in the event of any default or breach of Developer, or for any amount which may become due to City or DIA or any other person under the terms of this Agreement.

9.2 Force Majeure. No party to this Agreement shall be deemed to be in default hereunder where such default is based on a delay in performance as a result of war, insurrection, strikes, lockouts, riots, floods, hurricanes, earthquakes, fires, casualty, acts of God, acts of public enemies, epidemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, litigation, court orders, severe weather and other acts or failures beyond the control or without the control of either party (collectively, a “**Force Majeure Event**”); provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not excuse any financial liability of a party.

9.3 Notices. All notices to be given hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or delivered by a courier service utilizing return receipts, to the party at the following addresses (or to such other or further addresses as the parties may designate by like notice similarly sent) and such notice shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail, if sent by registered or certified mail, or the date actually received if sent by personal delivery or courier service, except that notice of a change in address shall be effective only upon receipt.

9.3.1

City:

Mayor  
City of Jacksonville  
117 West Duval Street, Suite 400  
Jacksonville, FL 32202

the DIA:

Downtown Investment Authority  
117 W. Duval Street, Suite 310  
Jacksonville, Florida 32202

Attn: Chief Executive Officer

With a copy to:

City of Jacksonville  
Office of General Counsel  
117 W. Duval Street, Suite 480  
Jacksonville, Florida 32202  
Attn: Corporation Secretary

9.3.2 The Developer:

500 East Bay LLC  
195 Beach Boulevard  
Biloxi, Mississippi 39530  
Attn: Greg Stewart

With a copy to:

Akerman LLP  
Attn: Robert A. Leapley, Jr., Esq.  
50 North Laura Street, Suite 3100  
Jacksonville, Florida 32202

9.4 Time is of the Essence and Force Majeure. Time is of the essence in the performance by any party of its obligations hereunder, and provided any date for performance or delivery that falls on a Saturday, Sunday, or legal holiday shall automatically be extended to the next business day. All dates for performance or delivery hereunder are subject to Force Majeure Events.

9.5 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

9.6 Amendment. No amendment or modification of this Agreement shall be effective or binding upon any party hereto unless such amendment or modification is in writing, signed by an authorized officer of the party claimed to be bound and delivered to the other party.

9.7 Waivers. All waivers, amendments or modifications of this Agreement must be in writing and signed by all parties. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, or any other rights or remedies for the same default or any other default by the other party.

9.8 Severability. The invalidity, illegality or inability to enforce any one or more of the provisions of this Agreement shall not affect any other provisions of this Agreement, but this Agreement will be construed as if such invalid illegal or unenforceable provision had never been contained herein.

9.9 Independent Contractor. In the performance of this Agreement, Developer will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venture or association of City or DIA. Developer and its employees or agents or contractors shall be solely responsible for the means, method, technique, sequences and procedures utilized by Developer in performance of this Agreement.

9.10 Exemption of City. Neither this Agreement nor the obligations imposed upon City or DIA hereunder shall be or constitute an indebtedness of City or DIA within the meaning of any constitutional, statutory or charter provisions requiring City to levy ad valorem taxes nor a lien upon any properties of City or DIA.

9.11 Parties to Agreement. This is an agreement solely between City, DIA and Developer. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any person not a party hereto other than and the permitted successors or assigns of City, DIA and Developer. This Agreement shall be binding upon Developer, and Developer's successors and assigns, and shall inure to the benefit of City and DIA, and their respective successors and assigns; provided, however, Developer shall not assign, transfer or encumber its rights or obligations hereunder or under any document executed in connection herewith, except in accordance with the terms and conditions of Section 7.1 above.

9.12 Venue: Applicable Law; Attorneys' Fees. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Duval County, Florida, or in the U.S. Developer Court for the Middle Developer of Florida, Jacksonville Division. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement. Each party shall be responsible for its own attorneys' fees and costs related to this Agreement and the Riverwalk Improvements Documents.

9.13 Contract Administration. City's Director of Public Works, or his respective designees, shall act as the designated representatives of City to coordinate communications between City, DIA and Developer regarding the administration of this Agreement and to otherwise coordinate and facilitate the performance of the obligations of City under this Agreement. The Chief Executive Officer of the DIA ("CEO"), or his representative, shall act as the designed representative of the DIA regarding the administration of this Agreement and to coordinate and facilitate the performance of the obligations of the DIA under this Agreement.

9.14 Further Authorizations. The Mayor, or his designee, and the Corporation Secretary, and CEO are authorized to execute any and all contracts and documents and otherwise take all necessary or appropriate actions in connection with this Agreement, and to negotiate and execute all necessary and appropriate changes and amendments and supplements to this Agreement and other contracts and documents in furtherance of the Riverwalk Improvements, without further City Council action, provided any such changes and amendments are limited to "technical amendments" and do not change the total financial commitments or the performance

schedule, and further provided that all such amendments and changes shall be subject to legal review by the Office of General Counsel and by all other appropriate official action required by law. The term “technical amendments” as used herein includes, without limitation, changes in legal descriptions and surveys, description of infrastructure improvements and/or Riverwalk Improvements, ingress and egress and utility easements and rights of way, design standards, vehicle access and site plans, to the extent the same have no material financial impact, and to the extent that the Office of General Counsel concurs that no further City Council action would be required to effect such technical amendment.

9.15 Civil Rights. Developer agrees to comply with all of the terms and requirements of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1968, as amended, and the antidiscrimination provisions of Chapter 126, Part 4, of City Ordinance Code, and further agrees that in its operation under this Agreement it will not discriminate against anyone on the basis of race, color, age, disability, sex or national origin.

9.16 Further Assurances. Developer will, on request of DIA and the DIA on behalf of the City: (a) promptly correct any defect, error or omission in this Agreement or any of the Riverwalk Improvements Documents; (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts deemed necessary, desirable or proper by DIA or the Developer to carry out the purposes of such Riverwalk Improvements Documents and to identify and subject to the liens of the Riverwalk Improvements Documents and to identify and subject to the liens of the Riverwalk Improvements Documents any property intended to be covered thereby, including any renewals, additions, substitutions, replacements, or appurtenances to the subject property; (c) execute, acknowledge, deliver, procure, file or record any documents or instruments deemed necessary, desirable or proper by DIA to protect - interest under the Riverwalk Improvements Documents against the right or interests of third persons; and (d) provide such certificates, documents, reports, information, affidavits or other instruments and do such further acts deemed necessary, desirable or proper by DIA or the Developer to carry out the purposes of the Riverwalk Improvements Documents.

9.17 Exhibits. In the event of a conflict between any provisions of this Agreement and any exhibit attached to or referenced in this Agreement, the provisions of this Agreement shall govern.

9.18 Construction. All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Developer further acknowledges that it has had ample time to review this Agreement and related documents with counsel of choice. Any doubtful or ambiguous provisions contained herein shall not be construed against the party who drafted this Agreement. Captions and headings in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

9.19 Limitations on Governmental Liability. Nothing in this Agreement shall be deemed as a waiver of the City or DIA’s sovereign immunity or the limits of liability as set forth in Section 768.28, Florida Statutes or other law, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under such limitations of liability or by operation of law.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Agreement, to be effective on the Effective Date.

ATTEST:

**CITY OF JACKSONVILLE**

By: \_\_\_\_\_  
James R. McCain, Jr.  
Corporation Secretary

By: \_\_\_\_\_  
Lenny Curry, Mayor

Form Approved:

\_\_\_\_\_  
Office of General Counsel

IN COMPLIANCE WITH the Ordinance Code of the City of Jacksonville, I do certify that there is or will be an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement in accordance with the terms and conditions thereof and that provision has been made for the payment of monies provided therein to be paid.

\_\_\_\_\_  
Director of Finance

Signed, sealed and delivered  
in the presence of:

**500 EAST BAY LLC**, a Florida limited liability  
company

\_\_\_\_\_  
(Printed Name)\_\_\_\_\_

By: LLI, LLC, a Mississippi limited liability  
company, its Manager

\_\_\_\_\_  
(Printed Name)\_\_\_\_\_

By: \_\_\_\_\_(SEAL)  
Name: Lori Stewart  
Its: Manager



**LIST OF EXHIBITS**

|           |                                                       |
|-----------|-------------------------------------------------------|
| EXHIBIT A | Description of Project Parcel                         |
| EXHIBIT B | Description of Riverwalk Improvements                 |
| EXHIBIT C | Scope, Budget and Schedule for Riverwalk Improvements |
| EXHIBIT D | Insurance and Bond Requirements                       |
| EXHIBIT E | JSEB Reporting Form                                   |
| EXHIBIT F | Disbursement Request Form                             |

## **EXHIBIT A**

### **Description of Project Parcel**

(To be inserted after confirmation by survey, but generally shall consist of a 5' strip of land northerly and adjacent to the existing Riverwalk on the southerly border of the Developer Parcel, and a 25' strip of land across the to-be-abandoned Catherin St. Parcel and along the southerly border City Parcel, if acquired by Developer.)

## **EXHIBIT B**

### **Description of Riverwalk Improvements**

The Riverwalk Improvements will be in the nature of resurfacing, paving work, landscaping, installation of benches and lighting, and similar surface improvements. The Riverwalk Improvements will consist of approximately 400 linear feet of 25' wide improvements on the City lands adjacent to the City Parcel, approximately 160' linear feet of 5' wide improvements within the portion of the Riverwalk Easement described in Section 6.4 of this Agreement located on the Developer Parcel and approximately 40' linear feet of 25' wide improvements located within the portion of the Riverwalk Easement along the southerly twenty-five feet (25') of the Catherine Street Parcel abutting the St. Johns River, the specific details of which Plans for the Riverwalk Improvements will be agreed upon by the City and the Developer as called for in Section 6.2 of the Redevelopment Agreement and in accordance with this Agreement.

**EXHIBIT C**

Riverwalk Improvements Scope, Budget and Schedule  
(Includes all design and construction costs – to be inserted upon completion of scope of work,  
budget and schedule of values)

| <b>ITEM</b> | <b>DESCRIPTION</b>  | <b>COST</b> |
|-------------|---------------------|-------------|
| 1           |                     | \$          |
| 2           |                     | \$          |
| 3           |                     | \$          |
| 4           |                     | \$          |
| 5           |                     | \$          |
| 6           |                     | \$ _____    |
|             | Subtotal            | \$          |
|             | Contingency (10%)   | \$ _____    |
|             | <b>TOTAL BUDGET</b> | \$          |

**EXHIBIT D**

**Insurance Requirements**

Without limiting its liability under this Agreement Contract, the Developer or its General Contractor (for this Exhibit G, collectively the “**Contractor**”) shall at all times during the term of this Agreement procure prior to commencement of work and maintain at its sole expense during the life of this Agreement (and Contractor shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

**Insurance Coverages**

| Schedule                                              | Limits                                                                                                                           |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| <b>Worker’s Compensation<br/>Employer’s Liability</b> | Florida Statutory Coverage<br>\$1,000,000 Each Accident<br>\$1,000,000 Disease Policy Limit<br>\$1,000,000 Each Employee/Disease |

This insurance shall cover the City and Developer (and, to the extent they are not otherwise insured, its Contractors and subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers’ Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers’ Compensation Act, where appropriate, coverage is to be included for the Federal Employers’ Liability Act, USL&H and Jones, and any other applicable federal or state law.

|                                     |             |                             |
|-------------------------------------|-------------|-----------------------------|
| <b>Commercial General Liability</b> | \$2,000,000 | General Aggregate           |
|                                     | \$2,000,000 | Products & Comp. Ops. Agg.  |
|                                     | \$1,000,000 | Personal/Advertising Injury |
|                                     | \$1,000,000 | Each Occurrence             |
|                                     | \$50,000    | Fire Damage                 |
|                                     | \$5,000     | Medical Expenses            |

The policy shall be endorsed to provide a separate aggregate limit of liability applicable to the Work via a form no more restrictive than the most recent version of ISO Form CG 2503

Contractor shall continue to maintain products/completed operations coverage for a period of ten (10) years after the final completion of the project. The amount of products/completed operations coverage maintained during the ten year period shall be not less than the combined limits of Products/ Completed Operations coverage required to be maintained by Contractor in the combination of the Commercial General Liability coverage and Umbrella Liability Coverage during the performance of the Work.

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management.

**Automobile Liability** \$1,000,000 Combined Single Limit (Coverage for all automobiles, owned, hired or non-owned used in performance of the Agreement)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

**Design Professional Liability** \$1,000,000 per Claim  
\$3,000,000 Aggregate

Any entity hired to perform professional services as a part of this Agreement shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement and with a ten (10) year reporting option beyond the annual expiration date of the policy.

**Builders Risk** % 100 Completed Value of the Project

Such insurance shall be on a form acceptable to the City's Office of Insurance and Risk Management. The Builder's Risk policy shall include the SPECIAL FORM/ALL RISK COVERAGES. The Builder's Risk and/or Installation policy shall not be subject to a coinsurance clause. A maximum \$10,000 deductible for other than windstorm and hail. For windstorm and hail coverage, the maximum deductible applicable shall be 2% of the completed value of the project. Named insured's shall be: Developer, Contractor, the City, and respective members, officials, officers, employees and agents, the Engineer, and the Program Management Firms(s) (when program management services are provided). The City of Jacksonville, its members, officials, officers, employees and agents are to be named as a loss payee.

**Pollution Liability** \$1,000,000 per Loss  
\$3,000,000 Annual Aggregate

Any entity hired to perform services as part of this Agreement for environmental or pollution related concerns shall maintain Contractor's Pollution Liability coverage. Such Coverage will include with respect to the construction of the Riverwalk Improvements bodily injury, sickness, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to destruction of tangible property including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arises from the operations of the contractor including transportation.

**Pollution Legal Liability**

\$1,000,000 per Loss  
\$3,000,000 Aggregate

Any entity hired to perform services as a part of this Agreement that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this Agreement.

**Watercraft Liability**

\$1,000,000 Per Occurrence

(to the extent that watercraft is utilized in the services of this Agreement)

**Umbrella Liability**

\$5,000,000 Each Occurrence/ Aggregate.

The Umbrella Liability policy shall be in excess of the above limits without any gap. The Umbrella coverage will follow-form the underlying coverages and provides on an Occurrence basis all coverages listed above.

In the event that any part of the work to be performed hereunder shall require the Developer or its Contractor or Subcontractors to enter, cross or work upon or beneath the property, tracks, or right-of-way of a railroad or railroads, the Developer shall, before commencing any such work, and at its expense, procure and carry liability or protective insurance coverage in such form and amounts as each railroad shall require.

The original of such policy shall be delivered to the railroad involved, with copies to the City, and their respective members, officials, officers, employee and agents, Engineer, and Program Management Firm(s) (when program management services are provided).

The Contractor shall not be permitted to enter upon or perform any work on the City Parcels until such insurance has been furnished to the satisfaction of the railroad. The insurance herein specified is in addition to any other insurance which may be required by the City, and shall be kept in effect at all times while work is being performed on or about the property, tracks, or right-of-way of the railroad.

**Additional Insurance Provisions**

- A. Additional Insured: All insurance except Worker’s Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and its members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.
- B. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter’s rights of subrogation in favor of the City of Jacksonville and their respective, officials, officers employees and agents.
- C. Developer’s Insurance Primary. The insurance provided by the Developer shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-

insurance maintained by the City or any of its members, officials, officers, employees and agents.

- D. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Agreement shall remain the sole and exclusive responsibility of the named insured Developer. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Agreement.
- E. Developer's Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Developer or its Contractors, Subcontractors, employees or agents to the City or others. Any remedy provided to City or its members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.
- F. Waiver/Estoppel. Neither approval by City nor failure to disapprove the insurance furnished by Developer shall relieve Developer of Developer's full responsibility to provide insurance as required under this Agreement.
- G. Certificates of Insurance. Developer shall provide the City Certificates of Insurance that shows the corresponding City Agreement Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- I. Notice. The Developer shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, the Developer shall provide a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of the Developer under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.



- L. Special Provisions: Prior to executing this Agreement, Contractor shall present this Agreement and this Exhibit F to its Insurance Agent affirming: 1) That the Agent has personally reviewed the insurance requirements of the Project Documents, and(2) That the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Developer.

**Bonds and Other Performance Security.** Developer shall not perform or commence any construction services for the CRA Infrastructure Improvements until the following performance bond and labor and material payment bond or other performance security have been delivered to City: Bonds - In accordance with the provisions of Section 255.05, Florida Statutes, Design-Builder shall provide to City on forms furnished by the City, a 100% Performance Bond and a 100% Labor and Material Payment Bond for each Public Infrastructure Improvement performed under this Agreement, each in an amount not less than an amount at least equal to the amount of the Direct Costs for the construction of the Riverwalk Improvements no qualification or modifications to the Bond forms are permitted.

To be acceptable to Owner as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

1. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code during the life of this agreement.
5. If the Contract Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:
  - a. The Surety Company shall have at least the following minimum ratings in the latest issue of A.M. Best's Key Rating Guide.

| CONTRACT AMOUNT              | RATING | RATING     |
|------------------------------|--------|------------|
| \$ 500,000 TO \$1,000,000    | A-     | CLASS IV   |
| \$1,000,000 TO \$2,500,000   | A-     | CLASS V    |
| \$2,500,000 TO \$5,000,000   | A-     | CLASS VI   |
| \$5,000,000 TO \$10,000,000  | A-     | CLASS VII  |
| \$10,000,000 TO \$25,000,000 | A-     | CLASS VIII |
| \$25,000,000 TO \$50,000,000 | A-     | CLASS IX   |
| \$50,000,000 TO \$75,000,000 | A-     | CLASS X    |

b. The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to conduct business in this state have been met.

2) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.



**EXHIBIT F**

Form of Disbursement Request

**CITY OF JACKSONVILLE, FLORIDA**  
**APPLICATION FOR PAYMENT NO. \_\_\_\_\_**

**PROJECT** \_\_\_\_\_ **BID NO.** \_\_\_\_\_ **CONTRACT NO.** \_\_\_\_\_

For Work accomplished through the date of \_\_\_\_\_.

**A. Contract and Change Orders**

- 1. Contract Amount ..... \$ \_\_\_\_\_
- 2. Executed Change Orders ..... + \$ \_\_\_\_\_
- 3. Total Contract (1) + (2)..... \$ \_\_\_\_\_

**B. Work Accomplished**

- 4. Work performed on Contract Amount (1) ..... \$ \_\_\_\_\_
- 5. Work performed on Change Orders (2)..... + \$ \_\_\_\_\_
- 6. Materials stored ..... + \$ \_\_\_\_\_
- 7. Total Completed & Stored (4) + (5) + (6)..... \$ \_\_\_\_\_
- 8. Less Previous Payments Made (or) Invoiced ..... \$ \_\_\_\_\_
- 9. Payment Amount Due this Application (7) — (10) ..... \$ \_\_\_\_\_

(\*) This application for payment shall be supported with the Contractor's pay request and supporting documentation.

**[Developer certification and signatures on following page]**

**EXHIBIT F**  
(page 2 of 2)

**DEVELOPER'S CERTIFICATION**

The undersigned certifies that: (1) all items and amounts shown above are correct; (2) all Work performed and materials supplied fully comply with the terms and conditions of the Contract Documents; (3) all previous progress payments received from the City on account of Work done under the Contract referred to above have been applied to discharge in full all obligations of Developer incurred in connection with Work covered by prior Applications for Payment; (4) title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to City at time of payment free and clear of all liens, claims, security interests and encumbrances; and (5) Developer has complied with Section 6.19 of the Agreement.

Dated \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Developer Signature  
By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Date

Approvals

\_\_\_\_\_

\_\_\_\_\_

Project Manager

\_\_\_\_\_

\_\_\_\_\_

City Engineer

## **EXHIBIT E**

### **Family Amenity Entertainment Improvements**

The proposed Family Entertainment Complex (“**FEC**”) structure will be located adjacent to the west boundary of Catherine Street, which will continue to provide a public access easement over Catherine Street and link the public to the waterfront, outside attraction area, and any future use of the adjacent pier. The FEC structure, in combination with the public access easement over Catherine Street, will create an exciting venue for pedestrians and allow transparency from street to river. The first and second floors will provide interactive video games, active games, and rides. A central courtyard will provide access to the second floor to a restaurant with exterior seating for views of the waterfront and docks.

The FEC facility is approximately 24,000 s.f. on two floors. The exterior facade will be primarily glass and the architectural character will be an extension of façade treatments of the Hotel. The service courtyard will be shared with the Hotel and will be internal to the structures and screened from the street.

Between the Parking Garage and the Riverwalk, this area will feature rides and entertainment for all ages of a fairground nature, including a sky wheel.

## **EXHIBIT F**

### **Parking Garage Improvements**

The parking garage improvements consist of a proposed parking facility for 631 cars on seven levels, totaling 180,000 s.f. ("Parking Garage"). The Parking Garage will have its access directly from the intersection of East Bay Street and Marsh Street, and function as a continuous ramp parking facility. The exterior treatment of this facility will be a dynamic multicolored panel composition broken by revealing linear openings on all sides. It will have a small retail shop, which may include a gift shop and a ticket sales office for the outside attraction areas of the Project and for activities on the adjacent pier.

**EXHIBIT G**

Restrictive Covenants and Parking Rights Agreement



**EXHIBIT G**  
**Form of Restrictive Covenants**

**THIS INSTRUMENT PREPARED BY  
AND RECORD AND RETURN TO:**

John C. Sawyer, Jr., Esq.  
City of Jacksonville  
Office of General Counsel  
117 W. Duval Street Suite 480  
Jacksonville, Florida 32202

[Space reserved for official use]

**RESTRICTIVE COVENANTS AND PARKING RIGHTS AGREEMENT**

[Short Term Public Parking Restrictions on Parking Facility]

**THIS RESTRICTIVE COVENANTS AND PARKING RIGHTS AGREEMENT** (this "**Agreement**") is entered into and effective this \_\_\_ day of \_\_\_\_\_, 201\_ (the "**Effective Date**"), by and between **500 EAST BAY LLC**, a Florida limited liability company, with an address of 195 Beach Boulevard, Biloxi, Mississippi 39530 (together with its successors and assigns, "**Garage Owner**"); and the **CITY OF JACKSONVILLE**, a Florida municipal corporation, with an address c/o Downtown Investment Authority, 117 W. Duval Street, Suite 310, Jacksonville, Florida 32202 (the "**City**") (collectively the "**Parties**" and individually a "**Party**").

**RECITALS:**

A. Garage Owner and City previously entered into that certain Redevelopment Agreement dated \_\_\_\_\_, pursuant to which Garage Owner constructed not less than a 630 space multi-level parking garage ("**Parking Garage**") on that certain parcel of real property located in Duval County, Florida, as more particularly described on **Exhibit A** attached hereto (the "**Property**"). The purpose of the Parking Garage is to serve the parking needs of the Garage Owner's adjacent hotel and related facilities and also the short term public parking needs in the surrounding area.

B. The Parties intend hereby to restrict the use of the Parking Garage to include at least 200 short term use public parking spaces during all operating hours of the Parking Garage (as more specifically defined below, the "**Minimum Public Parking Spaces**") to benefit the general public.

C. This Agreement shall remain in effect from the Effective Date until the sixtieth (60<sup>th</sup>) anniversary of the Effective Date (the "**Term**"); provided however that this Agreement

may be terminated by Garage Owner upon repayment of the \$3.5 million Parking Garage Grant described below.

D. Pursuant to the Redevelopment Agreement dated \_\_\_\_\_, 2019 (“**Redevelopment Agreement**”), Garage Owner is contemporaneously herewith receiving a grant from the City in the amount of \$3,500,000 (the “**Parking Garage Grant**”) in the form of cash or in the form of cash and the application of the Purchase Price offset against the Property described in this Agreement to reimburse Garage Owner for a portion of the development costs of the Parking Garage and to reserve the Minimum Public Parking Spaces. As a condition to the City’s agreement to make such grant, the City has required that this Agreement be executed and recorded in the Duval County Public Records to assure the availability for members of the general public of the Minimum Public Parking Spaces for the Term, under the provisions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledges, the Parties covenant and agree that the above Recitals are true and correct, and further covenant and agree as follows:

**Article I**  
**Definitions**

1.1 “**Annual Report**” is defined in Section 2.3.10.

1.2 “**Change in Use**” means any change in use of the Parking Garage that adversely affects the Minimum Public Parking Spaces, including without limitation any of the following: (i) any alteration of the Parking Garage structure or operations that affects the availability or use of the Minimum Public Parking Spaces in violation of the terms of this Agreement, (ii) any reduction in the number of Minimum Public Parking Spaces available in the Parking Garage, (iii) any restriction of public access to any of the Minimum Public Parking Spaces, or (vi) reducing the hours provided herein that the Minimum Public Parking Spaces are available for Public Parking. Notwithstanding the foregoing, a reduction in available Minimum Public Parking Spaces during times of maintenance, repair or modifications of the Parking Garage, including, without limitation, resurfacing, restriping, and/or repairs to the Parking Garage, shall not constitute a Change in Use so long as such maintenance, repair or modification is completed within thirty (30) days (or as to any longer period reasonably needed for any major repairs or replacements, subject to force majeure, and provided that Garage Owner gives the City at least 30 days prior written notice of the commencement date and proposed completion date of all such maintenance or repair work (unless such work is required to be completed on an emergency basis and in that case Garage Owner shall provide such notice as is reasonable under the circumstances).

1.3 “**City**” means the City of Jacksonville, a Florida municipal corporation, and its successors and assigns.

- 1.4 **“Cure Period”** is defined in Section 3.1.
- 1.5 **“Garage Owner”** means MVJFL LLC, a Florida limited liability company, and its successors and assigns.
- 1.6 **“Minimum Public Parking Spaces”** means at least 200 parking spaces dedicated only to, and used exclusively for, Public Parking at the Parking Garage during all Parking Hours, and complying with all applicable City ordinances and regulations pertaining to parking spaces in multi-level parking garages in downtown Jacksonville.
- 1.7 **“Parking Garage Grant”** means the City’s grant of \$3,500,000 disbursed to Garage Owner pursuant to the terms of the Redevelopment Agreement.
- 1.8 **“Parking Hours”** is defined in Section 2.3.3(b).
- 1.9 **“Peer Parking Area”** means the area bounded by Ocean Street, Forsyth Street, Julia Street and the St. Johns River.
- 1.10 **“Peer Parking Facilities”** means multi-level parking garages serving “Class A” offices in the Peer Parking Area.
- 1.11 **“Prime Rate”** means the prime rate of interest as determined by the Wall Street Journal, or in the event that such publication is not available, such other nationally recognized financial publication as the City may determine.
- 1.12 **“Project Documents”** means this Agreement, the Redevelopment Agreement and all documents executed in connection with such agreements.
- 1.13 **“Property”** is defined in the Recitals.
- 1.14 **“Public Parking”** means short term parking of three hours or less by any member of the general public on a first come, first served basis, during all Parking Hours.
- 1.15 **“Qualified Parking Operator”** is defined in Section 2.3.15(b) herein.
- 1.16 **“Redevelopment Agreement”** is defined in the Recitals.
- 1.17 **“Restrictions”** means the covenants and restrictions in this Agreement.
- 1.18 **“Special Event”** means any event utilizing the stadium bowl of the facility currently known as TIAA Bank Field.

1.19 “**Tenant**” means any tenant that has a long term lease of a material portion of the Parking Garage, excluding persons occupying spaces to park vehicles for terms of one month or less.

1.20 “**Term**” is defined in the Recitals.

## **Article II** **Covenants and Restrictions**

2.1 **Property Subject to Restrictions; Covenants Binding Future Owners and Tenants.** During the Term, the Property will be held, sold and conveyed subject to the covenants and restrictions in this Agreement (the “**Restrictions**”), and the Restrictions shall create privity of contract and estate among the City, Garage Owner, and any Tenant, and their respective successors, successors in title, and assigns. The Property is subject to all terms and conditions hereof, which are hereby deemed to be covenants running with the land, and which covenants will be binding on all parties having any right, title or interest in such lands or any part thereof, their heirs, successors and assigns. This Agreement is intended to impose the Restrictions on the Property. At such time as the Restrictions are no longer applicable to any portion of the Property under the terms of this Agreement, all parties hereto shall within thirty (30) days following a written demand therefor, execute a good and sufficient release of such Property from the Restrictions and this Agreement in such form and content as shall be reasonably requested by the then owner of the Property to be so released. The terms “Garage Owner” and “City” as used in this Agreement include their respective successors and assigns.

2.2 **Covenants and Restrictions on Parking; Clawbacks.** Garage Owner declares, covenants and agrees that, from and after the date of this Agreement and throughout the Term, the Parking Garage shall contain at least the Minimum Public Parking Spaces and neither such parking spaces nor the Parking Garage (or any part thereof) shall be used, altered, developed, or conveyed in any manner that results in a Change in Use or otherwise violates any provision of this Agreement. If for any reason there is any such Change in Use of the Minimum Public Parking Spaces that is not cured within the Cure Period (defined in Section 3.1 below) after written notice from the City, then upon written demand of the City, Garage Owner shall repay the Parking Garage Grant in full, together with interest at the Prime Rate plus two percent per annum for the entire time during which the Change in Use was in effect up to the date of such repayment.

2.3 **Additional Covenants and Restrictions.**

2.3.1 **Allocation of Parking Spaces by Utilization.**

(a) **Reservation and Location of Minimum Public Parking Spaces.** During the Term, at least the Minimum Public Parking Spaces shall be available during all Parking Hours in the Parking Garage.

(b) Remainder of Parking Spaces and Use of Garages. Except as expressly set forth in this Agreement and subject to applicable law, Garage Owner shall be entitled to exercise complete discretion, dominion and control over the use and control of the Parking Garage and the parking spaces therein and any other use of the Garage desired by the Garage Owner, such as but not limited to retail and commercial uses of portions thereof. Specifically, and without limiting in any way any rights, powers or discretion of Garage Owner, Garage Owner shall be entitled to provide parking spaces (other than the Minimum Public Parking Spaces) (i) to anyone that Garage Owner determines, including, but not limited to, the general public, owners and tenants of adjacent commercial or residential condominium units, and their respective employees, agents, licensees and invitees, and owners and tenants of condominium units in adjacent buildings and their respective employees, agents, licensees and invitees; (ii) under such terms and conditions as Garage Owner may respectively determine; and (iii) pursuant to such form and structure as Garage Owner determines including but not limited to hourly fee parking, special events parking, grants of use rights, licenses, easements, deeded rights or other form of right or interest (which right may constitute full-time or part-time exclusive or reserved use of parking spaces).

### 2.3.2 Reservation Payment

Contemporaneously herewith, the City is providing to Garage Owner the Parking Garage Grant to reimburse Garage Owner for a portion of the development costs of the Parking Garage, and the Parties agree that the Parking Garage Grant is in consideration for Garage Owner's obligations under this Agreement to reserve and provide the Minimum Public Parking Spaces during the Term under the terms and conditions of this Agreement.

2.3.3 Operations. The Parking Garage shall be operated in the following manner:

(a) Public Parking. During the Term, at least the Minimum Public Parking Spaces shall be available during all Parking Hours in the Parking Garage. Garage Owner agrees to set aside and make available the Minimum Public Parking Spaces to accommodate the short term public parking needs in the area including without limitation the parking needs of Garage Owner's adjacent hotel and other retail establishments, including without limitation restaurants, shops, and entertainment establishments in the surrounding area (collectively the "**Retail Establishments**"), and to operate the Parking Garage in a manner consistent with satisfying as efficiently as possible the short term public parking demands in the area including without limitation the parking demands generated by the Retail Establishments.

(b) Hours of Operation; Parking Rates. Garage Owner shall operate the Parking Garage in an efficient manner, on days and hours generally consistent with Peer Parking Facilities ("**Parking Hours**"), and also to accommodate the short term public parking demand in the area including without limitation the parking demands of the Retail Establishments. Such operation shall be continuous (subject to temporary closings of less than 30 days for repairs and except as otherwise provided for in this Agreement) unless the City shall otherwise agree in writing in its sole discretion. Charges for parking in the Parking Garage will

be commensurate with the demand for parking spaces and in accord with existing parking rates for Peer Parking Facilities. For purposes of clarity, the Minimum Public Parking Spaces shall be open to the public on a 24 hour, seven days a week basis, subject to temporary closings as described above.

(c) Special Events. Notwithstanding any other provisions herein to the contrary, commencing five hours before the start time of any Special Event, and concluding five hours after the conclusion thereof, Garage Owner may in its reasonable discretion create Special Event parking rates for the Minimum Public Parking Spaces.

(d) Maintenance. Garage Owner shall keep the Parking Garage at all times in a clean, presentable and sanitary condition and shall not permit anything thereon which would vitiate any insurance carried by Garage Owner on the Parking Garage. Garage Owner shall comply with all governmental laws, ordinances and regulations pertaining to the ownership and/or operation of the Parking Garage.

(e) Security. During all Parking Hours, Garage Owner shall operate the Parking Garage in a fashion that is reasonably secure, and the level of security generally consistent with the security standards applicable to Peer Parking Facilities or which is otherwise consistent with industry standards shall be deemed to meet this requirement.

(f) Indemnification by Garage Owner.

(i) Garage Owner shall indemnify and defend the City and hold it harmless from any liability, losses, damages or expenses, including reasonable costs of defense and attorney fees, that the City may incur from any claim or demand arising out of the operation of the Minimum Public Parking Spaces in the Parking Garage. Except as otherwise provided herein, the use of the Parking Garage shall be subject to any and all regulations for the use of such properties as may from time to time be prescribed by Garage Owner or its operator.

(ii) The City, as the party seeking to be indemnified (the “**Indemnified Party**”) by Garage Owner (the “**Indemnifying Party**”) under this Agreement, agrees to give the Indemnifying Party prompt written notice of any third party claim (a “**Claim**”); provided, however, that such notice shall not be a condition to the Indemnifying Party’s indemnity obligations hereunder unless the Indemnifying Party is materially and adversely affected by the Indemnified Party’s failure or delay in giving such notice. If the Indemnifying Party has reconfirmed, in writing and in a timely manner, its obligations to indemnify the Indemnified Party for a particular Claim, and the Indemnifying Party has provided the Indemnified Party with assurances satisfactory to the Indemnified Party, acting reasonably, that the Indemnifying Party has sufficient resources to satisfy its indemnity obligations hereunder, then the Indemnified Party will allow the Indemnifying Party to control the defense of such Claim as long as the Indemnifying Party acts promptly and reasonably. The Indemnified Party will reasonably cooperate with the Indemnifying Party in the defense of such claim. Any settlement by the Indemnifying Party must be approved by the Indemnified Party, with such approval not to be unreasonably withheld if the Indemnified Party receives a complete release of any such Claim. Notwithstanding anything herein stated, if in the Indemnified Party’s

reasonable judgment, the interests of the parties conflict, the Indemnified Party may select, at the Indemnifying Party's expense, its counsel as long as the Indemnified Party provides the Indemnifying Party notice of such selection within 60 days after receiving service of a summons and complaint. Further, notwithstanding anything herein stated, the Indemnified Party shall at all times have the right to fully participate in such defense at its own expense directly or through counsel; provided, however, if representation of both parties by the same counsel would be inappropriate under applicable standards of professional conduct and either party obtains a written legal opinion to such effect, then the reasonable expense of separate counsel for the Indemnified Party shall be paid by the Indemnifying Party.

(iii) As used in this Section 2.3.3(e), the term "City" includes the officers, employees, attorneys, agents, representatives, successors and assigns of the City, and the term "Garage Owner" includes the successors and assigns of Garage Owner.

(g) Pedestrian Access. The Parking Garage shall at all times provide for reasonable public pedestrian access to and from the Riverwalk and shall have good lighting subject to the standards of the Peer Parking Facilities.

2.3.4 Signage. During the Term, Garage Owner shall at its expense install and maintain lighted signs showing the availability of "Public Parking" (or similar signage language approved by the City) in the Parking Garage, which signage shall be located in a conspicuous location easily visible from Bay Street. Garage Owner shall pay all costs and expenses related to or associated with the purchase, installation, operation, maintenance, replacement and removal of such signs. Garage Owner's obligations relating to signage shall be subject to applicable laws and regulations. City agrees to use reasonable efforts, at no cost to the City, to assist Garage Owner in obtaining such permits, exceptions or waivers as necessary for the signage contemplated by this Section. Garage Owner agrees that the City may refer to the Parking Garage in its advertising and promotional materials.

#### 2.3.5 Quiet Possession and Non-Disturbance.

(a) By City. Garage Owner, and any successor thereto, has and shall continue to hold during the Term fee simple title to the Garage Property. Garage Owner covenants and agrees with the City that during the Term, the Minimum Public Parking Spaces shall be available for parking in accordance with the terms of this Agreement.

(b) By the General Public; Enforceable by City Only. Garage Owner shall observe and perform all terms of this Agreement relevant to the operation and maintenance of the Minimum Public Parking Spaces in the Parking Garage, for use by the general public during the Term. Garage Owner, and any secured or unsecured creditor of Garage Owner, shall not be permitted to disturb or terminate such use for any reason in violation of this Agreement, subject to reasonable rules of operation not inconsistent with the rules of operation for short term public parking spaces in Peer Parking Facilities. Notwithstanding anything to the contrary herein, the rights of the public under this Agreement shall be enforceable solely by the City, and

no member of the public shall have any private cause of action against any party hereto or their successors, assigns, tenants or agents arising under this Agreement.

2.3.6 No Alterations by City.

The City shall not have the right to make any alterations to the Parking Garage or to otherwise exercise rights of occupancy other than as set forth herein.

2.3.7 Rules and Regulations.

Garage Owner reserves the right to establish reasonable rules and regulations from time to time governing use and occupancy of the Parking Garage, provided that such rules and regulations do not conflict with the terms of this Agreement and are not inconsistent with the rules and regulations of the Peer Parking Facilities.

2.3.8 Representations and Warranties.

(a) Garage Owner hereby represents and warrants to the City that (i) Garage Owner has good, fee simple title to the Property, subject to (1) no liens that are superior to this Agreement or the Restrictions (2) no other encumbrances that are superior to this Agreement or the Restrictions except for those listed on attached **Exhibit B** (“**Permitted Encumbrances**”), and (3) no claims or other matters which would jeopardize the availability of the Minimum Public Parking Spaces for their use as required under the terms of this Agreement, and (ii) this Agreement has been duly authorized, executed and delivered by Garage Owner and represents the valid and binding obligations of Garage Owner, enforceable in accordance with its terms.

(b) The City hereby represents and warrants to Garage Owner that this Agreement has been duly authorized, executed and delivered by the City and represents the valid and binding obligations of the City enforceable in accordance with its terms.

2.3.9 Books and Records.

Garage Owner shall maintain suitable books of account relating to the utilization and availability of the Minimum Public Parking Spaces as required hereby, and such books and records shall be available for inspection and audit by the City, including but not limited to its City Council auditors, at any reasonable time on reasonable advance written notice. Within 90 days after the end of each calendar year during the Term, Garage Owner shall provide to the City a report, in a form approved by the City, including documentation evidencing the utilization and availability of the Minimum Public Parking Spaces during such year (the “**Annual Report**”).

2.3.10 Operation Maintenance and Repair.

(a) General Operations Standards.



(ii) By Garage Owner. Garage Owner shall continuously operate and manage the Parking Garage to be generally comparable to Peer Parking Facilities or otherwise consistent with industry standards for operation of Class A Office Parking Spaces in the City, or shall cause the operation and management of the Parking Garage by a Qualified Parking Operator. The Parking Garage shall not be operated for any purpose that is inconsistent with this Agreement. Garage Owner shall cause the Minimum Public Parking Spaces within the Parking Garage to be operated and maintained in a manner that will encourage the use thereof by the general public.

(b) Maintenance and Repair. Garage Owner agrees to use reasonable diligence in the care, protection and maintenance of the Parking Garage during the Term, and shall also be responsible for all repairs and replacements, including, but not limited to: landscaping under applicable City codes and regulations, resurfacing, striping, electrical, pavement repair, replacement of all mercury or sodium lighting tubes and ballasts, repairs to the walls and floors of the Parking Garage, painting of walls, maintenance of plumbing, ventilation system and elevators. Garage Owner may make any alteration to the Parking Garage without the consent of the City; provided, however, alterations which would constitute a Change in Use of the Minimum Public Parking Spaces (including, without limitation, the location, dimensions, or accessibility of parking spaces), may not be made without the prior written consent of the City in the City's sole discretion. Garage Owner shall make all alterations and repairs and shall perform maintenance of the Parking Garage so as to minimize interference with the use of the Minimum Public Parking Spaces as contemplated by this Agreement.

#### 2.3.11 Use of Parking Garage; Compliance with Laws and Regulations.

The Parking Garage shall not be used by Garage Owner for any illegal purpose or in any manner to create any nuisance or trespass. Garage Owner shall comply with all City ordinances and regulations, and other laws and regulations pertaining to the Parking Garage.

2.3.12 Insurance. Please see Exhibit C attached hereto and incorporated herein by this reference.

#### 2.3.13 Waiver of Subrogation Rights.

The City hereby waives on behalf of itself and its insurers, if any (none of which shall ever be assigned any such claim or be entitled thereto due to subrogation or otherwise), any and all rights of recovery, claim, action, or cause of action, against Garage Owner, its respective agents, officers, or employees, for any loss or damage that may occur to the Parking Garage, or any improvements thereto, or any personal property of City therein, if any, by reason of fire, the elements, or any other causes which are insured against by the Garage Owner under the terms of the standard fire and extended coverage insurance policies referred to herein, regardless of the cause or origin of the damage involved, including the negligence of Garage Owner, as applicable, and its agents, officers, or employees. However, the foregoing shall not negate or diminish the rights of the City, or the obligations of Garage Owner, pursuant to Section 2.3.18 of this Agreement.

2.3.14 Assignment and Subletting and Sale. Garage Owner shall not sell or convey its interest in the Parking Garage, or assign its rights and obligations hereunder to operate the Parking Garage in the manner described in this Agreement, as applicable, unless the proposed purchaser/assignee: (i) is a Qualified Parking Operator (as defined below); (ii) covenants and agrees with the City to retain during the Term a Qualified Parking Operator approved by the City to have full control over the operation, management and maintenance of the Parking Garage; or (iii) is a permitted assignee under Section 16.2 of the Redevelopment Agreement. A “**Qualified Parking Operator**” means a person or entity, which in the reasonable opinion of the City, possesses the experience, qualifications, good reputation, financial resources and adequate personnel necessary or appropriate for the proper operation of the Parking Garage in a manner consistent with the quality, character, reputation and economic viability of the Parking Garage and the requirements of this Agreement. The Parties agree that the following are examples of persons which would constitute Qualified Parking Operators: (1) Central Parking Systems, Inc., (2) any nationally or state recognized parking facility operator, and (3) any parking facility operator that owns, manages or operates multi-level parking facilities in downtown Jacksonville, Florida containing at least 250 parking spaces. Any assignment other than to the foregoing shall require the prior approval of the City, such consent not to be reasonably withheld or delayed. Upon any permitted assignment to purchase and/or operate the Parking Garage, the assignee shall expressly assume in writing, all of the obligations of Garage Owner under this Agreement with respect to the operation of the Minimum Public Parking Spaces from and after the date of assignment, in a form of assignment and assumption agreement reasonably approved by the City. Any such assignment or sale shall not relieve Garage Owner of its obligations under this Agreement to repay the Parking Garage Grant in the event such grant is required to be repaid under the provisions of this Agreement and shall not otherwise relieve the Garage Owner of any liabilities or obligations arising prior to the date of such assignment. If any such assignment occurs, the assignee and Garage Owner shall be jointly and severally liable for the repayment of the Parking Garage Grant in the event it is required to be repaid to the City under the terms of this Agreement. In addition, without assigning its rights or obligations under this Agreement, Garage Owner may employ, and may delegate some or all their respective duties hereunder, to a parking management firm to manage the Parking Garage, provided that such firm constitutes a Qualified Parking Operator and provided that Garage Owner shall remain liable for all of its obligations hereunder notwithstanding such employment or delegation. Garage Owner may collaterally assign its rights and obligations pursuant to this Agreement to any lender providing financing for the Property and any foreclosure or similar action and subsequent assignment by such lender or its assignees shall constitute a permitted assignment pursuant to this Agreement and the City agrees to execute such confirming documentation with respect to the same as may be requested by such Lender, subject to the City’s review and approval of such proposed confirming documentation, such consent not to be unreasonably withheld or delayed.

2.3.15 Property Rights.

Notwithstanding anything expressly or implicitly in this Agreement to the contrary, the Parties acknowledge and agree that Garage Owner has the sole ownership and other property rights and interests in the Parking Garage, and the parking spaces therein, and that the City, and its successors and permitted assigns, do not and will not, by virtue of this Agreement or otherwise, have any ownership or other property rights or other interests (including those of a lessee or licensee) in and to such Parking Garage, or any of the parking spaces therein, including the Minimum Public Parking Spaces; provided, however, that this provision shall not in any respect limit (i) the rights of the general public to use the Minimum Public Parking Spaces during the Term under the provisions of this Agreement as provided in this Agreement, or (ii) the enforcement rights and remedies of the City under this Agreement.

#### 2.3.16 Condemnation.

(a) Total Taking. In the event of any total taking of the Parking Garage by eminent domain, or conveyance in lieu thereof, upon written notice by one party to the other, this Agreement shall terminate on the date of taking. Garage Owner shall be entitled to seek compensation in accordance with its interest in the Parking Garage, and any award to Garage Owner shall in no way be reduced by any award to the City; provided, however, that the City shall not be entitled to compensation in excess of the present value at the time of the taking of City's interest in the Minimum Public Parking Spaces for the remainder of the Term (or for the period of the taking if shorter) as determined in accordance with Section 2.3.16(b).

(b) Valuation of City's Interest. The present value of City's interest shall be determined by an MAI appraiser approved by the City from the City's approved list of appraisers. The term "City's interest" means the City's investment of \$3,500,000 via the Parking Garage Grant for the use of the Minimum Public Parking Spaces for Public Parking during the Term under the provisions of this Agreement.

(c) Partial Taking. In the event the number of affected Minimum Public Parking Spaces is reduced below the Minimum Public Parking Spaces, the City may seek compensation not exceeding the present value of the City's interest in such lost parking spaces, as determined as set forth in Section 2.3.16(b).

#### 2.3.17 Destruction of, or Damage to, Parking Garage.

(a) If the Parking Garage is destroyed prior to the last two (2) years of the Term (which shall include damage beyond 25% of its value) by fire, storm, lightning, earthquake, or other casualty, and, as a result thereof any of the Minimum Public Parking Spaces are reduced or unavailable for use for Public Parking, then Garage Owner shall give written notice of the damage to the City. Upon receipt of such notice, the City shall have sixty (60) days to determine whether the City shall require the Garage Owner to reconstruct the damaged Parking Garage. If the City timely notifies Garage Owner of City's election to have the Parking Garage repaired or rebuilt or if the Garage Owner elects to reconstruct the Parking Garage by written notice to the City during such sixty (60) day period, (i) Garage Owner shall commence repair and/or reconstruction within sixty (60) days of receipt of such notice and upon receipt of

all required permits, lender approvals and or insurance approvals, must diligently pursue and complete the repair and/or reconstruction of the Parking Garage within two (2) years, and the City shall have no claim against the Garage Owner for any loss of use of the Minimum Public Parking Spaces, or (ii) if the Garage Owner fails to effect such repair or rebuild within such time, then the City shall have a claim against Garage Owner for the loss of use of the Minimum Public Parking Spaces. In addition, if the City elects to have the Parking Garage repaired and/or reconstructed, then the Term shall be extended for a period of time equal to the period of time the Minimum Public Parking Spaces are unavailable for use, unless Garage Owner elects, in lieu of such extension, to pay to the City an amount equal to the present value of the City's interest in the Minimum Public Parking Spaces attributable to the period of time the Minimum Public Parking Spaces are unavailable for use. If the City fails to notify Garage Owner within the foregoing 60-day period, this Agreement shall terminate, in which case, unless the Garage Owner has notified the City in writing of the Garage Owner's intent to rebuild the Parking Garage during such sixty (60) day period or subsequent thirty (30) day period below, this Agreement may be terminated by City or Garage Owner upon thirty (30) days written notice to the other party, and the City shall be entitled to share in insurance proceeds in an amount equal to the present value, at the time of the casualty, of City's interest in the Minimum Public Parking Spaces for the remainder of the Term. In the event of such destruction of the Minimum Public Parking Spaces, the City shall have first priority to use the first parking spaces available in the Parking Garage so as to meet the Minimum Public Parking Spaces requirement of this Agreement. Any present value determination shall be made in accordance with Section 2.3.16(b).

(b) If the Parking Garage is damaged, but not wholly destroyed by any such casualty or made inaccessible or unusable, the Garage Owner shall restore the Parking Garage to substantially as good and serviceable condition as before the damage as speedily as practicable to the extent necessary to meet the Minimum Public Parking Spaces requirement, and in that event the City shall have no claim against Garage Owner for any loss of use of the Minimum Public Parking Spaces, except that the Term shall be extended by the amount of time that any of the Minimum Public Parking Spaces are unavailable for use for their intended purpose described herein.

(c) If damage or destruction described in Section 2.3.17(a) or (b) occurs during the last two (2) years of the Term, the Garage Owner shall have the right, in its sole discretion, to elect whether or not to restore or rebuild the Parking Garage. If the Garage Owner elects not to restore or rebuild, then the City shall be entitled to receive a portion of the insurance proceeds equal to the then present value of the City's interest in the number of Minimum Public Parking Spaces as falls below the Minimum Public Parking Spaces requirement and prorated for the remainder of the Term, as determined in accordance with Section 2.3.16(b).

### **Article III**

#### **Default; Remedies; Enforcement**

3.1 **Default; Remedies; Enforcement.** If Garage Owner or any Tenant violates any of the Restrictions provided herein and has not cured the same within the “Cure Period” (defined below), then such violation shall constitute a default under this Agreement, and the City may maintain a proceeding against Garage Owner and/or Tenant for the purpose of preventing or enjoining all or any such violation, including mandatory injunctions requiring Garage Owner or Tenant to restore or return the Property use to a conforming state not in violation of this Agreement, without waiving any rights to damages available to the City at law or in equity (excluding punitive damages or consequential damages). Garage Owner shall be responsible for all acts or omissions of any Tenant that violates any provision of this Agreement, and City shall not be obligated to join Tenant in any action against Garage Owner for any violation of this Agreement. The remedies in this Article III will be construed as cumulative to all other remedies now or hereafter provided at law or in equity. The “**Cure Period**” shall mean within thirty (30) days following written notice by the City of such violation, provided, however, that if such default is not monetary and is not reasonably capable of being cured within such time period, the time for cure shall be extended for an additional ninety (90) days so long as the defaulting party shall continuously and diligently pursue such cure during such time period.

3.2 **Specific Defaults and Remedies.**

3.2.1 **By City.** Notwithstanding any City defaults under this Agreement, in no event shall Garage Owner be entitled to terminate this Agreement or to discontinue the restriction of the Minimum Public Parking Spaces as described herein, it being understood that the City’s disbursement of the Parking Garage Grant to Garage Owner shall constitute full and complete consideration for such restriction of the Minimum Public Parking Spaces during the entire Term.

3.2.2 **By Garage Owner.** If Garage Owner shall at any time violate any of the Restrictions or otherwise fail to perform any of the covenants, conditions, or provisions of this Agreement (including without limitation by any act or omission resulting in a Change in Use) and such default is not cured within the Cure Period, the City may pursue all available remedies, including, without limitation, actions for damages or specific performance, as may be permitted by law. The City’s remedies for any Change in Use shall include without limitation Garage Owner’s reimbursement of the Parking Garage Grant with interest at the Prime Rate plus two percent per annum from the date of default until paid. In addition to any other available remedy, City shall be entitled to cure or prosecute the curing of defaults by Garage Owner and to receive immediate reimbursement from Garage Owner, of all reasonable expenses incurred by City in connection with such cure, together with interest per annum at the Prime Rate plus two percent from the date the expense was incurred until the date paid. The Garage Owner hereby grants to City any such easement, license or other rights as may be necessary to affect such cure.

3.2.3 **Cumulative Remedies.** All remedies shall be non-exclusive and cumulative; provided however that with respect to any obligation of Garage Owner to repay all or any portion of the Parking Garage Grant under this Article III, Garage Owner shall not be required to repay more than \$3.5 million, plus interest from the date of any default as described in Section 3.2.2. Any sale of the Property shall not relieve Garage Owner of its obligations

under this Agreement including without limitation its obligation to repay the balance of the City Grant upon a Change in Use that may occur after any sale.

#### **Article IV** **General Provisions**

4.1 **No Waiver.** No delay or omission in the exercise of any right accruing to the City or Garage Owner under this Agreement will impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time. A waiver by the City or Garage Owner of a nonconforming condition or noncompliance with the covenants, restrictions and conditions set forth in this Agreement will not be construed to be a waiver of any subsequent nonconforming covenant, restriction, condition or noncompliance.

4.2 **Duration of Restrictions; Restrictions Run with Title.** The covenants and restrictions herein will run with the land and title to the Property, and will terminate at the end of the Term; provided, however that all such covenants and restrictions shall terminate upon any repayment to the City of the Parking Garage Grant (together with the default interest described in Article III if such repayment is pursuant to a default). Upon termination of the covenants and restrictions, the City agrees within thirty (30) days following written request therefor to execute such documents as may be reasonably requested by Garage Owner to terminate all such covenants and restrictions of record.

4.3 **Amendment of Agreement.** Except as expressly provided herein, this Agreement may not be terminated, waived, modified or amended, except by written instrument duly executed and recorded by each Party, its successors and assigns.

4.4 **Successors and Assigns.** The covenants and restrictions and other provision set forth in this Agreement will continue and be binding upon and shall inure to the benefit of the Property, the Garage Owner and all Tenants, and will run to the benefit of the City. The terms “Garage Owner” and “City” as used in this Agreement include their respective successors and assigns.

4.5 **Constructive Notice and Acceptance.** Every person or legal entity who or which will hereafter own or acquire any right, title, interest or estate in or to any portion of the Minimum Public Parking Spaces, whether or not such interest is reflected upon the public records of Duval County, Florida, will be conclusively deemed to have consented and agreed to each and every covenant, condition and restriction, contained or by reference incorporated herein with respect to the Minimum Public Parking Spaces, whether or not any reference to this Agreement is contained in the document or instrument pursuant to which such person or legal entity will have acquired such right, title, interest or estate.

4.6 **Effect of Invalidation.** If any particular provision of this Agreement is held to be invalid by any court, the validity of such provision will not affect the validity of the remaining provisions hereof.

4.7 **Estoppel Certificate.** City and Garage Owner agree that upon written request (which will not be more frequent than one (1) time during any period of twelve consecutive calendar months) of any of them, they will issue to such requesting party, or its prospective mortgagee or successor, an estoppel certificate stating to the issuer's knowledge (with "knowledge" being limited to the executive officers, general partners, or members, of such issuer executing the estoppel, without independent verification or investigation) as of such date whether the issuer knows of any default or violations under this Agreement, and if there are known violations, specifying the nature thereof. Any such statement will in no event subject the issuer to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such issuer to disclose correct and/or relevant information.

4.8 **Governing Law; Venue.** This Agreement shall be governed by Florida law without regard to any conflicts laws thereof, and any legal action related to this Agreement shall be instituted and maintained only in the state or federal courts located in Duval County, Florida.

4.9 **Taxes and Assessments.** Garage Owner shall timely pay all property taxes and assessments on the Property.

4.10 **Brokers.** Each Party represents and warrants one to the other that neither of them has employed any broker in connection with the negotiations of the terms of this Agreement or the execution thereof. Each Party hereby agrees to indemnify and hold each other harmless against any loss, expense, or liability with respect to any claims for commissions or brokerage fees arising from or out of any breach of the foregoing representation and warranty.

4.11 **Notices.** All notices to be given hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or delivered by an recognized courier service utilizing return receipts only to the Parties at the following addresses (or to such other or further addresses as the Parties may designate by like notice similarly sent), and such notices shall be deemed given and received for all purposes hereunder and shall be effective only upon receipt or when delivery is attempted and refused.

(a) the City:

Mayor  
City of Jacksonville  
117 West Duval Street, Suite 400  
Jacksonville, Florida 32202

With a copy to:

Office of General Counsel  
City of Jacksonville  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202

(b) Garage Owner:

500 East Bay LLC  
195 Beach Boulevard  
Biloxi, Mississippi 39530

With a copy to:

Akerman LLP  
Attn: Robert A. Leapley, Jr., Esq.  
50 North Laura Street, Suite 3100  
Jacksonville, Florida 32202

4.12 **Non-Liability of City Officials.**

No member, official or employee of the City shall be personally liable to any party hereto, or to any person or entity with whom Garage Owner or Tenant shall have entered into any contract, or to any other person or entity, in the event of any default or breach by the City of this Agreement.

4.13 **Time.**

Time is of the essence in the performance by any party of its obligations hereunder.

4.14 **Entire Agreement.**

This Agreement, the Redevelopment Agreement and all documents executed in connection therewith, constitute the entire understanding and agreement between the Parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

4.15 **Compliance with State and Other Laws.**

In the performance of this Agreement, Garage Owner shall comply with any and all applicable Federal, State and local laws, rules and regulations, as the same exist and may be amended from time to time. Such laws, rules and regulations include, but are not limited to, Chapter 119, Florida Statutes (the Public Records Act), and Section 286.011, Florida Statutes (the Florida Sunshine Law). If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

4.16 **Counterparts.**



This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

4.17 **Independent Contractor.**

In the performance of this Agreement, Garage Owner and each Tenant will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or association of the City. Garage Owner and each Tenant, and their respective employees and agents shall be solely responsible for the means, method, technique, sequences and procedures utilized by Garage Owner and each Tenant in the performance of this Agreement.

4.18 **Civil Rights.**

Garage Owner and Tenant agree to comply with all of the terms and requirements of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1968, as amended, and the antidiscrimination provisions of Chapter 126, Part 4, of the City Ordinance Code, and further agree that in their operation under this Agreement they will not discriminate against anyone on the basis of race, color, age, disability, sex or national origin.

4.19 **Construction.**

All Parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Garage Owner further acknowledges that it has had ample time to review this Agreement and related documents with its counsel of choice. Any doubtful or ambiguous provisions contained herein shall not be construed against the party who drafted this Agreement. Captions and headings in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

4.20 **Maximum City Indebtedness.**

The combined maximum City indebtedness under this Agreement, the Redevelopment Agreement and all other Project Documents with respect to the Parking Grant is \$3,500,000.00 (as such amount may be reduced pursuant to the Redevelopment Agreement), consisting only of the Parking Garage Grant. The City shall not incur any costs or indebtedness in connection with this Agreement or the Redevelopment Agreement or other Project Documents, other than the foregoing maximum indebtedness amount.

4.21 **Further Assurances.**

Garage Owner and City, will, on request of the other party,

4.21.1 promptly correct any defect, error or omission herein or in any of the Project Documents;

- 4.21.2 execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts deemed necessary, desirable or proper by the City or Garage Owner to carry out the purposes of the Project Documents and to identify and subject to the Restrictions any property intended to be covered thereby, including any renewals, additions, substitutions replacements, or appurtenances to the Property;
- 4.21.3 provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by the City or Garage Owner to carry out the purposes of the Project Documents;
- 4.21.4 Provide executed joinder and consents of its mortgagees' in recordable form in connection with any mortgages on the Garage Parcel for the purposes of subordinating the lien of any mortgages to this Agreement and City to execute a non-disturbance agreement and consent to assignments for such mortgages in accordance with the terms of this Agreement.

4.22 **Exhibits**. The following exhibits are attached hereto and incorporated herein by reference:

- Exhibit A: Legal Description of the Property
- Exhibit B: Permitted Encumbrances
- Exhibit C: Insurance Requirements

**IN WITNESS WHEREOF**, the Parties have executed and delivered this Agreement as of the date first above written.

[signatures begin on next page]

**GARAGE OWNER:**

Witnesses:

**500 EAST BAY LLC**, a Florida limited liability company

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

Print Name: \_\_\_\_\_

[CORPORATE SEAL]

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_, by \_\_\_\_\_, the \_\_\_\_\_ of **500 EAST BAY LLC**, a Florida limited liability company, on behalf of the company. He either [ ] is personally known to me or [ ] has produced \_\_\_\_\_ as identification.

\_\_\_\_\_

NOTARY PUBLIC, State of Florida

Printed Name: \_\_\_\_\_

Commission No.: \_\_\_\_\_

My commission expires: \_\_\_\_\_

[NOTARIAL SEAL]

**CITY:**

WITNESSES:

**CITY OF JACKSONVILLE**, a Florida municipal corporation

By: \_\_\_\_\_  
Lenny Curry, Mayor

\_\_\_\_\_  
Name: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
James R. McCain, Jr., Corporation Secretary

STATE OF FLORIDA        )

COUNTY OF DUVAL        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_, by Lenny Curry and James R. McCain, Jr., the Mayor and Corporation Secretary, respectively, of the **CITY OF JACKSONVILLE**, a Florida municipal corporation, on behalf of the City, each of whom either [ ] is personally known to me or [ ] has produced \_\_\_\_\_ as identification.

\_\_\_\_\_

NOTARY PUBLIC, State of Florida

Printed Name: \_\_\_\_\_

Commission No.: \_\_\_\_\_

My commission expires: \_\_\_\_\_

[NOTARIAL SEAL]

IN COMPLIANCE WITH the Charter of the City of Jacksonville, I do certify that there is or will be an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement in accordance with the terms and conditions thereof and that provision has been made for the payment of the monies provided therein to be paid.

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Director of Finance

Form Approved:

---

Office of General Counsel

GC-#1218495-v7-Berkman\_II\_RDA\_-\_Parking\_Restrictive\_Covenant\_.doc

**EXHIBIT A**

**Legal Description**

(To be inserted after confirmation by survey)

**EXHIBIT B**

Permitted Encumbrances

(To be inserted after confirmation by title commitment.)

**EXHIBIT C**

**INSURANCE REQUIREMENTS**

Without limiting its liability under this Agreement, Garage Owner shall at all times during the term of this Agreement procure prior to commencement of work and maintain at its sole expense during the life of this Agreement (and Garage Owner shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

**Insurance Coverages**

| Schedule                                              | Limits                                                                                                                        |
|-------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| <b>Worker's Compensation<br/>Employer's Liability</b> | Florida Statutory Coverage<br>\$ 100,000 Each Accident<br>\$ 500,000 Disease Policy Limit<br>\$ 100,000 Each Employee/Disease |

This insurance shall cover the Garage Owner (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

|                                     |             |                             |
|-------------------------------------|-------------|-----------------------------|
| <b>Commercial General Liability</b> | \$2,000,000 | General Aggregate           |
|                                     | \$2,000,000 | Products & Comp. Ops.       |
|                                     | Agg.        |                             |
|                                     | \$1,000,000 | Personal/Advertising Injury |
|                                     | \$1,000,000 | Each Occurrence             |
|                                     | \$ 50,000   | Fire Damage                 |
|                                     | \$ 5,000    | Medical Expenses            |

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

|                             |             |                       |
|-----------------------------|-------------|-----------------------|
| <b>Automobile Liability</b> | \$1,000,000 | Combined Single Limit |
|-----------------------------|-------------|-----------------------|





provide insurance as required under this Agreement.

- G. Certificates of Insurance. Garage Owner shall provide the City Certificates of Insurance that shows the corresponding City Contract Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- I. Notice. The Garage Owner shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, the Garage Owner, as applicable, shall provide said a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of the Garage Owner under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.
- L. Special Provisions: Prior to executing this Agreement, Garage Owner shall present this Agreement to its Insurance Agent affirming: (1) that the Agent has personally reviewed the insurance requirements of the Contract Documents, and (2) that the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Garage Owner.

**EXHIBIT H**

Riverwalk Design Criteria

# **RIVERFRONT PARK DESIGN CRITERIA**

## **CITY OF JACKSONVILLE**

**DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION**

**CITY PO 024150**

**JULY 2000 DRAFT**

## SECTION TWO: DESIGN CONCEPT

### GENERAL

Riverfront Park Design Criteria (RPDC) has been developed to provide standards for fixtures, landscape materials, and building materials to be utilized throughout Riverfront Park. The RPDC standards set forth herein are not to be construed as limiting creativity and good design, but are provided to guide the designer and establish unifying elements to produce a coordinated work effort. The RPDC applies to all materials and structures constructed within Riverfront Park. Generally, the extensions of Riverfront Park will continue to utilize the street furniture selected for the existing park, and will allow for upgrades in the paving materials.

### STYLE

There is no designated style for the property improvements however the designer is to take into consideration the existing architectural design, landscape materials, quality and colors existing within Riverfront Park and adjacent properties. The design shall be compatible by integration and repetition of certain design elements and landscape features.

### LAND ALLOCATION AND MASSING

#### *Mass/Density/Pattern*

Larger Building Mass requires a larger plaza along Riverfront Park, with long vistas and opportunity for monumental sculptures and fountains. Example: Friendship Park, and office campus such as Baptist Medical Center, Alltel/Fidelity, etc.

Likewise, small clustering of low-rise buildings requires less set-back which suggests higher pedestrian density, similar to a bustling city street, but focused on the waterfront. Less set-back and increased pedestrian density requires increased detailing of paving and seating areas and special attention to plant materials. Example: along the waterfront of the Northbank at the Jacksonville Landing and Southbank at Radisson Riverwalk Hotel. Examples of good land use of Riverfront Park frontage include small professional offices, clusters of residential units, and support facilities (restaurants/café's/pubs, retail, etc.). Descriptions via typical sections and plans follow.

#### *Land Use*

Designer is to take into consideration placement of pedestrian traffic generators towards public way, so as to be a contributor towards the public realm, as opposed to drawing the pedestrian away from the public way, such as would be the case with overhead connectors of buildings, internal shopping and café's inaccessible from esplanade, etc.

***Land Use Themes***

Once the Land Use has been approved by the City, a design can be developed within a specific theme. They are divided into two categories: minimum easement and set-back; and plaza with full fifty foot easement and greater. Within each category are two themes, informal and traditional (formal). When development of a parcel precedes development of the adjacent parcels, the Property Owner first developing their site shall have the option of establishment of theme; the theme must be maintained for a minimum of 600'.

*Full development of Theme and Categories under review*

## PREFACE

*This document has been created for use by: the Property Owner and/or the Developer, and the Design Professional to assist with understanding the design potential, and to provide specific design guidelines. It is generally organized in the order of a project development sequence, starting with governing authority, through land use, density, and massing, followed by specific design elements, and ending with plan review and inspections.*

## SECTION ONE: ADMINISTRATION

### PURPOSE AND INTENT

Riverfront Park Design Criteria (RPDC) has been developed to provide standards for design within Riverfront Park easement. The master plan for Riverfront Park provides for a safe, well-lit and richly landscaped linear park intersecting with scenic pedestrian-scale streets that link the downtown districts and parks. Anticipating residential and/or commercial developments coming on line prior to the City's riverwalk work, RPDC has been developed that guides the Riverfront Park portion of those projects. As the Property Owner sculpts the path at the edge of the St. Johns as part of their design or renovation, continuity is gained through the esplanade along the river front where design criteria is provided for certain requirements such as width, materials and lighting, but it is left to the creativity of the Property Owner to develop further and enhance their project; each "piece" of the esplanade reflects the character of that development.

The Property Owner and /or Designer of all work within the Riverfront Park easement is to incorporate the RPDC in the creation of their project; the design is to be compatible with existing sections of Riverfront Park and adjacent properties. Design compatibility is gained by repetition in detailing and design elements, whether through the use of building and finish materials, and landscape features. The standards set forth herein are to be considered minimum requirements and should not be construed as prohibiting creative design. The RPDC describes the minimum requirements and is intended to maintain the character of the plazas and promenades from the City Hall at St. James, along Hogan Street, past the City's Pocket Parks, to Riverfront Park, and promote one of the City's most valuable natural resource, the St. Johns River.

### REVIEW AND COMPLIANCE

Confirmation that the project is in compliance with the RPDC regarding design or material choice and construction finish and final appearance is the responsibility of the City; review procedure shall be as determined by the CITY and may include the JEDC Design Review Commission, the Planning Department, the Sheriff's Department for CPTED review, as well as the Permits and Inspections section. The CITY will review and approve submitted items promptly provided that the items meet the requirement and standard of the RPDC.

The CITY encourages creativity of design and material use; submittal documents are required to demonstrate compliance and may include photos, plans and/or specifications sufficient to illustrate the items design, color, quality and style of construction. Review is for compliance with Design Elements / Specifications of the RPDC and general Design Concepts such as:

- maximum/minimum height adjacent to property;
- adjacent land-use issues and associated concerns such as service yards, parking lots, and allowable access controls (retaining wall, fence, hedge, etc.);
- pedestrian circulation as it relates to riverwalk, both internal to the development and at adjacent City facilities, parks, and r.o.w.;
- variances, if any, for encroachment of buildings onto easement;
- priority of adjacent property owners layout based on time sequence of development.

## **QUALITY ASSURANCE**

The Design Professional is to satisfy himself that the product is adequate for its intended use and that the installer of the product (firm and person) can demonstrate their capabilities and experience.

## **CODES AND STANDARDS**

Any work or material specified by reference to the number, symbol, or title of a specified standard, such as a Commercial Standard, a Federal Specification, a Trade Association Standard, or other similar standards, shall comply with the requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of this Specification, except as modified in the Specifications. In the event of conflict, between this Specification and any reference standard, this Specification shall govern. The design and construction shall be in compliance with the applicable sections of the Florida Building Code, edition adopted by the State of Florida and the City of Jacksonville, including referenced editions of the National Electric Code and the Life Safety Code (NFPA-101).

## **MAINTENANCE**

Unless otherwise agreed to within Development Agreement, maintenance is the responsibility of the Property Owner; landscape material, handrail system, structures and site furniture, and paving is to be maintained in good condition, where the product or material may be used safely, remains attractive and is neat in appearance. Structures shall be constructed in low maintenance materials.

## **UTILITIES**

All trash dumpsters, mechanical piping and equipment, and other utilities and building services within the easement, and on adjacent property visible to the easement, shall be screened from view to minimize visual impact. Screening method include landscaped berm, landscaped fencing, dense planting, or other acceptable methods. Utilities shall be designed and installed in accordance with City standards for street R.O.W.



CITY OF JACKSONVILLE - RIVERFRONT PARK DESIGN CRITERIA

EXISTING BRIDGE DECK

EXIST. STREET ALIGNMENT REVISED & ESPALMADE SCULPTURED WITH NEW LANDSCAPED, PLANTER ISLANDS & BEDS. NEW ROAD SURFACE, HARDSCAPE & LANDSCAPE OVER EXISTING BRIDGE DECK.

CITY STANDARD CAST IRON TRASH RECEPTACLE (1 EVERY 200' MIN.)

CITY STANDARD 8' LONG CAST IRON WOOD SLAT BENCH OR EQUIVALENT (1 EVERY 40' MIN.)

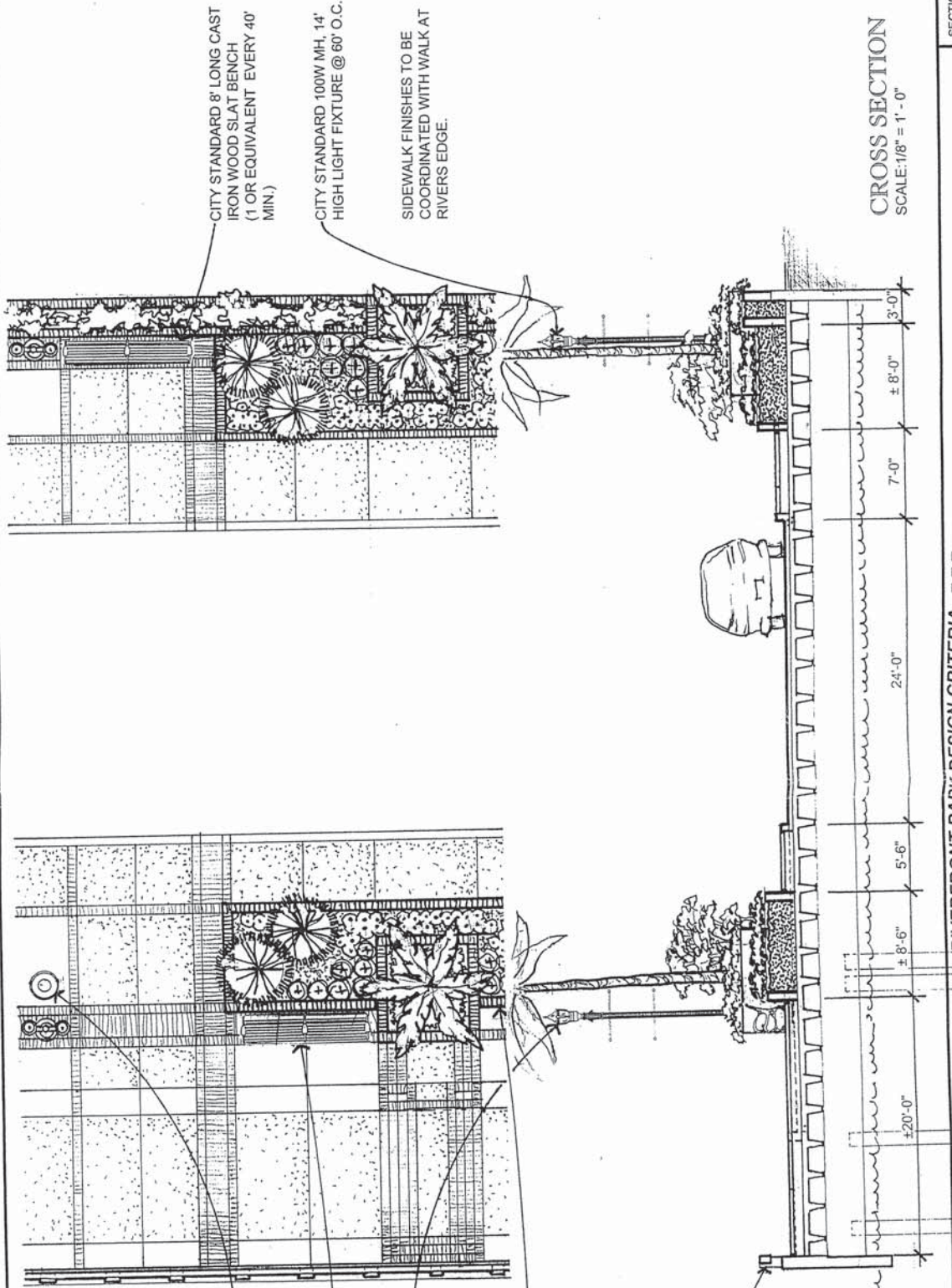
CITY STANDARD 100W MH, 14' HIGH LIGHT FIXTURE @ 60' O.C.

PLANTER BEDS ON BRIDGE DECK; PLANT MATERIAL IN PREPARED TOPSOIL ON GRAVEL WRAPPED IN FILTER FABRIC

EDGE OF BULKHEAD. CLEAN & PATCH EXIST. CONC. GUARDRAIL; REPLACE SECTIONS AS REQUIRED.

ALTERNATE: INSTALL DECORATIVE HANDRAIL 5" INBOARD OF EXIST.

TYPICAL SECTION INCLUDES PLANTER SYSTEM WITH MASONRY PAVEN ON SAND BED AT UTILITY CORRIDOR & INLAY OF SAME AND/OR COLOR STAINED 4" CONC.



RIVERFRONT PARK DESIGN CRITERIA CITY OF JACKSONVILLE

SECTION 1 of 6

SEPTEMBER 29, 1999



PO 024150

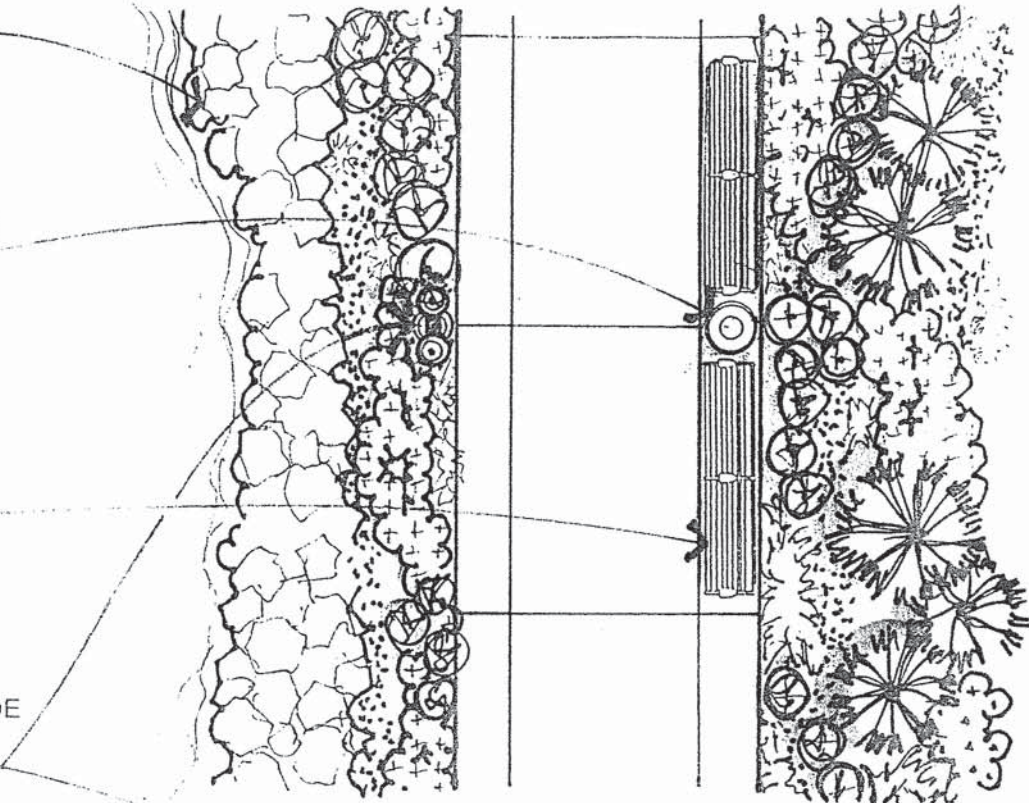
**UPLAND CONDITION**

EXITING RIP-RAP

CITY STANDARD  
CAST IRON TRASH  
RECEPTACLE

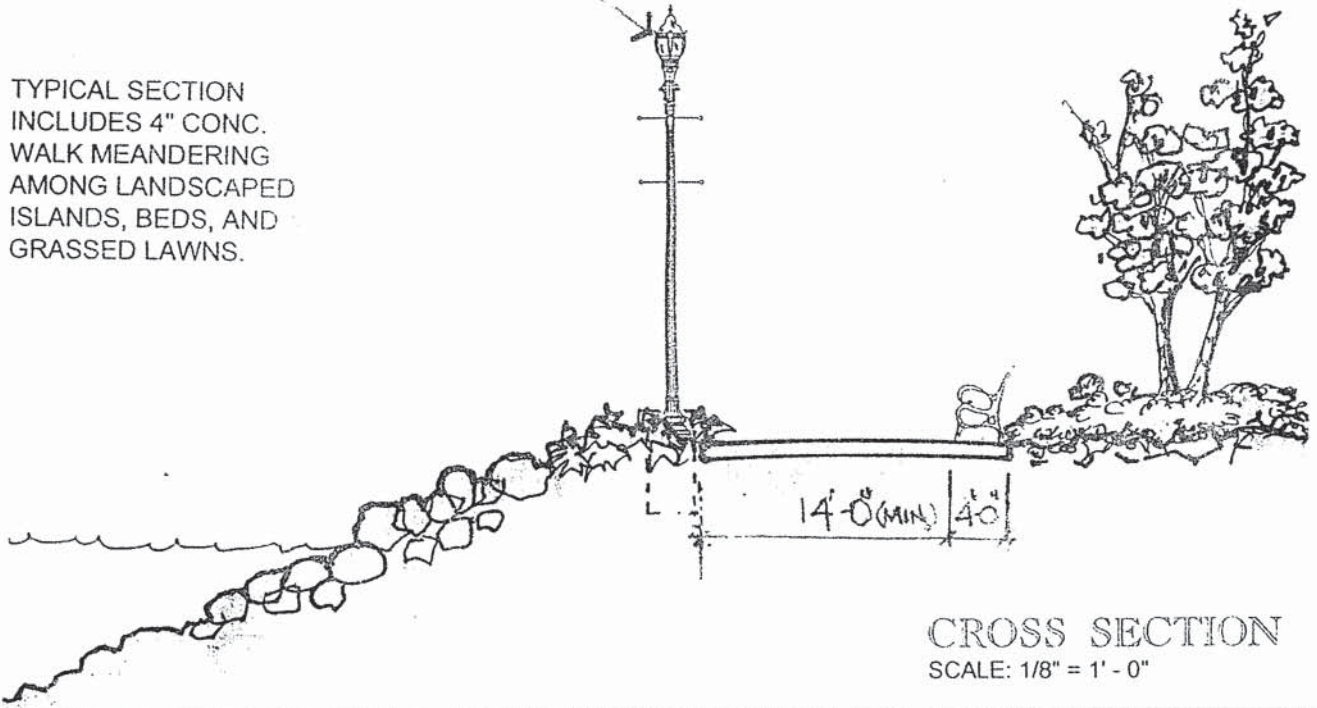
CITY STANDARD  
8' LONG CAST  
IRON WOOD  
SLAT BENCH

CITY STANDARD  
100W METAL HALIDE  
14' HIGH LIGHT  
FIXTURE @ 60' o.c.



TYPICAL SECTION  
INCLUDES 4" CONC.  
WALK MEANDERING  
AMONG LANDSCAPED  
ISLANDS, BEDS, AND  
GRASSED LAWNS.

**PLAN**



**CROSS SECTION**

SCALE: 1/8" = 1' - 0"



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**CITY OF JACKSONVILLE**

PO 024150

SEPTEMBER 29, 1999

SECTION  
**2**  
of 6

**EXISTING BULKHEAD**

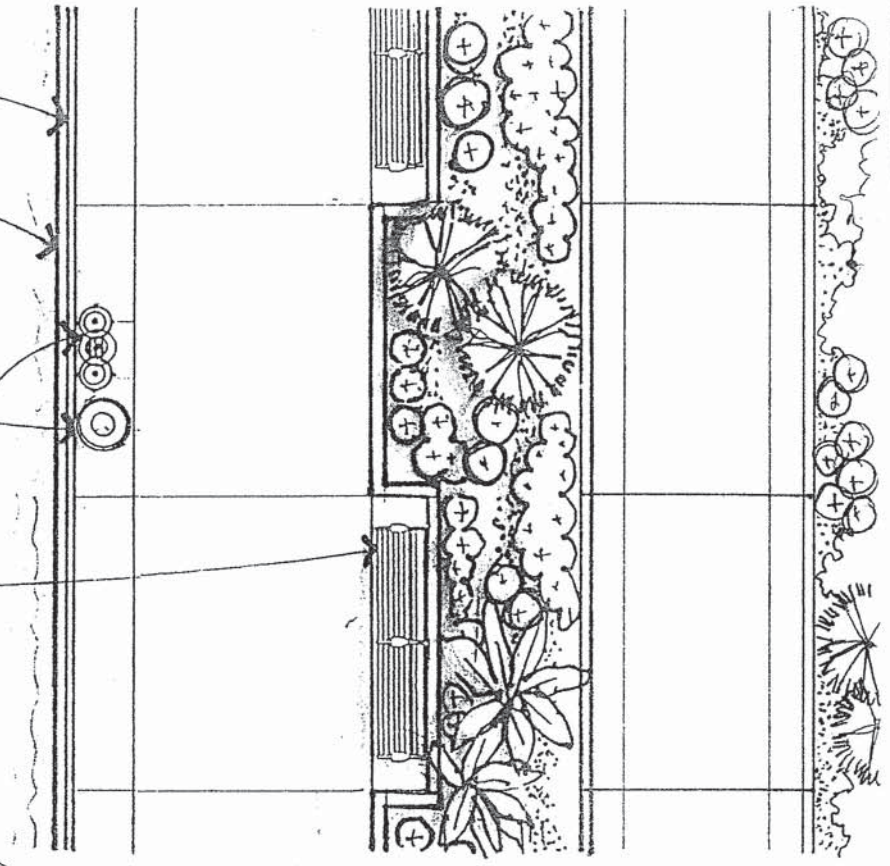
METAL HANDRAIL

EDGE OF BULKHEAD

CITY STANDARD  
CAST IRON TRASH  
RECEPTACLE

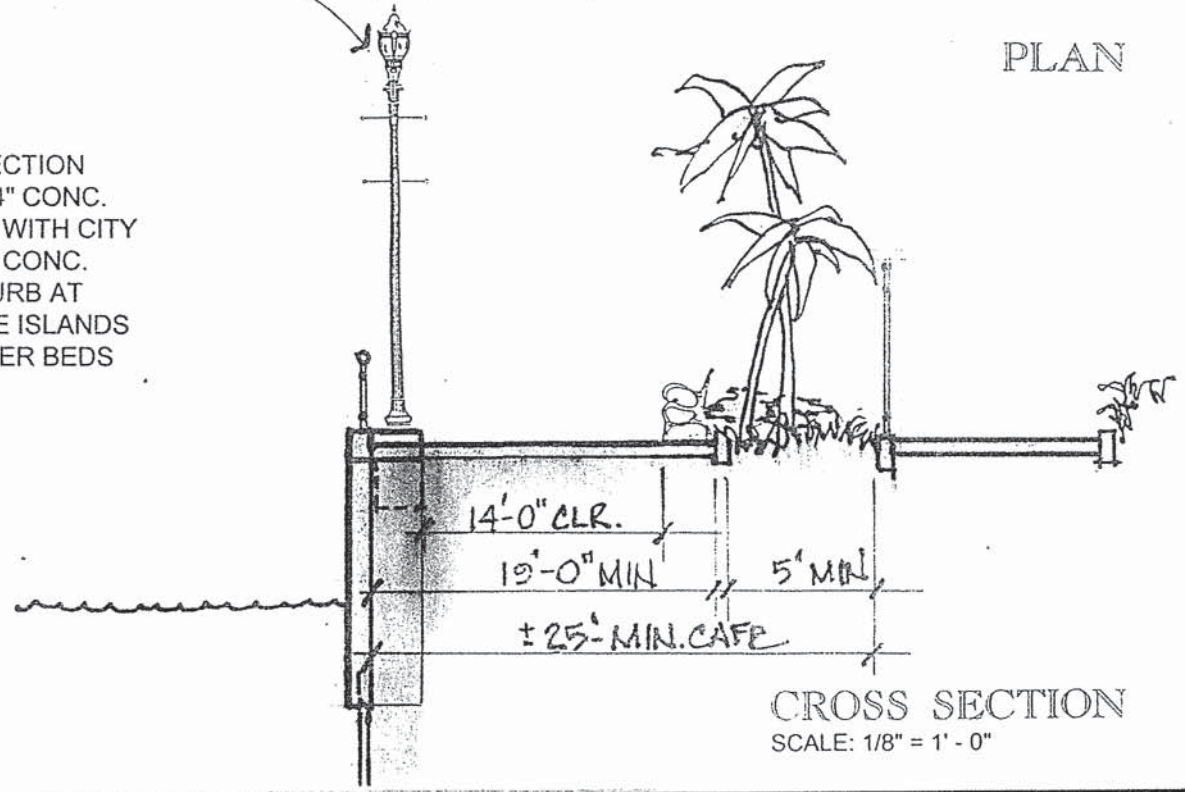
CITY STANDARD  
8' LONG CAST  
IRON WOOD  
SLAT BENCH

CITY STANDARD  
100W METAL HALIDE  
14' HIGH LIGHT  
FIXTURE @ 60' o.c.



PLAN

TYPICAL SECTION  
INCLUDES 4" CONC.  
PAVEMENT WITH CITY  
STANDARD CONC.  
HEADER CURB AT  
LANDSCAPE ISLANDS  
AND PLANTER BEDS

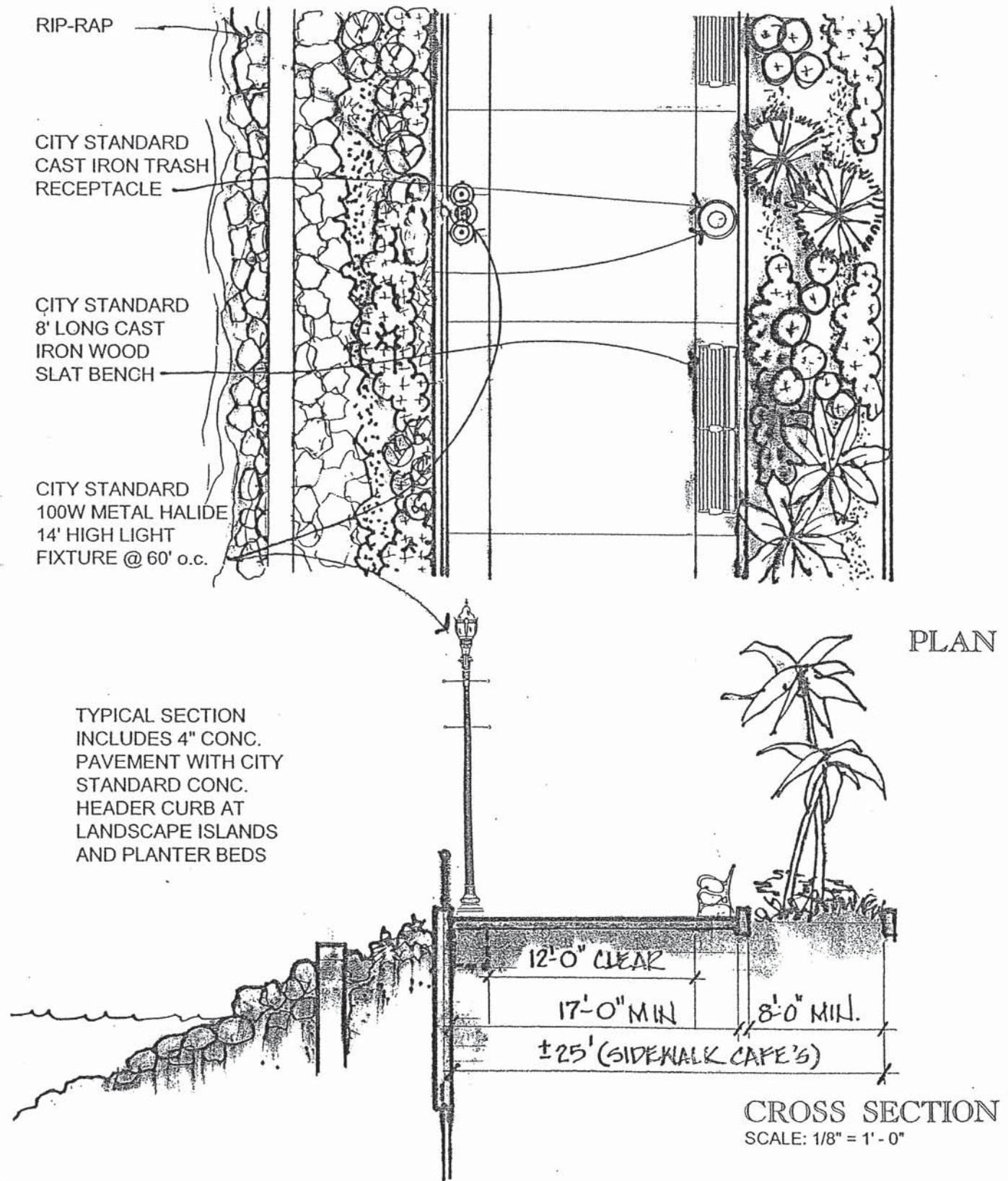


CROSS SECTION

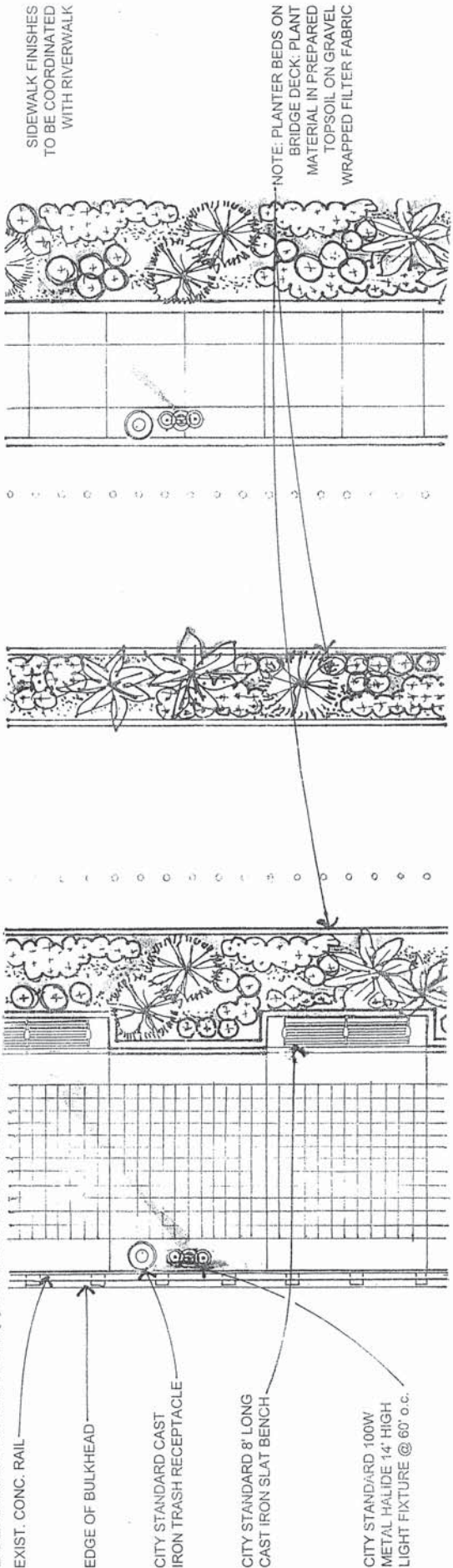
SCALE: 1/8" = 1' - 0"



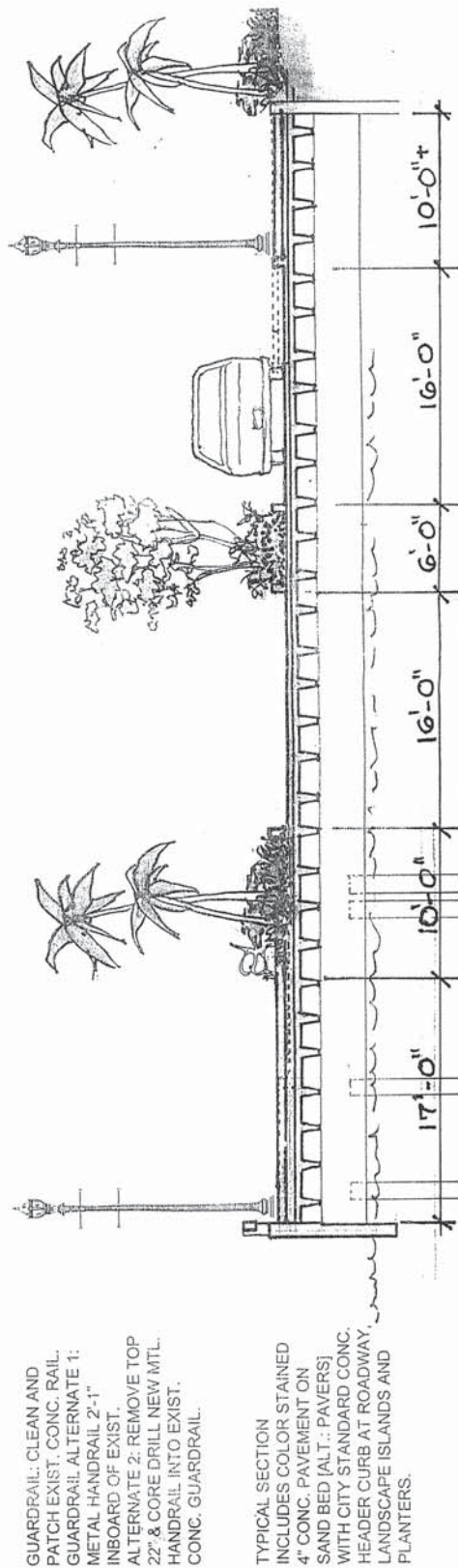
**B** NEW BULKHEAD, INLAND OF EXISTING RIP-RAP



**BULKHEAD CONDITION @ EXISTING BRIDGE DECK**



PLAN



CROSS SECTION  
SCALE: 1/8" = 1'-0"

SECTION 5  
of 6

■■■■ RIVERFRONT PARK DESIGN CRITERIA ■■■■  
CITY OF JACKSONVILLE

PO 024150



**UPLAND CONDITION**

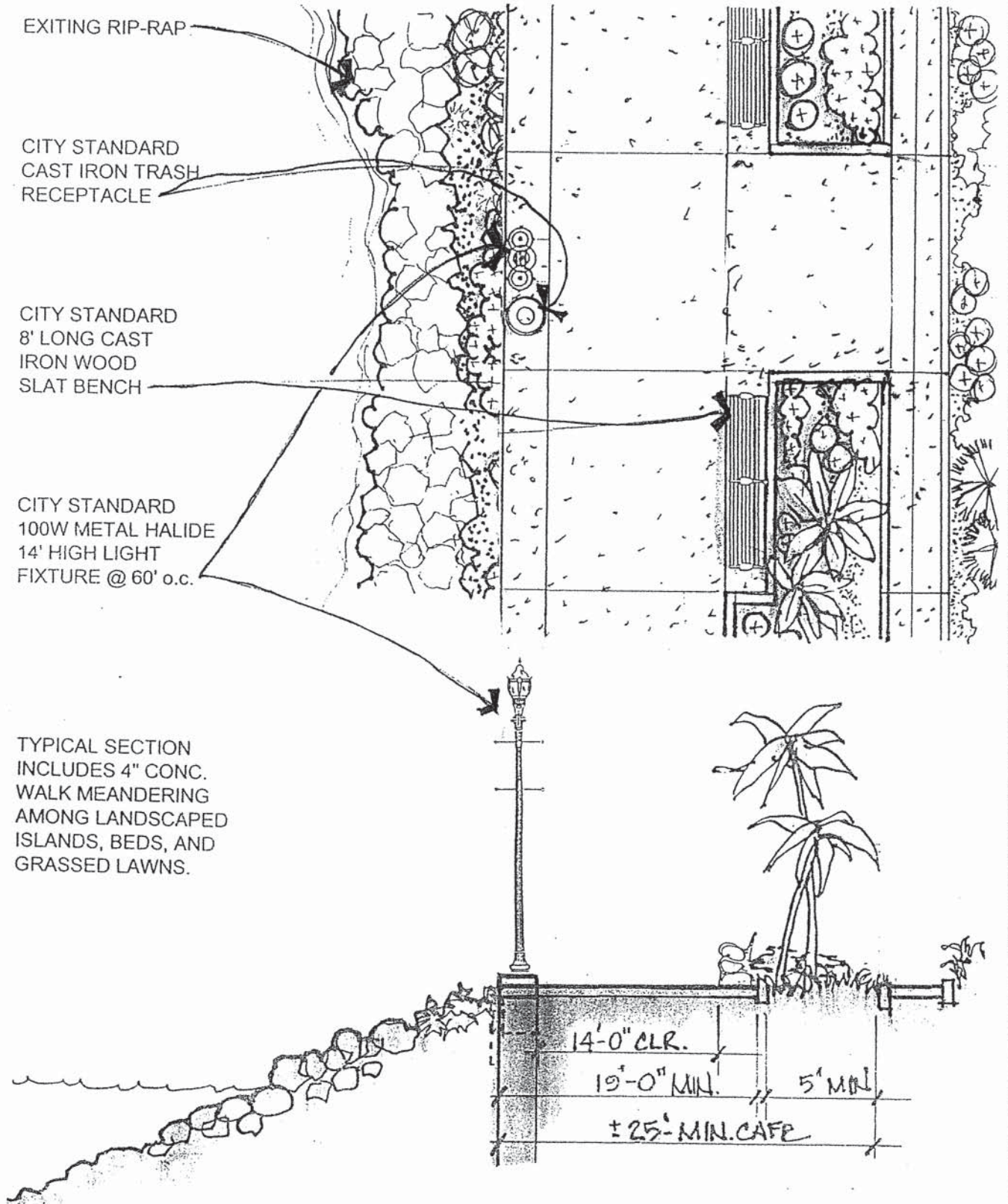
EXITING RIP-RAP

CITY STANDARD  
CAST IRON TRASH  
RECEPTACLE

CITY STANDARD  
8' LONG CAST  
IRON WOOD  
SLAT BENCH

CITY STANDARD  
100W METAL HALIDE  
14' HIGH LIGHT  
FIXTURE @ 60' o.c.

TYPICAL SECTION  
INCLUDES 4" CONC.  
WALK MEANDERING  
AMONG LANDSCAPED  
ISLANDS, BEDS, AND  
GRASSED LAWNS.



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**CITY OF JACKSONVILLE**

SEPTEMBER 29, 1999

SECTION  
**6**  
of 6

## SECTION THREE: DESIGN ELEMENTS

### GENERAL

The RPDC standards may indicate a specific product, based on the specific description, manufacturer, model, and number indicated. Unless otherwise indicated, products having equal performance characteristics by other manufacturers may be considered provided that deviations in dimensions, operation, color of finish, or other characteristics are minor and do not change the design concept or intended performance. Substitution of a specified product requires submittal of product data and samples; samples are to include full-size units showing full range of variations expected in characteristics. Burden of proof for product, material, or system equality is on the proposer.

## PAVING MATERIALS

This section includes Unit Pavers and Concrete Paving. Within the Unit Paving, there are different products described for various applications.

### UNIT PAVERS

#### BRICK PAVERS

Brick Pavers shall be as manufactured by Endicott Brick Company, or approved equal. Product pallet:

1. Medium Ironspot #77 - Wirecut
2. Medium Ironspot #46
3. Coppertone

Provide nominal 4 x 8, or 8 x 8, with 2 1/4" depth; reduced depth for specific application as approved by CITY.

#### INTERLOCKING CONCRETE PAVERS-CROSSWALKS

Interlocking pavers shall be Uni-Group U.S.A. manufacturers, Uni-Stone, Product pallet from Paver Systems by Tarmac Colormix III (Red/Tan/Charcoal) or approved equal, designed for vehicular traffic.

#### CONCRETE PAVERS

Concrete pavers shall be Uni-Group U.S.A. manufacturers, or approved equal. Product pallet from Paver Systems by Tarmac: Tan, Charcoal, Coral, Brown, Red, Camel, Natural Grey. See also finishes available from Uni-Group U.S.A. manufacturer Unilock and system of Quilting.

#### SETTING MATERIALS FOR UNIT PAVERS

Graded Aggregate for Subbase: Washed gravel complying with ASTM C 33 for Size No. 57.

Graded Aggregate for Base: Quality controlled, graded washed gravel complying with ASTM D 2940 for base material.

Sand for Leveling Course: Fine, sharp, non-plastic aggregate complying with ASTM C 33.

Sand for Joints: ASTM C 144 except use aggregate graded with 100 percent passing the No. 8 sieve and 95 percent, the No. 16 sieve.

### INSTALLATION

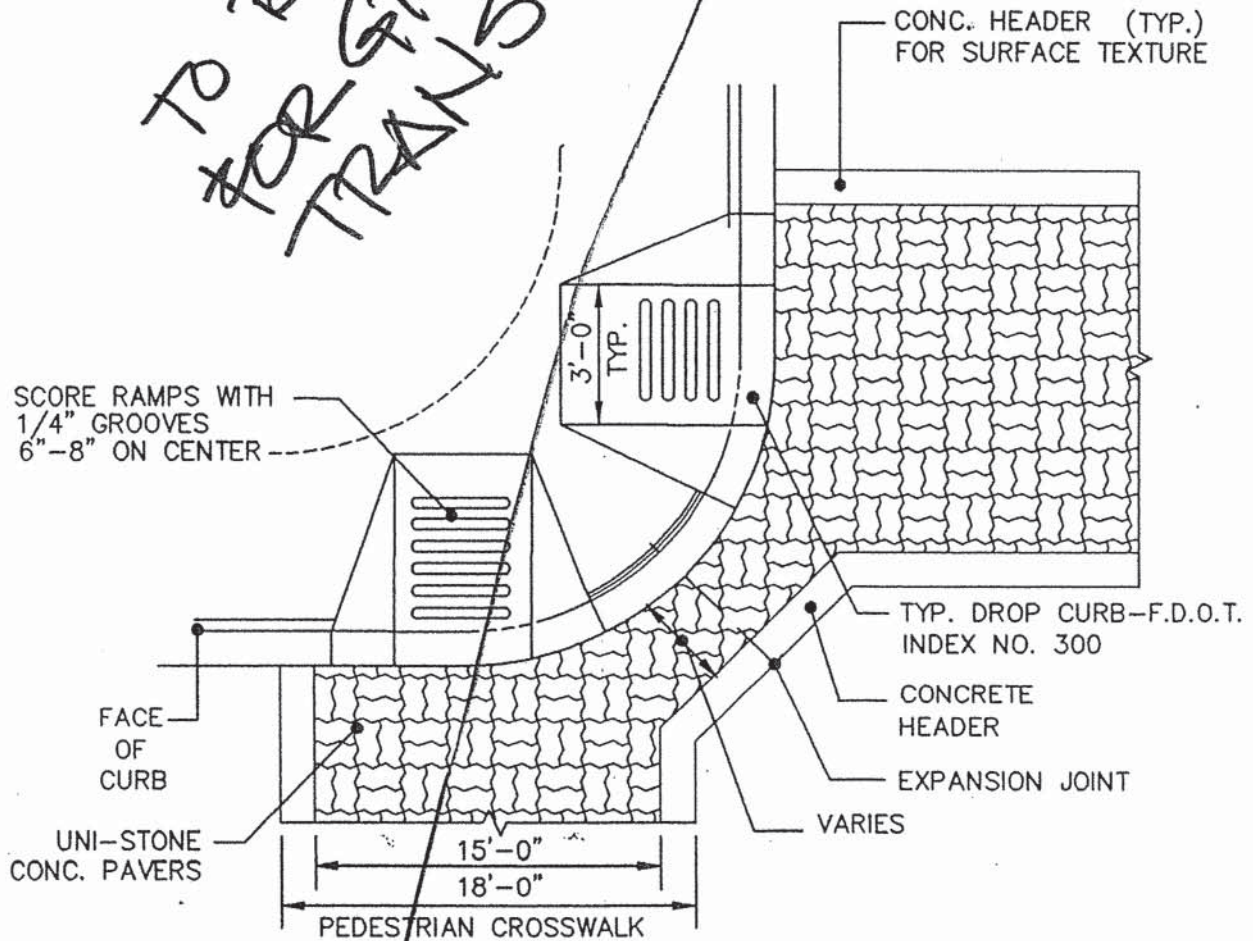
Install in accordance with manufacturers recommendations published instructions for the intended use and conditions. Engage an experienced Installer who has successfully completed unit paver installations similar in material, design, and extent to that indicated for Project.

Protect adjacent property material, equipment, and finishes from damage during construction period.



CITY OF JACKSONVILLE  
DEPARTMENT OF PUBLIC WORKS

TO BE UPDATED  
FOR GRADUAL  
TRANSITION

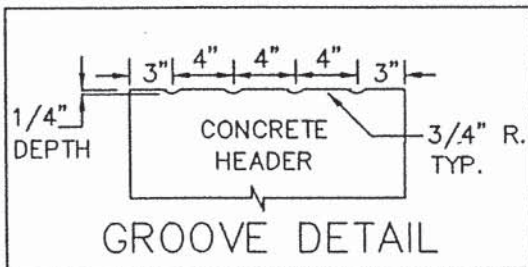
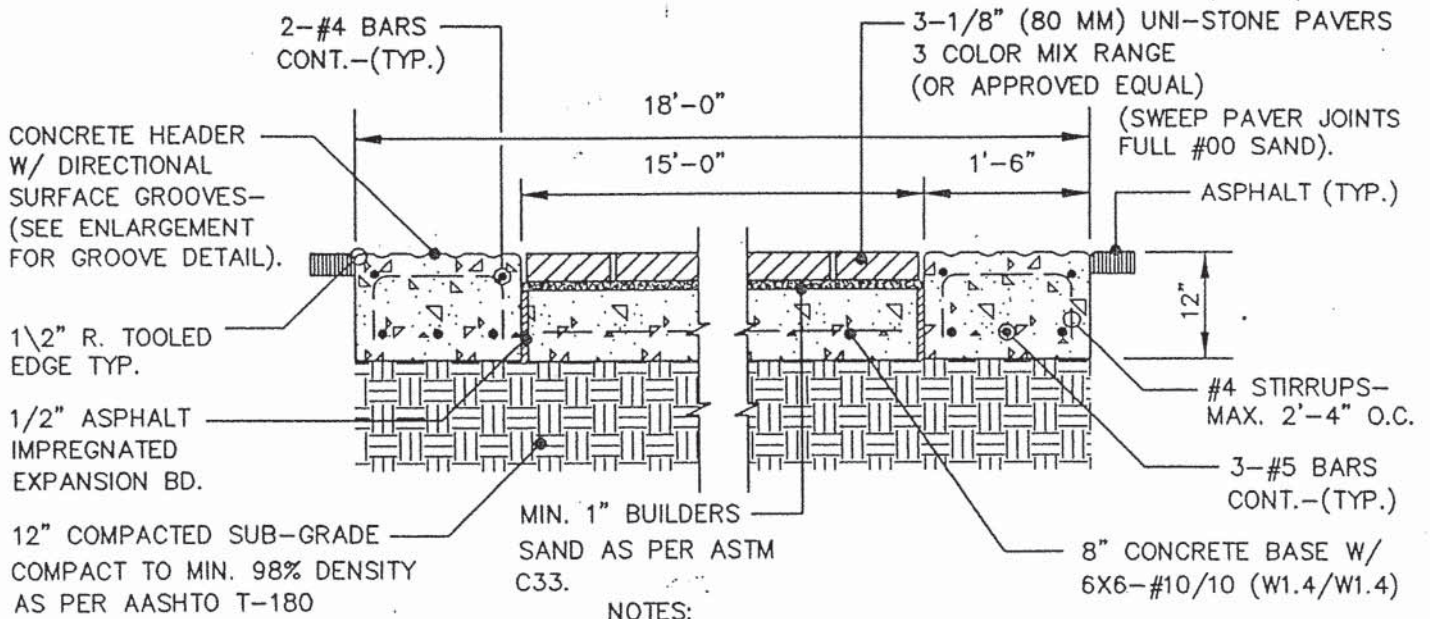


CROSSWALK & HANDICAPPED RAMP

N.T.S.

CROSSWALK DETAIL

CITY OF JACKSONVILLE  
 DEPARTMENT OF PUBLIC WORKS



NOTES:

- (1) PROVIDE EXPANSION JOINTS AT ENDS AND MIDDLE OF CONCRETE HEADER- PROVIDE SAW CUT SCORE JOINT. @ 3" DEPTH MIDWAY BETWEEN EXPANSION JOINTS. MIDDLE EXPANSION JOINT- UTILIZE 12" GALVANIZED METAL SLEEVES FOR DOWELED JOINT. TERMINATE BARS TO ALLOW MIN. 2" SLEEVE END CLEARANCE.
- (2) ALL CONCRETE SHALL BE HIGH/ EARLY STRENGTH MIX.

TYPICAL CROSSWALK

N.T.S.

CROSSWALK DETAIL

## COLOR STAINED DECORATIVE (CSD) CONCRETE PAVING SYSTEM

All concrete designated as CSD shall be as manufactured by L.M. Scofield Company, or approved equal, and shall contain the proper proportion of CHROMIX® Admixture for Color-Conditioned Concrete. The color-conditioning admixture shall be a single-component, colored, water-reducing, set-controlling admixture, factory formulated and package in cubic yard dosage increments, not multiple additives and pigments added separately into the mix. It shall comply with ASTM C 494.

The concrete shall contain the appropriate sacks of cement per cubic yard for the selected color. No calcium chloride shall be used. The slump shall not exceed four inches.

All surfaces shall be finished uniformly.

The concrete shall never be covered with plastic sheeting.

All mix design, batching, placing, finishing curing, joint sealing, and patching shall be in accordance with the Scofield Tech-Data Bulletins *A-304 CHROMIX® Admixtures for Color-Conditioned Concrete*, *A-634 COLORCURE® Concrete Sealer*, *S-404-3G LITHOSEAL™ Trafficalk-3G™*, and *M-304 CHROMIX™ Conpatch™*.

## **PIPE AND TUBE RAILINGS**

### **General**

This section includes steel pipe railing systems and acrylic pipe railing systems.

### **System Performance Requirements**

Control of Corrosion: Prevent galvanic action and other forms of corrosion.

Thermal Movements: Allow for thermal movement resulting from change in ambient temperature in the fabrication, and installation of handrails and railings to prevent buckling, opening up of joints, over-stressing of components, connections and other detrimental effects.

Designer is to satisfy himself that the product complies with applicable regulation design loadings, including review of any structural computations, material properties, and other information needed for structural analysis.

## **PRODUCTS**

### **STEEL HANDRAIL SYSTEM**

Provide metal forms and types that comply with requirements of referenced standards and that are free from surface blemishes where exposed to view in the finished unit. Exposed-to-view surfaces exhibiting pitting, seam marks, roller marks, stains, discolorations, or other imperfections on finished units are not acceptable.

### **MATERIALS:**

Steel Pipe: ASTM A 53; Galvanized finish, type F, and standard weight (schedule 40), unless otherwise required by structural loads. Brackets, Flanges, and Anchors: Cast or formed metal of the same type material and finish as supported rails, unless otherwise required.

Steel Tubing, provide tubing with hot-dip galvanized coating per ASTM A 53: Cold-Formed Round Steel Tubing, ASTM A S00, Grade B, unless otherwise required by structural loads; Hot-Formed Round Steel Tubing, ASTM A.

Miscellaneous: Steel Plates, Shapes, and Bars, ASTM A 36; Grey Iron Castings, ASTM A 48, Class 30; Malleable Iron Castings, ASTM A 47, grade 32510.

### **GROUT AND ANCHORING CEMENT**

Non-shrink, nonmetallic Grout: Premixed, factory-packaged, non-stinging, non-corrosive, non-gaseous grout complying with CE CRD-C 621. Provide grout specifically recommended by manufacturer.

Subject to design requirements, provide Non-shrink, Nonmetallic Grouts, such as "SonogROUT" as manufactured by Sonneborn Building Products Div., ChemRex, Inc.

## **PAINT**

Galvanizing Repair Paint: High-zinc-dust-content paint for regalvanizing welds in galvanized steel, with dry film containing not less than 94 percent zinc dust by weight, and complying with DOD-P-21035 or SSPC-Paint-20.

Bituminous Paint: Cold-applied asphalt mastic complying with SSPC-Paint 12 except containing no asbestos fibers.

Basic color shall be either unpainted, galvanized finish or green to match light fixtures at the Jacksonville Landing.

Accent areas:

Bronze/gold as selected from submitted samples.

Provide filler metal and electrodes type and alloy as recommended by producer of metal to be welded and as required for color match, strength, and compatibility in fabricated items. Select fasteners of the type, grade and class required to produce connections that are suitable for anchoring railing to other types of construction indicated and capable of withstanding design loadings; use plated fasteners complying with ASTM B 633, Class Fe/Zn 25 for electro-deposited zinc coating or ASTM B 696, Class 12 for cadmium plating.

#### FABRICATION

Fabricate handrails and railing systems to comply with requirements of design, dimensions, details, finish, and member sizes, including wall thickness of hollow members, post spacings, and anchorage, but not less than those required to support structural loads. Fabricate joints that will be exposed to weather in a manner to exclude water; provide weepholes or other means for evacuation of entrapped water in hollow sections of railing members.

#### FINISHES

Comply with NAAMM "Metal Finishes Manual" for recommendations relative to application and designations of finishes.

Factory-Primed Finish: Apply air-dried primer immediately following cleaning and pretreatment, to provide a minimum dry film thickness of 2.0 mils per applied coat, to surfaces that will be exposed after assembly and installation and to concealed, non-galvanized surfaces.

#### INSTALLATION

Fit exposed connections accurately together to form tight, hairline joints. Perform cutting, drilling, and fitting required for installation of handrails and railings. Set handrails and railing components accurately in location, alignment, and elevation, measured from established lines and levels and free from rack. Set posts plumb within a tolerance 1/4 inch in 12 feet. Align rails so that variations from level for horizontal members and from parallel with rake of steps and ramps for sloping members do not exceed 1/4 inch in 12 feet. Install expansion joints at locations required to accommodate thermal movement.

## THERMOPLASTIC HANDRAILS AND RAILINGS

This section includes thermoplastic handrails and railing systems. Definition in ASTM E 985 for railing related terms apply to this section.

### PRODUCTS

Subject to compliance with requirements, provide handrails and railing system equal to AVCON, INC.

### THERMOPLASTIC COMPONENTS

Tubing Components: Manufacturer's tubing will consist of high-impact, outdoor weatherable, pigmented TI02 enhanced tubing complying with physical properties of plastic pipe as follows, when tested per standards referenced:

|                           |            |              |
|---------------------------|------------|--------------|
| Specific gravity per      | ASTM D 792 | 1.05         |
| Rockwell hardness per     | ASTM 785   | 112          |
| Flexural strength per     | ASTM D 790 | 12,200 psi   |
| Tensile strength per      | ASTM D 638 | 7,300 psi    |
| Flexural modules per      | ASTM D 790 | 400,000 psi  |
| Tensile modules per       | ASTM D 638 | 380,000 psi  |
| Izod, impact, notched per | ASTM D 256 | 6.0 ft. Lbs. |
| Heat deflection per       | ASTM D 648 | 264 psi      |

Compound used in the manufacture of railing components will have undergone extensive outdoor testing, for a minimum of 24 consecutive months, in climates representing extremes encountered in the continental United States. Specifically: Arizona, (hot & dry), Florida (hot & wet), and New York (Freeze/thaw, pollutants). Results of said testing shall remain within the parameters established for exterior applications, by the manufacturer of the compound.

Use compounds that have undergone testing demonstrating that resins are dimensionally stable, fade resistant, and retentive of key physical engineering properties. Support color retention and stability, mechanical property retention including impact and tensile strength.

All tubing will maintain wall thickness and reinforcing.

### TOP, INTERMEDIATE AND BOTTOM RAIL OF GUARDRAIL SYSTEM

The wall thickness should not be compromised at any location throughout the system by milling, drilling, non-extruded fittings (crosses, tees, elbows, etc.) or any other manufacturing or molding process. Steel Pipe Reinforcing for Railing Posts and the Top Horizontal Rail of all other styles other than picket style with a single top rail: ASTM A 53, Type F, standard weight with a galvanized finish. Alternate: stainless steel of appropriate quality, size and gauge to maintain structural loads.

### FABRICATION

Fabricate handrails and railing systems to comply with requirements indicated for design, dimensions, details, finish, and member sizes, but not less than those required to support structural loads. Pre-assemble railing

systems in shop to greatest extent possible to minimize field splicing and assembly. Disassemble units only as necessary for shipping and handling limitations. Use connections that maintain structural value of joined pieces. Clearly mark units for reassembling and coordinated installation.

**Non-Welded Connections for Horizontal Railing Members:** Fabricate system for connection of sections by means of railing manufacturer's connector of a size to accommodate the inside diameter of the exterior railing member. Once connected, final connection shall be accomplished using a 1/8" diameter stainless steel pin placed in the appropriate sized drilled hole. Once installed resultant hole should be filled with a non-shrink color-coordinated or clear, silicone.

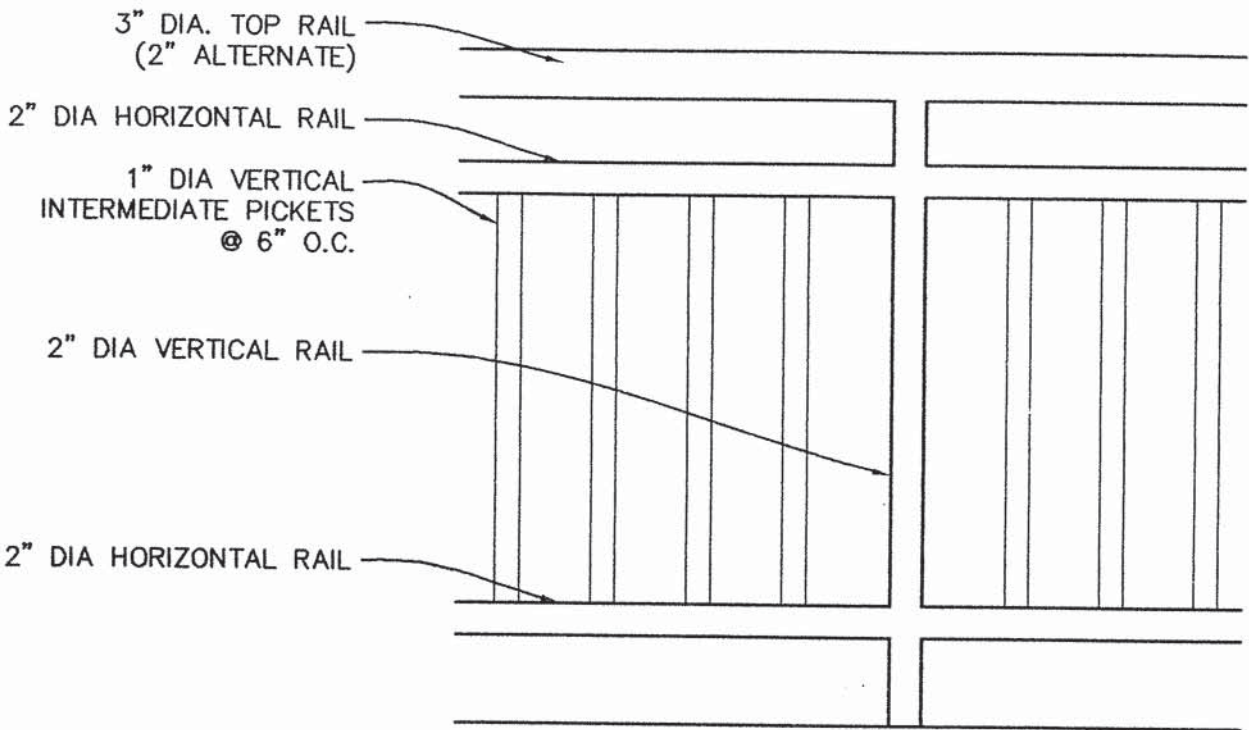
Provide for an Expansion Joint to top horizontal rail where sections are field joined. Joint should incorporate an internal sleeve that is independent of outer tubing or internal steel. Color of expansion sleeve shall match outer tubing color. Where appropriate incorporate the use of expansion collars at points where rails terminated at posts and/or top horizontal rail; this option requires submittal and approval of controlling authority.

**Brackets, Flanges and Anchors:** Provide manufacturer's standard brackets, flanges, and anchors for interconnection of handrail and railing members to other construction.

Provide inserts and other anchorage devices for connection handrails and railing systems to concrete or masonry work. Fabricate anchorage devices capable of withstanding loading imposed by handrail and railing systems. Coordinate anchorage devices with supporting structure.

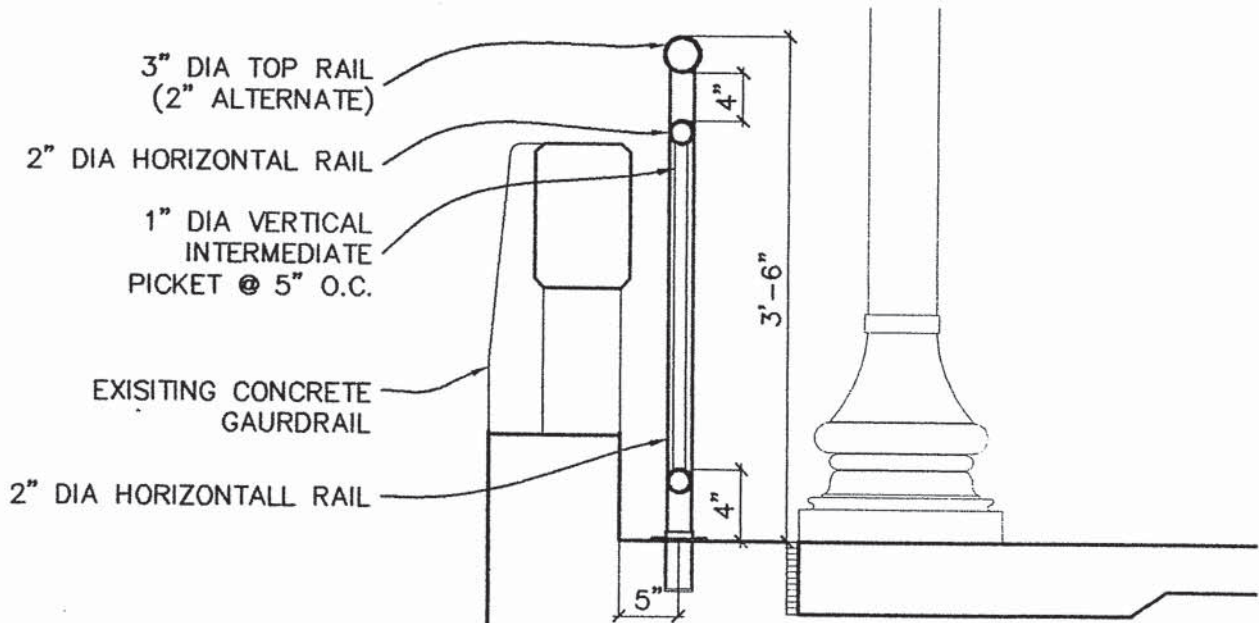
#### INSTALLATION

Fit sections accurately together. Set handrails and railing systems prior to anchoring to ensure matching alignment. Space posts at intervals indicated but not greater than that required by design loading. Anchor posts onto mounting surface by means of railing manufacturer's recommended method, to include: surface mount flange mount, fascia mount by means of clamp, fascia mount by means of a side mount split cup, or other means of anchorage as determined by railing manufacturer.



**HANDRAIL SECTION-TYPICAL**

SCALE: 1" = 1'-0"



**HANDRAIL SECTION-TYPICAL**

SCALE: 1" = 1'-0"



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CITY OF JACKSONVILLE

PO 024150

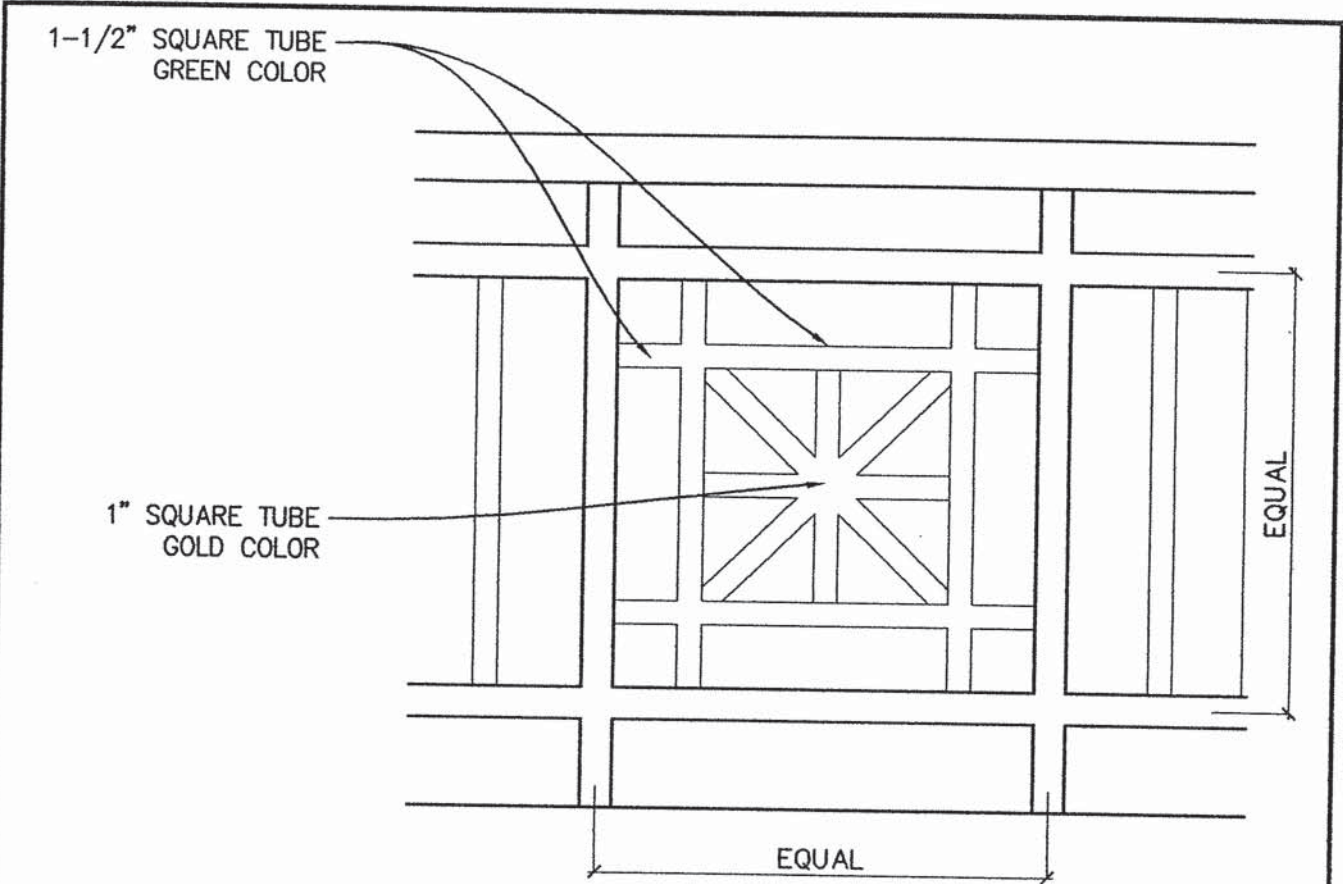
SEPTEMBER 27, 1999

SKETCH

1

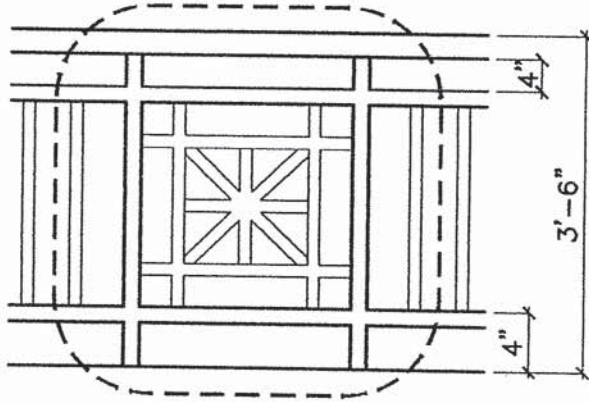
OF 4





**ACCENT DETAIL**

SCALE: 1" = 1'-0"



**HANDRAIL ELEVATION • ACCENT**

SCALE: 1/2" = 1'-0"



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CITY OF JACKSONVILLE

PO 024150

SEPTMEBER 27, 1999

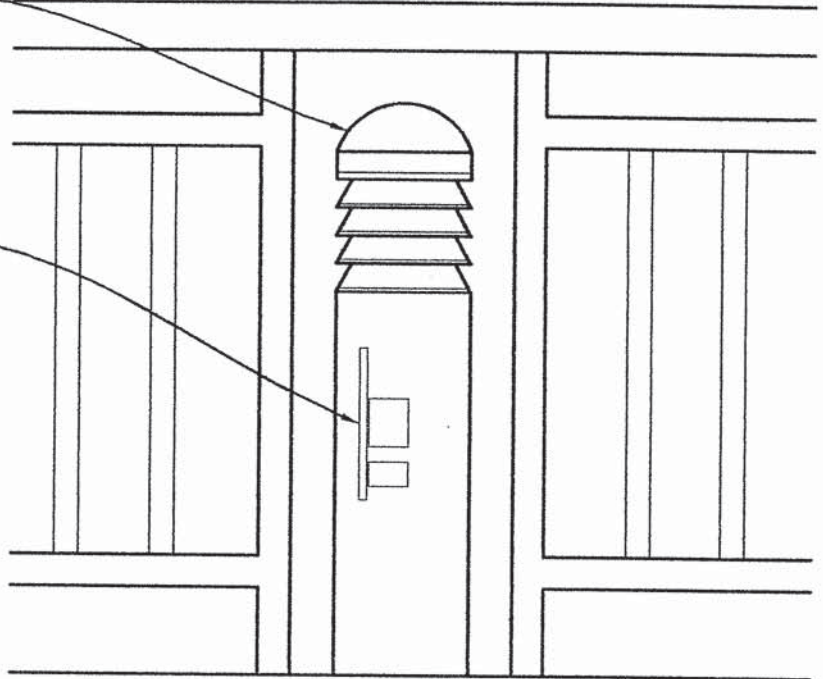
SKETCH

2

OF 4

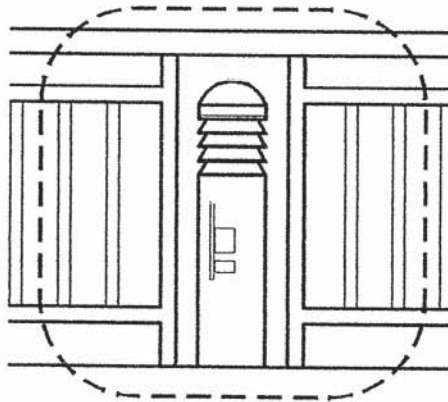
LIGHTING BOLLARD  
 (SPACING AS  
 RECOMMENDED BY  
 MANUFACTURER),  
 HOWEVER, CLEARANCE  
 NO GREATER THAN  
 4" IN ANY DIRECTION.

CUT OFF BOLLARD BASE  
 TO PROVIDE ADEQUATE  
 ACCESS TO TOP CAP



### BOLLARD DETAIL

SCALE: 1" = 1'-0"



### HANDRAIL ELEVATION • BOLLARD

SCALE: 1/2" = 1'-0"



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 CITY OF JACKSONVILLE

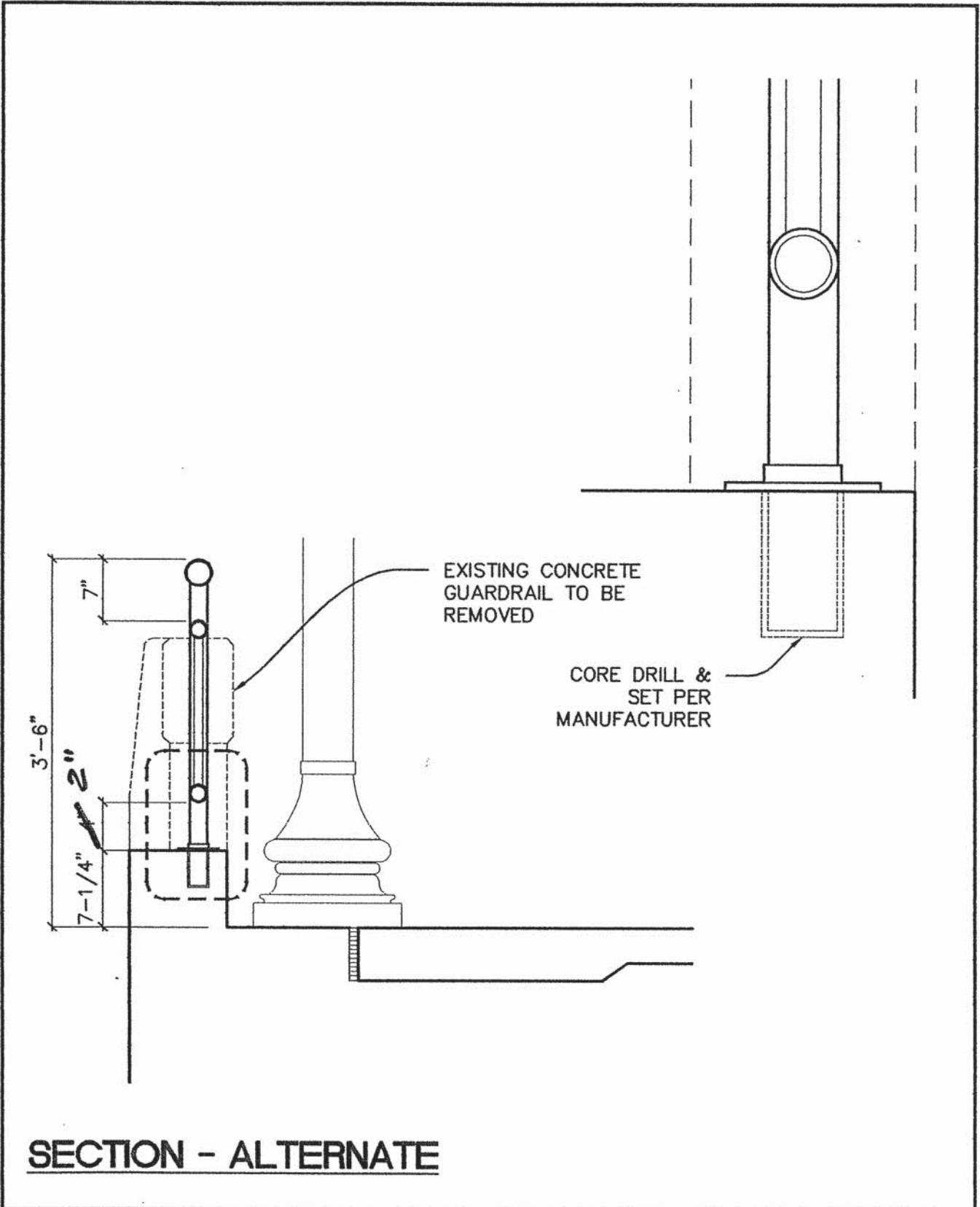
PO 024150

SEPTEMBER 27, 1999

SKETCH

3

OF 4



**SECTION - ALTERNATE**



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 CITY OF JACKSONVILLE

PO 024150

SEPTEMBER 27, 1999

SKETCH  
 4  
 OF 4

## SITE FURNITURE

### GENERAL

Site Furniture consists of benches, trash receptacles, signs, drinking fountains, bike racks, and traffic control bollards. Quantity and location of site furniture is to be shown on drawings and in accordance with function and community concerns, and the Property Owner's site requirement.

Street furnishings such as bus stops and water taxi docks, restrooms, telephones, and shelters may be provided as a community service however they shall be so located as to increase comfort, through security and safety of the public, and discourage the unintended user.

Street furnishings shall be appropriate to the RPDC Theme.

### PRODUCTS

#### ***Trash Receptacle:***

Model No. 103 Pennsylvania Avenue, as manufactured by Canterbury International, or approved equal. Receptacle with top, cast aluminum outer shell with flat black finish permanent steel liner, 32 gal rigid plastic removable liner, top secured; receptacles are to be fully assembled when delivered.

#### ***Bike Rack:***

Model 2170-9 (9' long) as manufactured by Timberform, Columbia Cascade Company, or approved equal.

#### ***Benches:***

##### *Traditional*

Model No. 2119-8, Restoration, as manufactured by Timberform, Columbia Cascade Company, or approved equal; slats shall be purple heart, unsealed. Cast iron frames shall be black. Cast with City of Jacksonville logo in bench ends. Anchor bolts to be supplied by Contractor. Alternates:

- Traditional Bench 5' - Model No. 2118 Custom 5' length.
- Backless Bench - Model No. 2123 Custom 5' length.

##### *Maritime*

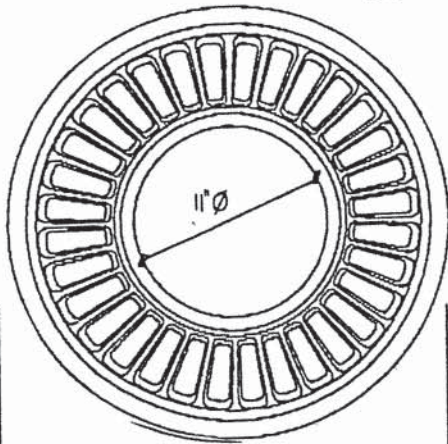
Model No. 2807-8, Renaissance, color green or black, as manufactured by Timberform, Columbia Cascade Company, or approved equal.

##### *Maritime-Alternate*

Benches: Prisdio Collection, straight seats, or narrow-backed angled seats in areas with curved meandering paths, with surface mounted or embedded support, grotto powder coat, as manufactured by Landscape Forms, or approved equal.

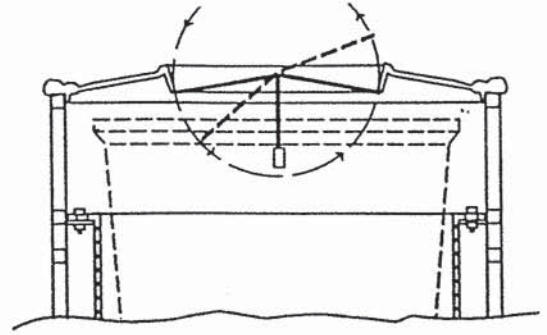
### INSTALLATION

Installation shall be in accordance with the Manufacturer's written instructions for secure vandal and theft resistant results.



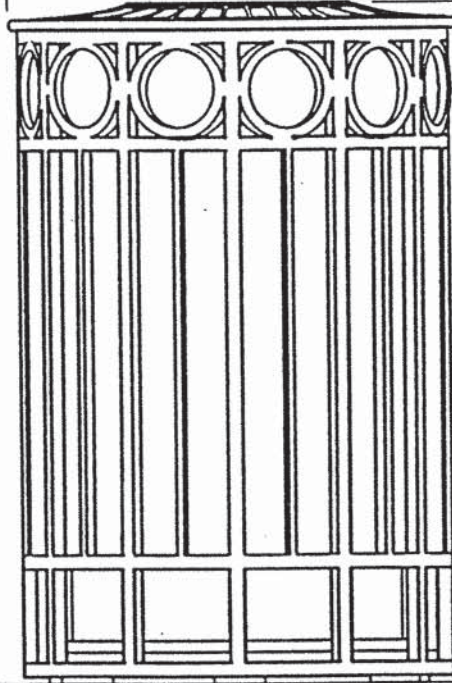
PLAN

23 1/2"



SECTION

Swinging Lid (optional)  
 STATIONARY LID; SIDE  
 DOOR ACCESS TO  
 LINER



ELEVATION

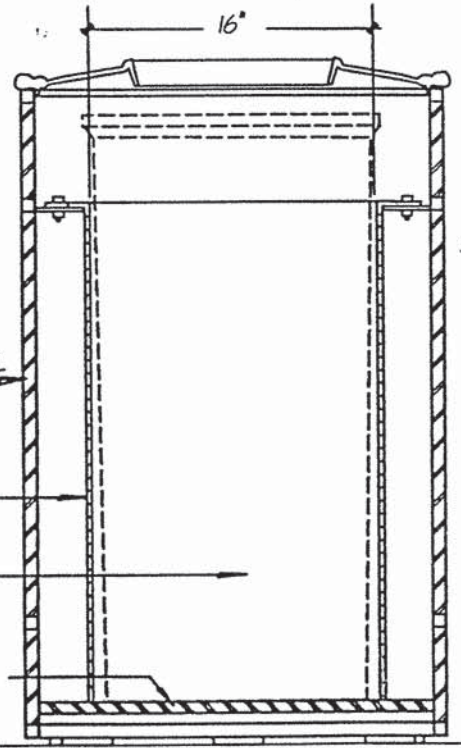
3' - 1 1/2"

1" x 1" CAST  
 ALUMINUM BARREL

16 GA STEEL  
 LINER

\* PLASTIC LINER

16 GA STEEL



SECTION

\* SWINGING LID <sup>DOOR</sup> OPTIONAL

\* NOTE: LARGER PLASTIC LINER IS  
 AVAILABLE WITH STEEL LINER FLUSH TO  
 ALUMINUM CASTING



# DECORATIVE TRASH RECEPTACLE

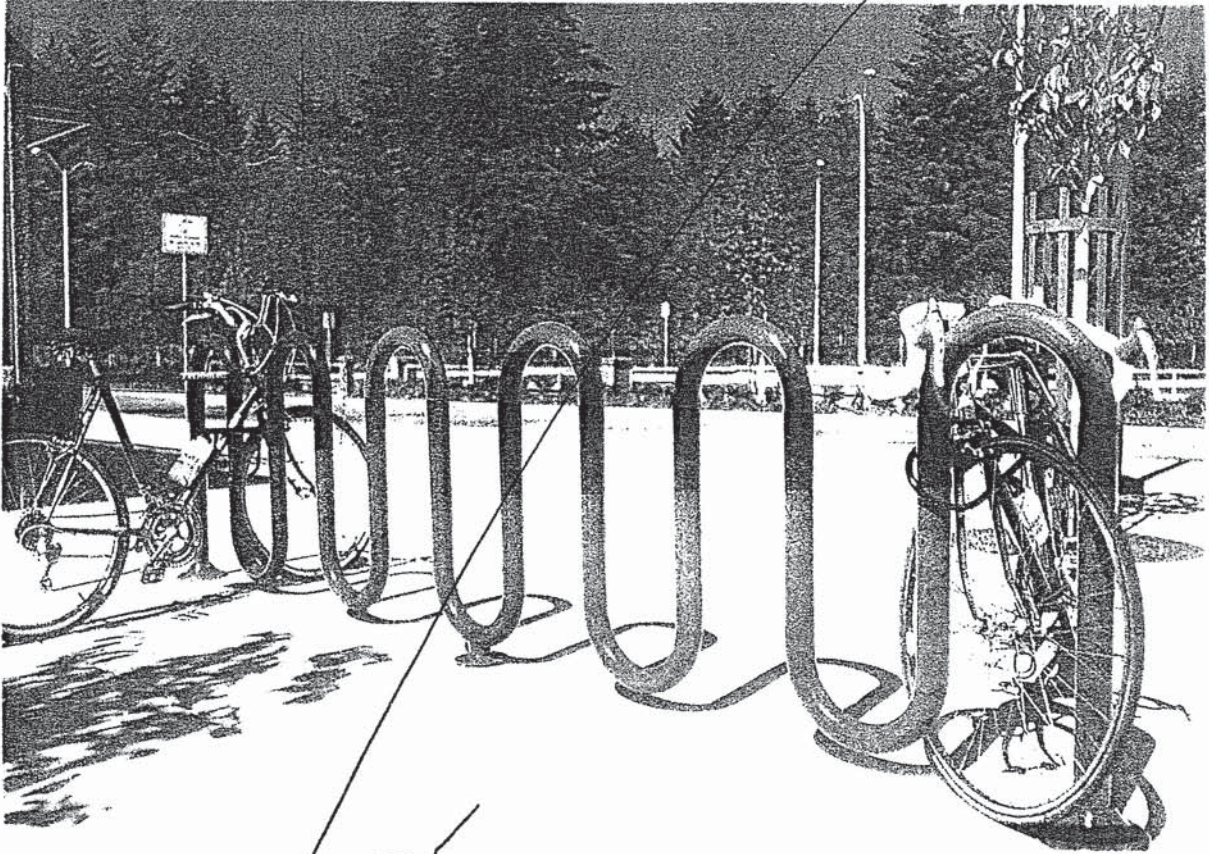


□ □ □ RIVERFRONT PARK DESIGN CRITERIA □ □ □  
 CITY OF JACKSONVILLE

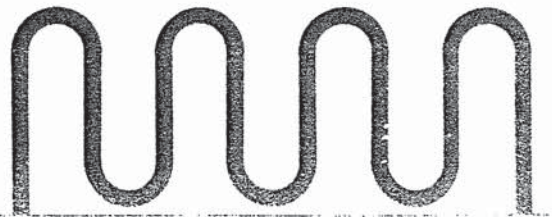
PO 024150

SEPTEMBER 27, 1999

SKETCH  
 1  
 OF 1



*THE BEST  
OF THE CITY  
STANDARD  
"LOOPS"*



**BIKE RACK**

2170-9

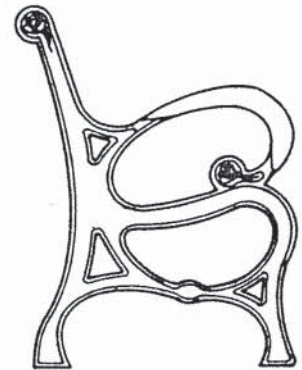
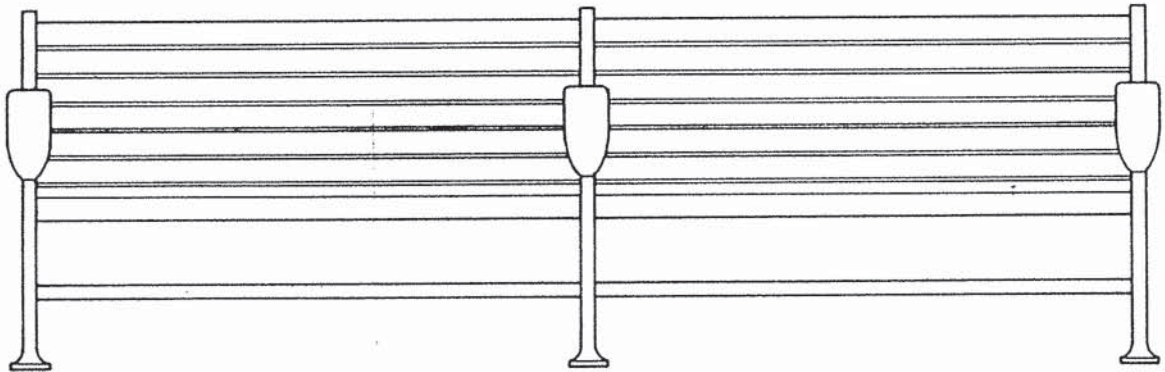
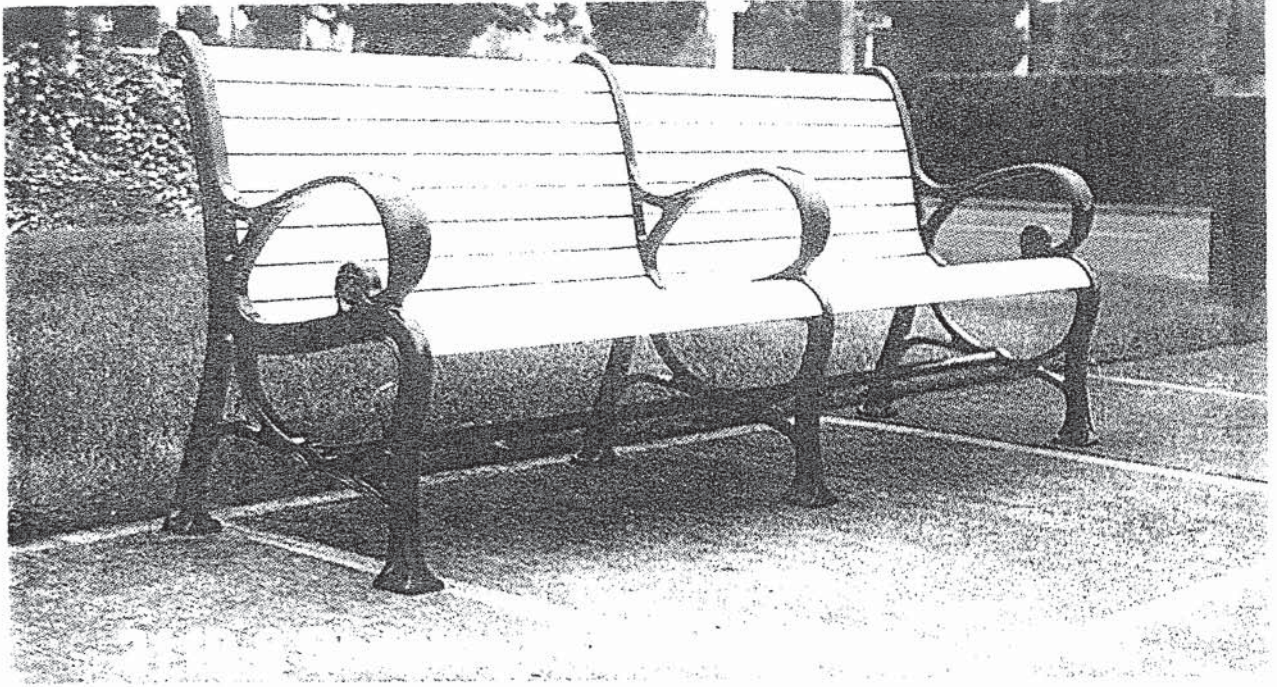


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CITY OF JACKSONVILLE

PO 024150

SEPTEMBER 27, 1999

SKETCH  
**1**  
OF 1



**DECORATIVE SLAT BENCH**

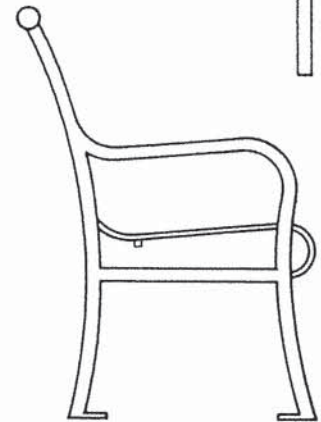
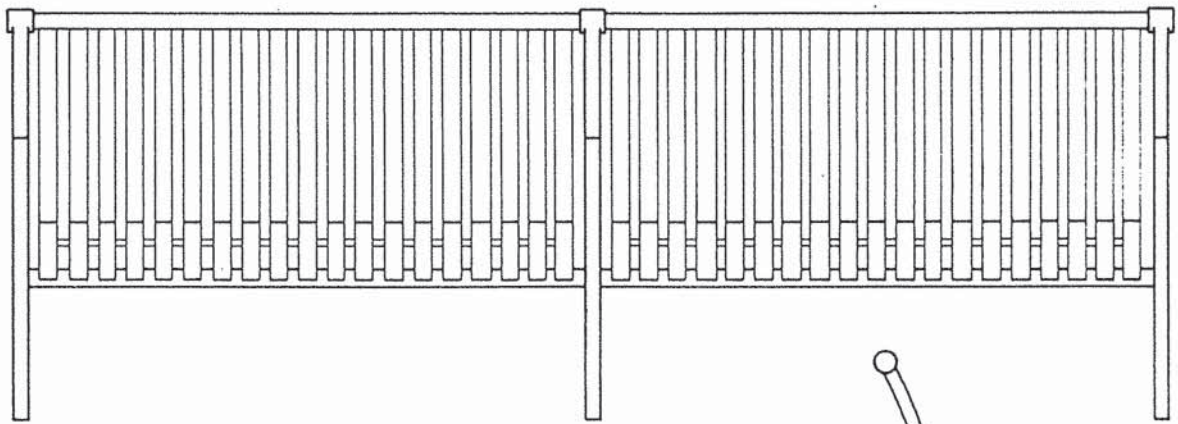


□□□ **RIVERFRONT PARK DESIGN CRITERIA** □□□  
CITY OF JACKSONVILLE

PO 024150

SEPTEMBER 27, 1999

SKETCH  
1  
OF 2



**MARITIME SLAT BENCH**



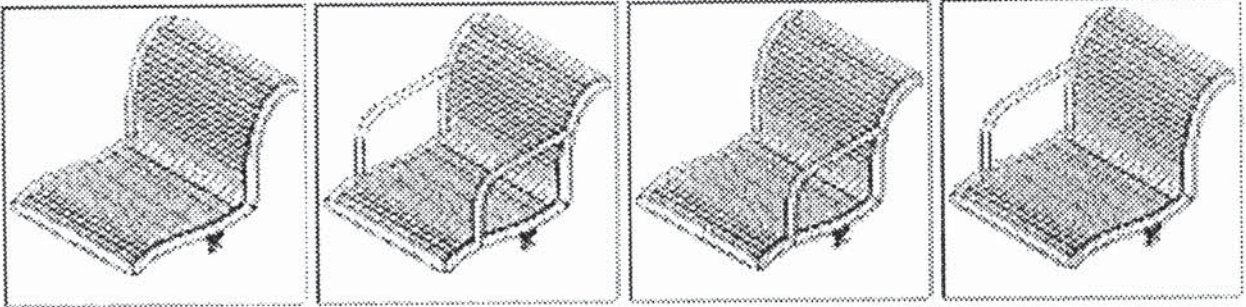
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CITY OF JACKSONVILLE

PO 024150

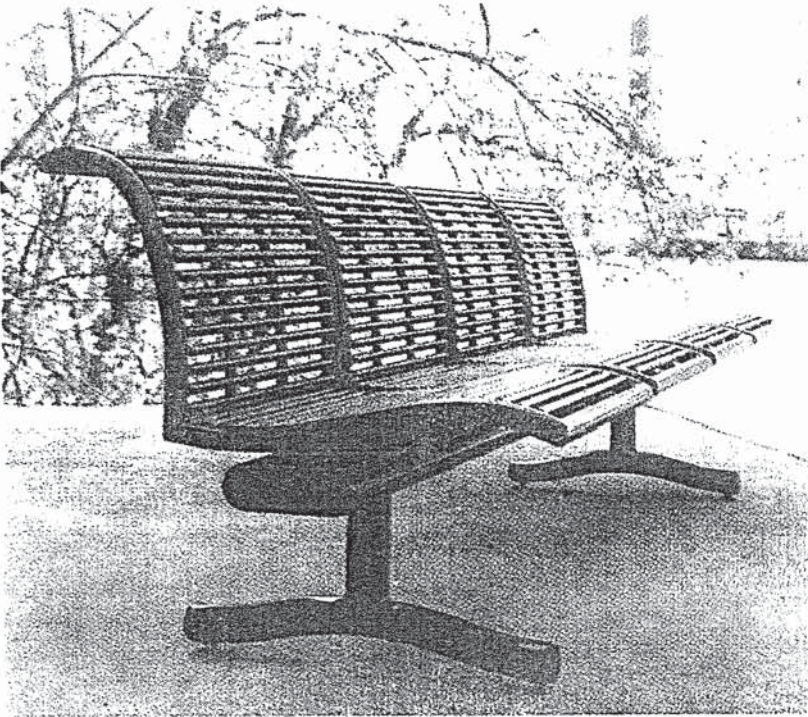
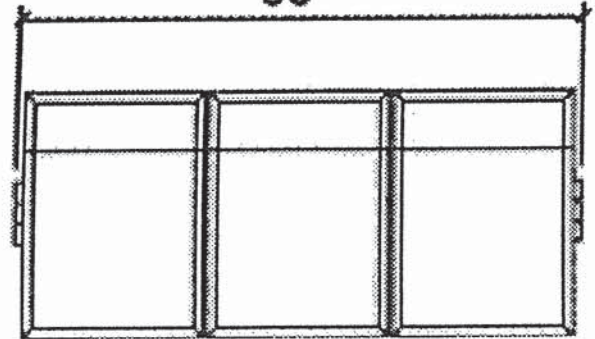
SEPTEMBER 27, 1999

SKETCH  
2<sup>a</sup>  
OF 2





69"



**MARITIME BENCH - ALTERNATE**



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CITY OF JACKSONVILLE

PO 024150

SEPTEMBER 27, 1999

SKETCH  
**2b**  
OF 2

## DRINKING FOUNTAIN

### SUMMARY

This Section includes pedestal drinking fountain and trim, fittings, and accessories, appliances, appurtenances, equipment, and supports associated with fixture. Basic mechanical and piping requirements, materials, and methods, apply to this Section.

### QUALITY ASSURANCE

Regulatory Requirements: Comply with requirements of ANSI Standard A117.1, "Buildings and Facilities" – Providing Accessibility and Useability for Physically Handicapped People," and Public Law 90-480, "Architectural Barriers Act, 1968," with respect to plumbing fixtures for the physically handicapped.

### PRODUCT

#### *Decorative*

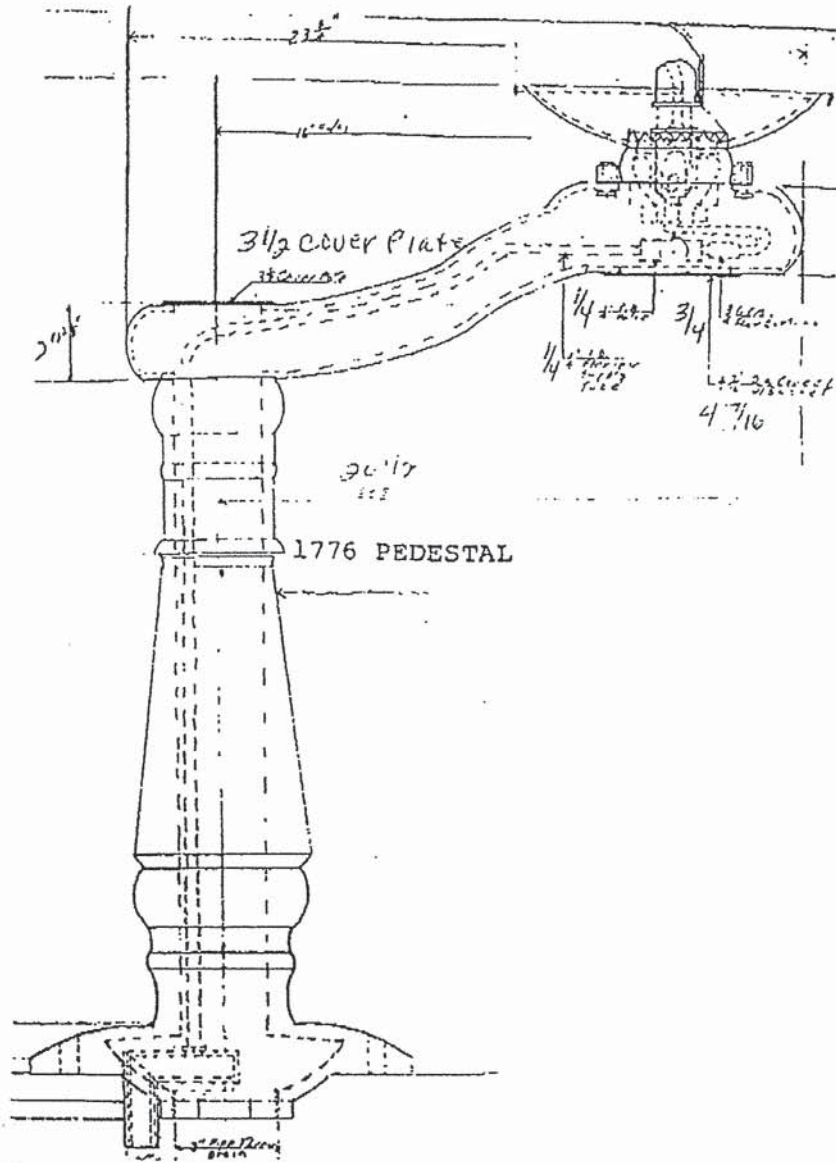
Drinking fountain shall be MC76-1-AVAF as manufactured by Murdock, Inc., or approved equal Heavy, one piece grey iron casting (SCH.30) extending thirty inches above grade line for barrier free access. This is predominantly square in shape with octagonal base for mounting to concrete pad. Provide anti-freeze pedestal fountain and trim, fittings, other components, and supports as specified.

#### *Maritime*

Drinking fountain shall be 3380FR G as manufactured by Haws Corporation, or approved equal. Heavy, curved, 18 gauge steel, barrier free pedestal. Provide anti-freeze pedestal fountain and trim, fittings, other components, and supports as specified.

### EXECUTION

Piping installation requirements are to be in accordance with the City Standards.



**DECORATIVE DRINKING FOUNTAIN**



□□□ **RIVERFRONT PARK DESIGN CRITERIA** □□□  
 CITY OF JACKSONVILLE

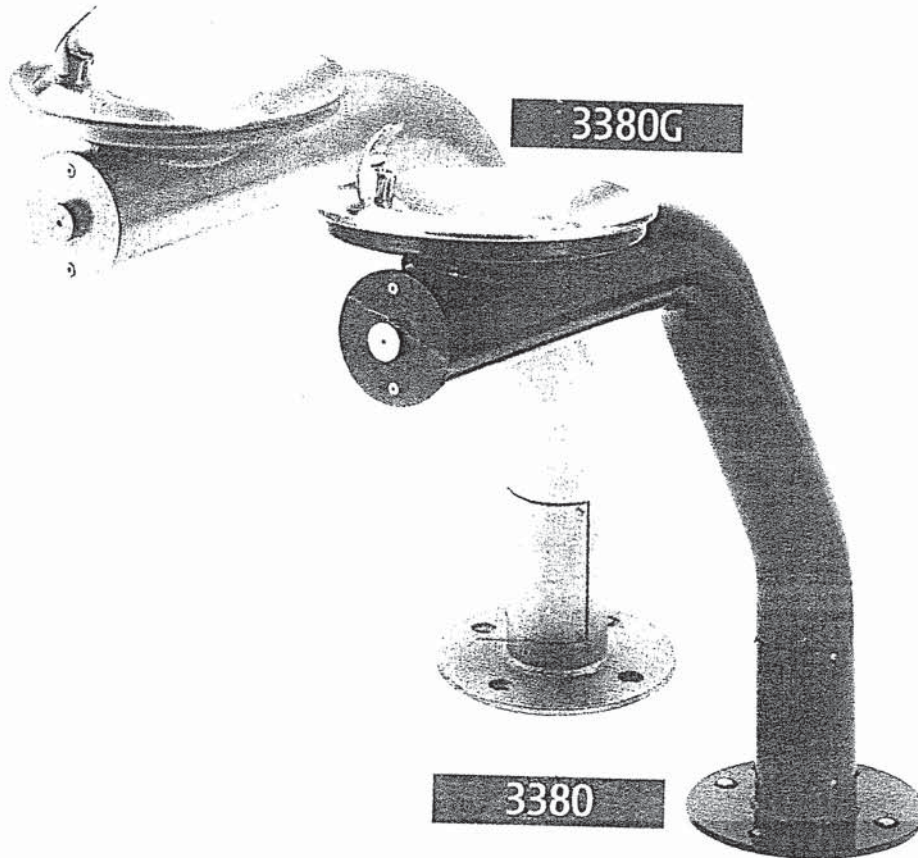
PO 024150

SEPTEMBER 27, 1999

SKETCH

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OF 2



**MARITIME DRINKING FOUNTAIN**

SCALE: 1/2" = 1'-0"



□□□ **RIVERFRONT PARK DESIGN CRITERIA** □□□  
CITY OF JACKSONVILLE

PO 024150

SEPTEMBER 27, 1999

SKETCH

2

OF 2

## **LANDSCAPE**

### **GENERAL**

Landscape design, installation, and maintenance shall comply with RPDC and with Part 12, Chapter 656, City of Jacksonville Ordinance Code, Tree Preservation and Landscape Standards; should there be a conflict between Chapter 656, Landscape Design Standards and RPDC, the more stringent requirement shall prevail. Proposed landscape design by the Property Owner within the easement may be considered in satisfying applicable portions of the requirements of the Landscape Ordinance; existing landscape within the easement may be considered with new development work using Chapter 656 "Credit for existing trees and understory". Screening of parking lots and drives shall be in compliance with Chapter 656, Landscape Design Standards.

### **QUALITY CONTROL**

Landscape Work shall be installed based on approved landscape documents prepared by a registered Landscape Architect. Installation of landscaping shall be by qualified personnel using quality plant materials as described in Chapter 656 "Landscape Design Standards" and herein. See Chapter 656, "Invasive Species" and "Mulch" for prohibited material. Size of planting when planted and attained height within two years shall be as specified.

### **PONDS, SWALES AND EROSION CONTROL**

Swales shall not be contemplated that require a fence; handrails acceptable.

### **IRRIGATION**

All irrigation shall be designed to be consistent with water efficient landscaping design standards in accordance with Chapter 656; informal/ natural theme to include areas of re-established native plant communities with temporary irrigation system.

Equipment and design shall be vandal resistant.

### **PLANT LIST**

For the purpose of continuity and compatibility, the attached plant list is provided. Continuity from development to development is gained along the riverfront where RPDC has provided for certain requirements such as plant materials; design compatibility is gained by repetition in detailing and design elements, such as landscape features and textures.

- All street trees shall have a minimum 5' clear trunk height.

- Landscaped Buffer Strip (Chapter 656 reference “durable opaque landscape screen”) shall be landscaped as follows: The berm, toe of berm, and adjacent groundcover is to be designed with a meandering, curved edge resulting in a natural appearance.
- Walls and hedges utilized to screen visibility of unsightly areas such as service yards require a ten foot wide (minimum) landscaped bed of smaller shrubs and groundcovers planted in curvilinear beds resulting in a natural appearance as viewed from the esplanade. However, the berm or hedge may not to be constructed where it interferes with vision or safety.
- Landscaping of open areas shall contain attractively designed clusters of trees, shrubs, and groundcover. Large shade trees shall be utilized in the design to provide accent and character.
- All lawn areas, not developed with paths, or planted in groundcovers, shrubs, or trees, shall be sodded, not seeded, St. Augustine Bitter Blue, 100% full coverage.

Hartwig & Associates, Inc.  
 Landscape Architects • Planning Consultants •  
 Horticulturists

April 11, 2000

North Riverwalk

The following is a Partial Plant Pallet developed for the North Riverwalk:

| <u>Botanical Name</u>                | <u>Common Name</u>      | <u>Size</u>    | <u>Special Notes</u> |
|--------------------------------------|-------------------------|----------------|----------------------|
| <u>Trees</u>                         |                         |                |                      |
| <i>Quercus virginiana</i>            | Live Oak                | 4-6" cal.      | Sun                  |
| <i>Acer rubrum</i>                   | Red Maple               | 4-6" cal.      | Sun/Wet              |
| <i>Taxodium distichum</i>            | Bald Cypress            | 4" cal.        | Wet                  |
| <i>Lagerstroemia indica</i>          | Crepe Myrtle            | 12-14' ht.     | Multi-Stem, Red      |
| <i>Ulmus parvifolia</i>              | Drake Elm               | 12-14' ht.     |                      |
| <i>Ligustrum japonica</i>            | Ligustrum               | 12' x 12'      |                      |
| <i>Ilex opaca</i> 'Savannah'         | Savannah Holly          | 12-14' ht.     |                      |
| <i>Ilex opaca</i> 'East Palatka'     | East Palatka Holly      | 12-14' ht.     |                      |
| <i>Ilex vomitoria</i>                | Yaupon                  | 10-12' ht.     |                      |
| <i>Myrica cerifera</i>               | Wax Myrtle              | 10-12' ht.     |                      |
| <u>Palms</u>                         |                         |                |                      |
| <i>Cycas revoluta</i>                | King Sago Palm          | varied heights |                      |
| <i>Phoenix dactylifera</i>           | Medjool Palm            | City Spec.     |                      |
| <i>Trachycarpus fortunei</i>         | Windmill Palm           | varied heights |                      |
| <i>Washingtonia robusta</i>          | Washingtonia Palm       | varied heights |                      |
| <u>Large Shrubs</u>                  |                         |                |                      |
| <i>Ligustrum japonica</i>            | Waxleaf Ligustrum       | 42-48"         | Full                 |
| <i>Ilex</i> 'Nellie R. Stevens'      | Nellie R. Stevens Holly | 30-36"         | Full                 |
| <i>Podocarpus macrophylla</i>        | Podocarpus              | 30-36"         |                      |
| <i>Viburnum suspensum</i>            | Sandankwa Viburnum      | 30-36"         |                      |
| <i>Ilex burfordi</i>                 | Burford Holly           | 24-30"         |                      |
| <i>Rhododendron</i> 'Red Formosa'    | Red Formosa Azalea      | 24-30"         | Full                 |
| <i>Rhododendron</i> 'Southern Charm' | Southern Charm Azalea   | 24-30"         | Full                 |

1310 Glen Laura Road / Jacksonville, Florida 32205 / (904) 389-6357

| <u>Botanical Name</u>             | <u>Common Name</u>        | <u>Size</u> | <u>Special Notes</u> |
|-----------------------------------|---------------------------|-------------|----------------------|
| <u>Large Shrubs Continued</u>     |                           |             |                      |
| Rhododendron 'G. G. Gerbing'      | G. G. Gerbing Azalea      | 24-30"      | Full                 |
| Rhododendron 'G. L. Tabor'        | G. L. Tabor Azalea        | 24-30"      | Full                 |
| <u>Medium/Low Shrubs</u>          |                           |             |                      |
| Buxus japonica                    | Boxwood                   | 18-24"      |                      |
| Juniperus parsoni                 | Parson's Juniper          | 18-24"      |                      |
| Juniperus chinensis hetzii        | Hetzi Juniper             | 18-24"      |                      |
| Juniperus virginiana              | Red Cedar                 | 18-24"      |                      |
| Ilex vomitoria 'nana'             | Dwarf Yaupon              | 18-24"      |                      |
| Pittosporum tobira 'wheeleri'     | Wheeler's Pittosporum     | 18-24"      |                      |
| Pittosporum tobira 'variegata'    | Variegated Pittosporum    | 18-24"      |                      |
| Rhododendron 'Coral Bell'         | Coral Bell Azalea         | 18-24"      |                      |
| Rhododendron 'Duc de Rohan'       | Duc de Rohan Azalea       | 18-24"      |                      |
| Rhododendron 'Duchess of Cypress' | Duchess of Cypress Azalea | 18-24"      |                      |
| <u>Groundcovers</u>               |                           |             |                      |
| Agapanthus africanus              | Lily of the Nile          | st.cl.      | Full                 |
| Aspidistra elatior                | Cast Iron Plan            | 5-7 bibs    |                      |
| Cyrtomium falcatum                | Holly Fern                | 12-15 lvs.  |                      |
| Hedera canariensis                | Algerian Ivy              | 10-12"      |                      |
| Hemerocallis spp.                 | Daylily                   | 12-15"      | Full, Yellow         |
| Liriope muscari 'Variegata'       | Variegated Liriope        | 5-7 bibs    |                      |
| Liriope 'Evergreen Giant'         | Evergreen Giant Liriope   | 5-7 bibs    |                      |
| Juniper conferta 'Blue Pacific'   | Blue Pacific Juniper      | 12-15"      |                      |
| Moraea iridioides                 | White African Iriga       | st.cl.      |                      |
| Trachelospermum asiaticum         | Asiatic Jasmine           | 10-12"      |                      |



## **LIGHTING**

### **GENERAL**

Through good design and maintenance practices, the lighting system provided by the OWNER will maintain or enhance the ambiance created along existing sections of Riverfront Park, and shall produce a safe and secure environment within Riverfront Park. Good design will take into consideration the function of the area, the landscape and hardscape materials, the resulting color rendition, contrasts, and shadows, and the ability to properly and efficiently maintain the lighting system. The lighting design is to take into consideration glare experienced by the pedestrian, boater, and vehicular traffic; lighting design should result in safe, secure, and unobtrusive light. Adjacent lighting systems shall be compatible with the Riverfront Park lighting system.

The lights shall be as specified herein, or as approved by the CITY.

### **PRODUCTS**

Provide lighting fixtures indicated complete with, but not limited to, housings, energy efficient ballast, starters and wiring. Provide electrical wiring within fixtures which are suitable for connection to branch circuit wiring NEC Type SF-1 for 120 volts, minimum No. 18 AWG.

Provide metal, raceway-type, lighting poles of type indicated. Equip with grounding connections readily accessible from handhole access door; and construct of the following materials and additional features: Anchor base type with hand hole and cover; Metal Lighting Standard Accessories: Provide accessories for metal lighting standards, including anchor bolts, as recommended by lighting standard manufacturer, of sizes and materials needed to meet erection and loading application requirements and weatherproof duplex receptacles mounted at the top of each pole.

### **STREET (R.O.W.) LIGHTING**

R.O.W. or Street Lighting shall be provided by the CITY, installed by the OWNER, and operated and maintained by the JEA, unless otherwise provided for within easement covenants. The OWNER shall require their Contractor to include installation of these City-furnished items as a separate activity item in their project schedule and shall give the City thirty (30) days written notice of the commencement of this work so that the City may arrange for timely delivery of the items to be "Owner-Installed", to the site.

Street lighting is to be provided as indicated in the table below, or as approved by the CITY; location and layout to be approved by the CITY, Traffic Engineering.

The following page includes information excerpted from the Jacksonville Electric Authority Master Materials Catalog.

| JEA Item /Description                                                                                                                                                                                                                                                             | JEA Item No. | Size                | Manufacturer           |                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------------|------------------------|------------------------------|
| <b>ANCHOR BASE, CONCRETE</b>                                                                                                                                                                                                                                                      |              |                     |                        |                              |
| ANCBA For Decorative Street Light Poles. 1" anchor bolts on 11 inch bolt circle. Includes nuts, flat washers, and lock washers (galvanized).                                                                                                                                      |              |                     | ACCORD IND.            | SOUTHERN PRECAST             |
|                                                                                                                                                                                                                                                                                   | 007          | 20" dia x 4' length | 861-BASE-204           | SPI20DIAX4                   |
| <b>POLES, ALUMINUM</b>                                                                                                                                                                                                                                                            |              |                     |                        |                              |
| POLAL Street Light Decorative. Wilman style decorative aluminum pole, satin black finish, provisions for banner rods, and 120v weatherproof receptacle.<br><i>Note: This is the decorative pole used in the downtown area. WILMAN14F/A.0CABKRL</i>                                |              |                     | THOMAS & BETTS (EMERY) |                              |
|                                                                                                                                                                                                                                                                                   | 006          | 14' length          | WILMAN14F/A.0CA BKRL   |                              |
| POLAL Decorative, base slotted for four - 1" anchor bolts on an 11 inch bolt circle, black finish, 4" dia shaft (fluted), 3" o.d. x 2.63" high tenon.<br><i>Note: These are the poles used with the plain acorn fixtures (no banners).<br/>Item 008 is preferred for 175w MH.</i> |              |                     | THOMAS & BETTS         | UNIQUE SOLUTIONS (HOLOPHANE) |
|                                                                                                                                                                                                                                                                                   | 007          | 12' length          | WL12F/17.0CA/BK        | W12F4/17-CA/BK               |
|                                                                                                                                                                                                                                                                                   | 008          | 14' length          | WL14F/17.0CA/BK        | W14F4/17-CA/BK               |
| <b>STREET LIGHT, DECORATIVE</b>                                                                                                                                                                                                                                                   |              |                     |                        |                              |
| <i>Note: This is the decorative fixture used in the downtown area, and the associated accessories. The 175W MH Fixture, Item 005, is as specified for Street Lighting; Pedestrian Area Lighting in Riverfront Park utilizes 100W MH Fixtures.</i>                                 |              |                     |                        |                              |
| STLDE Gold balls for banner rod assembly, aluminum.<br><i>Remarks: (Four per pole required)</i>                                                                                                                                                                                   |              |                     | THOMAS & BETTS         |                              |
|                                                                                                                                                                                                                                                                                   | 001          |                     | BALL/GD                |                              |
| STLDE Break away fitter for banner rod assembly, aluminum, satin black finish.<br><i>Remarks: (Four per pole required)</i>                                                                                                                                                        |              |                     | THOMAS & BETTS         |                              |
|                                                                                                                                                                                                                                                                                   | 002          |                     | BAF58                  |                              |
| STLDE Banner rod assembly, aluminum, satin black finish.<br><i>Remarks: (Four per pole required)</i>                                                                                                                                                                              |              |                     | THOMAS & BETTS         |                              |
|                                                                                                                                                                                                                                                                                   | 003          |                     | BR/RL                  |                              |
| STLDE Sunflower Arm, aluminum, for mounting two fixtures, satin black finish.<br><i>Remarks: (One per pole required)</i>                                                                                                                                                          |              |                     | THOMAS & BETTS         |                              |
|                                                                                                                                                                                                                                                                                   | 004          |                     | SUNFLOWER CA/BK/RL     |                              |
| STLDE 175W MH Fixture, 120V, utility acorn style with two-piece glassware and decorative finial.<br><i>Remarks: (Two per pole required)</i>                                                                                                                                       |              |                     |                        | UNIQUE SOLUTIONS (HOLOPHANE) |
|                                                                                                                                                                                                                                                                                   | 005          |                     |                        | GVU175MH12B3RSGH             |
| STLDE Fitter plate w/ ring for banner rod assembly.<br><i>Remarks: (Four per pole required)</i>                                                                                                                                                                                   |              |                     | THOMAS & BETTS         |                              |
|                                                                                                                                                                                                                                                                                   | 006          |                     | BRFPWR                 |                              |
| <b>STREET LIGHT LUMINARIES, METAL HALIDE</b>                                                                                                                                                                                                                                      |              |                     |                        |                              |
| STLLU Plain acorn style, black finish, electronic button-style photo control w/ quick disconnect connectors, & supplied w/ quick disconnect connectors (male/female) for supply wires.                                                                                            | 013          | 175 Watts           |                        | UNIQUE SOLUTIONS (HOLOPHANE) |
|                                                                                                                                                                                                                                                                                   |              |                     |                        | GV1A175MH12LB-SPECIAL        |

*(Note: The manufacturer THOMAS & BETTS has taken over the "EMERY" product line; various published data may still reference the Emery product.)*

**AREA AND LANDSCAPE LIGHTING**

Along Riverfront Park away from city street r.o.w. and along r.o.w where pathways can not be sufficiently lit by street lighting, Area Lighting of pedestrian way shall be as specified herein. Area Lighting is to installed by the OWNER, and operated and maintained by the CITY, unless otherwise provided for within easement covenants; Decorative Street Light Poles and Fixtures may be provided by the CITY. Area Lighting is to be provided as indicated in the table below, or as approved by the CITY; location and layout to be approved by the CITY. Lighting in addition to that indicated with in the table shall be approved by the CITY and shall be consistent with the design of the existing portions of Riverfront Park and adjacent development. Area Lighting may be supplemented with Landscape Lighting such as bollards.

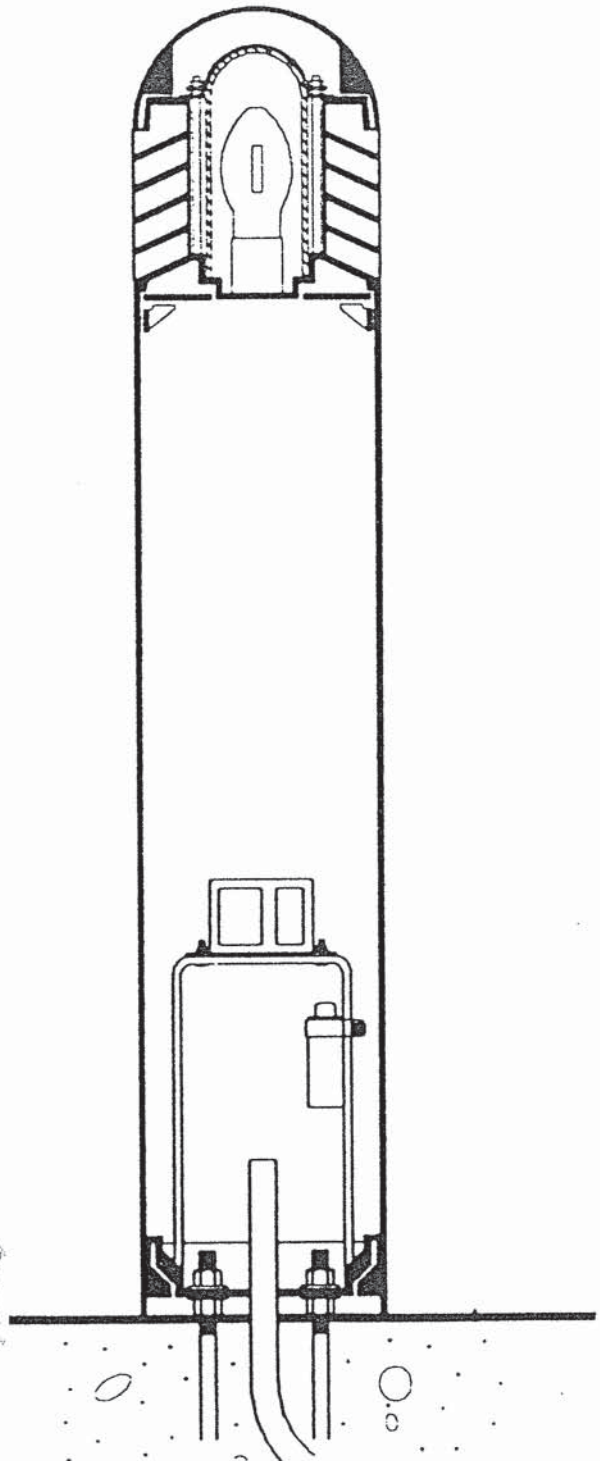
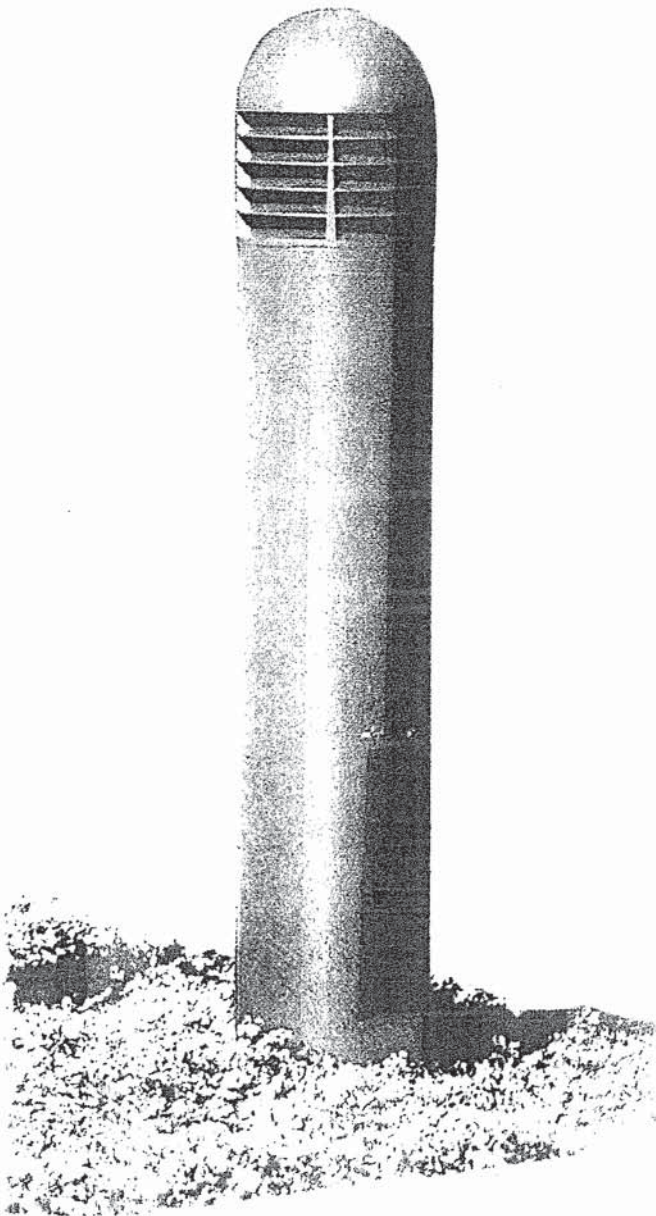
Utilizing good design and maintenance practices, lighting of adjacent buildings and structures, parking lots, landscaping, adjacent terraces and plazas or other exterior pedestrian areas, should maintain or enhance the ambiance created for Riverfront Park.

| Fixture Description                                                                                                                                                                                     | Manufacturer                 | Catalog Number                | Lamp |         | Volt |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|-------------------------------|------|---------|------|
|                                                                                                                                                                                                         |                              |                               | No.  | Type    |      |
| Decorative Light Fixture & Pole. See information on JEA Master Materials Catalog above for Pedestrian Area Lighting, including pole with twin cross arms and 120V receptacle, fixtures and accessories. | UNIQUE SOLUTIONS (HOLOPHANE) | GVU100MH12B3RSGH              | 2    | 100     | 120  |
| Maritime Light Fixtures, two per pole                                                                                                                                                                   | ARCHITECTURAL AREA LIGHTING  | 2-SL SR24, H2-5 (as required) | 2    | 100     | 120  |
| Maritime Light Pole with twin cross arms and 120V receptacle and accessories                                                                                                                            | ARCHITECTURAL AREA LIGHTING  |                               |      |         |      |
| Pole & base                                                                                                                                                                                             |                              | DB6 4R14-226 w/GFI            |      |         |      |
| twin cross arms                                                                                                                                                                                         |                              | SLA4-2                        |      |         |      |
| 42" Louvered Cast Aluminum Bollard; clear anodized finish, or painted finish, black or green.                                                                                                           | KIM                          | VRB1-100MH120                 | 1    | 100W MH | 120  |
|                                                                                                                                                                                                         |                              |                               |      |         |      |
|                                                                                                                                                                                                         |                              |                               |      |         |      |
|                                                                                                                                                                                                         |                              |                               |      |         |      |

**EXECUTION**

Provide grounding connections for exterior lighting fixtures. Tighten connections to comply with tightening torques specified in UL Std 486A to assure permanent and effective grounds.

At the date Work is turned over to the City for maintenance, replace lamps in lighting fixtures which are observed to be noticeably dimmed after Contractor's use and testing, as judged by the City.



**LIGHT BOLLARD**

 **KIM LIGHTING**

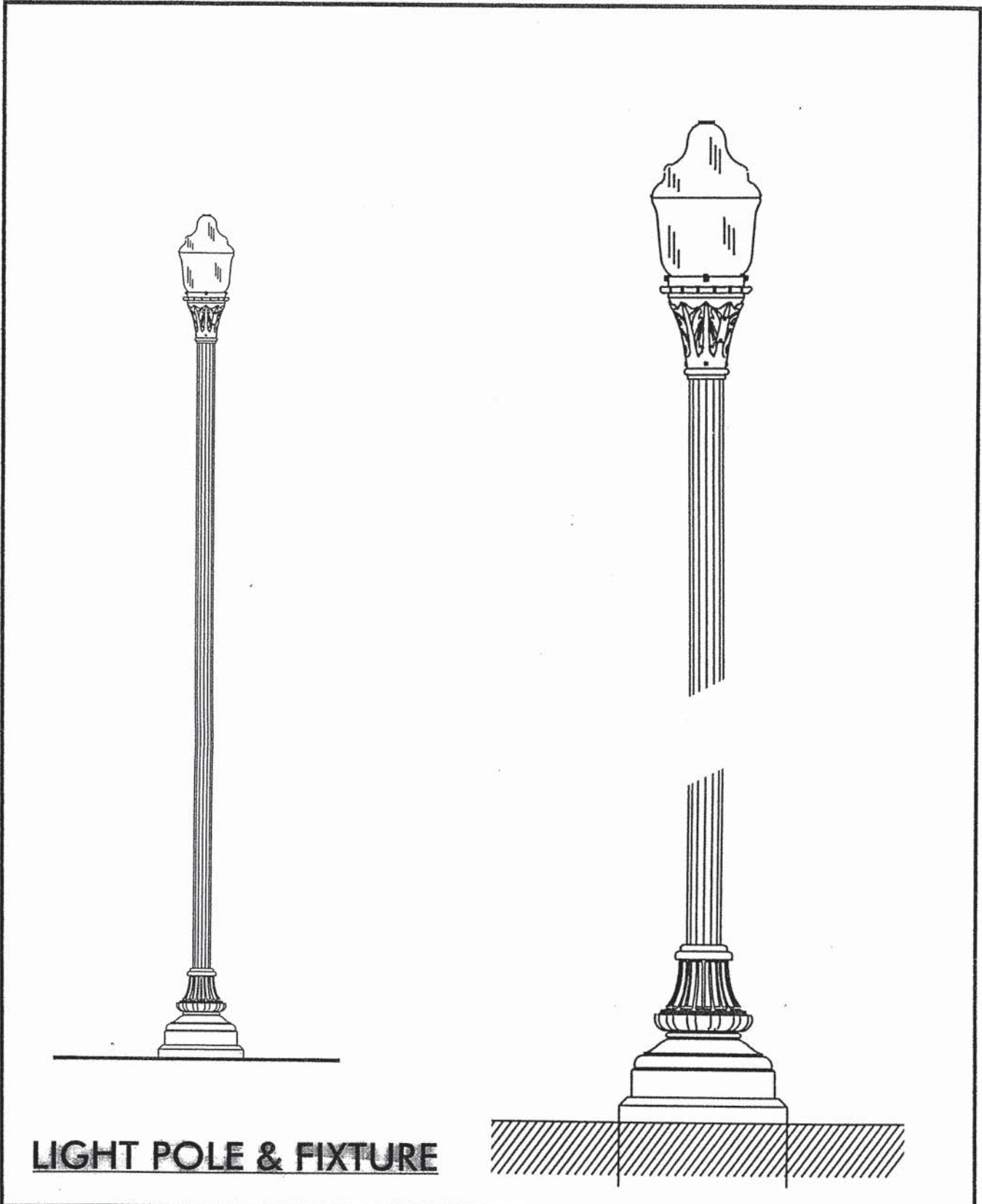


□□□ **RIVERFRONT PARK DESIGN CRITERIA** □□□  
CITY OF JACKSONVILLE

PO 024150

SEPTEMBER 27, 1999

SKETCH  
1  
OF 4



**LIGHT POLE & FIXTURE**

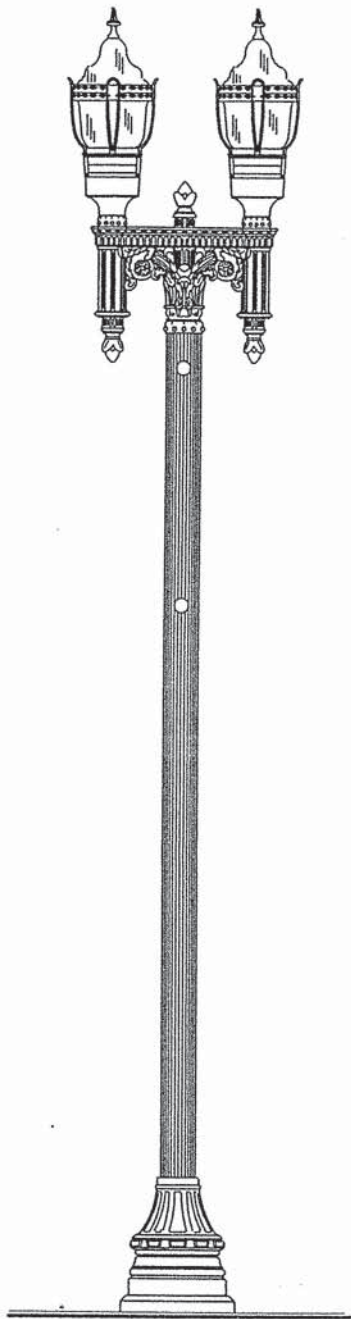


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 CITY OF JACKSONVILLE

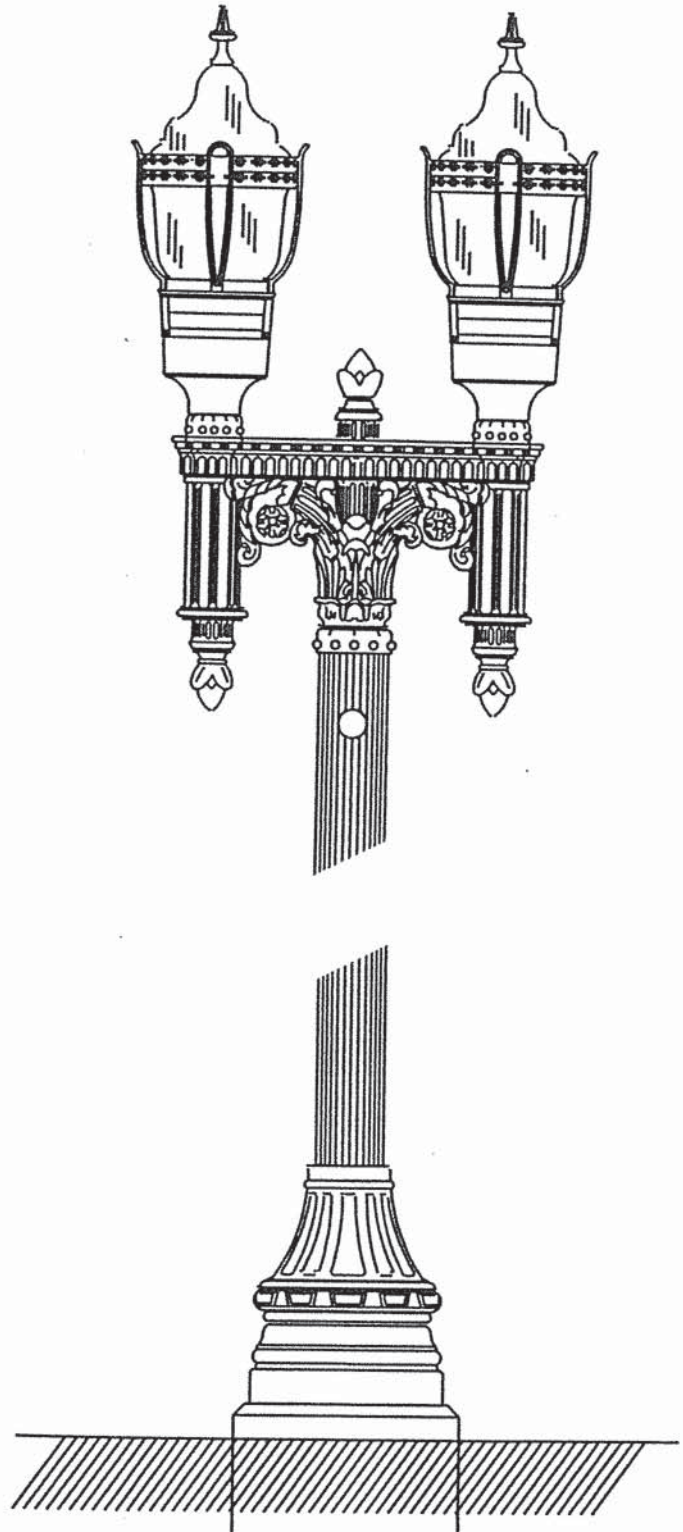
PO 024150

SEPTEMBER 27, 1999

SKETCH  
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 OF 4



**DECORATIVE LIGHT  
POLE & FIXTURE**

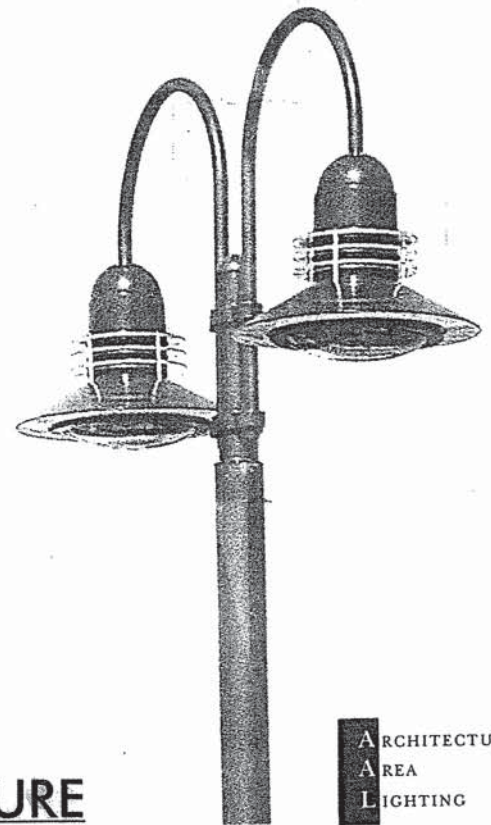
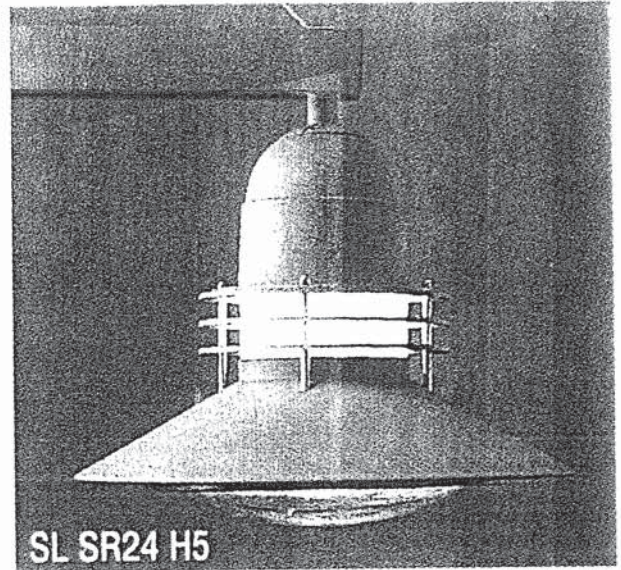
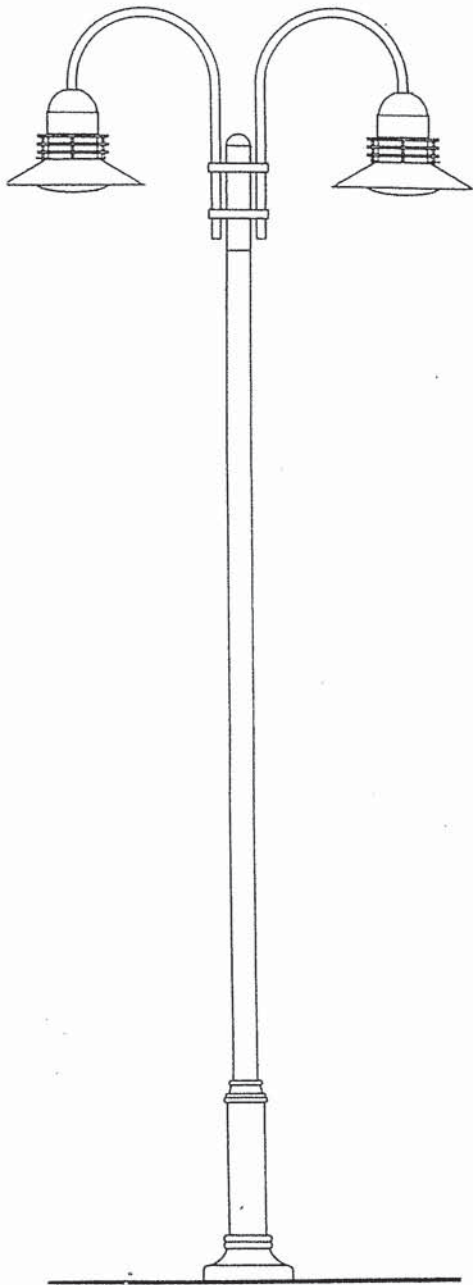


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CITY OF JACKSONVILLE

PO 024150

SEPTEMBER 27, 1999

SKETCH  
**3**  
OF 4



ARCHITECTURAL  
AREA  
LIGHTING

**MARITIME LIGHT POLE & FIXTURE**



□□□ **RIVERFRONT PARK DESIGN CRITERIA** □□□  
CITY OF JACKSONVILLE

PO 024150

SEPTEMBER 27, 1999

SKETCH

4

OF 4

## **EXHIBIT I**

### **Riverwalk Improvements**

The Developer proposes significant Improvements to the waterfront Riverwalk. Although the character, finishes, lighting and furnishings of the Riverwalk design will be consistent with City's Riverwalk Design Criteria specifications, the outdoor amenities of the Hotel and FEC will provide additional features and landscaping. Improvements to the existing Riverwalk will include paving, lighting and benches and will be addressed to create an overall Riverwalk section fronting the property. Such improvements will be in the nature of resurfacing, paving work, landscaping, installation of benches and lighting, and similar surface improvements. The Riverwalk Improvements will consist of approximately 400 linear feet of 25' wide improvements on the City lands adjacent to the City Parcel, approximately 160' linear feet of 5' wide improvements within the portion of the Riverwalk Easement described in Section 6.4 of this Agreement located on the Developer Parcel and approximately 40' linear feet of 25' wide improvements located within the portion of the Riverwalk Easement along the southerly twenty-five feet (25') of the Catherine Street Parcel abutting the St. Johns River, the specific details of which Plans for the Riverwalk Improvements will be agreed upon by the City and the Developer as called for in Section 6.2 of this Agreement and in accordance with the Disbursement Agreement described in Section 6.1 of this Agreement.



**EXHIBIT J**  
Riverwalk Parcel

*(Legal Description to be inserted after verification by survey.)*

**EXHIBIT K**

Form of Quitclaim Deed

Prepared by and return to:  
John Sawyer, Esq.  
City of Jacksonville  
Office of General Counsel  
117 West Duval Street Suite 480  
Jacksonville, FL 32202

Parcel Identification No.: \_\_\_\_\_ - \_\_\_\_\_

**QUITCLAIM DEED WITH REPURCHASE RIGHT**

**This Quitclaim Deed with Repurchase Rights** (“Deed”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, between the **CITY OF JACKSONVILLE**, a municipal corporation, whose business address is c/o Office of General Counsel Government Operations Department, 117 West Duval Street Suite 480, Jacksonville, FL 32202 (“Grantor”), and **500 EAST BAY STREET LLC**, a Florida limited liability company, whose address is 195 Beach Boulevard, Biloxi, Mississippi 39530 (“Grantee”).

**WITNESSETH:**

Grantor, for and in consideration of the sum of Ten and no/100 dollars (\$10.00) and other valuable considerations, receipt of which is hereby acknowledged, does hereby remise, release and quit-claim unto Grantee, its successors and assigns, all the right, title, interest, claim and demand which the Grantor has in and to the following described land, situate, lying and being in the County of Duval, State of Florida (the “Property”):

[See **Exhibit A** attached hereto]

**TO HAVE AND HOLD** the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the Grantor, either in law or in equity, to the only proper use, benefit and behoof of Grantee, its successors and assigns forever.

BY ACCEPTANCE OF THIS DEED, GRANTEE ACKNOWLEDGES THAT GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR

FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (F) GOVERNMENTAL RIGHTS OF POLICE POWER OR EMINENT DOMAIN, (G) DEFECTS, LIENS, ENCUMBRANCES, ADVERSE CLAIMS OR OTHER MATTERS: (1) NOT KNOWN TO GRANTOR AND NOT SHOWN BY THE PUBLIC RECORDS BUT KNOWN TO GRANTEE AND NOT DISCLOSED IN WRITING BY THE GRANTEE TO THE GRANTOR PRIOR TO THE DATE HEREOF, (2) RESULTING IN NO LOSS OR DAMAGE TO GRANTEE, OR (3) ATTACHING OR CREATED SUBSEQUENT TO THE DATE HEREOF, (H) VISIBLE AND APPARENT EASEMENTS AND ALL UNDERGROUND EASEMENTS, THE EXISTENCE OF WHICH MAY ARISE BY UNRECORDED GRANT OR BY USE, (I) ALL MATTERS THAT WOULD BE DISCLOSED BY A CURRENT SURVEY OF THE PROPERTY, (J) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (K) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, OR (L) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS MATERIALS AS DEFINED IN THE REDEVELOPMENT AGREEMENT PURSUANT TO WHICH THIS QUITCLAIM DEED IS DELIVERED. GRANTEE FURTHER ACKNOWLEDGES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CONVEYANCE OF THE PROPERTY IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS.

### **REPURCHASE RIGHT**

A. Grantor and Grantee are parties to that certain Redevelopment Agreement (the "Agreement", which Agreement is available to the public via a public records request made to the Grantor) dated \_\_\_\_\_, 2019 (the "Effective Date"), which requires Grantee to construct on the Property the Parking Garage Improvements and certain Family Amenity Entertainment Improvements (as defined in the Agreement), described generally as a 350 or 630 space structured parking facility, and certain outdoor rides. The Agreement requires Grantee to Commence Construction of the Parking Garage Improvements by \_\_\_\_\_ (*no later than eighteen months from the Effective Date of the Agreement*) (the "Commencement of Construction Date"), and to Complete construction of the Parking Garage Improvements no later than twenty-four (24) months thereafter (the "Completion Date"). In the event the Grantee fails to Commence Construction (as defined in the Agreement) by the Commencement of Construction Date, or to Complete (as defined in the Agreement) construction by the Completion Date (the "Repurchase Completion Deadline"), the Grantor shall have the right to repurchase the Property in accordance with the repurchase option set forth herein.

B. In the event that Grantee fails to (a) Commence Construction of the Parking Garage Improvements on or before the Commencement of Construction Date, and/or (b) fails to Complete the Parking Garage Improvements on or before the Completion Date, beyond the applicable cure periods (a "Fundamental Breach"), then the Grantor may exercise its option to re-purchase the Property by delivering written notice of such intent to Grantee, within one

hundred twenty (120) days of such Fundamental Breach. If Grantor fails to provides its written notice within one hundred twenty (120) days of such Fundamental Breach, this repurchase option shall automatically terminate.

C. The Repurchase Completion Deadline shall be extended on a day-for-day basis in the event that Grantee’s failure to meet the Repurchase Completion Deadline is a result of a Force Majeure Event (as defined in the Agreement). In the event that such delay is caused by a fire or other casualty which damages the unfinished Parking Garage Improvements, the Grantor and Grantee agree that the aforementioned day-for-day extension shall be based upon the time period required to return the unfinished Parking Garage Improvements to the condition such improvements were in immediately prior to the fire or other casualty.

D. If the City exercises its repurchase rights as set forth herein, the price for such repurchase shall be \_\_\_\_\_ Dollars (\$\_\_\_\_\_) [*the amount paid by Grantee for the Property under the Agreement*] (the “**Repurchase Price**”). The repurchase of the Property shall be consummated through the escrow agent, at a time determined by the Grantor no later than ninety (90) days after the delivery of the Grantor’s notice that it intends to exercise its repurchase rights. The Repurchase Price shall be payable in cash or other immediately available funds. Title to the Property shall be conveyed by the Grantee to the Grantor by quitclaim deed, subject to all permitted title exceptions, except delinquent real property taxes or installments of special assessments. Any mortgage or liens, including potential mechanics liens or other liens outstanding on the Property, shall be discharged by the Grantee at the closing hereunder. Current real property taxes and installments of special assessments shall be prorated as of the date of closing. The costs of closing and title shall be paid by Grantee.

E. Upon Completion of the Parking Garage Improvements by the Completion Date, the repurchase rights herein granted to the Grantor shall automatically and forever terminate and the Grantor shall be obligated to deliver to the Grantee a quitclaim deed further evidencing the termination of the Grantor’s repurchase rights in the form attached hereto as **Exhibit B** (the “Repurchase Rights Termination”).

**IN WITNESS WHEREOF**, Grantor has caused this instrument to be executed in its name on the day and year first above written.

Signed, sealed and delivered  
in the presence of:

CITY OF JACKSONVILLE,  
FLORIDA

\_\_\_\_\_  
Print Name:\_\_\_\_\_

By: \_\_\_\_\_  
Lenny Curry, Mayor

\_\_\_\_\_  
Print Name:\_\_\_\_\_

Attest: \_\_\_\_\_  
James B. McCain, Jr.  
Corporation Secretary

[Seal]

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by Lenny Curry, as Mayor, and James B. McCain, Jr., as Corporation Secretary, of the City of Jacksonville, Florida, a municipal corporation and a political subdivision of the State of Florida. They are ( ) personally known to me or ( ) have produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My commission expires:

FORM APPROVED:

\_\_\_\_\_  
Office of the General Counsel

## **Exhibit A to Quitclaim Deed**

### **Property Description**

That certain parcel of land comprised of approximately 3 acres adjacent to and east of the property owned by the Grantee (which Grantee property is located generally at 500 East Bay Street, Jacksonville, Florida), the legal description of which Property to be herein conveyed shall be inserted herein after confirmation by the title commitment and survey.

**Exhibit B to Quitclaim Deed**  
**Repurchase Rights Termination**

Prepared by and return to:  
John Sawyer, Esq.  
City of Jacksonville  
Office of General Counsel  
117 West Duval Street Suite 480  
Jacksonville, FL 32202

Parcel Identification No.: \_\_\_\_\_ - \_\_\_\_\_

**QUITCLAIM DEED EVIDENCING TERMINATION OF REPURCHASE RIGHT**

**This Quitclaim Deed Evidencing Termination of Repurchase Rights (“Deed”)** is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the **CITY OF JACKSONVILLE**, a municipal corporation, whose business address is c/o Office of General Counsel Government Operations Department, 117 West Duval Street Suite 480, Jacksonville, FL 32202 (“Grantor”), and **500 EAST BAY STREET LLC**, a Florida limited liability company, whose address is 195 Beach Boulevard, Biloxi, Mississippi 39530 (“Grantee”).

**WITNESSETH:**

Grantor, for and in consideration of the sum of Ten and no/100 dollars (\$10.00) and other valuable considerations, receipt of which is hereby acknowledged, does hereby remise, release and quit-claim unto Grantee, its successors and assigns, all the right, title, interest, claim and demand which the Grantor has in and to the following described land, situate, lying and being in the County of Duval, State of Florida (the “Property”) specifically including and to evidence that the Grantor’s repurchase rights as reserved to the Grantor in that certain Quitclaim Deed with Repurchase Right dated \_\_\_\_\_, 2019 from Grantor to Grantee and recorded in Official Records Book\_\_\_\_, Page\_\_\_\_ of the Duval County public records (the “Repurchase Rights”) have forever terminated:

[See **Exhibit A** attached hereto ] [ Note to drafter Exhibit A to be provided from legal description contained in the Repurchase Rights Quitclaim Deed referenced above]

**TO HAVE AND HOLD** the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the Grantor, either in law or in equity, to the only proper use, benefit and behoof of Grantee, its successors and assigns forever and to further confirm that the Grantor’s above referenced Repurchase Rights have forever terminated and are herein quit-claimed and conveyed by Grantor to Grantee.

BY ACCEPTANCE OF THIS DEED, GRANTEE ACKNOWLEDGES THAT GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR

CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (F) GOVERNMENTAL RIGHTS OF POLICE POWER OR EMINENT DOMAIN, (G) DEFECTS, LIENS, ENCUMBRANCES, ADVERSE CLAIMS OR OTHER MATTERS: (1) NOT KNOWN TO GRANTOR AND NOT SHOWN BY THE PUBLIC RECORDS BUT KNOWN TO GRANTEE AND NOT DISCLOSED IN WRITING BY THE GRANTEE TO THE GRANTOR PRIOR TO THE DATE HEREOF, (2) RESULTING IN NO LOSS OR DAMAGE TO GRANTEE, OR (3) ATTACHING OR CREATED SUBSEQUENT TO THE DATE HEREOF, (H) VISIBLE AND APPARENT EASEMENTS AND ALL UNDERGROUND EASEMENTS, THE EXISTENCE OF WHICH MAY ARISE BY UNRECORDED GRANT OR BY USE, (I) ALL MATTERS THAT WOULD BE DISCLOSED BY A CURRENT SURVEY OF THE PROPERTY, (J) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (K) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, OR (L) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS MATERIALS AS DEFINED IN THE REDEVELOPMENT AGREEMENT PURSUANT TO WHICH THIS QUITCLAIM DEED IS DELIVERED. GRANTEE FURTHER ACKNOWLEDGES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CONVEYANCE OF THE PROPERTY IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS.

**IN WITNESS WHEREOF**, Grantor has caused this instrument to be executed in its name on the day and year first above written.

Signed, sealed and delivered  
in the presence of:

CITY OF JACKSONVILLE,  
FLORIDA

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Lenny Curry, Mayor

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Attest: \_\_\_\_\_  
James B. McCain, Jr.  
Corporation Secretary

[Seal]



STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by Lenny Curry, as Mayor, and James B. McCain, Jr., as Corporation Secretary, of the City of Jacksonville, Florida, a municipal corporation and a political subdivision of the State of Florida. They are ( ) personally known to me or ( ) have produced \_\_\_\_\_ as identification.

\_\_\_\_\_

Notary Public  
My commission expires:

FORM APPROVED:

\_\_\_\_\_  
Office of the General Counsel

**Exhibit A to Quitclaim Deed Evidencing Termination of Repurchase Rights**

Property Description

[Note to drafter Exhibit A to be provided from legal description contained in the Repurchase Rights Quitclaim Deed referenced above]

**EXHIBIT L**

Riverwalk Easement

*(To be inserted at time of execution of agreement as agreed to by the parties)*

## EXHIBIT M

### Temporary Construction Easement

Prepared by and return to:

John C. Sawyer, Jr.  
Chief, Gov. Operations Dept.  
City of Jacksonville  
117 W. Duval St., Suite 480  
Jacksonville, FL 32202

### CITY OF JACKSONVILLE TEMPORARY CONSTRUCTION EASEMENT

**THIS TEMPORARY CONSTRUCTION EASEMENT** (this “Easement”), is made this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the **CITY OF JACKSONVILLE**, a municipal corporation whose address is c/o Office of General Counsel, 117 W. Duval Street, Suite 480, Jacksonville, Florida 32202 (the “Grantor”), and **500 EAST BAY LLC**, a Florida limited liability company, whose address is 195 Beach Boulevard, Biloxi, Mississippi 39530 (the “Grantee”).

**WITNESSETH:** Grantor for and in consideration of the sum of Ten and 00/100 dollars (\$10.00) and other valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties intending to be mutually bound to hereby agree as follows:

1. Grant of Easement. Grantor hereby gives, grants, bargains and releases unto Grantee, a Temporary Easement for the purpose of constructing those certain Riverwalk Improvements, including lighting, landscaping, benches, landscaping and other improvements as further detailed on Exhibit A hereto, as further detailed in the Redevelopment Agreement between Grantor and Grantee dated \_\_\_\_\_, 2019 (“Redevelopment Agreement”), to be undertaken by Grantee, said Temporary Easement being located in, upon, over and through the following described land in Duval County, Florida, described as follows:

See Exhibit B attached hereto and incorporated herein (the “City Parcel”).

2. Term of Easement. This Temporary Construction Easement shall automatically terminate upon the earlier to occur of (i) completion of construction of the Riverwalk Improvements by Grantee, or (ii) December 29, 20\_\_; provided however that upon the written request of the Grantor, Grantee shall execute and deliver for recordation a termination of easement in respect hereof.

3. Indemnification. Grantee hereby agrees to indemnify, and save Grantor and its officers, employees, members, agents, successors-in-interest and assigns (the “Indemnified Parties”) harmless from and against any and all claims for injury or death to persons or damage to or loss of property arising out of or alleged to have arisen out of or occasioned by exercise by Grantee or its successors, assigns, contractors, employees or agents of the easement rights hereunder granted, unless such damage or injury shall have been due to the gross negligence or intentional act of the Indemnified Parties. This indemnification shall survive the termination of this Easement.

4. Insurance. The insurance requirements of Grantee shall be as set forth in the Redevelopment Agreement.

5. Successors and Assigns. The burdens of this Easement shall run with title to the City Parcel, and all benefits and rights granted hereunder shall be appurtenant to the interest of the parties hereto. This Easement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

6. Use; Compliance with Laws. Subject to the provisions hereof, Grantee shall have the right to use the City Parcel for the purpose stated in Paragraph 1 above and for no other purpose without the prior written consent of Grantor (which consent may be withheld in Grantor’s sole discretion). Grantee shall comply with all laws, rules and regulations, orders and decisions of all governmental authorities, respecting the use of and operations and activities on the City Parcel, including, but not limited to, environmental, zoning and land use regulations. Grantee shall not make, suffer or permit any unlawful use of the City Parcel, or any part thereof.

7. Severability. The invalidity of any provision contained in this Easement shall not affect the remaining portions of this Easement, provided that such remaining portions remain consistent with the intent of this Easement and do not violate Florida law, which law shall govern this Easement.

8. Construction. The parties acknowledge that each party has reviewed and revised this Easement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Easement.

9. Notices. Any notice, demand, consent, authorization, request, approval or other communication (collectively, “Notice”) that any party is required, or may desire, to give to or make upon the other party pursuant to this Agreement shall be effective and valid only if in writing, signed by the parties giving such Notice, and delivered personally to the other parties or sent by express 24-hour guaranteed courier or delivery service, by facsimile transmission, with confirmed receipt, or by registered or certified mail of the United States Postal Service, postage prepaid and return receipt requested, addressed to the other parties and sent simultaneously as follows (or to such other place as any party may by Notice to the other specify):

To Grantee:

\_\_\_\_\_  
\_\_\_\_\_  
Jacksonville, Florida 32202  
Attn: \_\_\_\_\_

To Grantor:

117 West Adams Street, Suite 310  
Jacksonville, Florida 32202  
Attention: \_\_\_\_\_

Notices shall be deemed given when received, except that if delivery is not accepted, Notice shall be deemed given on the date of such non-acceptance.

10. Modification and Waiver. This Agreement shall not be modified or amended and no waiver of any provision shall be effective unless set forth in writing and signed by both parties.

11. Jurisdiction. This Easement shall be construed and enforced in accordance with the laws of the State of Florida. Any action or proceeding arising out of or relating to this Agreement shall be brought in the Circuit Court of Duval County, Florida. Both parties hereby waive any objections to the laying of venue in any such courts.

IN WITNESS WHEREOF, the parties have signed and sealed these presents the day and year first above written.

Signed and Sealed in Our  
Presence as Witnesses:

GRANTOR:

**CITY OF JACKSONVILLE,** a municipal  
corporation

Sign \_\_\_\_\_  
Print \_\_\_\_\_

By: \_\_\_\_\_  
Lenny Curry, Mayor

Sign \_\_\_\_\_  
Print \_\_\_\_\_

Attest: \_\_\_\_\_  
James R. McCain, Jr.,  
Corporation Secretary

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by Lenny Curry and James R. McCain, Jr., the Mayor and Corporation Secretary respectively, of the City of Jacksonville, a municipal corporation, on behalf of the corporation. Such persons are personally known to me or have produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida  
My commission expires: \_\_\_\_\_

Form Approved:

\_\_\_\_\_  
Office of General Counsel

WITNESS:

**500 EAST BAY LLC**, a Florida limited liability company

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_, by \_\_\_\_\_, the \_\_\_\_\_ of 500 East Bay LLC, a Florida limited liability company, on behalf of the company. Such person is personally known to me or have produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida  
My commission expires: \_\_\_\_\_



## **Exhibit A to TCE**

### **Description of Riverwalk Improvements**

Improvements to the existing Riverwalk will include paving, lighting and benches and will be addressed to create an overall Riverwalk section fronting the property. Such improvements will be in the nature of resurfacing, paving work, landscaping, installation of benches and lighting, and similar surface improvements. The Riverwalk Improvements will consist of approximately 400 linear feet of 25' wide improvements on the City lands adjacent to the City Parcel, approximately 160' linear feet of 5' wide improvements within the portion of the Riverwalk Easement described in Section 6.4 of this Agreement located on the Developer Parcel and approximately 40' linear feet of 25' wide improvements located within the portion of the Riverwalk Easement along the southerly twenty-five feet (25') of the Catherine Street Parcel abutting the St. Johns River, the specific details of which Plans for the Riverwalk Improvements will be agreed upon by the City and the Developer as called for in Section 6.2 of the Redevelopment Agreement and in accordance with the Disbursement Agreement described in Section 6.1 of the Redevelopment Agreement.

**Exhibit B to TCE**  
Legal Description of City Parcel

(To be inserted by the parties upon completion of survey.)



**EXHIBIT O**

Annual Survey

Please complete the form below as it relates to the project for which you received City or State assistance. Should you have any questions, please call Guy Parola at (904) 630-3448, or email gparola@coj.net. Send completed form to: City of Jacksonville, Downtown Investment Authority, 117 West Duval Street, Suite 310, Jacksonville, FL 32202.

Company name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Primary Contact Name: \_\_\_\_\_

Primary Contact Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Signature: \_\_\_\_\_ Reporting Date: \_\_\_\_\_

**As of [12/31/2018]:**

**I. HOTEL OCCUPANCY INFORMATION**

|                                      |     |
|--------------------------------------|-----|
| Number of sleeping rooms in Building | [1] |
|                                      |     |
|                                      |     |
|                                      |     |
|                                      |     |

**II. CAPITAL INVESTMENT INFORMATION**

|                                           |        |
|-------------------------------------------|--------|
| Project Land Costs                        | [3] \$ |
| Project Structure Costs                   | [4] \$ |
| Project Equipment Costs                   | [5] \$ |
| Other Costs                               | [6] \$ |
| Total Project Costs (sum [3] through [6]) | \$     |

**III. ASSESSED PROPERTY VALUE**

|                                                                         |        |
|-------------------------------------------------------------------------|--------|
| Assessed Value of Property on [2019]<br>Duval County Property Tax Bill: |        |
| Real Property                                                           | [7] \$ |

|                          |                  |
|--------------------------|------------------|
| Personal Property        | [8] \$           |
| Total of [7] & [8]       | \$               |
| Amount of Taxes Paid: \$ | Date Taxes Paid: |

**IV. PLEASE PROVIDE A BRIEF DESCRIPTION OF THE STATUS OF THE PROJECT INCLUDING, WHERE APPLICABLE, AN OVERVIEW OF THE TYPE OF JOBS CREATED.**

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**EXHIBIT P**

**Quitclaim Deed Evidencing Release of Reverter Rights**

Prepared by and return to:  
John Sawyer, Esq.  
City of Jacksonville  
Office of General Counsel  
117 West Duval Street Suite 480  
Jacksonville, FL 32202

Parcel Identification No.: \_\_\_\_\_ - \_\_\_\_\_

**QUITCLAIM DEED EVIDENCING RELEASE OF REVERTER RIGHTS**

**This Quitclaim Deed Evidencing Release of Reverter Rights** (“Deed”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the **CITY OF JACKSONVILLE**, a municipal corporation, whose business address is c/o Office of General Counsel Government Operations Department, 117 West Duval Street Suite 480, Jacksonville, FL 32202 (“Grantor”), and **500 EAST BAY STREET LLC**, a Florida limited liability company, whose address is 195 Beach Boulevard, Biloxi, Mississippi 39530 (“Grantee”).

**WITNESSETH**

Grantor, for and in consideration of the sum of Ten and no/100 dollars (\$10.00) and other valuable considerations, receipt of which is hereby acknowledged, does hereby remise, release and quit-claim unto Grantee and its successors and assigns all the reverter rights (the “Reverter Rights”) that the Grantor holds, if any, by way of that certain Special Warranty Deed recorded in Official Records Book 9501, Page 546, in the current public records of Duval County, Florida (the “Prior Deed”) and Grantor does hereby convey to the Grantee all right, title, interest, claim and demand which the Grantor has in and to the Reverter Rights, including but not limited to any Reverter Rights of the Grantor in and with respect of that certain real property lying and being in the County of Duval, State of Florida and being more particularly described on Exhibit A attached hereto (the “Property”).

**TO HAVE AND HOLD** the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the Grantor, either in law or in equity, to the only proper use, benefit and behoof of Grantee, its successors and assigns forever and to further confirm that the Grantor’s above referenced Reverter Rights have forever terminated and are herein quit-claimed and conveyed by Grantor to Grantee.

BY ACCEPTANCE OF THIS DEED, GRANTEE ACKNOWLEDGES THAT GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C)

THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (F) GOVERNMENTAL RIGHTS OF POLICE POWER OR EMINENT DOMAIN, (G) DEFECTS, LIENS, ENCUMBRANCES, ADVERSE CLAIMS OR OTHER MATTERS: (1) NOT KNOWN TO GRANTOR AND NOT SHOWN BY THE PUBLIC RECORDS BUT KNOWN TO GRANTEE AND NOT DISCLOSED IN WRITING BY THE GRANTEE TO THE GRANTOR PRIOR TO THE DATE HEREOF, (2) RESULTING IN NO LOSS OR DAMAGE TO GRANTEE, OR (3) ATTACHING OR CREATED SUBSEQUENT TO THE DATE HEREOF, (H) VISIBLE AND APPARENT EASEMENTS AND ALL UNDERGROUND EASEMENTS, THE EXISTENCE OF WHICH MAY ARISE BY UNRECORDED GRANT OR BY USE, (I) ALL MATTERS THAT WOULD BE DISCLOSED BY A CURRENT SURVEY OF THE PROPERTY, (J) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (K) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, OR (L) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS MATERIALS AS DEFINED IN THE REDEVELOPMENT AGREEMENT PURSUANT TO WHICH THIS QUITCLAIM DEED IS DELIVERED. GRANTEE FURTHER ACKNOWLEDGES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CONVEYANCE OF THE PROPERTY IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS.

**IN WITNESS WHEREOF**, Grantor has caused this instrument to be executed in its name on the day and year first above written.

Signed, sealed and delivered  
in the presence of:

CITY OF JACKSONVILLE,  
FLORIDA

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Lenny Curry, Mayor

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Attest: \_\_\_\_\_  
James B. McCain, Jr.  
Corporation Secretary  
[Seal]

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by Lenny Curry, as Mayor, and James B. McCain, Jr., as Corporation Secretary, of the City of Jacksonville, Florida, a municipal corporation and a political subdivision of the State of Florida. They are ( ) personally known to me or ( ) have produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My commission expires:

FORM APPROVED:

\_\_\_\_\_  
Office of the General Counsel



**Exhibit A to Quitclaim Deed Evidencing Termination of Reverter Rights**

Property Description

[ Note to drafter Exhibit A to be provided from legal description contained in the survey of the Developer Parcel]

**RESOLUTION 2018-09-02**

**A RESOLUTION OF THE DOWNTOWN INVESTMENT AUTHORITY (“DIA”) AUTHORIZING THE CHIEF EXECUTIVE OFFICER (“CEO”) OF THE DIA TO NEGOTIATE A REDEVELOPMENT AGREEMENT, WITH, 500 EAST BAY STREET, LLC FOR THE REDEVELOPMENT OF THE BERKMAN II TOWER ALONG WITH A PARKING GARAGE (COLLECTIVELY, THE “PROJECT”); AUTHORIZING: (1) A \$8,250,000 OPERATIONAL GRANT FOR THE PROJECT; (2) AUTHORIZING A REV GRANT IN THE AMOUNT OF \$20,000,000 FOR THE PROJECT; (3) RECOMMENDING APPROVAL BY CITY COUNCIL OF A \$3,250,000 CITY GRANT FOR THE PROJECT; AND (4) AUTHORIZING THE PARKING GRANT IN THE AMOUNT OF \$3,500,000 FOR THE RESERVATION OF 200 PARKING SPACES FOR THE PUBLIC VIA RESTRICTIVE COVENANT; AUTHORIZING THE CEO OF THE DIA TO NEGOTIATE REDEVELOPMENT AGREEMENTS, AND OTHER AGREEMENTS AS NECESSARY FOR THE PROJECT; AUTHORIZING CEO TO INITIATE FILING LEGISLATION WITH THE CITY COUNCIL REGARDING THE SAME; AUTHORIZING THE CEO OF THE DIA TO EXECUTE SUCH AGREEMENTS; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** The 500 East Bay Street, LLC (the “Developer”) currently has ownership of the land, building, and other improvements located at 500 E Bay Street, more commonly known as the Berkman II project site; and

**WHEREAS,** the Developers propose to redevelop the Berkman II site into a 340 room Hotel, Family Entertainment Center, Water Park, and Parking Garage; and

**WHEREAS,** the Developers propose to develop (design, construct, and finance) a parking garage on up to 3 acres of the westernmost portion of the City of Jacksonville owned undeveloped land located in the area commonly known as the shipyards, to accommodate the parking needs of the Project; and

**WHEREAS,** to assist the Developers in redeveloping these historic buildings, the DIA proposes to offer a package of incentives as further detailed in the Term Sheet attached to this Resolution as Exhibit “A”; and

**WHEREAS,** the Downtown Investment Authority (“DIA”) is authorized per section 55.108 *Economic Development* of the City Ordinance Code, to utilize the Tax Increment Finance District Trust Funds to foster the redevelopment of the Downtown Northbank Community Redevelopment Area; and

**WHEREAS,** the REV Grant annual payments will be funded through the Downtown East Tax Increment Finance District Trust Fund; **NOW THEREFORE**

**BE IT RESOLVED**, by the Downtown Investment Authority:

**Section 1.** The DIA finds that the recitals set forth above are true and correct and are incorporated herein by this reference.

**Section 2.** Authorizing the CEO to negotiate Redevelopment Agreement and a lease agreement, authorizing the incentives as described above and shown in more detail in the attached Term Sheet.

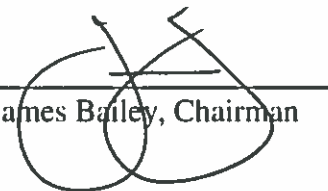
**Section 3.** Authorizing the CEO of the Downtown Investment Authority to execute said agreements subject to the terms as described above.

**Section 4.** This Resolution, 2018-09-02, shall become effective on the date it is signed by the Chair of the DIA Board.

WITNESS:

**DOWNTOWN INVESTMENT AUTHORITY**

  
\_\_\_\_\_

  
\_\_\_\_\_

James Bailey, Chairman

9/19/18  
Date

VOTE: In Favor: 8 Opposed: 0 Abstained: 0

**Project Title:** North Bank Riverwalk Extension - Berkman II **Council District(s):** 7  
**Project Location:** North Bank Riverwalk **Project Number:** \_\_\_\_\_  
**Department:** Downtown Investment Authority **Program Area:** \_\_\_\_\_  
**Ordinance No.:** \_\_\_\_\_ **Useful Life:** 30yrs **Project Completion Date:** 12/31/2021

**Project Description:**

Extension of the North Bank Riverwalk east from Catherine Street for approximately 400 linear feet. Scope includes design, lighting, pavers, park benches, trash receptacles, as-builts, etc.

**Justification:**

Public element to support the private upland development for the redevelopment of the Berkman II.

| <b>Funding Sources</b>           | <b>Total</b> | <b>Prior Years</b> | <b>FY 18-19</b> | <b>FY 19-20</b> | <b>FY 20-21</b> | <b>FY 21-22</b> | <b>FY 22-23</b> | <b>Beyond 5th</b> |
|----------------------------------|--------------|--------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-------------------|
| Transfer Between Projects        | \$ -         |                    |                 |                 |                 |                 |                 |                   |
| Debt Proceeds / Borrowed Funds   | \$ -         |                    |                 |                 |                 |                 |                 |                   |
| Pay-Go                           | \$ 1,800,000 |                    |                 | 1,800,000       |                 |                 |                 |                   |
| Interest Earnings                | \$ -         |                    |                 |                 |                 |                 |                 |                   |
| Contribution from Private Source | \$ -         |                    |                 |                 |                 |                 |                 |                   |
| Grant / Trust Fund               | \$ -         |                    |                 |                 |                 |                 |                 |                   |
| <b>Totals</b>                    | \$ 1,800,000 | \$ -               | \$ -            | \$ 1,800,000    | \$ -            | \$ -            | \$ -            | \$ -              |

| <b>Expenditures/Project Phase</b>   | <b>Total</b> | <b>Prior Years</b> | <b>FY 18-19</b> | <b>FY 19-20</b> | <b>FY 20-21</b> | <b>FY 21-22</b> | <b>FY 22-23</b> | <b>Beyond 5th</b> |
|-------------------------------------|--------------|--------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-------------------|
| Design & Engineering                | \$ -         |                    |                 |                 |                 |                 |                 |                   |
| Land Acquisition & Site Preparation | \$ -         |                    |                 |                 |                 |                 |                 |                   |
| Construction                        | \$ 1,800,000 |                    |                 | 1,800,000       |                 |                 |                 |                   |
| Capital Equipment                   | \$ -         |                    |                 |                 |                 |                 |                 |                   |
| Misc. Equipment & Furnishings       | \$ -         |                    |                 |                 |                 |                 |                 |                   |
| Art In Public Places                | \$ -         |                    |                 |                 |                 |                 |                 |                   |
| <b>Totals</b>                       | \$ 1,800,000 | \$ -               | \$ -            | \$ 1,800,000    | \$ -            | \$ -            | \$ -            | \$ -              |

| <b>Operating Budget Impact</b> | <b>Total</b> | <b>FY 18-19</b> | <b>FY 19-20</b> | <b>FY 20-21</b> | <b>FY 21-22</b> | <b>FY 22-23</b> | <b>Beyond 5th</b> |
|--------------------------------|--------------|-----------------|-----------------|-----------------|-----------------|-----------------|-------------------|
| Full Time Equivalents          | -            |                 |                 |                 |                 |                 |                   |
| Personnel Expenses             | \$ -         |                 |                 |                 |                 |                 |                   |
| Contractual Services           | \$ -         |                 |                 |                 |                 |                 |                   |
| Utilities                      | \$ -         |                 |                 |                 |                 |                 |                   |
| Materials/Supplies             | \$ -         |                 |                 |                 |                 |                 |                   |
| Equipment                      | \$ -         |                 |                 |                 |                 |                 |                   |
| Annual Debt Service            | \$ -         |                 |                 |                 |                 |                 |                   |
| <b>Totals</b>                  | \$ -         | \$ -            | \$ -            | \$ -            | \$ -            | \$ -            | \$ -              |