



**TO:** Richard Miles & Jennifer Denault, Cade Museum

**FROM:** Debbie Kleban

**RE:** Ground Lease Agreement for Museum Site at Depot Park and Financing for Construction of Museum

**DATE:** November 4, 2015

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The Cade Museum Foundation, Inc., (the “Cade Museum”) and the City of Gainesville (the “City”) entered into a Ground Lease Agreement for Museum Site at Depot Park with an effective date of July 3, 2015 (the “Ground Lease”). As a follow-up to our discussion yesterday and our review of the more detailed mark-up and inserts that I sent to you Monday, November 2, 2015, you requested that I provide a written summary of the main issues with the existing Ground Lease that will need to be addressed in order for a lender to provide financing for the construction of the Cade Museum on the property that is the subject of the Ground Lease (the “Leased Premises”).

Defined terms used in this Memorandum and not defined herein have the meaning set forth in the Ground Lease.

### **SUMMARY OF LEASEHOLD LENDER**

In order for a lender to make a loan secured by a leasehold mortgage, the leasehold needs to have collateral value to support the loan. Typically, that requires the leasehold estate to be as close to a fee estate as possible, including having as long of a term as possible, as few use restrictions as possible, and as few opportunities for tenant default as possible. With that in mind, we recommend the following general revisions:

- To facilitate the below-market financing that the Cade Museum is seeking, the Cade Museum may need to assign its interest in the Leased Premises to an entity affiliated with and created to support the Cade Museum. In that event, the Cade Museum would sublease the entire project from its affiliated support organization. The Ground Lease will need to permit this assignment and sublease and should permit other sub-subleases by the Cade Museum so long as the uses are consistent with the Permitted Uses.
  - Remove the prohibition on leasehold financing and include typical leasehold mortgage provisions (included in the inserts I provided with the mark-up of the Ground Lease).
  - Extend the term to 75 or 99 years.
  - Remove restrictions that are so narrow as to permit only the operation of the Cade Museum or any museum on the Leased Premises. I understand that the City need to protect its

interests and the surrounding park uses, so I have suggested a middle ground that will provide a lender with some comfort that the collateral (i.e. the building that it is providing the funds to construct and the leasehold interest in the Leased Premises upon which the building sits) will have value. The more restrictive the uses, the less value. The lender will need to evaluate whether there is sufficient value in the collateral to support the debt if the uses are limited to academic programs, education, seminars, etc. (as listed in Section 2.C. of the Ground Lease), which seems achievable. A lender most certainly will not find value in the collateral if the only use is for the Cade Museum or as narrow as any museum. The broader the City is able to go here, the more likely the lender will be able to provide the loan to build the museum.

- Remove as many pending City approvals or conditions to the Ground Lease as possible. Most of my “timing?” questions in the mark-up were intended to address this issue. To the extent that any of those conditions have been satisfied or City consents obtained, those provisions should be removed from the Ground Lease. To the extent that any contingencies remain, we will need to discuss in more detail how the Ground Lease may be revised in a manner that will provide a leasehold lender with comfort that those conditions will be met.

- The lender is financing the first phase of construction. Accordingly, the Ground Lease cannot contain an obligation to build any future phases if the failure to do so would result in a default under the Ground Lease. It is fine to state the intent to build future phases and to acknowledge in the Ground Lease that it is acceptable to the City for those future phases to be built (subject to any necessary City approvals of plans, financing, etc.), but it may not be a requirement to build any future phases.

- Any necessary easements for access and full use of the Leased Premises will need to be in place prior to closing on the financing.

This summary is not a complete list of the requested modifications. For details of the modifications summarized above and for other revisions, please refer to the mark-up and the inserts that I provided. Additionally, I understand from our conversation that (i) the Property boundaries have changes, so the Leased Premises descriptions will need to be amended, (ii) the Cade Museum would like the timeframes for construction commencement and completion to be pushed further out in Section 10.B. of the Ground Lease, and (iii) the general contractor will provide Sub-Guard insurance in lieu of the payment and performance bonds referenced in Section 11.C of the Ground Lease.

### **DISCLAIMERS**

Any advice or analysis contained in this memorandum is preliminary in nature, may be subject to further factual development and legal analysis and is not intended to be an opinion. As such, it is not intended to be used, and may not be used by any direct or indirect recipient, for the purpose of (i) avoiding any penalties that may be imposed on such recipient, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

### **CONFIDENTIALITY**

This memorandum is confidential and is intended only for the named recipients and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law.

## Inserts for A&R Ground Lease Agreement for Museum Site at Depot Park

### Insert 1:

**WHEREAS**, Lessee desires to fund the development and construction of the Project from a variety of sources, possibly including, all or some combination of new markets tax credits (the “New Markets Tax Credits”), various equity sources (including fundraising proceeds, private foundation grants and federal, state and local governmental grants) and various construction and/or bridge loans (collectively, the “Construction Financing”);

**WHEREAS**, to facilitate the Construction Financing, (i) Lessee may form a subsidiary or affiliate, which may be owned in whole or in part by Lessee or a subsidiary or affiliate of Lessee, (the “Lessee Successor”), and (ii) Lessee may assign all of its rights, title and interest in, to and under the Lease to the Lessee Successor pursuant to an assignment and/or contribution agreement (the “QALICB Assignment Agreement”), a copy of which shall be provided to Lessor;

### Insert 2:

29. **Assignment and Subletting.** Except as provided in this Section 29, this Lease may not be assigned without the express prior written consent of Lessor, which consent may be withheld by Lessor in its sole and absolute discretion. Lessor hereby acknowledges, consents and agrees that, without further notice to or consent of Lessor, Lessee shall be entitled to assign all of its rights, title and interest in, to and under the Lease the Lessee Successor. Lessee may sublease portions of the Leased Premises to sublessees for Permitted Uses.

### 30. **Leasehold Financing.**

A. Consent to Leasehold Mortgaging and Construction Financing. Lessee shall have the right to mortgage all or any part of the Leased Premises, including Lessee’s leasehold estate in the Premises under this Lease pursuant to a mortgage and/or deed of trust (a “Leasehold Mortgage”) to a Leasehold Mortgagee (defined below) at any time and from time to time with notice to but without the consent of Lessor, provided that the proceeds of such financing are used to fund the costs the Project and/or any other Improvements permitted under the terms of this Lease (including but not limited to architectural, engineering and construction costs of the Improvements and any fixtures and furniture to be used therein), on any terms Lessee may deem desirable, and in connection therewith may assign its leasehold estate to the holder of such mortgage and/or deed of trust. Any such Leasehold Mortgage shall be a lien only on Lessee’s interest in the Premises and shall not constitute a lien on Lessor’s interest in the Premises. In addition, Lessor hereby consents and agrees to the Construction Financing and to any assignment, pledge, grant of security, mortgage or other lien of any property or asset of Lessee or Lessee Successor (including without limitation any rights, title and interest of Lessee and/or Lessee Successor under this Lease), as security for any and all such Construction Financing. Lessor acknowledges and agrees that Lessee shall have no obligation to obtain Lessor’s consent to any terms or conditions of the Construction Financing. For purposes of this Section 30, the term “Leasehold Mortgagee” shall include any subsidiary of a Community Development Entity (as certified by the U.S. Department of Treasury Community Development Financial Institutions

Fund) (a “NMTC Lender”) that loans proceeds from a New Markets Tax Credits investment to Lessee or Lessee Successor. Lessor agrees that each Leasehold Mortgagee shall be entitled to exercise any and all rights and remedies available to such Leasehold Mortgagee under its Leasehold Mortgage, under any other documents which govern the agreement between such Leasehold Mortgagee and Lessee and under applicable laws, including, without limitation, foreclosure, appointment of a receiver, acceptance of a deed in lieu of foreclosure, all without notice to or consent of Lessor. Notwithstanding any provision herein to the contrary, Lessor agrees that a Leasehold Mortgagee shall be entitled to sell or transfer the Leased Premises to any third party in accordance with the terms and conditions of its Leasehold Mortgage and applicable laws and such third party shall succeed to all of Lessee’s rights, title and interest in, to and under the Lease without further notice to or consent of Lessor; provided that such third party, if requested by Lessor, agrees to be bound by, and subject to, the terms and conditions of this Lease. Notwithstanding any such transfer by any Leasehold Mortgagee, Lessee shall remain personally liable to perform all obligations of Lessee under this Lease.

B. Lessor Covenants. Lessor covenants that:

i. notice of a breach of this Lease on the part of Lessee given to Lessee shall be simultaneously given to each Leasehold Mortgagee at the most recent address of which the Leasehold Mortgagee has given Lessor written notice. Failure to serve a copy of such notice upon a Leasehold Mortgagee shall render the notice ineffective only as to that Leasehold Mortgagee. The Leasehold Mortgagee shall have the same period given in this Lease to Lessee, after the giving of such notice to the Leasehold Mortgagee at its election, to remedy or cause to be remedied the default of Lessee cited, plus (i) in the case of a default in the payment of any monetary amount, an additional period of thirty (30) days, and (ii) in the case of any other default, an additional period of one hundred twenty (120) days, and if such default cannot with reasonable diligence be cured within such additional one hundred twenty (120) day period, an additional time thereafter sufficient to cure the default, provided that such cure is initiated prior to the expiration of such additional one hundred twenty (120) day period and thereafter the curing of the same is prosecuted with diligence. If the Leasehold Mortgagee must be in possession of the Leased Premises to cure the default, it shall have an additional one hundred twenty (120) days within which to either (i) obtain possession of the Leased Premises (including possession by a receiver) and cure such default or (ii) institute foreclosure proceedings to acquire Lessee’s interest and prosecute such proceedings with diligence. Notwithstanding the foregoing, if Lessee is the subject of any of the proceedings referred to in Section 18.A.ii. and Leasehold Mortgagee is legally prevented from paying such sums or curing such defaults within the times above set forth, then such one hundred twenty (120) day period shall be extended until one hundred twenty (120) days after the earlier of the dismissal of the proceedings or the Leasehold Mortgagee obtaining a lifting of the automatic stay or other court order allowing it to obtain possession of the Leased Premises or foreclose on the Leased Premises. Until the expiration of such periods, Lessor will not exercise its remedy to terminate this Lease, but shall be permitted to exercise its other remedies provided for hereunder or under applicable law to secure the Leased Premises to safeguard the public and avoid or limit waste or deterioration of the Leased Premises, if Lessee has abandoned the Leased Premises and no Leasehold Mortgagee has secured the Leased Premises. Lessor shall accept performance by any Leasehold Mortgagee with the same effect as if any default under this Lease had been cured by Lessee, it being agreed that each Leasehold Mortgagee shall have the right, but not the obligation, to cure any default of

Lessee hereunder, and that performance by or caused by a Leasehold Mortgagee shall be accepted as if the same had been done or caused to be done by Lessee.

ii. if Lessor elects to terminate this Lease following an Event of Default by Lessee, the Leasehold Mortgagee, in addition to the right to cure in Section 30.B.i., shall also have the right, if notice is given in writing prior to the date of termination, to postpone and extend the specified date for the termination of this Lease for such time as is reasonably necessary to cure the defaults, provided that the Leasehold Mortgagee (i) shall pay any due but unpaid amounts due from Lessee under this Lease, (ii) shall comply with and perform all of the other terms and conditions of this Lease, provided the Leasehold Mortgagee shall promptly take steps to acquire or sell Lessee's leasehold interest hereunder which is subject to the lien of the Leasehold Mortgage for foreclosure or otherwise and shall prosecute the same to completion with due diligence.

iii. prior to the termination of this Lease by reason of a default on the part of Lessee and after expiration of any and all applicable notice and cure periods granted to Lessee and each Leasehold Mortgagee, Lessor shall offer the Leasehold Mortgagee or its designee a new Lease for the Premises for the remainder of the Term (including any renewal Term), effective as of the date of such termination, strictly on the terms and conditions set forth in this Lease, including but not limited to the use provisions of Section 2, and subject to those conditions of title and possession to the Leased Premises existing in fact and as of record, if

(a) The Leasehold Mortgagee or its nominee shall make written request upon Lessor for such new Lease within thirty (30) days prior to the date of such termination and such written request is accompanied by payment to Lessor or its designee of all sums then due under this Lease;

(b) The Leasehold Mortgagee or its nominee shall pay at the time of the execution and delivery of said new Lease, any and all sums which would at the time of the execution and delivery thereof, be due pursuant to this Lease but for such termination; and

(c) The Leasehold Mortgagee or its nominee, from and after the entry into such new Lease shall perform and observe all requirements of Lessee hereunder and shall further remedy, with reasonable diligence, any other default of Lessee under this Lease which is reasonably susceptible of cure by the Leasehold Mortgagee.

iv. If there is more than one Leasehold Mortgagee, Lessor shall offer a new Lease to each Leasehold Mortgagee in the order of such Leasehold Mortgagee's lien priority.

v. Lessor shall not grant any lien, mortgage or security interest in the Premises that is not expressly subordinate to this Lease and Lessee's interest in the Leased Premises.

C. Cooperation. Lessor hereby acknowledges that potential and existing Leasehold Mortgagees of Lessee may require estoppel certificates, consents, approvals or other written documentation from Lessor and from certain third parties that may from time to time have a

property, regulatory or other interest in the Leased Premises in connection with existing or potential Leasehold Mortgages, and Lessor hereby agrees to (i) within 20 days after written request, deliver all such documentation as Lessee or any existing or prospective Leasehold Mortgagee may reasonably require, provided that nothing therein materially adversely affects the rights of Lessor, and (ii) promptly cooperate with Lessee and any such existing or potential Leasehold Mortgagee in order to obtain any such written documentation from any such third parties. It is understood that Lessor shall not be obligated to expend any funds or incur any liabilities in implementation of the foregoing, and Lessor shall be reimbursed by Lessee or any such Leasehold Mortgagees for all such out-of-pocket costs and expenses incurred by Lessor in connection therewith.

D. Notice of Leasehold Mortgagee Default. Lessee hereby agrees to forward to Lessor a copy of any notice of default under any Leasehold Mortgage held by a Leasehold Mortgagee within ten (10) days after Lessee's receipt thereof from the applicable Leasehold Mortgagee.

E. No Modification Without Consent. Lessor will not amend, cancel, surrender, accept a surrender of, or modify this Lease without the prior written consent of such Leasehold Mortgagee.

F. Insurance. A standard mortgage clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Lessee hereunder on the condition that the insurance proceeds are to be applied in the manner specified in this Lease and the Leasehold Mortgage may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to Lessee pursuant to the provisions of this Lease.

G. Improper Payments. No payment made to Lessor by a Leasehold Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any such payment to Lessor pursuant to Lessor's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided demand shall have been made therefor not later than six (6) months after the date of its payment. It is not intended that this paragraph shall confer on Leasehold Mortgagee any additional rights concerning the refund of payment by it of any regularly City billed or invoiced taxes, municipal charges, privileges, water charges or other such fees etc.

H. Inconsistency. Any conflict or inconsistency between the provisions of this Section 30 and provision elsewhere in this Lease shall be resolved in favor of the provisions of this Section 30.

I. No Merger. Unless Leasehold Mortgagees shall otherwise consent, the fee title to the Premises and the leasehold estate created by this Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Lessee, Lessor, a Leasehold Mortgagee, or in any other person by purchase, operation of law, or otherwise.

J. Third Party Beneficiary. Each Leasehold Mortgagee shall be a third party beneficiary of all of the provisions of this Section 11 to the extent that Lessor has received

written notice of such Leasehold Mortgage transaction in accordance with Section 20 of this Lease.

31. **Representations and Warranties.** Lessor makes the following affirmative representations and warranties as the basis for the understandings on the part of Lessee contained in this Lease, understanding that Lessee may rely thereon:

A. Lessor is a municipal corporation duly organized and validly existing under the constitution and laws of the State of Florida;

B. Lessor has the full legal right, power, and authority to enter into and perform its obligations under this Lease;

C. The execution and delivery of this Lease (and any ancillary documents envisioned by this Lease) has been duly authorized by all proper and necessary action of Lessor and any other person whose action is required;

D. This Lease, when executed and delivered on behalf of Lessor, will constitute the legal, valid, and binding obligation of Lessor, enforceable in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights, or, to the extent that certain remedies hereunder require or may require enforcement by a court of equity, such principles of equity as the court having jurisdiction may apply;

E. The execution, delivery, and performance by Lessor of this Lease will not violate any provision of applicable law or any judgment, order, decree, rule, or regulation binding upon it, the violation of which might have a materially adverse effect upon Lessor, the Leased Premises, or the operation the Leased Premises;

F. There are no actions, suits, or proceedings pending against Lessor or, to the knowledge of Lessor, threatened against Lessor before or by any court, governmental body or agency, or other tribunal or authority, which action, suit, or proceeding would, if adversely determined, have a materially adverse effect on the authority or ability of Lessor to perform its obligations under this Lease, or which would question the legality, validity, or enforceability of this Lease;

G. Neither the execution and delivery of this Lease, the consummation of the transactions contemplated by this Lease, nor the fulfillment of or compliance with the terms and conditions of this Lease, conflicts with or results in a breach of any of the terms, conditions, or provisions of any corporate charter provision or any agreement or instrument to which Lessor is now a party or by which it is bound, or constitutes a default under the terms of any of the foregoing;

H. To the knowledge of Lessor, Lessor is not a party or a potential party to any pending, threatened, or contemplated bankruptcy or similar proceeding under any law that has resulted or may result in alteration of or grant of relief from claims of creditors against Lessor; and

I. Lessor's interest in the Premises is free and clear of any mortgages, liens or security interests.

Insert 3:

J. At Lessee's election, this Lease or a memorandum of this Lease may be recorded among the land records for Gainesville, Florida. In addition, upon expiration of termination of the Lease, upon the Lessor's or Lessee's request and at such requesting party's expense, Lessor and Lessee agree to record, among the land records of Gainesville, Florida, a termination of this Lease and transfer of the Improvements from Lessee to Lessor.



- Memo of Lease must be recorded
- Agreements must be recorded

## GROUND LEASE AGREEMENT FOR MUSEUM SITE

### AT DEPOT PARK

THIS GROUND LEASE AGREEMENT ("Lease") is made effective on July 3, 2015, (the "Commencement Date" or "Effective Date") by and between the CITY OF GAINESVILLE, a Florida municipal corporation ("Lessor" or "City"), and THE CADE MUSEUM FOUNDATION, INC., a Florida not-for-profit corporation ("Lessee" or "Cade Museum"), jointly referred to as the "Parties."

**WHEREAS**, on October, 2 2012 the Parties entered into a Memorandum of Understanding (the Original "MOU"), the purpose of which was to set forth the Parties' general understandings as to the further negotiation and execution of a disposition and development agreement for the Foundation's development of a museum (the "Project" or "Museum") on a parcel of property owned by the City and located in the City's Depot Park and more particularly described and depicted in the attached Exhibits A and B (the "Premises" or "Leased Premises"); and

**WHEREAS**, the Original MOU was amended by the Parties on February 11, 2013 and again on September 18, 2014, and the current version reflecting both of these referenced amendments supersedes and replaces the Original MOU ("Amended and Restated MOU"); and

**WHEREAS**, as required by Section 163.380, Florida Statutes, the site was publicly advertised and all interested parties were invited to submit proposals for the disposition and development of the property. On September 5, 2013, the Cade Museum Foundation, Inc. was formally selected in a Request for Proposal process for the development and operation of a museum, art gallery, and gardens of an educational or cultural interest that is open to the general public.; and

**WHEREAS**, the Parties understand that Depot Park is a designated Brownfield Area as defined in Section 376.79, Florida Statutes based on documented soil and groundwater impacts from offsite releases of manufactured gas plant wastes and onsite releases of industry-related heavy metals and organic contaminants; and

**WHEREAS**, the Parties agreed that, in accordance with the Amended and Restated MOU, it is necessary to evaluate the risks and liability of any existing environmental contamination issues at the Site and an Extended Area under consideration by the Museum prior to finalizing the construction plans for the Project; and therefore Lessee was granted an Access and Indemnity Agreement on November 9, 2014 to allow access for such testing activities; and

**WHEREAS**, Lessor and Lessee seek to enter into a Ground Lease for Property described in Exhibits A and B on a portion of a public park owned by the Lessor ("Premises or "Leased Premises"); and

Insert 1

Possible to extend to 75 or 99 years?

WHEREAS, Lessee now desires to move forward with construction of a museum; and

WHEREAS, Lessor has designated the Gainesville Community Redevelopment Agency as its agent for the Project.

NOW THEREFORE, in consideration of \$50.00 (one dollar per year for fifty years) and other good and valuable consideration paid by Lessee to Lessor, receipt of which is hereby acknowledged, and in consideration of the mutual covenants and conditions herein contained, it is agreed by the parties as follows:

1. Purpose. The Lessor owns, is developing and will maintain a public park known as Depot Park. The Lessor intends that Depot Park be multi-functional with amenities that will include a museum open to the Public. Lessor issued a Request for Proposals seeking parties interested in constructing and operating a museum on a portion of Depot Park. Lessee responded to that Request for Proposal indicating its intention to construct and operate a museum for creativity and invention at Depot Park (the "Museum") which will be open to the public. Lessee may charge admission to the Museum. The Museum will be approximately 45,000 square feet and will be built in phases, with the first phase being approximately 21,000 square feet.

This Lease represents the agreement between the Parties as to the financing, development, construction and operation of the Museum.

2. Leased Premises. The Lessor does hereby grant a ground lease to the Lessee of the real property more specifically described in Exhibit "B" (the "Leased Premises") attached to this Lease and made a part hereof by reference. A sketch of the property is attached hereto as Exhibit "A." In the event of a conflict between the sketch and the legal description, the legal description shall take precedence. ~~The grant of a ground lease to the Leased Premises is specifically contingent upon the Lessee timely financing, commencing and completing construction of the Museum and of the continued operation of the structure as a Museum open to the Public during the term of this Lease.~~ This Lease is further contingent upon Lessee's compliance with the terms and conditions of this Lease.

A. Museum Operations. ~~Once the Museum has been constructed, the Lessee will continually operate the Museum during the term of this Lease and any extensions thereto.~~ Except as otherwise set forth in Lease, nothing shall prohibit Museum from conducting its normal operations on the Premises. Museum shall not take any other action which constitutes a nuisance to City or Park or other third party or would disturb the quiet enjoyment of other users/tenants of the surrounding property.

B. Primary Use. <sup>primary</sup> The use of the Leased Premises ~~by Lessee~~ is limited ~~solely~~ to the construction and operation of a permanent museum for creativity and invention ("Lessee's Use" or "Museum") which is open to the public. The Museum may contain passive and interactive exhibits and displays and related programming and events. The Leased Premises shall at all times be considered a part of those certain lands known as Depot Park and the use of the Leased Premises, as well as all persons entering thereon or therein, whether as an employee,

Primary

agent, guest, or invitee of the Lessee, shall be subject to all applicable laws, statutes, ordinances, orders, rules and regulations of Federal, State, county and municipal authorities, and of any departments or divisions thereof, and of the applicable regulations of the Lessor. Lessee shall not make nor suffer any unlawful, improper or offensive use of the Leased Premises or any use or occupancy thereof.

C. Collateral Uses. Although the Primary Use of the Premises will be for a Museum, the Premises may be used for purposes in support of the Primary Use, including but not limited to academic programs, education, seminars, symposia, presentations, talks, classes, movies, films, slides, multimedia, retail shops, sales and dispensing of food and alcoholic beverages, catering rental of rooms, event planning and tours in compliance with applicable law (collectively "Collateral Uses").

*or to provide other community benefits*

*and together with the Primary Use, the "permitted Uses"*

3. **Brownfield Site. Remediation of Leased Premises.**

A. The Parties acknowledge that Depot Park, including the Leased Premises, is a designated Brownfield Area under Section 376.80, Florida Statutes, (the Florida Brownfield Act) based on documented soil and groundwater impacts from offsite releases of manufactured gas plant wastes and onsite releases of industry-related heavy metals and organic contaminants. Lessor has entered in to a Consent Order with the Florida Department of Environmental Protection ("FDEP"), Case No. 88-0539, dated the 28th day of September, 1992, and has agreed to implement certain corrective actions to remediate the site, not including the Leased Premises, as provided in the Consent Order. The City's obligation for the Depot Park consists of the faithful performance and completion of the Depot Park Pond and Pump Station Project, which includes a lined stormwater treatment facility, baffle box, an off-site stormwater pumping station, storm drainage pipe and structures, retaining wall, forebay walls, littoral zone plantings, grassing, wetland mitigation planting, and related works; none of the foregoing improvements will be made on the Leased Premises. The City has also undertaken the capping of residual soil contamination with two feet of clean fill with grassing on the entire site including the Leased Premises in accordance with regulatory requirements. Remediation activities, including the two foot cap, at Depot Park are on-going.

*the city*

B. Lessee acknowledges that the remediation activities are on-going and the date of final completion of the remediation, including the placement of the two foot cap on the Leased Premises is yet unknown. Lessee acknowledges that it may not occupy the site and that site construction may not commence prior to completion of the two foot cap being installed by the City and approved by FDEP.

*Timing?*

C. Property Condition. Subject to the completion of the remediation activities, the Lessor is leasing the Leased Premises in its physically "as is" condition. The Lessee acknowledges that it has made, or has had an opportunity to make, a thorough and complete inspection of the Leased Premises and is fully advised of its extent and condition.

D. Lessee further acknowledges that any construction activity on the Leased Premises must be undertaken in accordance with the institutional controls relating to the Site.

Possible to extend to 75 or 99 years?

4. **Term.** The term of this Lease shall be for fifty (50) consecutive years commencing on the Commencement Date ("Term"), provided, however, Lessee may not occupy or commence construction until the Florida Department of Environmental Protection (FDEP) has agreed that the two foot cap is in place. Lessor will send a Notice to Proceed once the FDEP has agreed that the cap is in place.

Timing?

Upon expiration of the initial Term, the Lease may be extended by mutual written agreement of the Lessor and Lessee.

5. **Rent.** The parties agree that the consideration given by Lessee for the Leased Premises is the Lessee's agreement to timely construct and continually operate a ~~Museum~~ the Project on the Leased Premises.

A. Taxes on the Lease. In the event there are any applicable Federal, State, County or local sales, use or other taxes associated with this Lease, Lessee shall promptly remit payment of the tax to the taxing authority.

B. Ad valorem taxes. In the event that any tax or assessment, whether ad valorem or otherwise, is levied as a result of or on the basis of this Lease against the Leased Premises or on other improvements placed thereon by Lessee, or upon any estate hereby created, Lessee covenants and agrees to promptly pay and discharge said taxes. It is agreed that Lessee shall assume and be responsible for the payment of such taxes and assessments, if any, for the year in which this Lease is executed, and thereafter, during the term of this Lease. Payment of said taxes or assessments shall be in addition to the rent payment provided for in this Lease. Lessee shall pay directly to the collecting authority such taxes and/or assessments within thirty (30) days of receipt of a bill for said taxes or assessments.

In the event that a tax assessment is levied on a portion of Depot Park outside of the Leased Premises, as a result of this Lease, then Lessee will assist Lessor in challenging the assessment.

6. **Project Financing.** Lessee shall demonstrate to the satisfaction of the Lessor that it has the capability to cause the development of the Project by the following:

including the Construction Financing Defined?

A. Financing Plan. Cade Museum shall prepare and file with the CRA within 180 days of execution of this Agreement, its plan for financing the Project. Such plan consists of donated funds, borrowed funds, and equity contributions from the Cade Museum. The Project shall be financed substantially in accordance with the Cade Museum's financing plan. The Cade Museum shall submit any proposed revision of the financing plan to the CRA and the City.

Timing?

B. Financing Commitment.

i. Cade Museum shall provide to the CRA and to the City, evidence, reasonably satisfactory to the CRA and the City, that Cade Museum has obtained for any portion of the Project for which financing is sought from a reputable financing institution or person or entity, a financing commitment from that institution or person or entity for the amount necessary to provide for construction and

completion of the Project as shown in the financing plan. Cade Museum covenants that the proceeds of such financing, together with any other funds provided by Cade Museum, shall be sufficient to pay the cost of construction of the Project and provide adequate initial operating capital for the Project.

ii. Cade Museum represents to the City and the CRA that the total cost of the construction of the first phase of the Project is approximately \$7,000,000. Cade Museum represents that there are currently private funds in the aggregate amount of \$5,100,000 available to finance construction of the Project. No later than 365 days after the execution of this agreement Cade Museum shall provide to the CRA evidence reasonably satisfactory to the CRA that Cade Museum has obtained the entirety of the private funds necessary to construct the Project.

7. **Community Redevelopment Agency Review of Project Plans And Specifications.**

A. Plan Review. No later than 180 days after execution of this Agreement by all parties, the Cade Museum shall submit the Design Plans and Specifications ("Design Plans") to the CRA for review and approval.

B. For purposes of this subparagraph, the word "day" shall mean any day the CRA is open for business. Upon the receipt of the Design Plans, the CRA shall review the Design Plans as submitted within twenty one (21) days of receipt for the purpose of determining that the improvements represented thereby in terms of size, design and quality meet the requirements of the Redevelopment Plan, the Project Proposal and this Agreement. The CRA shall not be responsible in any way for any error or omission thereon or failure of the Design Plans to comply with any building, zoning, or other regulations of the City. If the CRA shall determine that the Design Plans do not meet the requirements of the Redevelopment Plan, the Project Proposal and this Agreement, or all of them, the CRA shall so notify the Cade Museum within five (5) days of such determination. Upon receipt of such notification, the Cade Museum shall then amend the Design Plans accordingly and resubmit them to the CRA within ten (10) days of receipt by the Cade Museum of the said notification from the CRA, or as otherwise extended by the CRA Executive Director upon written request of the Cade Museum. The CRA shall then review the Design Plans, as amended, within five (5) days of receipt of such amended Design Plans and notify the Cade Museum that the Design Plans have or have not been determined to meet the requirements of the Plan, the Project Proposal, or this Agreement, or all of them. This procedure shall continue until the CRA finds that the Design Plans meets the requirements of the Redevelopment Plan, the Project Proposal, and this Agreement. The Cade Museum shall not apply for or request the City's Development Review Board review of the Design Plans unless and until the CRA Board approves the Design Plans as set forth in this Paragraph. After the approval of Design Plans by the CRA, the Cade Museum shall then submit the Project Plans and the Design Plans to the City for formal review in accordance with the Land Development Code of the City and other applicable laws, ordinances, codes and regulations as approved in Paragraph 9 below. Any approval of the Design Plans by the CRA are for purposes of this Agreement and do not affect or constitute approvals required for building permits or other approvals required by City ordinances or other regulatory laws.

*Lenders + Investor will want copies of these docs*

*Timing?*

C. If any substantial changes are required to be made to the Design Plans during the construction of the Project, the Design Plans, as amended to reflect such changes, shall be submitted to the CRA prior to the commencement of the construction affected by such amended Design Plans, and the CRA shall review the amended Design Plans in accordance with the standards and procedures set forth in subsection B of this Paragraph. For the purpose of this Paragraph, "substantial changes" means an increase or decrease in the gross square footage of any building of ten percent (10%) or more, a significant change in the facade of any structure, including design, materials, or the addition or deletion of three (3) or more parking spaces. The CRA and the Cade Museum shall communicate and consult informally as frequently as it is necessary to insure that the submittal of the Design Plans can be undertaken as expeditiously as is reasonably possible.

D. During the preparation of the Design Plans and construction of the Project, the CRA and the Cade Museum shall hold periodic meetings to coordinate the preparation of, submission of and review of the Design Plans.

8. **City Review of Project Plans and Specifications.**

Following the CRA review and approval of the Design Plans as provided in Paragraph 7, the Cade Museum shall submit the approved Design Plans, including any required project plans and specifications as required by the City's Code of Ordinances, to the City. Nothing contained or implied herein shall require the City to approve any change which will result in a violation of any applicable law, ordinance, code, policy or regulation. Upon such approval of the Plans and Specifications, the Plans and Specifications shall hereinafter be referred to as the "Approved Plans".

9. **Permits And Licenses; City's Best Efforts.**

The City, in its proprietary capacity, shall cooperate with the Cade Museum in securing all necessary licenses, permits, and governmental authorizations contemplated by this Agreement and necessary to the construction and completion of this Project, including the Building Permit, or other land development approvals. The City's obligations under this Paragraph shall not affect the City's right to act in regulatory matters in accordance with applicable laws or ordinances, and is expressly not a waiver of the City's lawful exercise of its police powers. Nothing herein shall be construed or deemed to contractually or otherwise obligate the City to approve any application or petition for development approval filed by or on behalf of the Cade Museum; however, in the event of a failure or refusal of the City to grant any development approval necessary to develop and operate the Project, Cade Museum may terminate this Agreement by providing the City and CRA with Notice at least 30 days in advance of the date of termination. Neither City nor CRA will be liable to Lessee for monetary damages as a result of the Lessee's failure to obtain any development approval or building permit or as a result of termination of this Lease.

10. **Museum Construction.**

Project

*The Project*

*The Permitted Uses*

A. Right to construct. The Lessor hereby grants to the Lessee the rights to construct, equip and operate ~~a permanent Museum building~~ and all improvements, such as utilities, necessary and required for ~~Lessee's Use~~ (the "Improvements"). The Lessee shall, at its sole expense, obtain all permits and approvals required by the City, and any other applicable regulatory agency, to construct and operate the ~~Museum~~ on the Leased Premises.

*Project*

Lessee shall cause the Improvements and any subsequent improvements or alterations to the Leased Premises to be constructed in accordance with applicable laws.

B. Museum Commencement and Completion. The Museum building will be built in two phases, with the first phase having a minimum size of 21,000 square feet of new construction. (Future phases of construction will increase the size to approximately 45,000 square feet.) Construction of the first phase of the improvements shall be commenced by April 1, 2016 and completed (as evidenced by issuance of a certificate of occupancy) by July 1, 2017. Construction of the second phase of the improvements shall commence by June 30, 2022, and be completed by June 30, 2024. If any phase of construction has commenced, but will not be completed within the time allotted, Lessee may request an extension of time, not to exceed two years, for good cause shown. Upon finding good cause shown, Lessor may grant the extension. Failure to meet the construction deadline (as extended, if applicable) shall be a default under this Lease.

*What if 2nd phase not built? Cannot lead to lease termination.*

C. Additional Improvements. Upon completion of the Museum, Lessee may make such alterations, improvements, and changes to any Improvements that may from time to time be on the Leased Premises as the Lessee may deem necessary, provided Lessee first obtains Lessor's prior written approval for any exterior alterations, improvements or changes. The parties agree that the Lessor maintains final approval over all architectural designs, improvements or alterations to the exterior. Lessor shall use its best efforts to promptly review such plans, and shall respond within a reasonable time, which shall be in 30 days or less, unless otherwise agreed to by the parties in writing. In the event of damage to or destruction of the Leased Premises, Lessee may rebuild or replace improvements to the design before the damage or destruction, without Lessor's approval, in accordance with existing law.

**11. Construction Conditions - General**

A. Licensed Contractors. Lessee shall retain a Florida licensed and qualified contractor(s) (the "Contractor") to construct the Museum on the Leased Premises in a safe and professional manner and pursuant to, and in accordance with, the Approved Plans, and in accordance with all applicable laws, codes, statutes, ordinances, rules and regulations, including, but not limited to, the Gainesville Code of Ordinances, Florida Building Code and Americans With Disabilities Act.

B. Prompt Payment. Lessee shall promptly pay for all labor and materials used in constructing any improvements, alterations or fixtures on the Leased Premises and shall do all things necessary to prevent the filing of any mechanics', materialman, or other type of lien or

## Construction Financing lender(s)

claim against Lessor or the Leased Premises by, against, through, or under Lessee or its contractors. Lessee shall notify its contractors that Lessor's interest shall not be subject to any liens or shall not be subject to any liens or claims for alterations, improvements or fixtures to the Leased Premises by Lessee. If any such lien or claim is filed, Lessee shall cause the same to be discharged within twenty (20) calendar days of the filing of the lien.

C. Payment and Performance Bonds. Lessee shall require any contractor performing any work hereunder to obtain payment and performance bonds (or public construction bonds) in face amounts of 100% of the value of the work. All bonds shall inure to the benefit of the Lessor.

D. Contractor Insurance. Lessee shall require the Contractor to provide the following types and amounts of insurance with an insurer rated A- or better by A.M. Best:

i. Commercial General Liability Insurance: coverage in the minimum amount of Two Million Dollars (\$2,000,000) for bodily injury (or death) of, and One Million Dollars (\$1,000,000) property damage, with an excess umbrella policy in a minimum coverage amount of Ten Million Dollars (\$10,000,000).

ii. Full and complete Workers' Compensation Insurance Coverage as required by State of Florida law.

iii. Automobile Liability Insurance Coverage: in the minimum amount of One Million Dollars (\$1,000,000) per occurrence for BI/PD, including hired/non-owned vehicles regardless of number of passengers transported.

iv. All Risk Builders Risk Insurance: During the undertaking of the Project and any subsequent repair work, Cade Museum or the Contractor, shall provide or cause to be provided All Risk Builders Risk Insurance, at replacement cost, for materials, supplies, equipment, machinery and fixture that are or will be part of the permanent facility. Coverage shall include but not be limited to the following: right to partial occupancy, material stored off-site and in-transit, boiler and machinery, earth movement, flood, including surface water backup, sewer backup and seepage, collapse, water damage, debris removal, faulty workmanship or materials, testing, and mechanical electrical breakdown.

v. Contractors Pollution Liability Insurance: When any work related to the Project is undertaken which may cause an environmental exposure, Cade Museum shall provide or cause to be provided Contractors Pollution Liability Insurance with limits of not less than \$1,000,000 insuring bodily injury, property damage, and environmental clean-up costs.

E. Construction Schedule. Within ten (10) days of issuance of the Building Permit, Lessee shall provide the CRA with a preliminary construction schedule showing the anticipated completion dates for the Project, and any updated construction schedules that show substantial changes to the Project Schedule during the course of construction.



F. Material Changes and Delays. The Cade Museum shall immediately notify the CRA's Executive Director in writing upon becoming aware of any actual or reasonably anticipated material delays in the construction of the Project.

G. Design and Construction Coordination. The Parties agree that a coordinated design and construction approach is the preferred method of delivering the Park and Museum projects. To the greatest extent possible, the Parties shall communicate design plans to each other and coordinate on decisions regarding all matters of design, materials and construction. Notwithstanding the cooperative efforts of the Parties referenced herein, the Park and the Museum are separate projects of their respective proponents and not joint ventures of the Parties.

## 12. Construction Conditions – Environmental

A. Environmental / Remedial Action at or near the Site. Lessee acknowledges that certain environmental assessments and remedial actions have been and are being undertaken in Depot Park at or near the Leased Premises and that those environmental assessments and remedial actions were associated with 1) coal tar contamination associated with the former manufactured gas plant located to the east of the Cade Site and Extended Area; 2) petroleum contamination associated with the former MCB Oil (aka Gas Depot) property located to the south of the Cade Site and partially on the Extended Area; 3) arsenic and polycyclic aromatic hydrocarbons associated with the use of Depot Park as a railroad train depot; 4) chlorinated volatile organic compound contamination associated with the former Rinker property located in the northeast corner of Depot Park; and 5) coal tar and petroleum contamination associated with the Poole Roofing property north of Depot Avenue. Environmental assessment and remedial action documentation relating to these five referenced properties are available for Lessee's review through the FDEP, and the Lessee agrees to review the available and applicable environmental assessment and remedial action documentation prior to undertaking the Museum construction.

B. Lessor is committed to remediating the impacts according to Remedial Action Plans approved by the FDEP that specify cleanup target levels protective of public recreational use. Lessor requires all construction on the site, including site work, to meet the conditions of the Remedial Action Plan. The construction of the Park amenities and the construction of the Museum are both considered part of the park remediation. During construction of the park amenities, including the museum, construction must comply with restrictions on soil caps, soil removal, and groundwater. These restrictions, ("Engineering Controls" and "Interim Institutional Controls") must be approved by FDEP prior to Museum construction. At the conclusion of the construction of Depot Park, including the Museum, the Lessor will seek approval from FDEP for a "Conditional Site Closure with Restrictive Covenants." The Interim Institutional Controls, the Engineering Controls, and the Restrictive Covenants are all conditions that the Lessee must comply with under the terms of this Lease.

C. Engineering Controls and Interim Institutional Controls.

The FDEP considers the Depot Park an active remediation site as long as the site is under construction. The construction of the Museum will be considered by FDEP and Lessor as a part of the site remediation. Lessor will develop Engineering Controls and/or Interim Institutional Controls applicable to the Leased Premises and obtain FDEP approval. The Engineering Controls or Interim Institutional Controls may be similar to those attached to this Lease as Exhibit D. Once approved by FDEP, Lessee shall execute an Agreement with Lessor that Lessee will comply with the Engineering Controls or Interim Restrictive Covenants. Lessee shall not begin construction of the Museum or any other work on the site until it has signed an agreement incorporating the Interim Institutional Controls or Engineering Controls. **Failure to agree to the Interim Institutional Controls and/or Engineering Controls shall be a breach of this Lease and the Lease will be terminated. Lessee will not be entitled to damages as a result of the termination.**

Timing?

**Any construction that does not comply with the Interim Institutional Controls and/or Engineering Controls, including commencing construction prior to the Agreement for Interim Institutional Controls shall be a breach of this Lease and result in immediate termination of this Lease. Lessor shall be entitled to direct, indirect and consequential damages caused by Lessee's breach.**

D. Final Restrictive Covenants. To ensure public safety, after remediation has been completed, the FDEP requires the Lessor to restrict the use of the Leased Premises through the imposition of a Restrictive Covenant for conditional site closure addressing all documented contaminants. The Restrictive Covenant will constrain future onsite activities with regard to contact with soil caps, other soils and groundwater. Lessee agrees to the imposition of the Restrictive Covenants and shall execute an agreement regarding the same. **Failure to execute an amendment agreeing to the Restrictive Covenant shall be a breach of this Lease and the Lease will be terminated. Lessee will not be entitled to damages as a result of the termination.**

Timing?

E. Examples of Controls. While the conditions of the Engineering Controls, Interim Institutional Controls and Restrictive Covenants are presently un-specified, FDEP has provided the Lessor with conceptual conditions. So that Lessee is on notice of the types of conditions it can expect to see, the FDEP conceptual conditions are as follows, which are subject to modification:

- i. No groundwater use or wells for potable water shall be installed.
- ii. No storm water detention/retention/swales installed without FDEP approval.
- iii. Dewatering plans for construction must be approved by FDEP.
- iv. The clean soil cap (an Engineering Control previously established for the entire project site, including the Leased Premises) shall be maintained and shall be annually inspected by a Professional Engineer.

v. Existing Structures will be considered as part of the Engineering Control (cap to prevent contact with soil), so if the structures are removed in the future, they would have to be replaced with a suitable cap or other Engineering Control.

vi. New construction on capped areas (Museum) will also become part of the Engineering Control to prevent contact with underlying soil.

vii. Excavation below the soil cap shall be managed as a contaminated soil excavation. The soil cap depth is two feet. If contaminated soil cannot be returned to its original position, FDEP-approved disposal will be required. (See soil management plan for Oelrich as an example of contaminated soil excavation)

viii. Construction work should be properly managed to prevent spreading contaminated soil onto capped areas and measures should be taken to minimize worker exposure to dust and soil.

ix. The land shall be restricted to park use as depicted in the Risk Assessment.

ix. Tenants/Lessees and transferees shall execute an agreement indicating consent to the Restrictive Covenants.

x. Any encumbrance on the property shall be identified and the encumbrance holders shall consent to the Restrictive Covenant.

*Need to know what this is to impact it may have on Project use.*

13. **Lessor acting in Proprietary Capacity.** The Parties recognize that the Lessor is entering this Lease in its proprietary capacity, as owner of the Leased Premises, and not in its regulatory capacity. The Parties agree that nothing contained in this Lease shall be interpreted or construed as an approval, waiver or contract to approve or waive any permit or other governmental requirement that the Lessor may have jurisdiction over in its regulatory capacity. Nothing contained in this Lease shall be interpreted or construed as contracting away the exercise of the regulatory or police powers of the Lessor.

14. **Easements.** The parties recognize that certain temporary and permanent easements will be necessary for the Lessee to undertake construction of the Project, maintain the Project and access the Project. Lessor shall grant a non-exclusive easement for ingress, egress, parking and utilities as set forth in Exhibit "C."

*Will need + will need title co. confirmation that it is an insurable interest*

15. **Maintenance.**

A. Lessor will be responsible for maintenance of the Leased Premises until FDEP has given written affirmation that the soil cap cover is in place. Upon Lessor's receipt of the written affirmation from FDEP, Lessor will issue a Notice to Proceed.

B. Upon Lessor's issuance of a Notice to Proceed, the Lessee shall maintain the Leased Premises and its Improvements at all times in the condition required in this Section. The Lessee shall be responsible for all maintenance and repairs to the Leased Premises and

*Timing?*

future Building in accordance with the City of Gainesville Code ("City Code"), Interim Institutional Controls, Engineering Controls, and the Restrictive Covenants.

C. Lessor shall maintain the easement areas and improvements, exclusive of signs and markings placed there by Lessee.

D. Lessee shall maintain any future sidewalks, which may be constructed by Lessee on the Leased Premises.

E. Lessee shall not permit the creation or maintenance of any nuisance or any unsafe or hazardous or dangerous conditions. Lessor shall provide Lessee written notice of any such condition or nuisance as provided herein, and if Lessee fails to take appropriate action within ten (10) business days of such notice, Lessor may remove the condition or nuisance and charge the cost thereof to Lessee, which cost shall be paid promptly upon demand by Lessor, or Lessor may declare a default of this Lease. Lessee shall, beginning at construction commencement, at its own cost, and without any expense to Lessor, keep maintain, repair and replace all Lessee owned improvements of every kind on the Leased Premises, which are installed by Lessee, and all appurtenances thereto, in good, sanitary and neat order, condition and repair, and except as specifically provided herein, Lessee shall restore and repair any improvements of any kind, that were installed by Lessee, that may be destroyed or damaged by fire, casualty, or any other cause whatsoever. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind, nature or description whatsoever to the Leased Premises or any improvements thereon.

16. **Utilities.** The parties agree that the Improvements will be separately connected for electric, water and wastewater, cable, internet and all other utility services. After such connection, the Lessee shall pay the monthly charges billed by Gainesville Regional Utilities and any other utility provider.

17. **Inspection.** Lessor shall have the right, at any and all reasonable times, with at least twenty four (24) hours prior notification to Lessee (or in the event of an emergency, upon whatever notice is reasonable under the circumstances), to enter upon the Leased Premises for the purpose of making inspections to determine whether Lessee is complying with the terms of this Lease and for any other purpose Lessor deems appropriate.

18. **Default and Termination.**

A. Except as otherwise provided herein, the following conditions will place the Lessor or Lessee in default and Notice of Default may be issued:

- i. If either party fails to perform any covenant or term hereof by the other party, and it is not cured within thirty (30) calendar days of notice thereof (without however, limiting any other rights available to the parties pursuant to any other provisions hereof); provided, that if the non-performing party commences efforts to cure within such period and diligently pursues the cure to completion within a reasonable time period, the party shall no longer be entitled to declare a default;

ii. (a) If Lessee becomes insolvent; (b) If Lessee makes an assignment for the benefit of creditors; (c) If Lessee files a Voluntary petition for relief under or otherwise seeking the benefit of any bankruptcy, reorganization, arrangement or insolvency law; or (d) If a receiver or trustee is appointed for Lessee; or

iii. If Lessee deserts, vacates or abandons the Leased Premises for a period of thirty (30) consecutive calendar days.

iv. If after ~~construction completion~~ <sup>Project in operation</sup> and Museum opening, Lessee fails to keep the ~~Museum open to the public~~ for a period of three consecutive weeks, except for a period of closure as a result of damage or destruction to the Project, wherein other terms set forth otherwise in this Lease shall apply.

v. Lessor may be considered in default if site remediation is not complete by June 30, 2016, provided however, the only remedy to Lessee for this event of default is the termination of lease. Lessee shall not be entitled to monetary damages.

*Timing?*

B. Fifteen days after Notice of Default has been received, and if the cause of the default has not yet been cured, the non-defaulting party may issue a Notice of Intent to Terminate. This notice must include the reason for the proposed action and a date, no earlier than 30 days from the date of receipt of the Notice to Intent Terminate, when the termination will be considered by either the ~~Gade Museum Foundation~~ or the Gainesville City Commission ("Commission"), whichever is the non-defaulting party, at a public meeting. Regardless of any other provision herein, this Lease may only be terminated by a vote by the Governing Board or the Commission, and only after compliance with the notice terms of this section, Default and Termination.

*Lessee*

*on behalf of Lessor*

19. **No Monetary Damages.** Lessee hereby acknowledges and agrees that it is sophisticated and prudent in business transactions and proceeds at its own risk under advice of its own counsel and advisors and without reliance on the other party. The only remedy available to Lessee for Lessors breach of this Lease is to require Lessor 's specific performance under the terms and conditions of this Lease. Lessor, its employees and agents shall not be liable to Lessee for damages of any kind including direct, indirect, or consequential damages.

20. **Expiration or Termination; Improvements.**

A. Prior to completion of construction of Phase 1 of the Museum, if Lessor terminates the Lease as a result of Lessee's unremedied default, then the Lessee shall return the Leased Premises to the condition it was in prior to Lessee taking possession of the Leased Premises.

B. Upon expiration of the Lease or in the event Lessee or Lessor terminates the Lease after construction of Phase 1 of the Museum, then the Improvements shall become, without payment of consideration, the property of Lessor and Lessee shall have no further obligation to Lessor except as otherwise provided in this Lease.

C. In the event Lessee or Lessor terminate the Lease after construction of Phase 1 of the Museum but during the construction of Phase 2 of the Museum, then the Phase 1 improvements shall become, without payment of consideration, the property of Lessor. However Lessee shall return the property involved in Phase 2 of the Museum to the condition it was in prior to Lessee taking possession of the leased premises.

D. Upon vacating the Leased Premises at termination or expiration, Lessee must remove its furniture, movable equipment and other personal property not attached to the Leased Premises. Anything not removed on or before the date the Lessee vacates the Leased Premises will become the property of the Lessor. Upon vacating the Leased Premises, Lessee agrees to deliver to Lessor all keys to the Leased Premises and to surrender the Leased Premises immediately and in good order and condition, excepting reasonable wear and tear, and return to the Lessor all tangible personal property supplied by Lessor to Lessee (if any).

21. **Destruction of Improvements.** If the Leased Premises or the Improvements are destroyed or damaged, so as to hinder the effective use of the Improvements in Lessee's sole and exclusive judgment, Lessee may elect to:

A. Terminate this Lease as of the date of the damage or destruction by so notifying the Lessor. If Lessee elects to terminate, Lessee shall coordinate with Lessor to determine whether the Lessor desires to retain the Improvements. If Lessor does not desire to retain the Improvements, Lessee shall remove the same and restore the Leased Premises to its original pre-lease condition within ninety (90) days after Lessor informs Lessee that it does not wish to retain the Improvements; or

B. Repair or replace the Improvements within a reasonable length of time, as Lessor and Lessee mutually determine. The parties recognize that all or a portion of the Museum may be closed during this time.

22. **Release of Lessor.** Lessor is hereby released from any damage or injury to person or property caused by or resulting from acts of nature or force majeure, including but not limited to, steam, electricity, gas, water, rain, wind, ice, snow or any leak or flow from or into any part of the Leased Premises. In addition, Lessor shall not be liable for any damage, compensation or claim by reason of inconvenience or annoyance arising from the necessity of repairing any portion of the Leased Premises, the interruption of the use of the Leased Premises, or the termination of this Lease by reason of any damage or destruction of the Leased Premises, except as otherwise stated in this Lease.

23. **Condemnation.** If a condemning authority takes all of the Leased Premises or a portion to render the Leased Premises, in the reasonable opinion of Lessee, unsuitable for the Lessee's use, this Lease shall terminate as of the date the title vests in the condemning authority. Lessee shall be entitled to the portion of any award payable for the value of its Improvements, moving expenses, prepaid rent and business dislocation expenses and Lessor shall be entitled to receive that portion of the award which has been paid on account of the taking of the land, including lost rent. A sale of all or part of the Leased Premises to a purchaser with the power of

*considered as  
unimproved*

eminent domain, in the face of the exercise of eminent domain power, shall be treated as taking by condemnation for the purpose of this paragraph.

24. **Insurance.** During the term of the Lease and any extension thereto, Lessee shall maintain the following types and amounts of insurance with an insurer rated A- or better by A.M. Best. Lessee shall purchase and maintain in full force and effect throughout the Term public liability and property damage policies. The policy of general liability insurance shall provide, at a minimum, a combined single limit of \$1,000,000. Additionally, Lessee shall maintain insurance against loss by fire, lightning, windstorm, flood, sinkhole, vandalism, malicious mischief and other hazards customarily insured by extended coverage, all risk (now known as causes of loss-special form) coverage on the Improvements for their full replacement value, which shall be adjusted from time to time to reflect current replacement value. All such insurance must be obtained through an insurance company authorized to do business in the State of Florida with an A.M. Best Rating of no less than A and certificates of such insurance shall be filed with Lessor prior to commencement of such construction. Lessor shall be named as additional insured with respect to such insurance and shall be given no less than thirty (30) days written notice of any amendment or cancellation thereof. Upon Lessor's written request, Lessee agrees to review the coverage limits of its liability insurance and increase the same to the extent necessary to adequately cover the operations on the Leased Premises, as determined by Lessee in its reasonable discretion; provided in no event shall Lessor require that Lessee review such limits more than once every two (2) years. Lessee hereby waives all rights to recover against Lessor for any loss or damage to property arising from any cause that would be covered by any insurance required or actually carried under this Lease. Lessee will cause its insurers to issue appropriate waiver of subrogation rights endorsements, and shall supply ~~Lessor~~ with appropriate information from its insurers confirming such waiver to be in effect. Lessor shall be a loss payee on the Lessee's property insurance to ensure that any insurance proceeds paid for the Improvements shall be utilized by Lessee to repair/restore the Improvements if and as required by this Lease.

Lessee's  
Policies

The City, its elected and appointed officers, employees and agents, including the CRA and its employees, shall be named as additional insured on all insurance policies required hereunder, except Worker's Compensation coverage. Cade Museum shall provide, or cause the Contractor to provide, the City with a certificate of insurance evidencing the required coverage prior to the issuance of a building permit for the Project, and shall furnish the City evidence of renewals of each such policy no less than thirty (30) days prior to the expiration of the applicable policy.

25. **Lessee's Environmental Covenants and Indemnity.**

A. Lessee's Use and Storage of Hazardous Substances.

i. Lessee may not use, dispose of, store or generate Hazardous Materials on the Leased Premises except those disclosed to and approved in writing by, in the sole discretion of, the Lessor. Lessor's approval of Lessee's use of the Hazardous Substances (as hereinafter defined) shall be limited to the maximum annual quantities listed in the written approval and subject to Lessee's compliance with this Section and Lessee's compliance with all applicable

Environmental Laws (as hereinafter defined). Lessor's approval of Lessee's use and storage of the Hazardous Substances shall not be deemed to constitute a determination of Lessor with respect to the legality or appropriateness of the storage methods or disposal methods detailed therein or otherwise employed by Lessee on the Leased Premises; Lessor has not and will not undertake an independent review of Lessee's storage or disposal methods, and is relying entirely on Lessee's representation that its storage and disposal practices are in full compliance with applicable Environmental Laws. Except in accordance with applicable Environmental Laws and as disclosed by Lessee and permitted in writing by Lessor, the storage, use or disposal of Hazardous Substances on the Leased Premises is hereby prohibited. Prior to taking possession of the Leased Premises, Lessee shall supply Lessor with Material Safety Data Sheets for all Hazardous Substances used, stored or disposed of by Lessee in connection with Lessee's use, occupancy, and possession of the Leased Premises.

ii. Lessee shall obtain and maintain any and all necessary government permits, licenses, certifications and approvals required or appropriate for the use, handling, storage, and off-site disposal of any Hazardous Substances used, stored, generated, transported, handled, blended, or recycled by Lessee on the Leased Premises. Lessor shall have a continuing right, without obligation, to require Lessee to obtain, and to review and inspect any and all such permits, licenses, certifications and approvals, together with copies of any and all Hazardous Substances management plans and programs, any and all Hazardous Substances risk management and pollution prevention programs, and any and all Hazardous Substances emergency response and employee training programs respecting Lessee's use of Hazardous Substances. Upon request of Lessor, Lessee shall deliver to Lessor, a narrative description explaining the nature and scope of Lessee's activities involving Hazardous Substances and showing, to Lessor's satisfaction, its compliance with all Environmental Laws and the terms of this Lease.

iii. Lessee shall promptly provide Lessor with copies of all correspondence, reports, Notices (as hereinafter defined), orders, findings, declarations and other materials relevant to Lessee's compliance with applicable Environmental Laws as they are issued or received by Lessee.

iv. In the event of Lessee's failure to comply in full with the foregoing provisions, Lessor may, at its sole and absolute discretion, perform any and all of Lessee's obligations in this Section. All reasonable costs and expenses incurred by Lessor in the exercise of this right shall be deemed to be additional rent payable on demand and with interest, at the highest rate authorized by law, until payment is made. Such costs and expenses include but are not limited to state agency fees, engineering fees, investigation and cleanup costs, any penalties assessed by any governmental authority based on Lessee's failure to comply with



Environmental Laws, filing fees and suretyship expenses, and associated attorneys' fees and expenses.

**B. Environmental Indemnity.** Without limiting Lessee's obligations under any other provision of this Lease, Lessee and its successors and assigns shall hereby indemnify, defend, protect, and hold Lessor, its officers, employees, elected officials, agents, lenders, consultants, independent contractors, and any successors to Lessor's interest ("Indemnified Parties") harmless from and against, and shall reimburse the Indemnified Parties for any and all losses, claims, liabilities, damages, costs, expenses, causes of action, judgments, damages, enforcement actions, taxes, remedial actions, the diminution in the value of the Leased Premises, the Building, or any portion thereof, and injuries to persons, property or natural resources, arising out of Lessee's breach of any provision (or representation, warranty, or covenant) contained in this Section 25 arising from, out of, in connection with, or as a consequence, directly or indirectly, of the Release or presence of any Hazardous Substances on, in, or beneath the Leased Premises or that may have migrated from the Leased Premises to any adjacent lands, air or water, which first occurs during the Term of this Lease, as the same may be extended by law or agreement of the parties, whether foreseeable or unforeseeable, and whether or not known to Lessee, it being understood and agreed that the foregoing indemnity includes, but is not limited to, all costs of removal, remediation of any kind, detoxification, clean up and disposal of such Hazardous Substances and the preparation of any closure or other required plans, all costs of determining whether the Leased Premises is in compliance and causing the Leased Premises to be in compliance with all applicable Environmental Laws, all costs and fees associated with claims for damages to persons, property, or natural resources, and Lessor's reasonable attorney's fees and consultant's fees and court costs in respect thereto, whether or not litigation or administrative proceedings shall occur, including all costs and expenses incurred or suffered by Lessor by reason of any violation of any applicable Environmental Law which first occurs, or has first occurred, upon the Leased Premises during the Term of this Lease, as the same may be extended by law or agreement of the parties, or by reason of the imposition of fines or penalties, or any governmental lien for the recovery of environmental clean-up costs, expended by reason of such violation, it being expressly understood and agreed that to the extent the Indemnified Parties or any of them are strictly liable under any Environmental Laws, this indemnity shall apply without regard to the strict liability with respect to the violation of law which results in such liability. Lessee shall comply with all Environmental Laws throughout the Term of this Lease, as the same may be extended by law or agreement of the parties. Lessee hereby covenants and agrees that all obligations of Lessee under this Section 25 shall survive any termination of the Lease, it being further understood and agreed that the rights of Lessor under this Section 18 shall be in addition to any other rights and remedies under this Lease, or otherwise available to Lessor at law or in equity.

**C. Definitions.**

i. The term "Environmental Laws" shall mean and include any and all federal, state or local laws (whether under common law, statute, rule, regulation, ordinance or otherwise), requirements under permits or other authorizations

issued with respect thereto, and other orders, decrees, judgments, directives or other requirements of any governmental authority relating to or imposing liability or standards of conduct (including disclosure or notification) concerning the protection of human health or the environment, Hazardous Substances or any activity involving Hazardous Substances, including without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq. ("CERCLA"), as amended; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6921 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. Sections 651 et seq. ("OSHA"); the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq.; the Federal Solid Waste Disposal Act, 42 U.S.C. Sections 6901 et seq.; the Clean Air Act, 42 U.S.C. Sections 7401 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Sections 11001 et seq.; Chapters 376 and 403, Florida Statutes; Chapter 62, Florida Administrative Code; and any regulation implementing the above.

ii. The term "Hazardous Substances" shall have the meaning ascribed to it in CERCLA; provided, however, that the definition of the term "Hazardous Substances" shall also include (if not included within the definition contained in CERCLA) any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance, including without limitation, asbestos, polychlorinated biphenyls, petroleum (including crude oil or any fraction or byproduct thereof), hydrocarbons, radon, urea, urea formaldehyde, and any material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which is prohibited, controlled, limited or regulated in any manner under any Environmental Laws.

iii. The term "Release" shall have the meaning ascribed to it in CERCLA and shall also include (if not included within the definition contained in CERCLA) any spill, leak, emission, discharge or disposal of Hazardous Substances into the environment.

iv. The term "Notice" shall mean any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from the Florida Department of Environmental Protection ("FDEP"), the United States Environmental Protection Agency ("USEPA"), the United States Occupational Safety and Health Administration ("OSHA") or other federal, state or local agency or authority, or any other entity or any individual, concerning any act or omission resulting or which may result in the Release of Hazardous Substances into the waters or

onto the lands of the State of Florida, or into waters outside the jurisdiction of the State of Florida, or into the environment.

26. **Employees and Agents of Lessee.** The employees and agents of Lessee shall not be deemed to be employees or agents of Lessor solely by the existence and terms of this Lease.

27. **Notices.** All notices required or permitted under this Lease shall be in writing and shall be deemed effective upon personal delivery, delivery by U.S. Mail, registered or certified, and postage prepaid, or delivery by a recognized overnight delivery service. Such notices shall be addressed to the party at the addresses shown below, or at such other address or addresses as either party shall designate to the other in writing in accordance with this paragraph:

If to Lessor, to: Russ Blackburn  
City Manager  
City of Gainesville  
200 E. University Avenue, Suite 402  
P.O. Box 490, Station 6  
Gainesville, Florida 32627

If to Lessee, to: Richard Miles  
Vice President  
Cade Museum Foundation  
904 South Main Street  
Gainesville, Florida 32601

28. **Title and Quiet Enjoyment.** Subject to Lessee complying with the Lease, Lessor covenants that Lessee shall have the quiet enjoyment of the Leased Premises against the claims of all persons claiming by, through or under Lessor during the Term.

29. **Encumbrances; Assignments and Subleases.**

*Insert 2*

~~A. Lessee shall not enter into financing which is secured by a leasehold mortgage on the Improvements. Lessee shall not have the right at any time to pledge, hypothecate, or mortgage this Lease or any estate or interest herein, by operation of law or otherwise, **Any such mortgage, pledge, or transfer of the lease or any estate or interest herein shall be void and of no force and effect.**~~

~~B. Lessee may not assign or sublet the Leased Premises or any part thereof without the prior written consent of Lessor which may be withheld in the sole discretion of the Lessor. **Any such assignment or sublet made without Lessor's consent shall be void and of no force and effect.** The consent of Lessor to any one or more assignments, subleases, transfers or liens shall not operate to exhaust the Lessor's rights under this section, nor shall Lessor's consent operate to release Lessee from any of its obligations under this Lease.~~

32

30. **Covenant Against Liens.** If, because of any act or omission of Lessee or any party claiming by through or under Lessee, any lien, charge, or order for the payment of money shall be filed against Lessor or any portion of the Leased Premises, Lessee shall, at its own cost and expense, cause the same to be discharged of record or bonded within twenty (20) days after written notice from Lessor to Lessee of the filing thereof; and Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, suits, penalties, claims, and demands, including reasonable counsel fees, resulting therefrom.

33

31. **Indemnification/Waiver of Liability.** The Lessee shall indemnify, defend, save, and hold harmless the Lessor and its officers, agents and employees from any losses, fines, penalties, costs, damages, claims, demands, suits, and liabilities of any nature, including attorney's fees (including regulatory and appellate fees), for any personal injury or property damage resulting from the use and control of the Leased Premises and the condition and maintenance of the Leased Premises, including utilities located within the Leased Premises, or otherwise arising from or occasioned by any act or omission or negligence or intentional wrongdoing on the part of the Licensee and its officers, agents, employees, and invitees. This indemnification shall not be limited to the insurance coverage provided herein. This indemnification obligation shall survive the expiration or termination of the Lease.

34

32. **Non-discrimination.** Lessee shall not discriminate against any person upon the basis of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity, in either employment, contracting or with regard to its services, as applicable, in accordance with any federal, state and local laws.

35

33. **Relationship with Lessor.** Lessee shall not use any trademark, service mark, trade name or other indicia of the Lessor, nor shall Lessee hold itself out as having any business affiliation with the Lessor other than a Lessor-Lessee relationship, and upon direction of the Lessor, the Lessee shall issue public disclaimers to that effect.

36

34. **Miscellaneous.**

A. Lessee shall surrender possession of the Leased Premises to Lessor upon the expiration or termination of this Lease, free of all trash, junk, garbage and other similar debris. If Lessee remains in possession of the Leased Premises following the expiration of the term, such hold over shall result in a tenancy at will and the Rent shall be \$5,000 per month. This provision does not give Lessee any right to hold over.

B. This Lease constitutes the entire agreement and understanding of Lessor and Lessee with respect to the subject matter of this Lease, and supersedes all options offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by Lessor and Lessee.

C. If either Lessor or Lessee is represented by a broker in this transaction, that party shall be fully responsible for any fees due such broker and shall hold the other party harmless from any claims for commission by such broker.

D. This Lease shall be construed in accordance with the laws of the State of Florida with venue in Alachua County, Florida.

E. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect; provided the intent and purpose of the Lease can be fulfilled.

F. This Lease may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties, it being understood that all parties need not sign the same counterpart.

G. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. Lessor makes no representation or warranty with respect to the presence or absence of radon in or about the Leased Premises.

H. Except as otherwise expressly provided in this Lease and Lease, Lessee acknowledges and agrees that (i) Lessor has not made and is not making any representations, warranties, assurances or guarantees to Lessee regarding the Leased Premises, express or implied, and (ii) Lessee is leasing the Leased Premises in its present condition, AS IS, WHERE IS.

I. No provision(s) of this Lease shall be interpreted or deemed as a waiver of Lessor's sovereign immunity.

J. Insert 3


The remainder of this page is intentionally left blank.

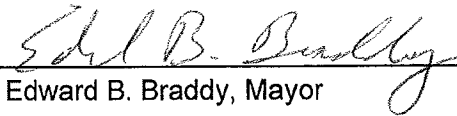
IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first written above.

LESSOR:


CITY OF GAINESVILLE

ATTEST:

  
\_\_\_\_\_  
Kurt Lannon, Clerk of the Commission

By:   
\_\_\_\_\_  
Edward B. Braddy, Mayor

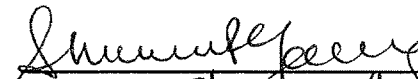
Approved as to Form and Legality:

  
\_\_\_\_\_  
Lisa Bennett, Assistant City Attorney II

LESSEE:

GADE MUSEUM FOUNDATION, INC.

ATTEST:

  
\_\_\_\_\_  
Print name: Shareeka K. Young  
Title: Executive Assistant to

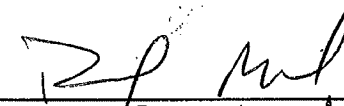
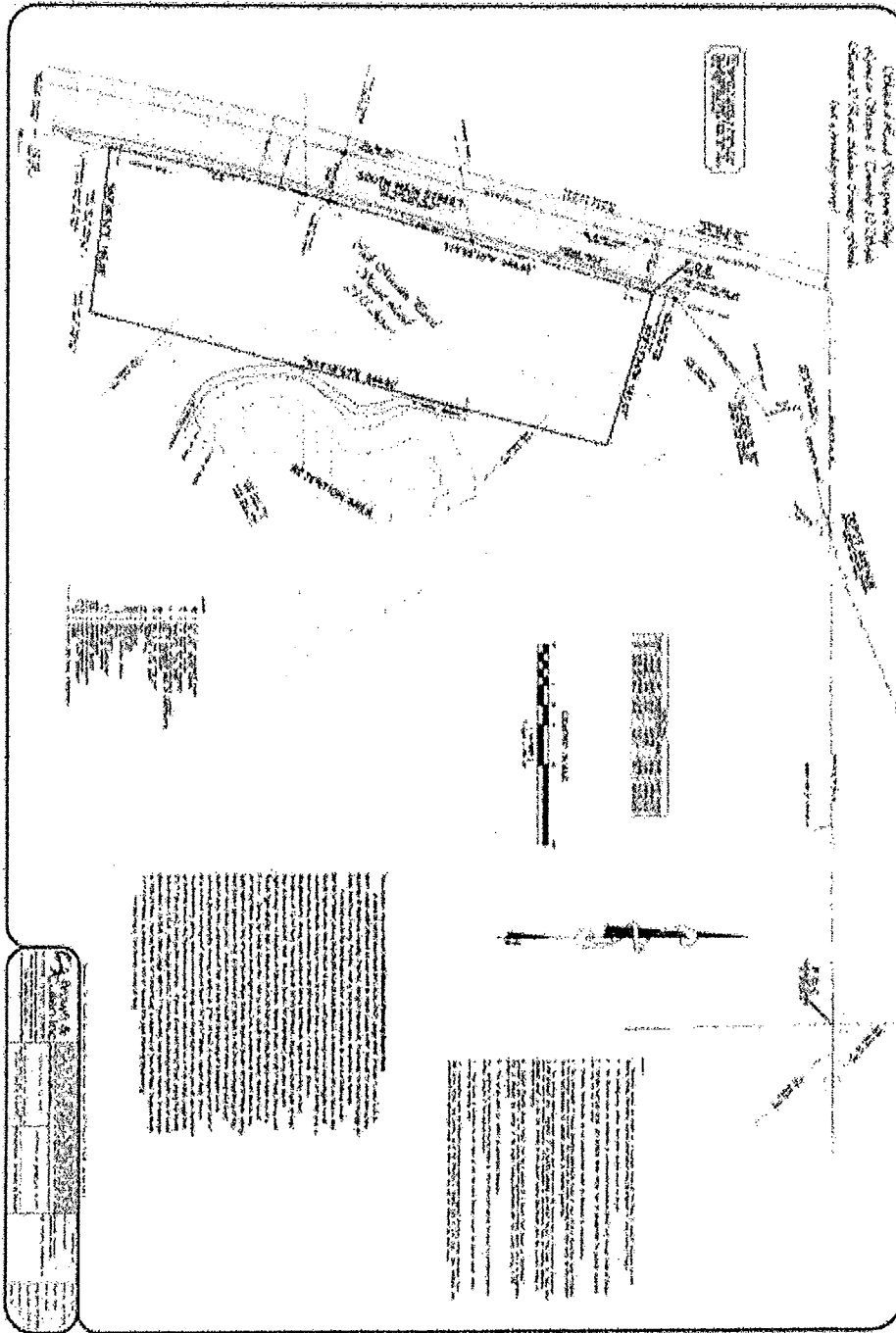
By:   
\_\_\_\_\_  
Print name: Richard Miles  
Title: Board Vice President

EXHIBIT "A"

Sketch of the Leased Area



**EXHIBIT "B"****Legal Description of the Leased Area**

A part of lands described in O.R.B. 2427, page 2468 (Parcel 1) and O.R.B. 2427, page 2468 (Parcel 2) and O.R.B. 2409, page 1797 (Parcel 1), all of the public records of Alachua County, Florida; lying in Section 8, Township 10 South, Range 20 East, Alachua County, Florida; being more particularly described as follows:

Commence at the Northeast corner of said Section 8, and run thence South  $89^{\circ}34'31''$  West, along the North line of said Section, a distance of 497.00 feet to the South right-of-way line of Depot Avenue; said point being on a non-tangent curve, concave Northerly, having a radius of 416.00 feet, a central angle of  $01^{\circ}45'56''$  and a chord bearing and distance of South  $78^{\circ}43'30''$  West – 12.82 feet; thence Southwesterly, along said curve and along said South right-of-way line, an arc distance of 12.82 feet; thence South  $50^{\circ}05'55''$  West, along said South right-of-way line, a distance of 6.87 feet; thence South  $76^{\circ}39'49''$  West, along said South right-of-way line, a distance of 108.40 feet; thence South  $13^{\circ}20'11''$  East, along said South right-of-way line, a distance of 33.29 feet to the South right-of-way line of a F.D.O.T. taking for State Road No. 329 (a.k.a. South Main Street); thence South  $51^{\circ}37'50''$  West, along said South right-of-way line, a distance of 150.81 feet to the East right-of-way line of said South Main Street; thence South  $15^{\circ}55'10''$  West, along said East right-of-way line, a distance of 23.20 feet to the Point-of-Beginning of the herein described parcel; thence continue South  $15^{\circ}55'10''$  West, along said East right-of-way line, a distance of 344.45 feet to the beginning of a tangent curve, concave Southeasterly, having a radius of 2781.79 feet, a central angle of  $04^{\circ}44'11''$  and a chord bearing and distance of South  $13^{\circ}34'17''$  West – 229.90 feet; thence Southwesterly, along said curve and along said East right-of-way line, an arc distance of 229.96 feet to the Northwest corner of lands described in O.R.B. 2462, page 359 (FCT Parcel #2), said public records; thence South  $83^{\circ}26'52''$  East, along the North line of said O.R.B. 2462, page 359 (FCT Parcel #2) and along the North line of lands described in O.R.B. 2462, page 359 (FCT Parcel #3), said public records, a distance of 169.28 feet; thence North  $14^{\circ}18'03''$  East, a distance of 544.60 feet; thence North  $73^{\circ}17'34''$  West, a distance of 161.07 feet to the said Point-of-Beginning.

Containing 2.155 Acres, more or less.



**EXHIBIT "C"**

**To be provided.**

Exhibit D - Sample Only

File #150099B



April 15, 2015  
ECT No. 150196-0100

Mr. Matthew V. Weaver  
Assistant Project Manager  
Oelrich Construction, Inc.  
25125 West Newberry Road  
Newberry, Florida 32669

**Re: Soil Management Plan  
Depot Park Site**

Dear Mr. Weaver:

Environmental Consulting & Technology, Inc. (ECT), is pleased to provide the attached Soil Management Plan in accordance with our contract. Please do not hesitate to contact me directly at 352.332.0444 or [mdale@ectinc.com](mailto:mdale@ectinc.com), if I can provide further clarification or assistance.

Sincerely,

**ENVIRONMENTAL CONSULTING & TECHNOLOGY, INC.**

Mervin W. Dale, P.G.  
Staff Scientist II

MWD/saw

cc: Reading File

3701 Northwest  
98<sup>th</sup> Street  
Gainesville, FL  
32606

(352) 332-0444

FAX (352) 332-  
8722

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An Equal Opportunity/Affirmative Action Employer  
[www.ectinc.com](http://www.ectinc.com)

## SOIL MANAGEMENT PLAN

### Purpose

There are many places throughout the state where current site activities and/or historic site activities have resulted in the release of chemicals to soils that may pose an unacceptable long term risk to human health and the environment. In some areas, the presence of certain naturally occurring metals in soils may represent an unacceptable long-term risk to human health and the environment. The intent of this soil management plan is to provide:

- \* Compliance with environmental regulations; and
- o Protection of human health and the environment by the following:
  - o Preventing direct exposure to contaminated soils, and
  - o Minimizing or preventing infiltration of storm water and surface waters through the contaminated soils if they could generate a leachate that could create a contaminant plume.

This soil management plan is designed to identify appropriate ways to manage soils on sites where unrestricted use of the soils is not possible due to the presence of contaminants in soils.

### Site Description

The site (Depot Park) has seen several historical uses that have resulted in legacy contamination issues. These historic land uses include:

- \* Former Manufactured Gas Plant (MGP) -- coal tar composed of benzene, toluene, ethyl benzene, total xylenes, (BTEX) and polynuclear aromatic hydrocarbons (PAHs), which remain in soils;
- o Former CSXT Railway -- arsenic and PAHs (aka, non-MGP chemicals of concern), which remain in soils;
- o Former Rinker Materials -- chlorinated solvents (e.g., trichloroethylene and tetrachloroethylene), which may be in groundwater; and,
- \* Former MCB Oil Company -- petroleum compounds (BTEX and/or PAHs), which remain in groundwater.

These historical uses have resulted in the release of contaminants to the soils (specifically, arsenic, BTEX, or PAHs) at concentrations greater than the regulatory criteria. The regulatory criteria have established soil cleanup target levels for the contaminants that may be present. Soil cleanup target levels (SCTLs) have been developed based on the risk associated with direct exposure to contaminated soils, and the potential to generate a leachate that would impact groundwater.

The attached tables (Table 1 for arsenic; Tables 2 and 3 for BTEX and PAHs) identify those chemicals detected at the site through previous investigations and the range of concentrations detected. In addition, the calculated SCTLs based on direct exposure under the 'park use' scenario as well as leachability-based SCTLs are provided for the BTEX and PAHs on Tables 7 and 8. ECT developed a site-specific SCTL for arsenic for this site based on its future use as a public park of 5.4 mg/kg, which is FDEP approved. Figure 1 illustrates the remaining documented impacts of coal tar in soils in-situ at the site. That same figure indicates the impacts of arsenic and/or PAHs related to the Former CSXT Railway lines (see the Soil Management Units 1-3, and 5-8 on Figure 1) which crisscrossed the site; thus, the requirement for the 2-foot cap over much of the site.

Remedial actions have been conducted at the facility that included extensive excavation and off-site disposal of the most contaminated soils. However, some soils remain at the property that exceed one or more of the SCTLs. In these areas, a 2-foot cap of clean soils has been placed over the impacted soils. This 2-foot cap serves as an engineering control and acts as a barrier, preventing direct exposure to the contaminated soils. This 2-foot cap is integral to the redevelopment of the property and is to be maintained at all times. This engineering control is one component of institutional controls that have been approved by the Florida Department of Environmental Protection and will be recorded with the Alachua County Clerk of the Circuit Court.

#### Development

Development of the property is planned which consists of the following:

- Park amenities installation and associated underground support infrastructure; and,

- \* Cade Museum construction.

It is conceivable that as part of construction of the park amenities and the Cade Museum that the 2-foot cap may be temporarily disturbed. There are three possible scenarios that are envisioned during site redevelopment that could require reference to this soil management plan. These include:

- ◊ Some, or all of the cap may be removed and the area paved over for buildings, parking lots, etc.
- ◊ The cap and underlying soils may be excavated to allow for installation of infrastructure. Such infrastructure may include, but not be limited to, storm drains, potable water lines, sanitary sewer lines, electrical utilities, etc.
- \* The cap may be removed, along with some potentially impacted soils, for planting vegetation.

#### **Soil Management**

The objective of this soil management plan is to ensure that contaminated soils are not left exposed at the site. The 2-foot clean soil cap placed over the majority of the park, covers the soils potentially contaminated with arsenic, PAHs and/or BTEX from historic land uses.

Any potentially-contaminated soils below the 2-foot clean soil cap that are excavated may be used beneath buildings or pavement in the same area they are removed from, if they meet the geotechnical requirements for the project. Or, these soils may be used as fill in that same area of the site where needed and covered with two feet of clean fill. The buildings, pavement, and clean soil on top of those contaminated soils serve as an engineering control.

If soils are excavated and are not to be reused on the property, they should be stockpiled on visqueen and covered with visqueen to prevent airborne dust from emanating from them which could become a hazard to other workers and/or the public. In addition, the stockpiles should be properly characterized under two options as follows:

Option 1: According to protocols used during the MGP source removal, 1 sample per 100 tons of soil should be collected from the stockpile and analyzed for the constituents of concern (i.e., arsenic and PAHs for non-MGP soils; and, BTEX and PAHs for MGP soils). Assuming the analytical results affirm the soil as being non-hazardous and the waste facility operator's evaluation of the analytical report agrees with that assessment, the soils should be transported to the historically approved landfill operated by Waste Management (WM) called Chessir Island Landfill.

Option 2: WM may be contacted to request acceptance of excavated soils based on historical soils data. WM has waste profiles for the two contaminated soil types as follows:

- MGP soils - #102275GA
- Non-MGP soils - #375749GA

However, WM may, at their discretion, require additional sampling to include other appropriate analytical parameters based on their permit.

Any personnel directly involved in the excavation and handling of potentially contaminated soils from this site should be OSHA 40-hour hazardous waste operations (HAZWOPER) trained, and they should be working in accordance with the site-specific health and safety plan designed for HAZWOPER-related soil work at this site.

If elevated concentrations of metals are present in the soils, the data should be evaluated with respect to MCLs using the 20:1 rule to determine whether the soils may be characteristically hazardous. It may be necessary to collect additional samples for TCLP analyses.

If ditches, swales or ponds are to be constructed on site, then contaminated soils that contain contaminants of concern at concentrations greater than their leachability-based SCTLs, or a leachate generated from an SPLP extraction containing contaminants of concern at concentrations greater than their groundwater cleanup target levels, should be excavated from beneath these features and clean fill should be used for construction.

Since the site's current topography and soil cap thickness are documented by Public Works, FDEP will require adequate documentation of any changes to the site's topography and soil cap. The documentation should include at a minimum a PLS drawing showing the changes. Other suggested documentation related to those types of changes might include photos and confirmatory soil borings taken by an independent geotechnical firm. It is anticipated that the City will submit an annual report that would include such data as a requirement of a long term maintenance and monitoring plan required by the FDEP for this site.

For questions regarding the soil management plan, please contact Merv Dale at 332.0444.

For questions regarding acceptance of the soils for off-site disposal, please contact Allison B. Yelverton at Waste Management, 800-963-4776 extension 8150.

**TABLES**



Table 1. Screening for Chemicals of Potential Concern in Vadose Zone Soils  
Former CSXT Parcel  
Gainesville, Florida

MEDIA: SOILS  
AREA: VADOSE ZONE - NO VISIBLE IMPACTS

CHEMICAL CLASS/CHEMICAL	Units	Number of Samples	Number of Detects	Number Below RL	MIN Reporting Limit	MAX Reporting Limit	MIN Conc. Detected	MAX Conc. Detected	AVG Conc. Detected	Risk Based Screening Results	COPC (Y/N) Basis <sup>1</sup>
<b>VOLATILE ORGANICS</b>											
Benzene	µg/kg	18	1	17	<5	<8	8.1	8.1	8.1	600	No/B
Ethylbenzene	µg/kg	18	0	18	<5	<8	ND	ND	NA	8,800	No/D
Total Xylenes	µg/kg	18	0	18	<5	<8	ND	ND	NA	27,000	No/D
Toluene	µg/kg	18	2	16	<5	<7	6.8	12	8.3	820,000	No/B
<b>SEMI-VOLATILE ORGANICS</b>											
1-Methylnaphthalene	µg/kg	0	0	0	NA	NA	NA	NA	NA	NPRG	Yes/C
2-Methylnaphthalene	µg/kg	22	0	22	<350	<5,300	ND	ND	NA	NPRG	Yes/C
Acenaphthene	µg/kg	22	1	21	<350	<5,300	1,400	1,400	1,400	370,000	Yes/C
Acenaphthylene	µg/kg	22	0	22	<350	<5,300	ND	ND	NA	NPRG	Yes/C
Anthracene	µg/kg	22	1	21	<350	<5,300	8700	8700	8700	2,200,000	Yes/C
Benzo(a)anthracene	µg/kg	22	8	16	<350	<5,300	440	12000	3,490	820	Yes/A
Benzo(a)pyrene	µg/kg	22	8	17	<350	<5,300	440	11000	4,880	82	Yes/A
Benzo(b)fluoranthene	µg/kg	22	4	18	<350	<5,300	380	7800	3,478	820	Yes/A
Benzo(g,h,i)perylene	µg/kg	22	5	17	<350	<5,300	530	7800	3,380	NPRG	Yes/C
Benzo(k)fluoranthene	µg/kg	22	4	18	<350	<5,300	430	10000	4,210	6,200	Yes/A
Chrysene	µg/kg	22	5	17	<350	<5,300	380	11000	3,840	82,000	Yes/C
Dibenz(a,h)anthracene	µg/kg	22	1	21	<350	<5,300	340	540	540	82	Yes/A
Fluoranthene	µg/kg	22	8	14	<350	<5,300	460	29000	7,280	2,300,000	Yes/C
Fluorene	µg/kg	22	3	19	<350	<5,300	370	870	580	2,700,000	Yes/C
Indeno(1,2,3-cd)pyrene	µg/kg	22	4	18	<350	<5,300	400	6300	2,880	820	Yes/A
Naphthalene	µg/kg	22	0	22	<350	<5,300	ND	ND	NA	56,000	Yes/C
Phenanthrene	µg/kg	22	6	17	<350	<5,300	380	18000	4,880	NPRG	Yes/C
Pyrene	µg/kg	22	10	12	<350	<5,300	440	23000	8,870	230,000	Yes/C
<b>METALS</b>											
Arsenic	mg/kg	20	15	5	<0.1	<0.8	0.4	115	8.40	0.38	Yes/A
<b>MISCELLANEOUS</b>											
TRPH/Petroleum Range Organics	mg/kg	4	4	0	NA	NA	88	220	180	NPRG	Yes/C

Notes: NA = Not applicable.  
 ND = Not detected.  
 RL = Reporting limit.  
 NPRG = No preliminary remediation goal.  
 COPC = Chemical of Potential Concern (yes/no)

**Basis:**  
 A = Maximum detected concentration greater than Risk-Based Concentration based on risk level of 1x10<sup>-6</sup> for carcinogens and HQ=0.1 for non-carcinogens.  
 B = Maximum detected concentration less than Risk-Based Concentration based on risk level 1x10<sup>-6</sup> for carcinogens and HQ=0.1 for non-carcinogens.  
 C = The chemical is a member of a chemical class which contains other COPCs.  
 D = Chemical not detected in samples.  
 E = Chemical not analyzed for.

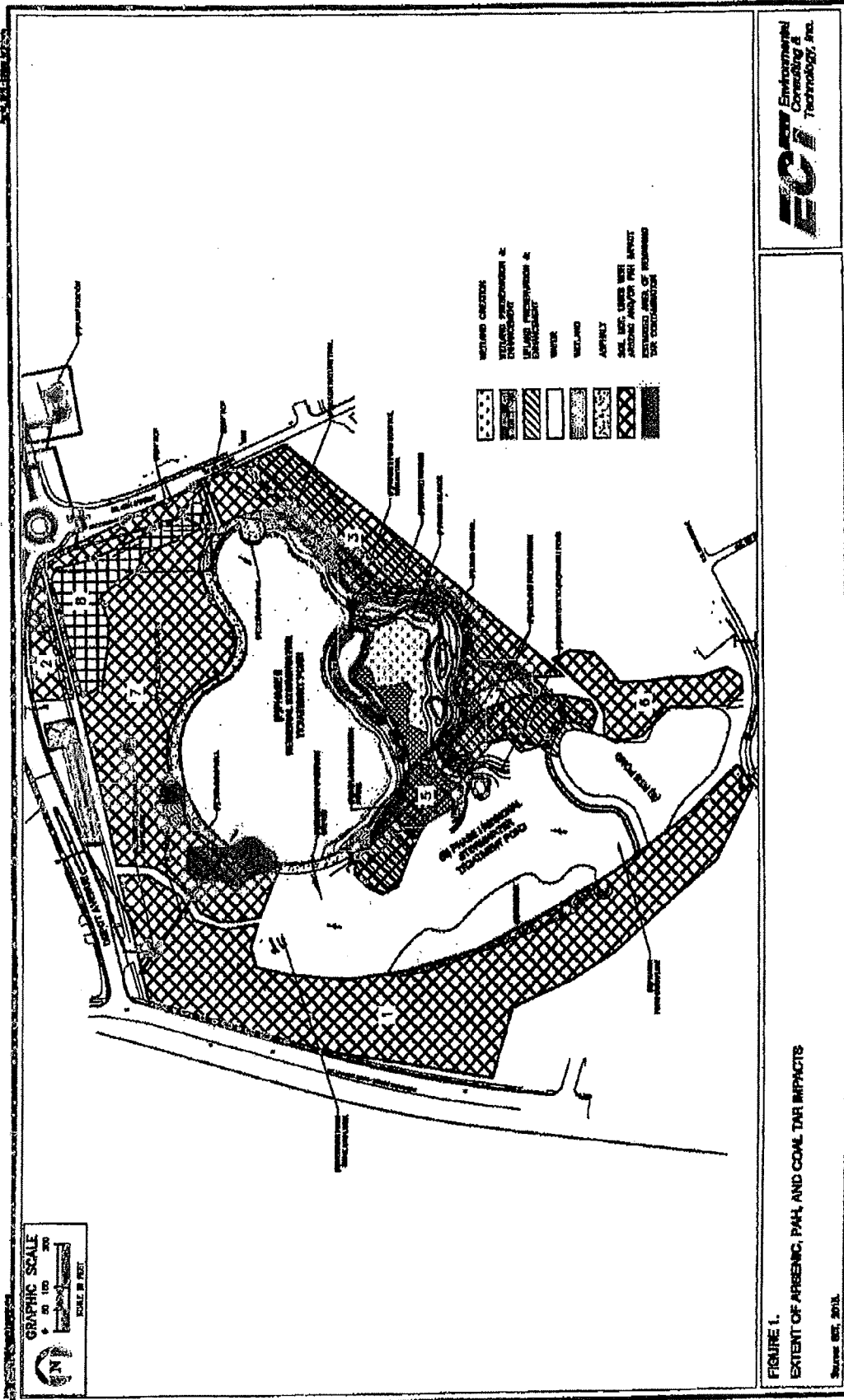








**FIGURES**



**ECT** Environmental Consulting & Technology, Inc.

FIGURE 1.  
EXTENT OF ARSENIC, PAH, AND COAL TAR IMPACTS  
March 2001