

**ACQUISITION AND DEVELOPMENT AGREEMENT
FOR RETAIL DEVELOPMENT**

BETWEEN

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

and

**M2PCD, LLC,
a Florida limited liability company**

Table of Contents

1. DEFINITIONS.....	2
1.1. GENERALLY	2
1.1.1. Adequate Assurance	2
1.1.2. Agreement	2
1.1.3. Approval	2
1.1.4. Approval Date.....	2
1.1.5. Approved Plans.....	2
1.1.6. Business Day.....	3
1.1.7. City Code.....	3
1.1.8. City Incentives.....	3
1.1.9. City Payments.....	3
1.1.9.1. City Review Contributions.....	3
1.1.9.2. Development Incentive Payments	3
1.1.9.3. Project Construction Reimbursements	3
1.1.10. Closing	3
1.1.11. Closing Date.....	3
1.1.12. Completion	3
1.1.13. Construction Costs	3
1.1.14. Construction Loan.....	3
1.1.15. Contingency.....	3
1.1.16. Control.....	3
1.1.17. Deadline.....	3
1.1.18. Develop.....	4
1.1.19. Developer Parcel.....	4
1.1.20. Developer Principal.....	4
1.1.21. Development Costs.....	4
1.1.22. Development Order	4
1.1.23. Effective Date	4
1.1.24. Entire Parcel	4
1.1.25. Equity Investment.....	4
1.1.26. Facility	4
1.1.27. Financial Information	4
1.1.28. Financial Review Committee	4
1.1.29. Force Majeure.....	4
1.1.30. Grocery Store	4
1.1.31. Month.....	5
1.1.32. NMTC Program	5
1.1.33. OPD Easements	5
1.1.34. OPD Parcel.....	5
1.1.35. OPD Substation.....	5
1.1.36. Other Parcel.....	5
1.1.37. Person.....	5
1.1.38. Plans	5
1.1.39. Prior Agreement	5
1.1.40. Project	5
1.1.41. Property.....	5
1.1.42. Purchase Price	5

1.1.43.	Schedule	5
1.1.44.	Title Company.....	5
1.1.45.	West Ocala Plan	6
1.2.	ADDITIONAL DEFINITIONS AND RULES OF CONSTRUCTION	6
2.	PURPOSE	6
3.	PROPERTY	6
3.1.	LAND USE AND ZONING.....	6
3.2.	INSPECTION AND SURVEY.....	6
3.2.1.	Developer’s Inspection of the Property.....	6
3.2.2.	Indemnification.....	7
3.2.3.	Survey.....	7
3.3.	TITLE INSURANCE	8
3.4.	PLANS.....	9
3.5.	JOINDER AND APPLICATIONS.....	9
3.6.	CLOSING DATE.....	9
3.7.	FORM OF CONVEYANCE AND CLOSING COSTS	10
3.8.	ADEQUATE ASSURANCE.....	10
3.9.	AS IS.....	11
4.	DEVELOPMENT AND OTHER OBLIGATIONS.....	12
4.1.	GENERALLY	12
4.2.	PROJECT DEVELOPMENT COSTS	12
4.3.	OPD SUBSTATION.....	13
4.4.	NMTC PROGRAM.....	17
5.	PAYMENTS.	17
5.1.	CITY REVIEW CONTRIBUTIONS	17
5.2.	DEVELOPMENT INCENTIVE PAYMENTS.....	17
5.3.	PROJECT CONSTRUCTION REIMBURSEMENTS.....	20
6.	CONTINGENCIES	20
6.1.	GENERALLY	20
6.2.	GROCERY STORE LEASE	21
6.3.	EQUITY INVESTMENT	21
6.4.	FINANCIAL REVIEWS AND INFORMATION.....	21
6.5.	COUNCIL DETERMINATION.....	25
6.6.	EFFECT OF CONTINGENCY FAILURE.....	25
6.7.	RESPONSIBILITIES	25
7.	SCHEDULE AND DEADLINES	25
8.	MISCELLANEOUS PROVISIONS APPLICABLE TO THE PROJECT	27
8.1.	LOCAL PROFESSIONALS.....	27
8.2.	COMPLIANCE WITH OTHER PROVISIONS OF APPLICABLE LAW.....	27
8.3.	RESTRICTIONS ON USE OF, AND OTHER MATTERS CONCERNING DEVELOPER PARCEL.....	27
8.4.	SIGNAGE FOR OPD SUBSTATION.....	28
9.	REPRESENTATIONS AND WARRANTIES OF CITY	28
10.	REPRESENTATIONS AND WARRANTIES OF DEVELOPER	29
11.	DEFAULT.....	30
11.1.	FORCE MAJEURE.....	30

11.2.	NOTICE AND OPPORTUNITY TO CURE	30
11.3.	REMEDIES.....	31
11.4.	REMEDIES NOT EXCLUSIVE.....	31
11.5.	NO CONSEQUENTIAL DAMAGES.....	31
11.6.	NO WAIVER.....	31
11.7.	EFFECT OF TERMINATION.....	31
12.	REAL ESTATE TAXES; ASSESSMENTS	31
13.	TERMINATION OF PRIOR AGREEMENT.	31
14.	REAL ESTATE COMMISSION.....	31
15.	AGREEMENT TO RUN WITH DEVELOPER PARCEL.....	32
16.	SURVIVAL	32
17.	FORCE MAJEURE	32
18.	NOTICE	33
19.	ASSIGNMENT; INTEREST TRANSFER	34
20.	CITY’S POLICE POWERS.....	35
21.	SOVEREIGN IMMUNITY	35
22.	RESOLVING ANY INVALIDITY	35
23.	APPLICABLE LAW.....	35
24.	SEVERABILITY	35
25.	RELATIONSHIP.....	35
26.	PERSONAL LIABILITY.....	35
27.	EXCLUSIVE VENUE	36
28.	JURY WAIVER	36
29.	RECORDING.....	36
30.	COUNTERPARTS; COPIES	36
31.	ATTORNEY’S FEES.....	36
32.	SUCCESSORS AND ASSIGNS	36
33.	WAIVER.....	36
34.	CONSTRUCTION OF AGREEMENT	37
35.	EXHIBITS.....	37
36.	FURTHER ACTION	37
37.	TIME.....	37
38.	ENTIRE UNDERSTANDING.....	37
39.	AMENDMENTS	37
	EXHIBIT A - PROPERTY	41
	EXHIBIT B - OTHER PARCEL	42
	EXHIBIT C - OPD PARCEL	43

EXHIBIT D - ARCHITECTURAL SITE PLAN 44
EXHIBIT E - OPD MODULAR BUILDING ADDITIONAL REQUIREMENTS 45
EXHIBIT F - PROJECT CONSTRUCTION REIMBURSEMENT..... 47
EXHIBIT G - OTHER GROCERY STORES 48
EXHIBIT H - TIMELINE..... 49

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**ACQUISITION AND DEVELOPMENT AGREEMENT
FOR RETAIL DEVELOPMENT**

THIS ACQUISITION AND REDEVELOPMENT AGREEMENT (“*Agreement*”), is entered into effective as of this ____ day of May, 2016 (the “*Effective Date*,” as defined below) by and between:

- City of Ocala, a Florida municipal corporation (“*City*”); and
- M2PCD, LLC, a Florida limited liability company (“*Developer*”).

WHEREAS:

- A. City, like many local governments, seeks to promote economic development to improve its local economy by attracting business, creating jobs, and encouraging private investment.
- B. City is committed to the development and revitalization of West Ocala.
- C. City is the owner of the Property¹ as described on **Exhibit A**.
- D. City desires for the Entire Parcel to be developed to include the Grocery Store, Medical Facility, OPD Substation, and other uses consistent with and in furtherance of the City’s West Ocala Plan.
- E. City has established, pursuant to Part III, Chapter 163, Florida Statutes (the “*CRA Act*”) a community development area (the “*CRA*”).
- F. The West Ocala CRA includes West Ocala, and specifically the Entire Parcel.
- G. The Developer Parcel is located within a nationally recognized Low Income and Low Access area with limited access to healthy affordable food. (Source: <http://www.ers.usda.gov>)
- H. The City commissioned a grocery store study which indicated that there is a need for a full-service grocery store offering fresh, affordable food in West Ocala.
- I. City and Developer previously entered into the Prior Agreement.
- J. After substantial due diligence and investigation pursuant to the Prior Agreement, Developer has determined the Project is feasible if City is willing to make certain specific investments in the development of the Developer Parcel, and to provide other specific economic incentives to Developer relating to the Project.
- K. The City recognizes a certain amount of joint effort and investment by both parties is necessary to advance the type of retail development it desires in West Ocala, however, the potential benefits derived from the Project to both City and Developer are great. If successful, the Project will likely contribute greatly to the development of West Ocala.
- L. City Council, finding this economic development opportunity to be in the best interest of City and the health, safety and welfare of the citizens of Ocala, has offered to facilitate the Project by

¹ Terms capitalized in these whereas clauses and not otherwise defined are defined in paragraph 1.1 below.

providing the City Incentives to Developer with the expectation the City's involvement will encourage and accelerate the timing of the development, thus generating additional tax revenues, benefiting the West Ocala economy and enhancing the potential for future development and re-occupancy of neighboring properties.

- M. City Council finds the City's provision of economic incentives and investments pursuant to this Agreement constitutes a public purpose.
- N. The Florida Legislature has found government sponsored public-private arrangements and the promotion and support, including financial assistance, of economic development activities are in the public interest and achieve a public benefit.

NOW THEREFORE, in consideration of the foregoing matters (which are incorporated herein by reference) and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by all parties, the parties hereto agree as follows:

1. **Definitions.**

1.1. Generally. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings.

1.1.1. *Adequate Assurance* – The adequate assurance to be provided in connection with City's conveyance of the Property and to consist of one, or a combination, of the following:

1.1.1.1. Cash in an escrow account, maintained in Marion County, Florida by an escrow agent mutually acceptable to City and Developer. The parties agree that a licensed financial institution maintaining an office in Marion County, Florida shall qualify as an approved escrow agent.

1.1.1.2. A letter of credit issued by a financial institution licensed to transact business in the State of Florida.

1.1.1.3. Some other adequate financial assurance (other than personal guarantees) reasonably approved by City.

1.1.2. *Agreement* – This agreement, including any Exhibits attached hereto, and any revisions or amendments to this agreement.

1.1.3. *Approval* – The final, unconditional approvals (i.e. site plan approval) from all applicable governmental agencies reasonably necessary to allow for the immediate issuance of building permits and commencement of construction of the Project, and the expiration of time for the filing of an appeal or other challenge, without such an appeal or challenge having been filed.

1.1.4. *Approval Date* – The date on which Project Approval is obtained for the Project.

1.1.5. *Approved Plans* – The Plans for the Project as approved by the issuance of all Approvals for the Project.

- 1.1.6. *Business Day* (regardless of whether the term is capitalized) – Any day other than Saturday, Sunday, any legal holiday, any day on which the government offices of City are closed, and any other day on which commercial banks in the State of Florida are required or authorized to be closed.
- 1.1.7. *City Code* – The Code of Ordinances of City of Ocala.
- 1.1.8. *City Incentives* – One or more of the following:
 - 1.1.8.1. Conveyance of the Property for less than fair market value.
 - 1.1.8.2. The City Payments.
- 1.1.9. *City Payments* – One or more of the following:
 - 1.1.9.1. *City Review Contributions* – City’s payment or waiver of fees and charges as set forth in paragraph 5.1.
 - 1.1.9.2. *Development Incentive Payments* – City’s payments set forth in paragraph 5.2.
 - 1.1.9.3. *Project Construction Reimbursements* – City’s payments set forth in paragraph 5.3.
- 1.1.10. *Closing* – The conveyance of title of the Property from City to Developer under this Agreement.
- 1.1.11. *Closing Date* – The date upon which City conveys the Property to Developer.
- 1.1.12. *Completion* – When construction of the Project is substantially completed which shall be the date when City has issued certificate of occupancies for the applicable improvements (including the OPD Substation) and certificates of completion (or similar approval) for any other applicable improvements to be constructed.
- 1.1.13. *Construction Costs* – All actual costs of construction and site development work incurred by Developer in connection with the Project.
- 1.1.14. *Construction Loan* – A loan or loans from a third party to Developer to permit Developer to pay all or any portion of the Development Costs for the Project and secured by a mortgage on the Developer Parcel.
- 1.1.15. *Contingency* – As set forth in paragraph 6.
- 1.1.16. *Control* – The power to direct the management and policies of an entity or business by ownership, beneficial interest, contract or otherwise.
- 1.1.17. *Deadline* – A deadline for performance of an obligation or occurrence of a Contingency under the Schedule as set forth in paragraph 7.

- 1.1.18. *Develop* (regardless of whether the term is capitalized) – To perform activity associated with the development of the Project including the construction of all the improvements for the Project pursuant to this Agreement.
- 1.1.19. *Developer Parcel* – The real property consisting of the Property and the Other Parcel, less and except the OPD Parcel.
- 1.1.20. *Developer Principal* – Steve Allen
- 1.1.21. *Development Costs* (regardless of whether the phrase is capitalized) – All Construction Costs; furniture, fixture and equipment costs; and directly related “soft costs” (i.e. design, permitting, professional fees, consulting fees, etc.) incurred in connection with or directly attributable to the Project.
- 1.1.22. *Development Order* (regardless of whether the term is capitalized) – Site plan approvals, issuance of building permits or similar action by City and all other government entities with jurisdiction over the Project, or any portion thereof, necessary for Developer, as may be applicable, to develop the Project pursuant to the requirements of this Agreement.
- 1.1.23. *Effective Date* – The date or effective date of this Agreement is the date upon which City or Developer last signs this Agreement. [The last party executing this Agreement is authorized to fill in the Effective Date in the blank therefor in the first paragraph of this Agreement.]
- 1.1.24. *Entire Parcel* – The real property consisting of the Property and the Other Parcel; i.e., including the OPD Parcel.
- 1.1.25. *Equity Investment* – The required equity investment of Developer described in paragraph 6.3.
- 1.1.26. *Facility* – A retail center to include the Grocery Store; the Medical Facility and (if desired by Developer) other retail stores to be constructed on the Developer Parcel by Developer pursuant to paragraph 4.
- 1.1.27. *Financial Information* – The information to be provided by Developer pursuant to paragraph 6.4.
- 1.1.28. *Financial Review Committee* – A person, or group of persons, which the parties anticipate shall provide services to City as set forth in this Agreement. The relationship between City and the Financial Review Committee is as set forth in paragraph 6.4.7.
- 1.1.29. *Force Majeure* – As set forth in paragraph 17.
- 1.1.30. *Grocery Store* – A retail store that meets the definition of a “grocery store” under Section 122-3 of the City Code, and that is to be constructed as part of the Project as further described in this Agreement.

- 1.1.31. *Month* (regardless of whether the term is capitalized) – When used with reference to calculation of dates, shall refer to the monthly anniversary of the starting date or event for example, two (2) months after June 15, 2016, is July 15, 2016.
- 1.1.32. *NMTC Program* – The New Markets Tax Credit Program originally established as part of the Community Renewal Tax Relief Act of 2000 and codified at Section 45D of the Internal Revenue Code. References to other terms “as defined in” or “under” the NMTC Program, refer to such terms as defined in Section 45D.
- 1.1.33. *OPD Easements* – The easements to be granted to City pursuant to paragraph 4.3.3.2.c.
- 1.1.34. *OPD Parcel* – The portion of the Other Parcel upon which the OPD Substation will be located as set forth in paragraph 4.3.2. The configuration of the OPD Parcel is set forth on the attached **Exhibit C**.²
- 1.1.35. *OPD Substation* – The substation for the Ocala Police Department to be located on the OPD Parcel.
- 1.1.36. *Other Parcel* – The real property described in the attached **Exhibit B**.
- 1.1.37. *Person* (regardless of whether the term is capitalized) – An individual, corporation, limited liability company, partnership, or similar entity or group of individuals or persons.
- 1.1.38. *Plans* – The site plan and building plan for the Project, and other applications necessary to obtain a building permit and other development approvals for the Project.
- 1.1.39. *Prior Agreement* – The Purchase and Sale Agreement Between City and Developer with an effective date of April 5, 2016.
- 1.1.40. *Project* – The Facility, OPD Substation, and other improvements to be constructed on the Entire Parcel.
- 1.1.41. *Property* – The real property described on the attached **Exhibit A**.
- 1.1.42. *Purchase Price* – The sum of Two Dollar and 00/100 (\$2.00), together with Developer’s performance of its obligations under this Agreement.
- 1.1.43. *Schedule* – As set forth in paragraph 7.
- 1.1.44. *Title Company* – First American Title Insurance Company, Attorneys Title Insurance Fund, or Old Republic Insurance Company or another title insurance

² **Exhibit C** is attached solely for the purpose set forth in this paragraph. It is not an approved site plan nor does it depict exactly how the OPD Substation must be configured. See also footnote 3.

company with offices or agents in Marion County, Florida, selected by Developer and approved by City in its reasonable discretion.

1.1.45. *West Ocala Plan* – The “West Ocala Community & Community Plan” adopted by City Council on December 20, 2011, as may be amended by City Council from time to time.

1.2. Additional Definitions and Rules of Construction. The definitions in paragraph 1.1 and elsewhere in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The words “herein,” “hereof,” “hereunder,” and similar terms shall refer to this Agreement, unless the context otherwise requires.

2. **Purpose.**

2.1. The purpose of this Agreement is to provide for the development of a portion of West Ocala so as to enhance the quality of life and the aesthetic and useful enjoyment of the Ocala West CRA area, promote economic development and investment in the Ocala West CRA area, and further the objectives of the West Ocala Plan.

2.2. Developer’s development of the Project consistent with this Agreement is a material inducement for City to enter into this Agreement. The opportunity for Developer to develop the Project pursuant to this Agreement, and the other obligations of City pursuant to this Agreement, are material inducements for Developer to enter into this Agreement.

3. **Property.**

3.1. Land Use and Zoning.

3.1.1. The parties intend that the Entire Parcel be developed as retail center project consisting of the Grocery Store and other uses as set forth in paragraph 3.4.2.

3.1.2. The parties understand and agree that the Project is consistent with the Entire Parcel’s B-2 zoning and Low Intensity future land use classification and that no change to such zoning or land use classifications shall be required. Developer acknowledges, however, that it will be required to comply with City’s Shopping Center Ordinance as codified in Division 29 of Chapter 122 of the City Code.

3.1.3. For purposes of illustration only, a preliminary architectural site plan for the Project is attached hereto as **Exhibit D**.

3.2. Inspection and Survey.

3.2.1. *Developer’s Inspection of the Property.*

3.2.1.1. Developer acknowledges that, pursuant to the Prior Agreement, Developer has had a full and complete opportunity to inspect the Property prior to entering into this Agreement.

3.2.1.2. Commencing with the Effective Date of this Agreement and continuing until the Closing Date, Developer shall have the right to continue to inspect the Property. In connection therewith, Developer shall have the right to enter upon the Property, to make all inspections of the condition of the Property which it may deem necessary, including, but not limited to, soil borings, percolation tests, engineering, environmental and topographical studies, inspections of zoning and the availability of utilities, all of which inspections shall be undertaken at Developer's sole cost and expense. After completing its inspection of the Property, Developer shall, at its sole cost and expense, repair any damage it has caused to the Property.

3.2.2. *Indemnification.* Developer hereby agrees to indemnify City against, and hold City harmless from all claims, demands and liability, including, but not limited to, attorneys' fees, for nonpayment for services rendered to Developer, for construction liens, or for damage to persons or property arising out of the presence of Developer's agents, employees, surveyors, engineers, contractors, or other third parties under the control of Developer, on the Property. Notwithstanding anything to the contrary set forth in this Agreement, the indemnification and agreement to hold harmless set forth in this paragraph shall survive the Closing or the earlier termination of this Agreement as expressly provided herein.

3.2.3. *Survey.*

3.2.3.1. Developer shall, within one month after the Effective Date, obtain a survey of the Entire Parcel and provide such survey to City for its approval. The survey shall comply with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys (effective 2/23/11), including those set forth in paragraphs 1 through 4, 6(b), 7(a), 8, 11(b) and 21 of Table A to such requirements, and shall be certified to Developer and City.

3.2.3.2. The survey shall contain:

- a. A legal description and sketch of the Property.
- b. A legal description and sketch of the Other Parcel.
- c. A legal description and sketch of the OPD Parcel consistent with paragraph 4.3.2.
- d. A (perimeter) legal description and sketch of the Entire Parcel.
- e. A legal description and sketch of the Developer Parcel.

3.2.3.3. The survey shall be subject to City's written approval, which shall not be unreasonably withheld (unless the OPD Parcel is not located in the southeast corner of the Entire Parcel, contiguous to SW 24th Avenue, in which event City shall have sole discretion concerning

the location of the OPD Parcel.) The City Manager shall be deemed to have the authority to execute such writing on behalf of City.

3.2.3.4. The legal descriptions for the Property, Entire Parcel and OPD Parcel shall be determined by the approved survey.

3.2.3.5. If the survey reveals any matters that would interfere with Developer's development of the Entire Parcel pursuant to the Project, Developer shall, within ten (10) days of its receipt of the survey, notify City of such matters. If Developer fails to do so, it shall be deemed to have accepted the Property as set forth on the survey. If Developer does object, the provisions of paragraph 3.3.5 shall apply concerning such objections.

3.3. Title Insurance.

3.3.1. Developer shall obtain, at Developer's expense, within one (1) month after the Effective Date (and in any event, within such time period as shall permit the survey under paragraph 3.2.3 to show the location of all recorded easements), a commitment (the "*Commitment*") for an owner's title insurance policy from Title Company, or from an agent of Title Company selected by Developer, agreeing to insure title to the Property in an amount Developer currently estimates is equal to the value of Property, and subject to: no exceptions other than those matters herein permitted; those which will be discharged prior to or at Closing; and the standard printed exceptions and exclusions from coverage customarily contained in an owner's policy from the Title Company. Developer may not object to the OPD Easement as and to the extent it is set forth on the Commitment. Upon Developer's election, the Commitment may include all or portions of the Entire Parcel, and not merely the Property, provided that any exceptions to title as reflected on Schedule B-II of the Commitment that apply only to the Property are so designated.

3.3.2. Developer shall provide City a copy of the Commitment, together with copies of the exception documents, within five (5) business days of receipt of same.

3.3.3. Within ten (10) days of its receipt of the Commitment, Developer shall notify City of any objections thereto. If Developer fails to do so, it shall be deemed to have accepted the Commitment and title to the Property as evidenced thereby.

3.3.4. Developer shall take title subject to zoning, restrictions and prohibitions imposed by governmental authority which would not inhibit, restrict or prohibit development of the Property consistent with this Agreement.

3.3.5. If the Commitment discloses unpermitted exceptions or matters that render the title non-marketable, City, at its option, shall have forty-five (45) days from the date of receiving written notice of defects from Developer within which to have the exceptions removed from the Commitment, or the defects cured to the reasonable satisfaction of Developer. If City fails to have the Commitment exceptions removed or the defects cured within the specified time: (a) Developer may terminate this Agreement; or (b) Developer may elect, upon notice to City within ten (10) days after the expiration of the curative period, to take title as it

then is notwithstanding such exceptions or title defects. If Developer fails to provide such notice, City may provide notice to Developer of its intent to terminate this Agreement unless Developer elects, by providing notice to City within ten (10) days of City's intent-to-terminate notice, to accept title as then exists, notwithstanding such exceptions or title defects. If Developer fails to timely provide notice to City of an election to accept title notwithstanding exceptions or title defects within the specified time period after the City intent-to-terminate notice, Developer shall be deemed to have elected to terminate this Agreement.

3.3.6. Subsequent to or at closing, Developer, at Developer's expense, may obtain an owner's title policy showing good and marketable title in Developer for the Property through the date of recording the special warranty deed and subject only to the permitted exceptions and any matters created at closing.

3.4. Plans.

3.4.1. As and when required by the Schedule, Developer shall submit to City, for approval by City, proposed Plans for the Project consistent with the following.

3.4.2. The Plans for the Project will:

3.4.2.1. Provide for the construction of the Facility to consist of at least 60,000 gross square feet of building area, which shall include the Grocery Store consisting of at least 15,000 gross square feet of building area. The remainder of the Facility shall be suitable for retail uses consistent with the City Code and this Agreement (particularly paragraph 8.3).

3.4.2.2. Provide for the location of the OPD Substation and the construction of fifteen (15)³ parking spaces that shall be dedicated for use of the OPD Substation and located on the OPD Parcel.

3.4.2.3. Provide for the conveyance and retention of stormwater from the OPD Parcel.

3.5. Joinder and Applications. City, as owner of the Property during the entitlement process, shall join in any application for Development Orders associated with development of the Property consistent with this Agreement, including, but not limited to, applications for final site plan approval and stormwater permits. City shall maintain the Property in its current condition during the term of this Agreement prior to Closing.

3.6. Closing Date. The Closing Date shall be a date selected by Developer upon at least ten (10) days written notice to City, so that the Closing of transfer of title to the Property shall occur simultaneously with the closing of the Construction Loan for the Project and the closing of Developer's acquisition of the Other Parcel. The Closing Date may be

³ Only fifteen (15) parking spaces are required, despite the fact that the attached Exhibit C shows nineteen (19) parking spaces.

extended for up to one (1) month pursuant to a written agreement executed by Developer and the City Manager without the necessity of amending this Agreement. In no event shall the Closing Date be after December 31, 2016.

3.7. Form of Conveyance and Closing Costs.

- 3.7.1. Developer shall pay to City One Dollar (\$1.00) in immediately available funds (the City having retained the \$1.00 deposit made by Developer pursuant to the Prior Contract, as set forth in paragraph 13.2.2).
- 3.7.2. City shall convey the Property to Developer pursuant to a special warranty deed. In such deed, City shall reserve a temporary easement pursuant to paragraph 4.3.4.1.
- 3.7.3. Documentary stamps, if any, on the special warranty deed shall be the expense of Developer. The documentary stamps shall be calculated by Developer pursuant to Florida law. Developer shall indemnify and hold City harmless from and against any liability for documentary stamps incurred as a result of the special warranty deed.
- 3.7.4. Developer shall pay for the cost of the title insurance commitment, and the owner's title policy, recording of the deed and all expenses associated with any financing.
- 3.7.5. City shall pay for the cost of recording curative instruments.
- 3.7.6. Each party shall pay its respective attorney's fees.
- 3.7.7. City shall execute an owner's affidavit reasonably acceptable to City as may be required by Title Company to remove the so-called "standard exceptions" from any title insurance policy to be issued to Developer following Closing.

3.8. Adequate Assurance.

- 3.8.1. Developer shall, simultaneously with or prior to Closing of the Property, provide the Adequate Assurance to City in the amount of \$1,100,000.00.
- 3.8.2. The form and substance of the Adequate Assurance as set forth in paragraph 1.1.1 shall be acceptable to City in its reasonable discretion.
- 3.8.3. In the event the Adequate Assurance is in the form of a letter of credit, or other obligation with an expiration date, Developer shall renew the Adequate Assurance so it remains effective during the time period set forth in paragraph 3.8.4 that Developer is required to maintain the Adequate Assurance. Developer shall provide City with proof of such renewal at least thirty (30) days before the expiration of the Adequate Assurance. In the event Developer fails to renew the Adequate Assurance as and when required hereunder, City shall provide Developer with written notice of such default and, in the event Developer thereafter fails to renew the Adequate Assurance within fifteen (15) days of City's provision of such notice, City shall be entitled to demand payment under

the Adequate Assurance. The provisions of this paragraph shall govern over any conflicting provision in paragraph 11.2.3.

3.8.4. The Adequate Assurance shall be maintained from the date it is provided to City until Completion of the Project.

3.8.5. City may request payment of the Adequate Assurance in the event the condition described in paragraph 5.2.5.1 fails to occur or be maintained during the period the Adequate Assurance is required to be maintained.

3.8.6. The purpose of the Adequate Assurance is to reimburse or compensate City for its performance of obligations under this Agreement including, without limitation, its conveyance of the Property to Developer for monetary consideration of less than the Property's fair market value, the City Review Contributions and the Project Construction Reimbursements.

3.8.6.1. In the event the Adequate Assurance is paid to City under paragraph 3.8.5, City shall, except as set forth in paragraph 3.8.6.2, be entitled to retain the full amount of such payment, and shall not be obligated to credit Developer with any portion thereof or to otherwise account to Developer for the payment.

3.8.6.2. Notwithstanding paragraph 3.8.6.1, in the event that the Adequate Assurance is paid to City prior to the date that City has become obligated to pay to Developer all Project Construction Reimbursements, City shall pay to Developer, from the Adequate Assurance received by City, the amount of any Project Construction Reimbursements not previously paid by City, and City shall be relieved from the obligation to pay any further Project Construction Reimbursements.

3.9. AS IS. Except as otherwise expressly provided in this Agreement, City is not making and specifically disclaims any warranties or representations of any kind or character, express or implied, with respect to the Property or any portion thereof, including, but not limited to, warranties or representations as to matters of title (other than City's warranty of title set forth in the deed to be delivered at Closing), zoning, tax consequences, physical or environmental conditions, availability of access, ingress or egress, operating history or projections, valuation, governmental approvals, governmental regulations, or any other matter or thing relating to or affecting the Property including, without limitation, the value, condition, merchantability, marketability, profitability, suitability or fitness for a particular use or purpose of the Property. Developer agrees that with respect to the Property, Developer has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty of City (except as expressly set forth in this Agreement) or any agent of City. Developer represents that it is a knowledgeable purchaser of real estate and that it is relying solely on its own expertise and that of Developer's consultants, and that Developer will conduct such inspections and investigations of the Property as Developer deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same, and, upon closing, shall assume the risk that adverse matters concerning the Property, including, but not limited to, adverse physical and environmental conditions, which may not have been revealed by Developer's inspections and investigations. Developer's

closing hereunder shall be deemed to constitute an express waiver by Developer or its successors and assigns of any right to sue City, and of Developer's right to cause City to be joined in an action, concerning the Property brought under any federal, state, or local law, rule, act, or regulation which prohibits or regulates the use, handling, storage, transportation, or disposal of a hazardous or toxic substance or which requires removal or remedial action with respect to such hazardous or toxic substance, specifically including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. and Part IV of the Florida Air and Water Pollution Control Act, Chapter 403, Florida Statutes. DEVELOPER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, CITY SHALL SELL AND CONVEY TO DEVELOPER, AND DEVELOPER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS," WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES, ORAL REPRESENTATIONS (EXCEPT AS SPECIFICALLY PROVIDED HEREIN OR IN THE DEED TO BE DELIVERED AT CLOSING), COLLATERAL TO OR AFFECTING THE PROPERTY BY CITY, ANY AGENT OF CITY, OR ANY THIRD PARTY ACTING FOR OR ON BEHALF OF CITY. The terms and conditions of this paragraph shall expressly survive the closing and not merge into the deeds to be executed and delivered at Closing.

4. **Development and Other Obligations.**

4.1. Generally.

4.1.1. Developer shall construct the Facility, and otherwise develop the Project, consistent with the Approved Plans and this Agreement.

4.1.2. Except to the extent of the City Review Contributions, Developer is responsible for all charges or fees for plan review, permits and inspections for the Project.

4.2. Project Development Costs. Developer's total Development Costs shall be no less than \$10,000,000.00.

4.2.1. For purposes of the amounts set forth in paragraph 4.1, Developer's Development Costs shall consist solely of the Development Costs paid by Developer for the Project and shall not consider the value or amount of any City Incentives.

4.2.2. Upon Completion of the Project, Developer shall provide to City documentation that Developer's actual Development Costs incurred in connection with the Project were equal to, or in excess of, the amount set forth in paragraph 4.1; Developer shall not be required to provide any documentation concerning actual Development Costs in excess of such amount. Such proof shall consist of monthly draw requests, identical to those provided by Developer to the lender of the Construction Loan, together with Developer's Schedule of Values, and such additional documents as may be reasonably requested by City.

4.3. OPD Substation.

4.3.1. Background.

- 4.3.1.1. Currently, a substation (the “*Existing Substation*”) for the Ocala Police Department (“*OPD*”) is located on the Property. The Existing Substation is located in a modular building (the “*Modular Building*”).
- 4.3.1.2. In connection with this development of the Project, Developer desires to relocate the Modular Building to the OPD Parcel so that it may be used as the OPD Substation.

4.3.2. Location of OPD Parcel.

- 4.3.2.1. As of the Effective Date, City and Developer have agreed that the OPD Parcel shall be located on the Other Parcel but have not determined the exact location thereof (the location of the OPD Parcel as set forth on **Exhibit D** is not the final location of the OPD Parcel). The dimensions of the OPD Parcel as set forth on the survey shall be consistent with those on the attached **Exhibit C**.
- 4.3.2.2. In connection with Developer’s preparation of the survey pursuant to paragraph 3.2.3, Developer and City shall consult concerning the exact location of the OPD Parcel which shall be determined pursuant to paragraph 3.2.3.3.
- 4.3.2.3. If, thereafter, Developer determines, while preparing the Plans for the Project, that the OPD Parcel needs to be located elsewhere, Developer shall prepare another survey of the OPD Parcel for approval by City in its sole discretion. If such revised survey is approved, it shall be deemed to be the survey for purposes of paragraph 3.2.3.4. If, as a result of the relocation of the OPD Parcel, other provisions of this Agreement are no longer correct (e.g., if the OPD Substation is to be located on the Property instead of the OPD Parcel), City and Developer shall negotiate an amendment to this Agreement consistent with the new location of the OPD Parcel.

4.3.3. Conveyance of OPD Parcel and Easement.

- 4.3.3.1. The OPD Substation is to be located on the OPD Parcel which is contained within the Other Parcel which Developer is acquiring from third parties. Therefore, it will be necessary for Developer to convey the OPD Substation to City together with the OPD Easements.
- 4.3.3.2. At Closing, Developer shall convey the OPD Parcel and OPD Easements to City pursuant to the following procedures:
 - a. City shall not be required to pay any monetary consideration to Developer.

- b. Developer shall convey the OPD Parcel to City pursuant to a special warranty deed. Developer shall reserve, in such deed, a temporary construction easement permitting Developer to install the Modular Building, construct the Parking Spaces, and perform all other activities on the OPD Parcel as required under the provisions of this Agreement.
- c. Developer and City shall enter into an agreement (the “*OPD Easement Agreement*”), in form and substance satisfactory to City in its sole discretion, pursuant to which Developer shall also grant to City the following easements (the “*OPD Easements*”); the following list may be revised by City in its reasonable discretion based upon the location of the OPD Parcel⁴:
 - 1) An easement for ingress to, and egress from, the OPD Parcel. This easement shall permit City to utilize the Entire Parcel until Developer Completion of the Project, after which date such easement shall be limited to driveways and other access improvements constructed by Developer on the Entire Parcel.
 - 2) A utility easement permitting City to construct, maintain, repair and replace utilities for the OPD Substation. This easement shall permit City to utilize the Entire Parcel until Completion of the Project, after which date such easement shall be limited to the location of utilities constructed on the Entire Parcel.
 - 3) If the stormwater from the OPD Parcel is going to be conveyed or stored on the Developer Parcel, a stormwater easement permitting City to convey to, and store in, all surface water and stormwater from the OPD Parcel into stormwater facilities (the “*Stormwater Facilities*”) constructed by Developer pursuant to the Approved Plans. Developer shall be obligated to maintain any such Stormwater Facilities not located on the OPD Parcel.

4.3.3.3. Developer shall obtain, at Developer’s expense, and provide to City, within one (1) month after the Effective Date, a commitment (the “*OPD Commitment*”) for an owner’s title insurance policy from Title Company, or from an agent of Title Company selected by Developer, agreeing to insure title to the OPD Parcel in the amount of Thirty Eight Thousand and no/100 Dollars (\$38,000.00), and subject to: no exceptions other than those matters herein permitted; those which will be discharged prior to or at Closing; and the standard printed exceptions and exclusions from coverage customarily contained in an

⁴ For example, if, as anticipated, the OPD Parcel is contiguous to SW 24th Avenue, City shall not require the easement described in paragraph 4.3.3.2.c.1) to be granted to City.

owner's policy from the Title Company. If Developer elects, pursuant to paragraph 3.3.1, to include the OPD Parcel in the Commitment it is obtaining under such paragraph, such Commitment shall satisfy Developer's obligations under this paragraph 4.3.3.3 provided that, after City approves the location of the OPD Parcel pursuant to paragraph 3.2.3.3, Developer obtains an updated commitment, or endorsement to the prior Commitment specifying which exceptions to title as reflected on Schedule B-II of the Commitment apply only to the OPD Parcel.

- a. Developer shall provide City with a copy of the OPD Commitment, together with copies of the exception documents, within five (5) business days of receipt of same.
- b. Within ten (10) days of its receipt of the OPD Commitment, City shall notify Developer of any objections thereto. If City fails to do so, it shall be deemed to have accepted the OPD Commitment and title to the OPD Parcel as evidenced thereby.
- c. City shall take title subject to zoning, restrictions and prohibitions imposed by governmental authority which would not inhibit, restrict or prohibit use or development of the OPD Parcel consistent with this Agreement. No other restrictions and/or easements shall affect the title.
- d. If the OPD Commitment discloses unpermitted exceptions or matters that render the title non-marketable, Developer, at its option, shall have forty-five (45) days from the date of receiving written notice of defects from City within which to have the exceptions removed from the OPD Commitment, or the defects cured to the reasonable satisfaction of City. If Developer fails to have the OPD Commitment exceptions removed or the defects cured within the specified time: (a) City may terminate this Agreement; or (b) City may elect, upon notice to Developer within ten (10) days after the expiration of the curative period, to take title as it then is notwithstanding such exceptions or title defects. If City fails to provide such notice, Developer may provide notice to City of its intent to terminate this Agreement unless City elects, by providing notice to Developer within ten (10) days of Developer's intent-to-terminate notice, to accept title as then exists, notwithstanding such exceptions or title defects. If City fails to timely provide notice to Developer of an election to accept title notwithstanding exceptions or title defects within the specified time period after the Developer intent-to-terminate notice, City shall be deemed to have elected to terminate this Agreement.
- e. Subsequent to or at closing, Developer, at Developer's expense, shall provide City with an owner's title policy showing good and marketable title in City for the OPD Parcel through the date of

recording the special warranty deed and subject only to the permitted exceptions and any matters created at closing.

4.3.3.4. Documentary stamps, if any, on the special warranty deed shall be the expense of Developer. The documentary stamps shall be calculated by Developer pursuant to Florida law.

4.3.3.5. Developer shall pay for the cost of the title insurance commitment, and the owner's title policy, and recording of the deed.

4.3.4. Relocation of Modular Building.

4.3.4.1. The Modular Building in which the OPD Substation is currently located on the Property. Notwithstanding the conveyance of the Property to Developer, City shall retain a temporary easement reasonably necessary for use of the OPD Substation, access to and from the OPD Substation, and the provision of utilities for the OPD Substation. Such easement shall terminate upon the relocation of the OPD Substation pursuant to paragraph 4.3.4.2.

4.3.4.2. Developer shall, at its sole cost and expense, relocate the Modular Building to the OPD Parcel.

4.3.4.3. If, in connection with such relocation, the Modular Building has incurred any damage and can be repaired to substantially the same condition it was in prior to the damage, Developer shall, at its sole cost and expense, so repair the Modular Building. If the damage cannot be so repaired, Developer shall replace the Modular Building with a new modular building substantially equivalent in terms of size, method of construction and internal configuration to the existing Modular Building and acceptable to City in its reasonable discretion.

4.3.4.4. At the time Developer constructs the Project, Developer shall also construct the parking spaces for the OPD Substation consistent with the Approved Plans. The parking spaces shall be completed pursuant to the Approved Plans before the Modular Building is relocated.

4.3.4.5. The stormwater retention facilities for the OPD Substation shall be completed pursuant to the Approved Plans before the Modular Building is relocated.

4.3.4.6. Developer shall, during the construction of the Project, provide access to the OPD Substation, either in its existing location or as relocated pursuant to this paragraph 4.3.4, except while the Modular Building is actually being relocated.

4.3.4.7. City acknowledges and agrees that the OPD Substation may not be operational for the period of time (not exceeding sixty (60) consecutive days) necessary for Developer to relocate the Modular Building.

4.3.4.8. Attached hereto as **Exhibit E** is a summary of additional requirements, and the responsible party (i.e., Developer or City) therefor, concerning the relocation of the Modular Building.

4.4. NMTC Program.

4.4.1. Developer has advised City that it intends to finance the Project pursuant to the NMTC Program.

4.4.2. If Developer does so, City shall be responsible for no costs or expenses associated therewith except to the extent of the City Incentives provided under this Agreement.

5. **Payments.**

5.1. City Review Contributions.

5.1.1. City shall pay on behalf of Developer (or waive, to the extent permitted by applicable law) all charges or fees for plan review, permits and inspections for the Project including, without limitation: building permit, building plan review fee, new construction plan review, fire plan review fee, radon fee, plan retention fee, electrical permit fees, plumbing permit fees, mechanical permit fees, fire sprinkler permit, fire alarm permit, site plan review, site permit, underground utility permit, fire line underground permit, tree removal application fee, fire impact fees, storm water impact fees, transportation impact fees, and water and sewer impact fees. The foregoing represents one-time payments for the foregoing services; nothing set forth in this Agreement shall relieve Developer from its obligation to pay periodic (including monthly) charges for utilities and other services provided by City.

5.1.2. During review of the plans for, and construction of the Project, City shall temporarily pay or defer payment of the fees or charges referred to in paragraph 5.1.1. If Developer causes Completion of the Project to occur as and when required by the Schedule, City shall make final payment of the City Review Contributions to City's Building Department. If Developer does not cause Completion of the Project to occur as and when required by the Schedule, Developer shall pay to City the amounts deferred or temporarily paid by City within thirty (30) days of City's demand therefor; if City so elects, City may retain, from the Adequate Assurance paid to City pursuant to paragraph 3.8, such amounts whereupon Developer shall be relieved of its obligation to pay them to City under this paragraph.

5.2. Development Incentive Payments.

5.2.1. As an incentive to construct the desired improvements associated with the Project, and in anticipation of the benefits to be received by West Ocala and the public if the Project is constructed, City shall pay, to Developer, Development Incentive Payments pursuant to the schedule set forth in paragraph 5.2.2 and calculated as set forth in paragraph 5.2.3.

- 5.2.2. The Development Incentive Payments shall be paid in ten annual installments, with the first installment being paid on or before April 15 of the second year after the date of Completion of the Project. Nothing set forth herein shall preclude City from paying any installment payment prior to the date it is due hereunder.
- 5.2.3. The amount of each installment shall be 70% of the Tax Increment. For purposes of this Agreement, "Tax Increment" shall equal (1) the amount of City ad valorem taxes paid on the Developer Parcel during the calendar year preceding the year in which the City Payment is due (regardless of the calendar year during which such taxes were assessed) in excess of (2) the City taxes that were paid on the Other Parcel during the 2016 tax year together with 90%⁵ of the taxes that would be paid on the Property during the 2016 tax year if the Property was not exempt from taxation because it was owned by City. The Tax Increment shall not include any ad valorem taxes or assessments assessed by Marion County, the Marion County School Board, the St. Johns River Water Management District or any governmental entity or taxing authority other than City.
- 5.2.4. Notwithstanding that installments of Development Incentive Payments may be calculated based on a percentage of the Tax Increment under paragraph 5.2.3:
- 5.2.4.1. The Tax Increment is utilized only to calculate such installments, and the installments need not be paid from the ad valorem taxes that are utilized to calculate the Tax Increment.
- 5.2.4.2. The Development Incentive Payments do not constitute a rebate to Developer of any taxes collected by City on the Developer Parcel.
- 5.2.4.3. City does not pledge its full faith and credit or taxing power in connection with its obligation to pay the Development Incentive Payments.
- 5.2.4.4. Neither Developer nor any other person or entity has a right to require City to impose any tax or establish any tax rate in order to generate funds for the Development Incentive Payments.
- 5.2.4.5. City's obligation to pay the Development Incentive Payments does not constitute a lien upon any property of City.
- 5.2.5. City's obligation to pay the Development Incentive Payments to Developer is conditioned upon the following; if any of such conditions do not occur or cease to exist, City's obligation to pay the Development Incentive Payments shall be deemed terminated, and therefore, City shall be relieved from its obligation to pay Developer, any unpaid Development Incentive Payments; Developer shall not, however, be required to return to City any Development Incentive Payments

⁵ This percentage is used because, although the City is conveying to Developer the Property, which is approximately two and one-half acres in size, Developer is conveying to City the OPD Parcel, which is approximately one-quarter acre in size, the latter being 10% of the size of the Property.

received by Developer before the termination of City's obligation to pay Development Incentive Payments:

- 5.2.5.1. Developer's total Development Cost being no less than the amount set forth in paragraph 4.2.
- 5.2.5.2. Developer causing Completion of the Project to occur as and when required by the Deadline for Completion thereof set forth in the Schedule. City may not declare this condition has not occurred unless City first provides Developer with notice the Completion has not occurred, and the Completion does not occur within one (1) month after such notice. If someone other than Developer (i.e. a mortgage lender) causes Completion of the Project to occur, this condition shall be deemed not to have occurred; City shall not be required to provide Developer with notice or an opportunity to cure in such situation.
- 5.2.5.3. Developer, paying all taxes and assessments (including real property and tangible personal property taxes and assessments) due on the Property (and its contents to the extent they are taxed) on or prior to the dates they are due under applicable law. City may not declare that this non-payment has not occurred unless City first provides Developer, new owner or assignee with notice that the condition has not occurred, and the condition does not occur within three (3) months after such notice.
- 5.2.5.4. The Grocery Store remaining open for business for at least twelve (12) years after the date of Completion of the Project. The Grocery Store shall not be deemed "open for business," but rather shall be deemed to be "closed for business," should it not be available for members of the public to shop there between the hours of 9:00 a.m. to 5:00 p.m. on all days other than Sunday and holidays. Should the Grocery Store cease to be open for business for more than thirty (30) consecutive days, or more than sixty (60) total days during any consecutive three hundred sixty-five (365) day period, the Grocery Store shall be deemed to have failed to remain open for purposes of this condition. Periods of closure due to construction, remodeling or renovation or due to events qualifying as Force Majeure shall not be deemed to constitute failure to remain open for purposes of this paragraph.
- 5.2.5.5. The Developer retaining ownership of the Developer Parcel until Completion of the Project. Developer shall be deemed to have retained ownership during such time period except upon the occurrence of any of the following:
 - a. Developer assigns this Agreement in whole or in part, or an Interest Transfer occurs, other than as permitted in paragraph 18.5.

- b. Conveyance of fee simple title in any portion of the Developer Parcel to:
 - 1) An individual other than a Developer Principal; or
 - 2) An entity: (a) in which the Developer Principals, individually or collectively, retain less than 51% of the ownership and voting interests; or (b) of which no Developer Principal maintains Control.
 - c. Developer enters into a lease of any portion of the Developer Parcel (other than a lease of the Grocery Store to the operator thereof), pursuant to which the lessee has a right to possession of any portion of the Developer Parcel prior to the Completion of the Project for purposes other than to inspect the Developer Parcel or to construct interior improvements or signage needed for occupancy by the lessee.
- 5.3. Project Construction Reimbursements. City shall provide the following incentive (the “Project Construction Reimbursements”) to Developer to assist Developer in constructing the Project.
- 5.3.1. City shall compensate Developer for the components of the development of the Project as set forth in the attached **Exhibit F**. The amount of the Development Incentive Payment for each component shall not exceed the amount allocated to such component as set forth on **Exhibit F**; if Developer pays less than the amount of each such component, the Development Incentive Payments payment for such component shall be the amount actually paid by Developer.
 - 5.3.2. As set forth on the attached **Exhibit F**, there are two groups of components of the Project Construction Reimbursements: Professional Design Fees and Site Work Costs. City shall pay the Project Construction Reimbursements in two installments, one for the Professional Design Fees and the other for the Site Work Costs.
 - 5.3.3. City shall pay the Project Construction Reimbursements to Developer within 30 days after Developer provides to City: (a) a certification from Developer’s contractor, acceptable to City in its reasonable discretion, establishing that a group of components of the Project (as described in paragraph 5.3.2), for which City is obligated to pay the Project Construction Reimbursements, has been completed by Developer in accordance with the Approved Plans; and (b) documentation, acceptable to City, in its reasonable discretion, establishing the amount for which Developer has paid for each component as listed on the attached **Exhibit F**.

6. **Contingencies.**

- 6.1. Generally. The parties’ obligations under this Agreement are contingent upon each of the matters set forth in paragraphs 6.2 through 6.5 (each, a “Contingency”) occurring prior to the deadline (“Contingency Deadline”) therefor as set forth below.

6.2. Grocery Store Lease. As and when required by the Schedule (which shall be the Contingency Deadline for this Contingency), Developer shall enter into a lease or letter of intent for a lease with Save-A-Lot or with a grocery store chain of similar quality and standards, including the grocery store chains set forth on the attached **Exhibit G** (or a brand of similar quality and standards), and City approval of the form of such lease or letter of intent, which approval shall not be unreasonably withheld. Within fifteen (15) days after Developer provides City with the proposed lease or letter of intent, City shall provide notice to Developer as to whether it approves the form of such lease or letter of intent; if City does not approve the form of such lease or letter of intent, it shall provide notice to Developer of the reason(s) therefor. Failure of the City to respond within such fifteen (15) days period shall be deemed approval if the Developer provides City with notice, at the time it delivers the proposed lease or letter of intent, or thereafter, that the failure of the City to respond within the fifteen (15) day time period shall be deemed approval.

6.3. Equity Investment.

6.3.1. Developer shall have available owner equity in the minimum amount of \$1,000,000.00 (the “*Equity Investment*”).

6.3.2. The Equity Investment shall consist of: (a) Development Costs incurred by Developer, as established by documentation provided by Developer consistent with paragraph 4.2.2; and (b) amounts held by Developer in one or more bank accounts in the name of Developer, as documented by bank statements (the account numbers of which may be redacted by Developer).

6.3.3. Developer must provide proof of the Equity Investment as of the date of the Second Financial Review under paragraph 6.4.1.2 (which shall be the Contingency Deadline for this Contingency), and shall retain the portion of the Equity Investment maintained in a bank account under paragraph 6.3.2 until it is spent on the Project pursuant to paragraph 6.3.4.

6.3.4. Developer shall be deemed to have complied with the Equity Investment requirement of this paragraph 6.3 if the Equity Investment is established as of the date set forth in paragraph 6.3.3, but shall be required to spend any portion of the Equity Investment maintained in a bank account under paragraph 6.3.2 on the Project except to the expense that such expenditure is unnecessary as a result of funds available under a Construction Loan; notwithstanding the foregoing, Developer may use the Equity Investment as collateral for Adequate Assurance provided by a third party. Any unused equity investment remaining after Completion of the Project may be released or paid to Developer.

6.4. Financial Reviews and Information.

6.4.1. As and when required by the Schedule (which shall be the Contingency Deadlines for the following Contingencies), Developer shall:

6.4.1.1. Developer shall request the Financial Review Committee to conduct its first financial review (the “*First Financial Review*”) of the Project, shall submit to the Financial Review Committee information (the “*Financial Information*”) confirming the financial ability of

Developer and the Developer Principals to develop the Project, and shall obtain a report from the Financial Review Committee indicating that, in its opinion, and subject to the Second Financial Review, Developer and the Developer Principals have the financial ability to develop the Project.

6.4.1.2. Developer shall request the Financial Review Committee to conduct a second financial review (the “*Second Financial Review*”), wherein Developer shall submit to the Financial Review Committee any Financial Information that has become available or changed since the date of the First Financial Review, including any changes in Financial Information concerning Developer or Developer Principals, and any additional items required by paragraph 6.4.2.6 for inclusion as Financial Information only as of the Second Financial Review, and shall obtain an updated report from the Financial Review Committee based solely upon such changes and additional information, indicating that, in its opinion, Developer and the Developer Principals continue to have the financial ability to develop the Project.

6.4.2. Unless modified pursuant to paragraph 6.4.5.1, the Financial Information shall include the following:

6.4.2.1. Information concerning the Developer Principals, including prior development experience, current or ongoing development of Projects similar to the Project in which the Developer Principals are or have been involved, and credit bureau reports for each Developer Principal.

6.4.2.2. The last two (2) years’ federal corporate income tax returns of the Developer Principals and of Developer (if Developer was required to file such tax returns).

6.4.2.3. Financial statements of Developer and each Developer Principal accurately representing their financial condition as of a date that is no less than six months prior to the date of delivery of the financial statements.

6.4.2.4. A complete pro forma and cash flow projection on the Project, including all assumptions.

6.4.2.5. Estimates of Construction Costs for the Project provided by a licensed general contractor to be used for the Project and copies of the construction contract with such contractor.

6.4.2.6. For the Second Financial Review only:

a. A loan commitment or other documentation establishing that Developer and the Developer Principals have sufficient financing or resources in place to develop the Project.

- b. Proof that Developer has the Equity Investment required by paragraph 6.3.
- 6.4.3. Developer may provide to City, and City shall request the Financial Review Committee to consider the following additional information:
 - 6.4.3.1. Documents explaining the NMTC Program including the use of the NMTC Program in connection with the development of similar projects.
 - 6.4.3.2. Any other documents that Developer believes are necessary for the Financial Review Committee to understand the Project including the necessity for the Grocery Store in West Ocala.
- 6.4.4. City shall, because of the complexities of the NMTC Program and the unique nature of the Project, request the Financial Review Committee to permit Developer or its counsel to make a presentation to the Financial Review Committee at each Financial Review meeting concerning the matters set forth in paragraph 6.4.3, and to schedule such meetings of the Financial Review Committee at a time that will permit Developer or its counsel to make such presentations.
- 6.4.5. In connection with each Financial Review:
 - 6.4.5.1. Developer or the Financial Review Committee may request City to permit the types of Financial Information described in paragraph 6.4.2 be modified based upon the following factors: whether the Financial Information is subject to the Florida Public Records Act (notwithstanding paragraph 6.4.7.3); and such other matters as otherwise render the provision of the Financial Information described in paragraph 6.4.2 inappropriate and unnecessary. In considering the information to be provided, City shall consider, not only the matters asserted by the requesting party, but also City's reasonable necessity to assure that Developer and the Developer Principals have the financial ability to develop the Project.
 - 6.4.5.2. City and Developer shall request that no person serve on the Financial Review Committee who is employed by, or represents, a financial institution: (a) if a Developer Principal owns stock in such financial institution; (b) if a Developer Principal serves on the Board of Directors of such financial institution; or (c) if the financial institution has a business relationship with a Developer Principal that would create an appearance of impropriety if such person were to serve on the Financial Review Committee.
 - 6.4.5.3. The Financial Review Committee shall review the Financial Information submitted and make a report to City Council concerning its findings as to whether Developer and the Developer Principals have the financial ability to develop the Project.

- 6.4.6. As of the Effective Date, City anticipates that the Financial Review Committee shall consist of at least three persons selected in writing by the Ocala/Marion County Chamber of Commerce, Inc., a Florida not for profit corporation (“CEP”), or selected by one or more persons selected by the CEP: whose primary offices are in Marion County; who are employed by banks or similar financial institutions with offices in Marion County; who are experienced in commercial lending; and who are willing to serve on the Financial Review Committee for no compensation. In the event that the CEP is unable or unwilling to select such persons, City shall select persons meeting the foregoing qualifications in its sole discretion. Although the CEP has a role in selecting the members of the Financial Review Committee, the Financial Review Committee is not a committee of, or under the control of, the CEP and shall perform its duties hereunder without any direction from CEP.
- 6.4.7. The relationship between City and the Financial Review Committee is as follows:
- 6.4.7.1. The Financial Review Committee is not, and will not be, a department, division, bureau, commission or other separate unit of government created or established by, City.
- 6.4.7.2. The Financial Review Committee was not created by law or ordinance of City or any other public agency.
- 6.4.7.3. Although City anticipates that the Financial Review Committee will provide a report to City as set forth in paragraph 6.4.5.3, City has not entered into a contract with the Financial Review Committee concerning such report or other activities of the Financial Review Committee hereunder.
- 6.4.7.4. Therefore, in light of the foregoing, City and Developer believe and intend that all documents or other information provided by or on behalf of Developer to the Financial Review Committee shall be kept confidential by the Financial Review Committee and are not subject to Florida Public Records Act. Nothing set forth herein shall preclude the disclosure of such documents or other information: (a) in any litigation involving City or Developer in which such documents or other information is relevant, but the parties shall endeavor to protect such documents or other information from disclosure pursuant to available procedures under Florida law (including requesting that such documents or other information be sealed, if appropriate); or (b) pursuant to a subpoena or court order. Except in connection with any such use, City shall not request the Financial Review Committee to provide the information or documents to City. Further, City and Developer acknowledge that the Financial Review Committee may destroy information and documents provided to it by or on behalf of Developer hereunder upon Developer’s request and that therefore it may be unable to obtain such information in connection with any permitted use thereof.

6.5. Council Determination.

6.5.1. Conveyance of the Property shall be subject to City Council's determination that Developer and the Developer Principals have the financial ability to develop the Project, based upon any report of the Financial Review Committee and other information available to City Council.

6.5.2. If requested by Developer, City may make an initial determination based upon the report of the Financial Review Committee promptly after the First Financial Review, and a final determination promptly after the Second Financial Review.

6.6. Effect of Contingency Failure.

6.6.1. In the event a Contingency fails to occur prior to the Contingency Deadline as set forth in paragraph 7, City may, in its sole discretion, extend the Contingency Deadline for up to one period of thirty (30) days, by providing notification of the extension (or second extension) to Developer. Any such notification by City under this paragraph 6.6.1 may be made by the City Manager.

6.6.2. If a Contingency fails to occur prior to the Contingency Deadline, either party may elect to terminate this Agreement, by providing written notice of termination (which notice must be delivered prior to the occurrence of the Contingency), whereupon City and Developer shall be released from all further liability under this Agreement, except as to matters that are stated herein as expressly surviving the termination of this Agreement.

6.6.3. Each party shall exercise reasonable diligence in causing the Contingencies to occur prior to the applicable Contingency Deadlines.

6.7. Responsibilities. Developer shall be responsible for all costs and expenses associated with the Contingencies.

7. **Schedule and Deadlines.**

7.1. City and Developer shall perform the following obligations, or cause the following to occur, pursuant to the following schedule (the "*Schedule*"); the date by which an obligation is required to be performed is referred to as the "*Deadline*" for such obligation.

7.1.1. Within one (1) month after the Effective Date:

7.1.1.1. City shall deliver to Developer a notice identifying the member(s) of the Financial Review Committee, and the address for Developer to provide the Financial Information for review by the Financial Review Committee.

7.1.1.2. Developer shall obtain the Commitment pursuant to paragraph 3.3.1 and the survey (pursuant to paragraph 3.2.3).

7.1.1.3. Developer shall provide to City the OPD Commitment pursuant to paragraph 4.3.3.3.

- 7.1.2. Within two (2) months after the Effective Date:
 - 7.1.2.1. Developer shall enter into a lease or letter of intent pursuant to paragraph 6.2.
 - 7.1.2.2. Developer shall complete the First Financial Review pursuant to paragraph 6.4.1.1.
- 7.1.3. Within one month after completion of the First Financial Review, if Developer requests City Council to make an initial determination of the matters set forth in paragraph 6.5.1 pursuant to paragraph 6.5.2, City Council shall make such determination of financial ability.
- 7.1.4. Within six (6) months after the Effective Date:
 - 7.1.4.1. Developer shall obtain Approval for the Project.
 - 7.1.4.2. Developer shall complete the Second Financial Review pursuant to paragraph 6.4.5.3.
- 7.1.5. Within one (1) month after completion of the Second Financial Review, City Council shall make the final determination of financial ability pursuant to paragraph 6.5.
- 7.1.6. City and Developer shall close the transfer of title to the Property on the Closing Date as set forth in paragraph 3.6.
- 7.1.7. Developer shall commence construction of the Project on or before December 31, 2016.
- 7.1.8. Developer shall cause Completion of the Project to occur on or before December 31, 2017.
- 7.2. The Schedule in paragraph 7.1 is subject to the following:
 - 7.2.1. One extension, of up to three (3) months in duration, of the Deadline contained in paragraph 7.1.8 may be provided by the City Manager. Developer shall request such extension in writing not less than one (1) month prior to the expiration of the Deadline, which request shall state the good cause for the extension. The City Manager shall not unreasonably withhold approval of a request for an extension.
 - 7.2.2. Except as provided in paragraph 7.2.1 or pursuant to other express provisions of this Agreement (e.g., in paragraph 17), there shall be no other extension of any performance obligation except through formal amendment of this Agreement.
- 7.3. Attached hereto as **Exhibit G** is a spreadsheet of a sample timeline (the “*Timeline*”) demonstrating the Schedule set forth in paragraph 7.1.
 - 7.3.1. The Timeline is merely an example of the calculation of dates pursuant to such schedule; because the performance of certain obligations will likely occur prior

to the exact date of the Deadline therefor as set forth in the Timeline, it is very unlikely that the Timeline will reflect the actual schedule.

7.3.2. In the event of a conflict between the Timeline and paragraph 7.1, the provisions of paragraph 7.1 shall prevail.

8. **Miscellaneous Provisions Applicable to the Project.**

8.1. Local Professionals. Developer shall endeavor to utilize local professionals, architects, engineers, or contractors in the development of the Project. Nothing set forth herein shall, however, require Developer to take any action or select any professionals, architects, engineers, or contractors that would interfere, in Developer's sole discretion, with Developer developing the Project in a competent, professional and cost-effective manner.

8.2. Compliance with Other Provisions of Applicable Law. Developer shall construct the Project in compliance with all applicable laws, regulations and ordinances including provisions of the City Code involving platting or dividing real property pursuant to condominiums.

8.3. Restrictions on Use of, and Other Matters Concerning Developer Parcel.

8.3.1. No portion of the Developer Parcel may be used for any of the following uses without the express written consent of City, which may be withheld or conditioned in City's sole discretion: automobile cleaning/detailing service; full service station; on-site laundry and dry cleaning service (this shall not prohibit a laundry and dry cleaning establishment for drop-off only or done in connection with the operation of the Grocery Store or other retail establishments); minor household repair establishment; repair garage self service station/convenience store; day labor establishment; adult use establishment; massage parlor; pawn shop; check cashing store; bail bonds; used auto sales; gun store; any accommodation except hotel motel and historic bed and breakfasts; community residential homes and similar facilities; flea markets; food banks and feeding programs; missions; recovery homes or drug abuse treatment facilities; tattoo parlors; smoke shops; vapor parlors and e-cigarette stores; bar as a principal use; used clothing store; and used furniture store.

8.3.2. The color of any exterior portions of the Facility, attachments to the Facility or onsite signage at the Developer Parcel is restricted to the spectrum colors that qualify under the Munsell Rating System with a Light Reflectance Value (LRV) rating not to exceed 2.8. Fluorescent colors shall be prohibited on all exterior surfaces; neon lighting is not included within the term of "fluorescent." Colors that are reasonably deemed by City to be loud, clashing or garish are prohibited.

8.3.3. Additionally, the use of neon lighting, rope lighting or other specialty lighting around the interior or exterior of windows, or that are otherwise affixed to the Facility, is prohibited.

8.3.4. The use of robotic signs is prohibited.

8.3.5. The use of metal bars, metal grates, metal panels (except temporary use of Building Code-approved hurricane shutters) or other devices affixed to the

exterior opening of any window or door at the Facility (including future development that occurs on the Developer Parcel's outparcels) is prohibited. Only motion detector, other electronic sensor or video equipment may be used.

8.3.6. Customers, clients, patients pedestrians or business invitees shall not be directed, encouraged or allowed to stand, sit (including in a parked car for any period of time longer than reasonably required for a person's passenger to conduct its business and depart) or gather/loiter outside of any building on the Developer Parcel, including in any parking areas, sidewalks, rights-of-way, or neighboring properties.

8.4. Signage for OPD Substation.

8.4.1. In connection with its construction of the Project, Developer shall construct a "shopping center sign" on West Silver Springs Boulevard, advertising the Grocery Store and other businesses located on the Developer Parcel.

8.4.2. Developer shall, in perpetuity, permit City to install, maintain, repair and replace, at City's sole cost and expense, one sign panel advertising the OPD Substation on the pylon sign. The size of such panels shall be consistent with the size of sign panels provided to other occupants of the Project (except the Grocery Store which is likely to have a larger panel).

8.4.3. Developer shall provide all electricity needed to illuminate the sign, including City's sign panel, and to maintain, repair and replace all portions of the sign except for City's sign face.

9. **Representations and Warranties of City.** City hereby represents and warrants the following:

9.1. This Agreement and each document contemplated hereby to which City will be a party has been authorized and will be executed and delivered by City and neither their execution and delivery, nor compliance with the terms and provisions: (a) requires the approval and consent of any other party, except as have been obtained or as are specifically noted herein, (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on City, or (c) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance on City.

9.2. This Agreement and each document contemplated to which City will be a party, will constitute a legal, valid and binding obligation of City enforceable against City in accordance with the terms thereof, except as such enforceability may be limited by public policy or applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights and subject to usual equitable principles if equitable remedies are involved.

9.3. To the knowledge of City, there is no suit, litigation or action pending or threatened against City, which questions the validity of this Agreement or any document contemplated hereunder or challenges the power or any approvals of the Council to authorize the execution and delivery of same.

- 9.4. City shall use its best efforts to timely fulfill all of the conditions and obligations expressed in this Agreement which are within the control of City and shall act so as not to unreasonably delay the Completion of the Project.
 - 9.5. City shall cause to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to and the responsibility of the City.
 - 9.6. City: shall use reasonable efforts to assist the Developer in accomplishing the development of the Project in accordance with this Agreement and the Project Plans; and will not violate any applicable laws, ordinances, rules, regulations, orders, contracts, or agreements, or, to the extent permitted by law, adopt any ordinance, regulations or order or approve or enter into any agreement, that will result in this Agreement or any part hereof, or any other instrument contemplated, to be in violation thereof.
 - 9.7. City represents that the Property is not on any “Superfund” list under any applicable Environmental Law, nor is the Property currently subject to any lien related to any environmental matter. Except as specifically set forth herein, City makes no other representations or warranties, expressed or implied, concerning the environmental condition of the Property.
 - 9.8. City shall discharge, vacate, or release any lien, encumbrance, easement, right-of-way or other property interest City has or owns on or in the Property (other than utility easements or those arising under this Agreement) on or before the Closing.
10. **Representations and Warranties of Developer.** Developer hereby represents and warrants the following:
- 10.1. Developer is a validly existing limited liability company under the laws of the State of Florida, has all requisite power and authority to carry on its business, to own and hold property, to enter into and perform its obligations under this Agreement and consents to service of process on its registered agent in Florida.
 - 10.2. This Agreement and each document to which Developer is or will be a party has been authorized and will be executed and delivered by Developer and neither their execution and delivery, nor compliance with the terms and provisions: (a) requires the approval and consent of any other party, except as have been obtained or as are specifically noted herein, (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on Developer, or (c) results in any default or result in the creation of any lien on the property or assets of Developer which will have a material adverse effect on its ability to perform its obligations hereunder.
 - 10.3. This Agreement and each document contemplated to which Developer will be a party, will constitute a legal, valid and binding obligation of Developer enforceable against Developer in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors’ rights and subject to usual equitable principles if equitable remedies are involved.

- 10.4. To the knowledge of Developer, there is no suit, litigation or action pending or threatened against Developer, which questions the validity of this Agreement or which will have a material adverse effect on its ability to perform its obligations hereunder.
- 10.5. Developer shall use its best efforts to timely fulfill all of the conditions and obligations expressed in this Agreement which are within the control or are the responsibility of Developer.
- 10.6. During the period the obligations of Developer are in effect, Developer shall cause to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to and the responsibility of Developer.
- 10.7. Developer shall use its best efforts to accomplish the development of the Project in accordance with this Agreement, the Proposal and the Project Plans, and will not violate any applicable laws, ordinances, rules, regulations or orders in its efforts to do so.

11. **Default.**

- 11.1. Force Majeure. Neither party shall be held in default of this Agreement for any delay or failure of such party in performing its obligations pursuant to this Agreement if such delay or failure is caused by Force Majeure as set forth below.
- 11.2. Notice and Opportunity to Cure. Prior to declaring a default hereunder, the non-defaulting party must provide the defaulting party with written notice and at least thirty (30) days to cure such default.
 - 11.2.1. Provided, however, if the default is of a nature that cannot be reasonably cured within such 30-day period, then the defaulting party shall be allowed a reasonable period of time to cure such default provided that it diligently commences the cure within the 30-day period and thereafter undertakes and pursues such cure.
 - 11.2.2. Further provided, however, that no prior notice or opportunity to cure need to be provided:
 - 11.2.2.1. In the event the defaulting party has previously breached a provision of this Agreement and thereafter breaches the same provision;
 - 11.2.2.2. Concerning a party's failure to close as and when required by this Agreement; or
 - 11.2.2.3. Concerning the failure to cause Completion of the Project to occur pursuant to the Schedule.
 - 11.2.3. In addition to the foregoing provisions concerning notice and an opportunity to cure, in the event that City desires to demand payment under any Adequate Assurance, City must (except as set forth in paragraph 3.8.3 based on expiration of the Adequate Assurance), after expiration of the foregoing time periods for notice and opportunity to cure, provide Developer with an additional written notice and at least thirty (30) days to cure such default.

- 11.3. Remedies. If a default occurs, the non-defaulting party may terminate this Agreement, institute an action to compel specific performance or to recover damages as applicable, suspend its own performance hereunder, or pursue any other remedy available at law or equity.
- 11.4. Remedies Not Exclusive. The specified rights and remedies to which City and Developer are entitled under this Agreement are not exclusive and are intended to be in addition to any other means of redress which City or Developer may have under this Agreement.
- 11.5. No Consequential Damages. Notwithstanding paragraphs 11.3 and 11.4, under no circumstances will City or Developer be liable for consequential damages, including lost profits, the right to such damages being expressly waived.
- 11.6. No Waiver. The failure by City or Developer to promptly insist on strict performance of any provision of this Agreement shall not be deemed a waiver of any right or remedy that City or Developer may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such provision.
- 11.7. Effect of Termination. In the event that a party terminates this Agreement under this paragraph 11 or any other provision of this Agreement:
- 11.7.1. Prior to conveyance of the Property, this Agreement shall be deemed terminated in its entirety; or
- 11.7.2. After conveyance of the Property, such termination shall not affect the obligations of the parties as to the Project except that City shall be relieved from any obligation to provide the City Incentives.
12. **Real Estate Taxes; Assessments**. As the Property is currently owned by City, it is not subject to ad valorem taxes or assessments. Therefore, taxes and assessments will not be prorated as of the Closing. Developer shall be responsible for any ad valorem taxes and assessments that are due and payable on the Property after Closing.
13. **Termination of Prior Agreement**.
- 13.1. The Prior Agreement is hereby terminated and shall have no further force or effect.
- 13.2. Notwithstanding the termination of the Prior Agreement:
- 13.2.1. Developer shall remain obligated under any provisions of the Prior Agreement requiring Developer to indemnify City.
- 13.2.2. The deposit of One Dollar (\$1.00) paid by Developer under the Prior Agreement shall be retained by City and applied to the Purchase Price at Closing (reducing the unpaid portion of the Purchase Price to \$1.00).
14. **Real Estate Commission**. Developer represents and warrants to City, and City likewise represents and warrants to Developer, that they have neither dealt nor negotiated with any broker or finder in connection with the sale of the Property to the Developer, each party hereto agrees to indemnify and hold the other harmless from any and all claims, demands, causes of action or other liability, and all costs and expenses, including reasonable attorney's fees and disbursements

incurred in defending against any such claims, arising from or pertaining to any brokerage commission, fees, cost or other expense which may be claimed by any broker or person by reason of any claims arising out of the actions of the Developer (as to the indemnity obligations of Developer) or arising out of any actions of the City (as to the indemnity obligations of City).

15. **Agreement to Run with Developer Parcel.**

15.1. This Agreement shall run with the Developer Parcel and any portion thereof.

15.2. This Agreement, and any amendments hereto, shall be binding and inure to the benefit of, and be enforceable by, City and Developer, and the heirs, successors and permitted assigns of the foregoing.

15.3. In the event of a conveyance of any portion of, or of any interest in, the Developer Parcel, this Agreement may be amended by the new owner without the necessity of joinder or consent of any prior owner provided that the amendment does not amend the obligations of the prior owner. This paragraph supplements paragraph 19.6.

15.4. In the event that this Agreement is terminated prior to the conveyance of the Developer Parcel, City may record a notice of termination in the public records of Marion County, Florida, in which event this Agreement shall no longer run with the Developer Parcel. Such notice of termination shall be conclusive proof of the termination of this Agreement.

15.5. The provisions of this paragraph 15 concerning the Other Parcels shall be effective only upon Developer acquiring title to the Other Parcels.

16. **Survival.** Notwithstanding the termination of this Agreement (except a termination of the entire Agreement under paragraph 11.7.1 or 15.4) or the prior performance by the parties hereunder, the following paragraphs of this Agreement shall survive and remain effective: 8.3, and 18 through 39.

17. **Force Majeure.** Delays in performance due to: fire; flood; hurricane; tornado; earthquake; windstorm; sinkhole; unavailability of materials, equipment or fuel; war; declaration of hostilities; terrorist act; civil strife; strike; labor dispute; epidemic; archaeological excavation; act of God; or any other matter beyond the control of the party obligated to perform that constitutes an excuse under Florida law based upon the doctrine of "impossibility of performance," shall be deemed events of Force Majeure and such delays shall be excused in the manner herein provided. If a party is delayed in any performance required by this Agreement because of an event of Force Majeure, the date for action required or contemplated by this Agreement shall be extended by the number of days equal to the number of days such party is delayed. The party seeking to be excused based on an event of Force Majeure shall give written notice of the delay indicating its anticipated duration. Each party shall use its best efforts to rectify any conditions causing the delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses to overcome any loss of time that has resulted. Specific references in this Agreement to deadlines as to which Force Majeure shall apply shall not be interpreted as intending to exclude the application of Force Majeure from other performance.

18. **Notice.**

- 18.1. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing (including emailed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, emailed or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by notice complying with the terms of this paragraph:
 - 18.1.1. For City: City Manager, City of Ocala, 110 S.E. Watula Avenue, Ocala, Florida 34471; email: jzobler@ocalafl.org.
 - 18.1.1.1. With copy to: Director of Revitalization Strategies Department, 201 SE 3rd Street, Ocala, Florida 34471; email: mgaboardi@ocalafl.org.
 - 18.1.2. For Developer: M2PCD, LLC; Attn: Fredric Washington, Manager, 2649 West Silver Springs Boulevard, Ocala, Florida 34474 email: fewbelieve@gmail.com.
 - 18.1.2.1. With a copy to: Steve Allen, Tallen Builders, LLC., 2531 NW 35th Street, Ocala, FL 34475; email: sallen@tallenbuilders.com.
- 18.2. Each such notice shall be deemed delivered:
 - 18.2.1. On the date of delivery if by personal delivery;
 - 18.2.2. On the date of email transmission if by email (subject to paragraph 18.5); and
 - 18.2.3. If the notice is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; or (b) the date upon which delivery is refused.
 - 18.2.4. Notwithstanding the foregoing, service by personal delivery delivered, or by email sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.
- 18.3. If a notice is delivered by multiple means, the notice shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.
- 18.4. If the above provisions require notice to be delivered to more than one person (including a copy), the notice shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.
- 18.5. Concerning Communications sent by email:
 - 18.5.1. The Communication shall not be deemed to have been delivered if the sender receives a message from the sender's or the recipient's internet service provider or otherwise that the email was not delivered or received;
 - 18.5.2. If the sender receives an automatic reply message indicating that the recipient is not present to receive the email (commonly referred to as an "out of the office message"), the email shall not be deemed delivered until the recipient returns;

- 18.5.3. Any email that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient.
- 18.5.4. The sender must print the email to establish that it was sent (though it need not do so at the time the email was sent); and
- 18.5.5. The sender shall maintain the digital copy of the email in its email system for a period of no less than one year after it was sent.

19. Assignment; Interest Transfer.

- 19.1. Developer may not, without the written consent of City which may be withheld or conditioned by City in its sole discretion, assign its rights or obligations under this Agreement, in whole or in part, until the Completion of the Project.
- 19.2. No membership interest in Developer may be transferred (an “Interest Transfer”) until Completion of the Project except as follows:
 - 19.2.1. An interest held by a Developer Principal may be transferred to another Developer Principal; or
 - 19.2.2. Upon the written consent of City which may be withheld or conditioned by City in its sole discretion.
- 19.3. Following Completion of the Project:
 - 19.3.1. Developer may assign this Agreement in whole or in part if the assignee executes and delivers to City an instrument, in a commercially reasonable and customary form and acceptable to City in its reasonable discretion, accepting the assignment and assuming the obligations of Developer under this Agreement, to the extent of the assignment, as if such assignee executed this Agreement as an original party hereto; and
 - 19.3.2. Any Interest Transfer may be made.
- 19.4. Promptly after any assignment or Interest Transfer, Developer shall provide notice thereof to City.
- 19.5. A notice under paragraph 19.4 concerning an Interest Transfer under paragraph 19.2.1 shall include sufficient information for City to determine whether the assignment or Interest Transfer was permissible under this Agreement; such information could include an affidavit from a Developer Principal with personal knowledge of the matters set forth therein and need not be copies of operating agreements, partnership agreements or other documents that Developer deems confidential.
- 19.6. In the event of an assignment hereunder, and to the extent of the assignment:
 - 19.6.1. The assignee will have all rights and obligations of Developer.
 - 19.6.2. The assignee shall be entitled to amend the provisions of this Agreement without the joinder or consent of Developer.

- 19.6.3. The assignee shall be permitted to terminate this Agreement as otherwise provided in this Agreement without the joinder or consent of Developer or any prior assignee.
- 19.6.4. In the event of an assignment in connection with a sale of all of Developer's rights in a Project, the assignor shall be released from all liability under this Agreement for actions or inactions after, but not before, such assignment.
- 19.7. By executing this Agreement, Developer agrees, and by accepting any assignment, each assignee agrees, to the foregoing provisions of this paragraph concerning the ability of an assignee to amend or terminate this Agreement.
20. **City's Police Powers.** Nothing in this Agreement shall serve to affect or limit City's police powers in the exercise of rezoning decisions or other governmental action associated with the proposed development of the Developer Parcel or any Development Order associated therewith.
21. **Sovereign Immunity.** Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of City's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on City's potential liability under state or federal law. As such, City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, City shall not be liable for any claim or judgment, or portion thereof that exceeds the applicable limit of liability under applicable law (currently Section 768.28(5), Florida Statutes). This paragraph shall survive termination of this Agreement.
22. **Resolving any Invalidity.** City and Developer hereby agree that in the event this Agreement or the economic incentives described herein are ever challenged by any person and held to be invalid by a court of competent jurisdiction, each will cooperate with the other, in good faith, to resolve the invalidity or pursue a valid alternative means to secure a substantially similar and equitable financial arrangement which the parties acknowledge was the inducement for Developer undertaking the Project.
23. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
24. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal or unenforceable shall be severable and shall not be construed to render the remainder to be invalid, illegal or unenforceable.
25. **Relationship.** This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture among City and Developer. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that the other party hereto is not acting as a fiduciary for nor as adviser to it in respect of this Agreement.
26. **Personal Liability.** No provision of this Agreement is intended, nor shall any be construed, as a covenant of any official (either elected or appointed), director, employee, or agent of City in an individual capacity, and nor shall any such individual be subject to personal liability by reason of any covenant or obligation of City hereunder.

27. **Exclusive Venue.** The parties agree that the exclusive venue for any litigation, suit, action, counterclaim, or proceeding, whether at law or in equity, which arises out of concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall be in Marion County, Florida.
28. **JURY WAIVER.** EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
29. **Recording.** Developer shall, at its own expense, record this Agreement, or a certified copy thereof, in the Public Records of Marion County, Florida.
30. **Counterparts; Copies.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which shall together constitute one and the same instrument. Additionally, signed facsimiles shall have the same force and effect as a signed original, and, in lieu of an original, any party hereto may use a photocopy of this Agreement in any action or proceeding brought to enforce or interpret any of the provisions contained herein.
31. **Attorney's Fees.** If any legal action or other proceeding is brought (including, without limitation, appeals or bankruptcy proceedings) whether at law or in equity, which arises out of, concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby; or is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, and court costs incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.
32. **Successors and Assigns.** All covenants, Agreements, warranties, representations, and conditions contained in this Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties to this Agreement.
33. **Waiver.** A failure to assert any rights or remedies available to a party under the terms of this Agreement shall not be deemed a waiver of such rights or remedies, and a waiver of the right to remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this Agreement, unless such waiver of such right or remedy is contained in a writing signed by the party alleged to have waived his other rights or remedies.

34. **Construction of Agreement.** Each party acknowledges that all parties to this Agreement participated equally in the drafting of this Agreement and that it was negotiated at arm's length. Accordingly, a court construing this Agreement shall not construe it more strongly against either party.
35. **Exhibits.**
- 35.1. Any Exhibits attached to this Agreement shall, by this reference, be incorporated into this Agreement.
- 35.2. The following Exhibits are attached to this Agreement:
- 35.2.1. **Exhibit A** – Property.
- 35.2.2. **Exhibit B** – Other Parcel.
- 35.2.3. **Exhibit C** – OPD Parcel.
- 35.2.4. **Exhibit D** – Architectural Site Plan.
- 35.2.5. **Exhibit E** – OPD Modular Building Additional Requirements.
- 35.2.6. **Exhibit F** – Project Construction Reimbursement.
- 35.2.7. **Exhibit G** – Other Grocery Stores.
- 35.2.8. **Exhibit H** – Timeline.
36. **Further Action.** Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the parties hereto.
37. **Time.**
- 37.1. Time is of the essence of all of the provisions and terms of this Agreement.
- 37.2. When any time period specified herein falls or ends upon a date other than a Business Day, the time period shall automatically extend to 5:00 p.m. on the next ensuing Business Day.
38. **Entire Understanding.** This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations (if any) made by and between the parties.
39. **Amendments.** The provisions of this Agreement may not be amended, supplemented, waived, or changed orally but only by a writing making specific reference to this Agreement signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought.

THEREFORE, the parties have executed this Agreement on the day and year first written above.

**THIS PART OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURES START ON FOLLOWING PAGE**

ATTEST:

City of Ocala, a Florida municipal corporation

Angel B. Jacobs
City Clerk

James P. Hilty, Sr.
President, Ocala City Council

Approved as to form and legality

Patrick G. Gilligan
City Attorney

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by James P. Hilty, Sr., as City Council President of the City of Ocala, Florida, a Florida municipal corporation, on behalf of the City.

Notary Public, State of Florida

Name: _____

(Please print or type)

Commission Number:

Commission Expires:

Notary: Check one of the following:

Personally known OR

Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

AS TO DEVELOPER

M2PCD, LLC; a Florida limited liability company

Witness Signature

Witness Printed Name

Witness Signature

Witness Printed Name

By: _____
Fredric Washington as Manager

Date _____

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this this _____, 2016, by Frederic Washington, as Manager of M2PCD, LLC, a Florida limited liability company, on behalf of the company.

Notary Public
Name: _____
(Please print or type)
Commission Number:
Commission Expires:

Notary: Check one of the following:

Personally known OR

Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

EXHIBIT A - PROPERTY

Approximately 2.56 acres of real property with Marion County Tax Parcel Identification Number 22745–000–00 and described as follows:

The East 280 feet of the North 450 feet of the NW 1/4 of the SW 1/4, except right of way of State Road 40, in Section 13, Township 15 South, Range 21 East, in Marion County, Florida.

EXHIBIT B - OTHER PARCEL

The real property in Marion County, Florida, with the following Marion County Tax Parcel Identification Numbers:

1. 22740-000-00⁶
2. 22741-000-00
3. 22743-000-00
4. 22744-000-00
5. 22746-000-00

⁶ This portion of the Other Parcel shall be included as part of the Other Parcel only if Developer acquires title thereto prior to Completion of the Project. If Developer does not so acquire title, this portion shall, without the necessity of amending this Agreement, be deemed excluded from the Other Parcel.

EXHIBIT E - OPD MODULAR BUILDING ADDITIONAL REQUIREMENTS

	Requirement	Responsible Party
	<u>Prior to Relocation</u>	
1.	Provide notice to City that Developer anticipates commencing the relocation at least two weeks before the commencement date.	Developer
2.	Video or pictures of inside and outside of modular building before relocation commences.	City
3.	Remove desks, file cabinets, phones, computers, camera and other removable equipment before relocation commences.	City
	<u>During Relocation</u>	
4.	Install stucco skirting, if required to eliminate water flow under building.	Developer
5.	Install wooden ramp and deck/porches at entry doors (secured in ground with concrete as is current situation).	Developer
6.	Relocate existing air conditioning units.	Developer
7.	Move and reconnect telecommunication fibers.	City
8.	Install roof over each door entrance.	Developer
9.	If required to accommodate stormwater, install rain gutter and scupper system to move water off of and away from the building.	Developer
10.	Install landscaping and irrigation system for shrubs around the building consistent with current condition.	Developer
11.	Install parking lot lighting for security consistent with current condition.	City
12.	Relocate "Ocala Police" lighted street sign.	City
13.	Reconnect water and sewer utilities, and inspect to insure there are no leaks or draining issues.	Developer
	<u>After Relocation</u>	
14.	After relocation, schedule inspection with OPD representatives.	Developer and City
15.	If exterior concrete wall panels are cracked or broken during relocation, replace them to match existing pattern or similar pattern and color acceptable to City.	Developer

	Requirement	Responsible Party
16.	Replace any roof leaks that occur during relocation.	Developer
17.	After relocation, reinstall building cameras.	City
18.	Insure that wiring for phones, computers, televisions, cameras and electricity is working after relocation, or repair if needed.	Developer
19.	If interior wall panels are broken or cracked during move, replace them in either existing color/pattern or new color/pattern acceptable to City; color/patterns must be consistent within each room.	Developer
20.	If carpet, floor tile or base boards are removed or damaged in relocation , restore to same location and substantially same condition as before move.	Developer
21.	After relocation, install items that City removed before relocation.	City
22.	If ceiling tiles or grid work are damaged during relocation, restore to current condition.	Developer
23.	Test electrical wiring, switches, lighting, etc. after relocation and repair if needed.	Developer

EXHIBIT F - PROJECT CONSTRUCTION REIMBURSEMENT

DESCRIPTION	AMOUNT
PROFESSIONAL DESIGN FEES	
GEOTECHNICAL SOIL BORINGS & RECOMMENDATIONS	\$20,656.00
LANDSCAPE & IRRIGATION DESIGN	\$6,455.00
SURVEYING	\$13,500.00
TRAFFIC STUDY	\$21,000.00
TOTAL PROFESSIONAL DESIGN FEES	\$61,611.00
SITE WORK COSTS	
FIRE HYDRANTS	\$11,250.00
FDC BACKFLOW PREVENTORS (2-8" DDC W/FDC)	\$30,000.00
SEWER TO SITE (INTERNAL FROM R.O.W.)	\$113,710.00
WATER TO SITE (INTERNAL FROM R.O.W.)	\$70,445.00
CLEARING & GRUBBING OF SITE	\$28,400.00
EROSION CONTROL – SEDIMENT BARRIERS	\$5,810.00
PHASE I ENVIRONMENTAL ASSESSMENT	\$3,100.00
TOTAL SITE WORK COSTS	\$262,715.00
TOTAL OF PROFESSIONAL DESIGN FEES AND SITE WORK COSTS	\$324,326.00

EXHIBIT G - OTHER GROCERY STORES

1. Publix
2. Winn-Dixie
3. Walmart Neighborhood Store
4. Bravo
5. Aldi
6. Earth Origins
7. Food Lion
8. GFS Market (Gordon Foods)
9. Hitchcock's Markets
10. Bi-Lo
11. Kroger
12. Lucky's

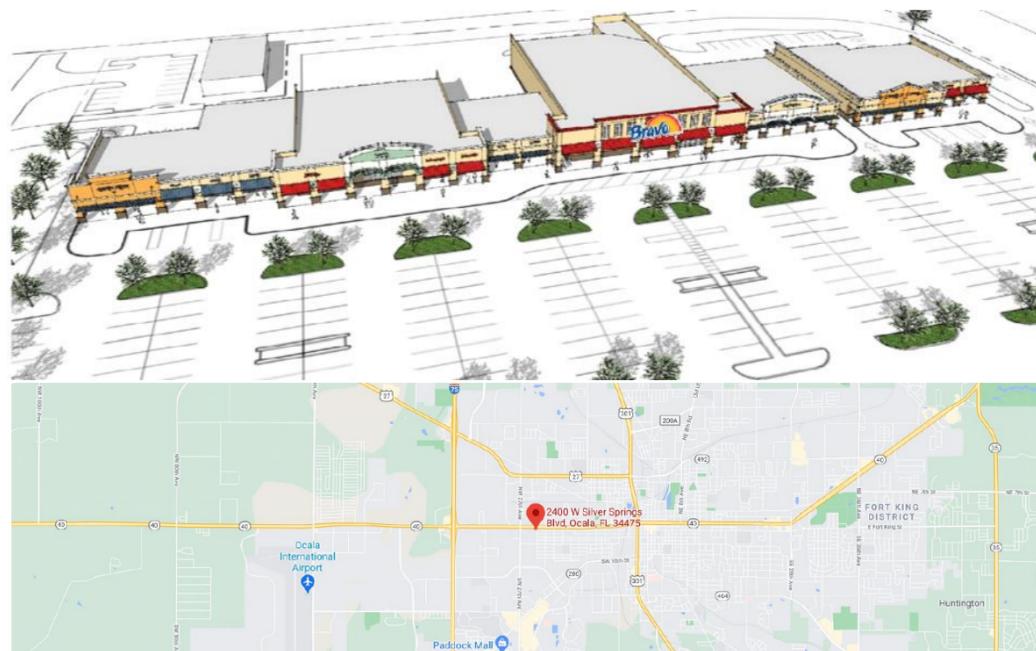
EXHIBIT H - TIMELINE

MG to provide.

E:\CITY\Revitalization Strategies\EIP\M2PCD\Contract\EIP\M2PCD Agreement 5-16-16.docx

COMMERCIAL
PROPERTY

*PACE
Proposal*



Paradise Park Retail Center
2400 W. Silver Springs, Ocala, FL 34475
COMMERCIAL PROPERTY PACE ASSESSMENT QUOTE
Prepared For Fred Washington / M2PCD, LLC

Confidential | Counterpointe Sustainable Real Estate | March 24, 2021

This proposal is solely for discussion purposes and contains indicative terms only, and is intended solely for the person to whom it is delivered. It is confidential and must not be reproduced, photocopied or disseminated to any person not involved in the proposed transaction without the express prior written consent of Counterpointe Sustainable Real Estate LLC.

PACE FINANCING PROPOSED TERMS	
Property Owner / Developer:	Fred Washington / M2PCD, LLC
Property Description:	A to-be-built 72,780 SF grocery anchored strip retail center. The development will be anchored by Bravo Supermarkets (15,496 SF) and a Police Substation (14,020 SF).
Property Address:	2400 W. Silver Springs, Ocala, FL 34475
PACE Program / Administrator:	Florida PACE Financing Agency ("FPFA") / Counterpointe Energy Solutions
Capital Provider:	Counterpointe Sustainable Real Estate
Estimated Project Costs:	\$1,700,000
Term:	25 Years. The Term may not exceed the estimated useful life of the eligible improvements up to the maximum period permitted by the PACE Program.
Amortization:	Self-Amortizing
Interest Rate:	The Interest Rate will be fixed based on the greater of (i) a spread, expected to be 359 bps over the average life treasury (16 years) or (ii) 5.95%.
Call Protection:	The Assessment is fully prepayable at any time during the Term provided, however, that a prepayment fee equal to a yield maintenance premium through year 3, 3% for years 4-5, 2% for years 6-7, and 1% thereafter will be due with the prepayment.
Estimated Financed Amount:	\$1,902,864
Estimated Annual Payment:	\$151,111
First Payment Date:	December 31, 2022
Capital Provider Fees:	1.50% of total PACE Assessment. Fee is included in the total PACE Assessment.
State Program Fees:	1.65% of the total PACE Assessment to the FPFA. Fees are included in total PACE Assessment. In addition, the County Tax Collector may collect an ongoing fee equal to 2.0% of the Estimated Annual Payment each year.
Special Underwriting Conditions:	<ol style="list-style-type: none"> 1. A detailed review of the construction budget must be performed to determine that the Energy Conservation Measures ("ECMs") for the project are qualifying improvements per Program Administrator guidelines. 2. Property NOI/total debt service (mortgage loan(s), plus the proposed PACE assessment plus any other debt-like financing) is at least 1.05x as of the fiscal year that the Property has reached its projected operating performance for that year (estimated to be 2023). 3. The Assessment financing may not exceed 25% of the Property value as determined by the "as-stabilized" appraised value, but may be limited by the sum of the qualifying ECMs. The maximum total Property debt, including the Assessment, any outstanding mortgage-related loan and any other debt-like financing must not exceed 90% of the adjusted Property value calculated using the "as-stabilized" appraised value. 4. Contingent on receipt and review of executed anchor tenant leases for Bravo Supermarkets and Police Substation. 5. Contingent on receipt and review of final development budget.

Counterpointe Sustainable Real Estate LLC ("CSRE") is pleased to present this summary of proposed terms and conditions for a PACE financing for the above-reference property (this "Term Sheet"). This Term Sheet is neither a commitment nor an offer to commit to any financing by CSRE. It has been prepared based upon information furnished to date by you or on your behalf and constitutes the general basis upon which CSRE will proceed with structuring and pricing the proposed financing. The financing contemplated herein, if any, will be subject to, inter alia, satisfactory completion of due diligence, final documentation and

Estimated Closing Costs Financed ¹	
Program Administration Charge ²	\$31,397
Capital Provider Fee ³	\$28,543
Reserve Fund Deposit ⁴	Waived
Administrative Reserve Account Deposit ⁵	\$100
Trustee & Recording Fee ⁶	\$200
Other Costs ⁷	\$25,000
Subtotal	\$85,240
Prepaid Interest ⁸	\$117,623
Total Closing Costs	\$202,864
Project Costs to Be Financed	\$1,700,000
Estimated Financed Amount	\$1,902,864

Footnotes

1. Estimated Closing Costs Financed. You may capitalize all or any portion of the Closing Costs and Prepaid Interest by electing to add such amounts to the Financed Amount.

2. Program Administration Charge. This is a one-time charge that covers or defrays costs, including certain costs of the Program Administrator, bond counsel and other entities responsible for program administration, support and management. This charge is based on the amount of the financed amount of your project.

3. Capital Provider Fee. This is a one-time charge that covers certain costs of CSRE as Capital Provider. This charge is based on the amount of the financed amount of your project.

4. Reserve Fund Deposit. This is a one-time, non-refundable charge that covers a deposit the governmental entity sponsoring the CSRE Program is required to make into a debt service reserve fund for the bonds issued to fund your assessment. This charge is based on the amount of your assessment. Program Administrator has waived the Reserve Fund Deposit for this transaction.

5. Administrative Reserve Account Deposit. This is a non-refundable charge by the governmental entity sponsoring the CSRE Program for a reserve for expenses of the bond trustee(s) and administrative and similar expenses. This charge is payable at closing and will be charged each year during the term of your assessment. This is a fixed amount.

6. Trustee & Recording Fee. This is a one-time charge that covers the cost of filing documents relating to your assessment. This charge is based on the cost imposed by the county in which property is located and related service fees.

7. Other Costs. This is an estimated amount to cover the fees of the Capital Provider's counsel, third party reports and other due diligence costs.

8. Prepaid Interest. Interest on the full amount of your assessment will begin to accrue on the date the bond to fund your assessment is issued. Depending on the timing of enrollment of your assessment in the county tax roll, an interest payment on such bond may be due before your first payment under the financing documents. In such case, you must prepay the amount of that interest at the closing of your assessment. The Prepaid Interest shown in this proposal is based on the estimated closing date. The Prepaid Interest will vary based on the actual closing date.

AMORTIZATION SCHEDULE

Year	Assessment Payment	Principal	Interest	Estimated Annual Fees *	Total Payment	Balance
2023	\$148,148	\$34,928	\$113,220	\$2,963	\$151,111	\$1,867,936
2024	\$148,148	\$37,006	\$111,142	\$2,963	\$151,111	\$1,830,930
2025	\$148,148	\$39,208	\$108,940	\$2,963	\$151,111	\$1,791,722
2026	\$148,148	\$41,541	\$106,607	\$2,963	\$151,111	\$1,750,181
2027	\$148,148	\$44,013	\$104,136	\$2,963	\$151,111	\$1,706,168
2028	\$148,148	\$46,631	\$101,517	\$2,963	\$151,111	\$1,659,537
2029	\$148,148	\$49,406	\$98,742	\$2,963	\$151,111	\$1,610,131
2030	\$148,148	\$52,346	\$95,803	\$2,963	\$151,111	\$1,557,786
2031	\$148,148	\$55,460	\$92,688	\$2,963	\$151,111	\$1,502,325
2032	\$148,148	\$58,760	\$89,388	\$2,963	\$151,111	\$1,443,566
2033	\$148,148	\$62,256	\$85,892	\$2,963	\$151,111	\$1,381,309
2034	\$148,148	\$65,960	\$82,188	\$2,963	\$151,111	\$1,315,349
2035	\$148,148	\$69,885	\$78,263	\$2,963	\$151,111	\$1,245,464
2036	\$148,148	\$74,043	\$74,105	\$2,963	\$151,111	\$1,171,421
2037	\$148,148	\$78,449	\$69,700	\$2,963	\$151,111	\$1,092,972
2038	\$148,148	\$83,116	\$65,032	\$2,963	\$151,111	\$1,009,856
2039	\$148,148	\$88,062	\$60,086	\$2,963	\$151,111	\$921,794
2040	\$148,148	\$93,302	\$54,847	\$2,963	\$151,111	\$828,492
2041	\$148,148	\$98,853	\$49,295	\$2,963	\$151,111	\$729,639
2042	\$148,148	\$104,735	\$43,414	\$2,963	\$151,111	\$624,904
2043	\$148,148	\$110,966	\$37,182	\$2,963	\$151,111	\$513,938
2044	\$148,148	\$117,569	\$30,579	\$2,963	\$151,111	\$396,369
2045	\$148,148	\$124,564	\$23,584	\$2,963	\$151,111	\$271,804
2046	\$148,148	\$131,976	\$16,172	\$2,963	\$151,111	\$139,829
2047	\$148,148	\$139,829	\$8,320	\$2,963	\$151,111	\$0

* Estimated Annual Charges. Annual charges may be added to each annual assessment installment during the term of your assessment on your property tax bill. These Annual Charges cover administrative and collection fees and costs associated with your assessment, which may include charges for administration costs and expenses of the governmental entity sponsoring the CSRE Program, fees or charges imposed by the county and collection costs. The annual charge shown in this proposal is as estimate of the charges for the first year and may increase or decrease, as the costs and expenses comprising the annual charge are subject to change annually.



July 8, 2021

Fredric Washington
Josephine Hart
Southern Accommodations Paradise Park Plaza LLC

RE: \$8,100,000 construction loan to develop the retail plaza located at 2649 W. Silver Springs Blvd., Ocala, FL 34475

Set forth below is a preliminary outline of terms that may be appropriate for your request. This is not a loan commitment or an agreement of any kind by Climate First Bank (hereinafter "CLIMATE FIRST BANK" or "Bank"). Neither this term sheet nor any of its terms or substance shall be disclosed, directly or indirectly, to any other person except: (a) to your employees, attorneys, accountants, investors, equity partners, and advisors who are directly involved in the consideration of this matter, and (b) as disclosure as may be compelled in a judicial or administrative proceeding or as otherwise required by law. Notwithstanding the exchange of term sheets such as this one, or correspondence or discussions relating to financing, whether containing expressions suggesting an agreement or understanding, no such commitment or agreement will exist unless and until it is embodied in a formal document and executed specifically as a loan commitment or other agreement by an authorized officer of CLIMATE FIRST BANK. This term sheet is transmitted CONFIDENTIALLY for the sole use of the individual(s) and entities shown above and it may not be forwarded or disclosed to others without the express consent of CLIMATE FIRST BANK.

Borrower:	Southern Accommodations Paradise Park Plaza LLC (the "Borrower")
Purpose:	Provide \$8,100,000 to develop the retail plaza located at 2649 W. Silver Springs Blvd., Ocala, FL 34475.
Loan:	Term loan of up to \$8,100,000 (the "Loan"), not to exceed 60% of the appraised value of the property.
Repayment:	12 months interest only payments followed by 48 months of principal and interest payments with balance due at maturity.
Maturity:	5 years (60 months).
Interest Rate:	Fixed at 5.75% for 60 months.
Amortization:	20 years
Fees:	1% loan fee (\$81,000)
Prepayment Penalty:	N/A
Security:	A first mortgage and assignments of rents, leases and profits encumbering the subject property described above.

Guaranty: Fredric Washington and Josephine Hart, joint and severally agree to unconditionally guaranty the term loan as noted herein.

Other Terms: *Documentation:* All terms of this Proposal will be subject to, among other things, CLIMATE FIRST BANK's normal due diligence, credit approval process and standard requirements, including without limitation the following:

- All expenses associated with preparing the documentation of the Loan, including without limitation costs of underwriting will be paid by Borrower.
- Borrower will maintain all operating accounts associated with the subject property at Climate First Bank.
- Borrower to provide evidence of Hazard, Liability, and any other requested insurance policies at Bank's discretion.
- Title Insurance and Survey acceptable to the Bank and Bank's Counsel.
- Other documentation as the Bank may deem necessary.

Financial Reporting: Frederic Washington and Josephine Hart

- Current Personal Financial Statement to be provided on an annual basis to include verification of liquid assets, list of contingent liabilities and a detailed schedule of real estate owned.
- Complete U.S. Income Tax Returns to be provided on an annual basis within 30 days of filing, inclusive of all K-1 Schedules.

Southern Accommodations Paradise Park Plaza, LLC

- U.S. Income Tax Returns to be provided on an annual basis within 30 days of filing.
- Annual financial statements
- Annual rent roll/lease agreements

Financial Covenant: Bank may include financial covenants to be determined during the underwriting period.

Any further action by Climate First Bank regarding your request will require appropriate additional evaluations and credit analysis and other approvals. For the Lender's records, indicate your desire to have the Lender further consider your request by signing this letter and returning this letter to the Lender. Furthermore, should this transaction not close, Borrower/Guarantors agree to be responsible for all third-party costs borne by the Lender related to the underwriting of the loan.

*If you are interested in moving forward with this Loan Request, please sign and return this letter and a check made payable to CLIMATE FIRST BANK in the amount of \$10,000. The funds will be used to cover any expenses incurred by CLIMATE FIRST BANK including, but not limited to, appraisal report, legal fees, third-party reports, and credit reports. If the Loan contemplated herein is approved and closed, the fee will be credit towards the Loan Fee. **This Term Sheet will expire if this letter is not signed and returned to CLIMATE FIRST BANK by July 28, 2021.***

Sincerely,

Scott Leitner

Scott Leitner, Esq.
Senior Vice President
Climate First Bank

ACCEPTANCE OF TERM SHEET

YOUR SIGNATURE BELOW INDICATES YOUR ACCEPTANCE OF THE PROPOSED TERMS AND CONDITIONS TO BE INCLUDED IN A LOAN.

"BORROWER"

Southern Accommodations Paradise Park Plaza LLC

By: _____

Printed: _____

Its: _____

"GUARANTORS"

Frederic Washington

Josephine Hart

ADDENDUM TO CONTRACT

Seller: **INDUSTRIAL CORPORATION, INC., a Florida corporation**
Buyer: **SOUTHERN ACCOMMODATIONS, LLC, a Florida limited liability company**
Property
Address: **2286-2308 SE Hawthorne Road, Gainesville, FL 32641**

This addendum is made part of the Contract concerning the property referenced above.

Total down payment at closing, including escrow deposits, shall be \$250,000. In addition to the down payment buyer will pay prepaid interest, closings costs, title insurance and any other charges that may be incurred.

The purchase price is \$5,100,000. The balance of the mortgages and notes is \$4,850,000 represented by 2 notes as follows:

Note #1 will be in the amount of a \$2,125,000 payable @4.5% interest per annum with said interest being prepaid at closing for a period of 2 years (\$191,250.00) and monthly thereafter for the remaining term of the note.

Note #2 will be in the amount of \$2,725,000 payable @ 2% interest per annum with said interest being prepaid at closing for a period of 2 years (\$109,000.00) and monthly thereafter for the term of the note.

The notes and mortgage shall be interest only and be due and payable at the end of said term with the entire outstanding principal balance and accrued interest, if any,

The notes are prepayable in whole or in part at anytime without penalty.

The mortgage and notes shall be personally guaranteed by Fredric Washington.

The mortgage shall include terms of an institutional mortgage and other required documents used in commercial transactions.

The parties acknowledge that the only broker in this transaction is TCB/REO. In no event will seller be liable for any other brokerage fees or finder fees of any kind.

Title insurance shall be at Buyer's expense and issued by Law Offices of Leonard E. Zedeck with Old Republic being the underwriter. Title insurance commitment will be ordered immediately after confirmation of non cancellation by Buyer.

This contract must be executed no later than 5/15/21 and the \$25,000 deposit placed in escrow. Thereafter the Buyer will have 30 days to review and inspect the property. Within said 30 days the contract is also contingent upon the City of Gainesville providing incentives to the purchaser for the opening of a grocery store on said property. Buyer may cancel the agreement during that time. Cancellation shall be by written notice to the Seller. If cancelled the escrow deposit shall be returned the Buyer and no further obligations will be in exist as to Buyer and/or Seller.

In the event the contract is not cancelled pursuant to the terms herein then the purchaser shall be required to place an additional \$225,000 in escrow and proceed to close within 10 days. At closing Buyer will pay the prepaid interest and additional costs pursuant to the terms herein.

corporation

INDUSTRIAL CORPORATION, INC., a Florida

Date: _____

Seller: _____
LEONARD E. ZEDECK, V.P.

Date: _____

Seller: _____

limited liability company

SOUTHERN ACCOMMODATIONS, LLC, a Florida

Date: _____

Buyer: _____
FREDRIC WASHINGTON, COO

Date: _____

Buyer: _____
FREDRIC WASHINGTON, GUARANTOR

Development Agreement for Incentives

This Term Sheet summarizes the principal terms of a Development Agreement for Incentives of for the establishment of a supermarket to be located at 2286 SE Hawthorne Road, Gainesville, Florida. This term sheet does not create any legally binding obligation or any commitment to provide any loan from the City to the Developer until the definitive agreements are executed and delivered by all parties involved in the transaction

Parties:	City of Gainesville, Florida Developer: Southern Accommodations, LLC
Effective Date:	August 1, 2021
Project:	The creation of an approximate 25,000 sq.ft. <i>supermarket</i> located at 2286 SE Hawthorne Road, Gainesville, Florida 32641
Project Schedule and Completion Date:	July 21, 2022
Loan Amount:	Not to exceed \$3,300,000, amount to be subject to final determination during Due Diligence Period.
Source of City Funds:	American Rescue Plan Act (ARPA) and/or Gainesville Community Reinvestment Area (GCRA) Special Revenue Funds
Job Creation Requirement:	Supermarket – 30 FTE
Local Hiring:	Developer and Supermarket Operator shall use commercially reasonable efforts to hire individuals to satisfy the Job Creation Requirement who reside within Census Tracts within a 1-mile radius of the Project.
Living Wage Requirement:	Required pursuant to Chapter 2, Article IX, Division 2 of the Code of Ordinances of the City of Gainesville, Florida.
Local Contracting Requirement:	Best efforts to work with City, through its Office of Equity and Inclusion, to notify local business firms, minority owned firms, women-owned firms of the opportunities to submit bids for work on the Project.
Financing Structure:	Developer is responsible for using own funds to develop the project.

Upon attainment of a lease agreement with a Supermarket operator acceptable to the City, the City will provide construction financing in an amount not to exceed \$2,000,000, amount to be subject to final determination during Due Diligence Period. Securitization of the construction financing shall be subject to a method acceptable to the City (such as an UCC-1 filing).

Upon completion of the Supermarket (receives a Certificate of Occupancy), the City will loan Developer an amount not to exceed \$3,300,000, amount to be subject to final determination during Due Diligence Period, inclusive of the construction financing.

Two promissory notes:

1. Job Creation \$1,200,000. Reduced on the 3rd, 4th and 5th anniversary of the Project Completion Date by the proportionate number of jobs created from the Job Creation Requirement multiplied by \$400,000. For example, 27 FTEs created, 30 FTE requirement would equal 0.90 multiplied by \$400,000 resulting in \$360,000 of the note forgiven.
2. Supermarket Operation. \$2,100,000. Reduced on the 4th, 5th, 6th, 7th, 8th, 9th and 10th anniversary of the Project Completion Date by \$300,000 provided that the supermarket was operational for at least 4,320 hours during the preceding year.

Mobility Hub Lease:

No later than November 1, 2021, Developer shall lease to the City a portion of the property (approximately 1.5 to 2 acres in size) at 2286 SE Hawthorne Road, Gainesville, Florida 32641 for the amount of \$1/year for 99 years for the purpose of the City building and operating an RTS Mobility Hub that will serve transit, microtransit, micromobility, bicycle, pedestrian and Park & Ride commuters and connect to the existing bike boulevard. Site depicted on Exhibit A.

Supermarket Product Selection:

The Supermarket product selection should feature (1) grocery and hot bar products that cater to the heritage,

culture and customs of the indigenous and existing community and (2) grocery aisles/sections and hot bar products that provide healthy options that address the health issues within the existing community (such as hypertension, diabetes, etc.). Proper product selection shall be affirmed by a Community Advisory Group.

Community Advisory Group:

During the term of any outstanding principal of the note, the Supermarket Operator must establish a community advisory group consisting of no less than 9 residents of the City from a ½ mile radius of the supermarket to provide recommendations to the supermarket operator regarding product selection and services. The Community Advisory Group shall meet at least quarterly with the supermarket manager.

SNAP/WIC Acceptance:

The Supermarket must accept Florida ACCESS EBT Cards (Florida SNAP benefits and Florida Temporary Cash Assistance Program) and WIC benefits as payment per state program guidelines. Supermarket must also offer Fresh Access Bucks (FAB) - the USDA funded statewide nutrition incentive program that enables SNAP recipients to double the purchasing power of their SNAP benefits on Florida grown fruits and vegetables sold at the Supermarket.

Supermarket Energy Efficiency:

Must apply for and receive a score of 75 or higher for the Energy Star Certification.

Supermarket Operations During Emergencies:

The Developer shall ensure that the Supermarket has emergency power (i.e., generator) to operation during periods of prolonged power outages.

Supermarket Disposal of Product:

Must develop a partnership with a Gainesville-based food pantry and Gainesville-based composting facility for the disposal of surplus product.

Local Sourcing of Product:

In association with providing product for sale at the supermarket, the Developer shall establish a program for local sourcing of product which will be included as a performance requirement of the loan. The definition of "Local" shall refer to products produced "as close as possible" to the City of Gainesville based on seasonality

and availability of product, with preference being given to food items produced and processed in Alachua County, the State of Florida, and the southeast region of the United States.

Expansion of Project: To the extent that the Project is expanded to meet unmet community needs, as defined by the City, the City and the Developer may agree to additional development incentives in addition to those delineated in this term sheet.

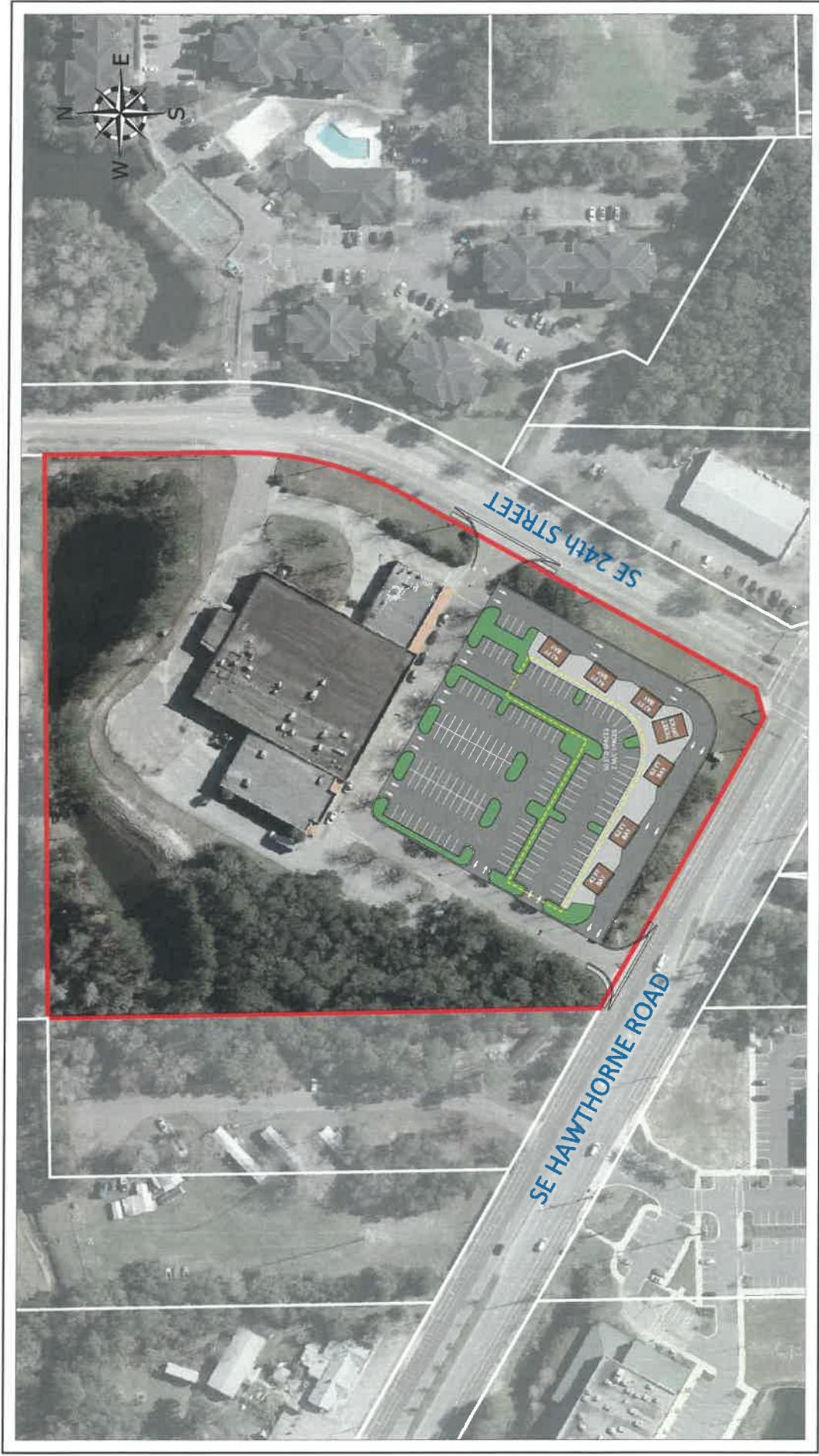
Due Diligence: City will be given an option to conduct due diligence on the Developer's business, historical and projected financials, legal contracts with tenants and potential tenants, legal contracts with vendors, operational and quality procedures, marketing strategy, tax compliance, and human resources. The City will also be given access to the site (interior and exterior) to perform necessary inspections to determine the viability of the Project.

Due Diligence Period: The period of time between the execution of this term sheet and the final approval of the loan documents by the City Commission.

Fees and Expenses: Each party shall bear its own legal fees and expenses including, but not limited to, legal, professional, due diligence, advisory support and negotiation in connection with this transaction.

Termination: Either party may terminate this agreement by a simple notice including email before the signing of the definitive agreements. No party is required to give the reasons for the same.

This Term Sheet is not a contract or a binding agreement but just an expression of a possible business transaction between the City and the Developer. No party will be bound for a transaction until and unless definitive agreements are approved by the City Commission of the City of Gainesville, Florida and executed by the parties to this transaction.



RTS - EASTSIDE TRANSFER STATION - CONCEPTUAL SITE PLAN

PREPARED BY:  **JBrown Professional Group**
CIVIL ENGINEERING • LAND SURVEYING • PLANNING
3530 NW 43rd Street • Gainesville, FL 32605 • 352.375.6999 • JBPG.com

COMPARISON OF UTILITY COSTS FOR SELECTED GROCERY STORES SERVED BY GRU

Former Food Lion Store

(Moran Foods)*

2302 SE Hawthorne Road - Site for Proposed BRAVO Food Store

Billing Date:	11/3/2017	9/5/2017	8/2/2017	7/5/2017	6/2/2017	5/2/2017	4/4/2017	3/2/2017	2/2/2017	1/4/2017	12/2/2016	11/2/2016	Yearly Total:
Electric:	\$ 8,588.74	\$ 8,387.50	\$ 7,941.50	\$ 8,403.50	\$ 7,241.50	\$ 6,331.50	\$ 6,875.50	\$ 5,603.50	\$ 5,999.50	\$ 6,108.00	\$ 6,637.00	\$ 6,635.50	\$ 84,753.24
Gas:	\$ 51.53	\$ 52.26	\$ 50.08	\$ 55.88	\$ 53.71	\$ 56.61	\$ 127.72	\$ 157.47	\$ 179.24	\$ 108.13	\$ 108.13	\$ 62.41	\$ 1,063.17
Water:	\$ 20.20	\$ 24.05	\$ 27.90	\$ 31.75	\$ 16.35	\$ 35.60	\$ 70.25	\$ 58.70	\$ 39.45	\$ 66.40	\$ 166.50	\$ 447.55	\$ 1,004.70
Wastewater:	\$ 21.70	\$ 28.00	\$ 34.30	\$ 40.60	\$ 15.40	\$ 46.90	\$ 97.30	\$ 78.40	\$ 53.20	\$ 91.00	\$ 248.50	\$ 683.20	\$ 1,438.50
Stormwater:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Taxes & Surcharges:	\$ 1,275.03	\$ 1,245.20	\$ 1,183.54	\$ 1,247.70	\$ 1,084.68	\$ 958.09	\$ 1,046.83	\$ 874.85	\$ 930.54	\$ 912.65	\$ 996.69	\$ 1,019.51	\$ 12,775.31
Adjustments & Service Chg.	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 123.26	\$ -	\$ -	\$ -	\$ 132.72	\$ -	\$ 255.98
Monthly Total**:	\$ 9,957.20	\$ 9,737.01	\$ 9,237.32	\$ 9,779.43	\$ 8,411.64	\$ 7,551.96	\$ 8,217.60	\$ 6,772.92	\$ 7,201.93	\$ 7,286.18	\$ 8,289.54	\$ 8,848.17	\$ 101,290.90

*Last known grocery store open at East GNV location proposed for BRAVO Food Store

**All charges shown as of 2016/2017. No adjustment has been made to reflect current 2021/2022 utility rates

\$ 101,034.92 Total less late Charges

Winn Dixie

1459 NW 23rd Ave.

Billing Date:	11/24/2021	9/20/2021	8/20/2021	7/22/2021	6/15/2021	5/17/2021	4/15/2021	3/15/2021	2/15/2021	1/19/2021	12/15/2020	11/19/2020	Yearly Total:
Electric:	\$ 19,836.21	\$ 23,082.72	\$ 21,547.95	\$ 22,081.82	\$ 19,230.45	\$ 17,833.51	\$ 18,804.05	\$ 15,912.45	\$ 17,899.55	\$ 21,482.74	\$ 17,660.59	\$ 18,621.22	\$ 233,993.26
Gas:	\$ 1,430.81	\$ 302.06	\$ 314.43	\$ 359.58	\$ 441.15	\$ 489.21	\$ 1,256.73	\$ 1,673.26	\$ 760.82	\$ 399.63	\$ (621.30)	\$ 1,059.38	\$ 7,865.76
Water:	\$ 205.76	\$ 217.37	\$ 217.37	\$ 221.24	\$ 205.76	\$ 217.37	\$ 248.33	\$ 201.89	\$ 422.48	\$ 797.87	\$ 364.43	\$ 496.01	\$ 3,815.88
Wastewater:	\$ 328.70	\$ 312.94	\$ 312.94	\$ 319.27	\$ 300.28	\$ 312.94	\$ 363.58	\$ 293.95	\$ 635.77	\$ 1,218.13	\$ 547.15	\$ 749.71	\$ 5,695.36
Stormwater:	\$ 852.80	\$ 811.80	\$ 811.80	\$ 811.80	\$ 811.80	\$ 811.80	\$ 811.80	\$ 811.80	\$ 811.80	\$ 811.80	\$ 811.80	\$ 811.80	\$ 9,782.60
Taxes & Surcharges:	\$ 3,681.49	\$ 4,136.52	\$ 3,876.78	\$ 3,971.31	\$ 3,505.23	\$ 3,263.84	\$ 3,574.99	\$ 3,151.52	\$ 3,345.60	\$ 3,921.21	\$ 3,049.29	\$ 3,530.21	\$ 43,007.99
Adjustments & Service Chg.	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Monthly Total:	\$ 26,335.77	\$ 28,863.41	\$ 27,081.27	\$ 27,765.02	\$ 24,494.67	\$ 22,928.67	\$ 25,059.48	\$ 22,044.87	\$ 23,876.02	\$ 28,631.38	\$ 21,811.96	\$ 25,268.33	\$ 304,160.85

Publix

1302 N. Main Street

Billing Date:	12/1/2021	11/1/2021	10/1/2021	9/1/2021	8/2/2021	7/1/2021	6/1/2021	5/3/2021	4/1/2021	3/1/2021	2/1/2021	1/4/2021	Yearly Total:
Electric:	\$ 25,090.49	\$ 23,128.44	\$ 24,627.77	\$ 24,363.64	\$ 23,037.16	\$ 22,005.62	\$ 19,901.68	\$ 20,476.01	\$ 18,565.13	\$ 20,059.58	\$ 19,317.94	\$ 20,115.15	\$ 260,688.61
Gas:	\$ 428.76	\$ 431.67	\$ 471.72	\$ 438.96	\$ 505.94	\$ 427.31	\$ 430.21	\$ 476.10	\$ 420.75	\$ 427.31	\$ 443.33	\$ 434.59	\$ 5,336.65
Water:	\$ 372.17	\$ 391.52	\$ 403.13	\$ 372.17	\$ 410.87	\$ 356.69	\$ 410.87	\$ 418.61	\$ 391.52	\$ 352.82	\$ 329.60	\$ 441.83	\$ 4,651.80
Wastewater:	\$ 614.65	\$ 585.13	\$ 604.12	\$ 553.48	\$ 616.78	\$ 534.49	\$ 616.78	\$ 629.44	\$ 585.13	\$ 528.16	\$ 490.18	\$ 667.42	\$ 7,025.76
Stormwater:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Taxes & Surcharges:	\$ 4,329.57	\$ 4,129.86	\$ 4,361.48	\$ 4,310.50	\$ 4,089.60	\$ 3,905.76	\$ 3,551.94	\$ 3,649.52	\$ 3,321.30	\$ 3,565.63	\$ 3,429.76	\$ 2,075.42	\$ 44,720.34
Adjustments & Service Chg.	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Monthly Total:	\$ 30,835.64	\$ 28,666.62	\$ 30,468.22	\$ 30,038.75	\$ 28,660.35	\$ 27,229.87	\$ 24,911.48	\$ 25,649.68	\$ 23,283.83	\$ 24,933.50	\$ 24,010.81	\$ 23,734.41	\$ 322,423.16

Save-a-Lot (Moran Foods)

2605 NW 13th Street

Billing Date:	12/9/2021	11/8/2021	10/11/2021	9/10/2021	8/10/2021	7/12/2021	6/9/2021	5/11/2021	4/9/2021	3/9/2021	2/9/2021	1/11/2021	Yearly Total:
Electric:	\$ 7,903.39	\$ 6,962.88	\$ 7,362.12	\$ 6,920.49	\$ 6,677.77	\$ 7,217.92	\$ 6,372.94	\$ 6,441.51	\$ 6,746.61	\$ 5,867.28	\$ 5,895.25	\$ 6,895.28	\$ 81,263.44
Gas:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Water:	\$ 24.11	\$ 24.11	\$ 27.98	\$ 27.98	\$ 20.24	\$ 24.11	\$ 27.98	\$ 24.11	\$ 35.72	\$ 27.98	\$ 24.11	\$ 27.98	\$ 316.41
Wastewater:	\$ 29.45	\$ 29.45	\$ 36.10	\$ 34.42	\$ 21.76	\$ 28.09	\$ 34.42	\$ 28.09	\$ 47.08	\$ 34.42	\$ 28.09	\$ 34.42	\$ 385.79
Stormwater:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Taxes & Surcharges:	\$ 1,350.43	\$ 1,234.86	\$ 1,337.73	\$ 1,254.43	\$ 1,213.50	\$ 1,302.09	\$ 1,160.21	\$ 1,172.29	\$ 1,221.83	\$ 1,073.64	\$ 1,077.96	\$ 1,246.04	\$ 14,645.01
Adjustments & Service Chg.	\$ -	\$ -	\$ 123.56	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 123.56
Monthly Total:	\$ 9,307.38	\$ 8,251.30	\$ 8,887.49	\$ 8,237.32	\$ 7,933.27	\$ 8,572.21	\$ 7,595.55	\$ 7,666.00	\$ 8,051.24	\$ 7,003.32	\$ 7,025.41	\$ 8,203.72	\$ 96,734.21

\$ 96,610.65 Total less late Charges