**City Council Chambers**
9101 Bonita Beach Road
Bonita Springs, Florida 34135

# CITY COUNCIL
# MEETING AGENDA

October 19, 2022
9:00 a.m.

---

If you plan to address the City Council, please complete a "Public Comment Card" located on the table outside of Chambers. Completed comment cards should be submitted to the City Clerk who sits to the left of the podium prior to the start of the meeting.

To submit your public comment in writing, please email your name, address, and comments to CITYMEETINGS@CITYOFBONITASPRINGS.ORG. **Any written public comment must be received by 4:00 p.m. on October 18, 2022.**

The City of Bonita Springs will not discriminate against individuals on the basis of race, color, national origin, sex, age, disability, religion, income, or marital status. To request an ADA-qualified reasonable modification at no charge to the requestor, please contact Lisa Roberson by calling (239) 949-6262 at least 48 hours prior to the meeting.

If a person decides to appeal a decision made by the Council on any matter at this meeting, such person must have a verbatim record of the proceeding to include the testimony and evidence upon which such appeal is to be based.

---

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Roll Call
5. Approval of Agenda
6. Mayor's Welcome
7. Public Comment on Agenda Items
8. Proclamations and Presentations:
    A. Proclamation proclaiming October 17-21$^{st}$ at City Government Week
9. Consent Agenda:

A. Approval of the September 21, 2022, City Council Budget Hearing Minutes

B. Approval of the September 21, 2022, City Council Meeting Minutes

C. Authorize approval of West Terry Street South Sidewalk Design Project scope of services and fee schedule from McMahon Associates, Inc., in the amount of $895,344.29. (Green Sheet No. 22-10-162)

D. Authorize approval of design costs for US 41 & Bonita Beach Road Quadrant Plan Northwest Phase I from RK&K in the amount of $1,964,403.91 (Green Sheet No. 22-10-163)

E. Approve agreement with Florida Gulf Coast University (FGCU) for Water Steward position at FGCU's Vester Field Station. (Green Sheet No. 22-10-164)

F. Ratify the State of Emergency and the Executive Orders issued by the Mayor and City Manager during the Local State of Emergency pursuant to the authority granted by Resolution No. 22-59. (Green Sheet No. 22-10-165)

G. Adopt Resolution to ratify contract for RFT 22-13 Information Technology Services to the single responsive bidder, TeamLogicIT. (Green Sheet No. 22-10-166)

- Opportunity for City Council Comments on Consent Agenda

10. Mayor and Council Member Items:

11. Public Hearing:

A. Second Reading and public hearing of the following Ordinance: An ORDINANCE OF THE CITY OF BONITA SPRINGS, AUTHORIZING THE LEASE OF REAL PROPERTY KNOWN AS IMPERIAL CROSSING IN THE OLD 41 DOWNTOWN; AND PROVIDING FOR AN EFFECTIVE DATE. (Green Sheet No. 22-10-167)

12. City Attorney's Items:

A. Update regarding Emergency Compensation

13. City Manager's Items:

A. Update regarding Hurricane Ian response

14. Mayor and Council Member Reports

15. Public Comment

16. Adjournment

City of Bonita Springs Florida
Small Town Charm. Big Bright Future.

**City Council Chambers**
9101 Bonita Beach Road
Bonita Springs, Florida 34135

# CITY COUNCIL
# BUDGET HEARING
# MINUTES

September 21, 2022
5:01 p.m.



1. Call to Order

   Mayor Rick Steinmeyer called the meeting to order at 5:01 P.M.

2. Invocation

   Pastor Doug Pratt, with the First Presbyterian Church, furnished the invocation.

3. Pledge of Allegiance

   Mayor Steinmeyer led in the Pledge of Allegiance.

4. Roll Call

   Mayor Steinmeyer and all Council Members were in attendance, with Council Members Quaremba and Corrie participating via phone.

5. Public Comment

   Ron George spoke in support of a reduction in the millage rate to .8000.

6. A Resolution of the City of Bonita Springs, Lee County, Florida, adopting the final levying of ad valorem taxes for the City of Bonita Springs, Lee County, Florida, for Fiscal Year 2022-2023; and providing an effective date. (Green Sheet No. 22-09-156)

   City Attorney Derek Rooney read the resolution into the record.

   Mayor Steinmeyer motioned to set the millage rate at .8000; Council Member Jesse Purdon seconded. Council discussion was held.

   The motion passed 4-2 (Council Members Carr and Corrie opposed) **ADOPTED RESOLUTION NO. 22-57**

7. A Resolution of the City of Bonita Springs, Lee County, Florida, adopting the final budget for Fiscal Year 2022-2023 and providing an effective date. (Green Sheet No. 22-09-157)

City Attorney Rooney read the resolution into the record.

Mayor Steinmeyer motioned to adopt the budget; Council Member Purdon seconded.

Council Member Mike Gibson suggested removing the $200,000 reflected in the CIP for the Quadrant Study for West Terry and Old 41 as he doesn't believe the study would correct the traffic issue at that intersection.

Council Member Purdon stated he would second that motion.

Council Member Quaremba addressed a safety concern that was to also be addressed by the study, which she further addressed. Council discussion was held.

City Attorney Rooney clarified the motion on the floor which is to adopt the budget with the removal of the one line item suggested by Deputy Mayor Gibson, which includes removing the budgeted out-years in the CIP.

The motion carried 6-1 (Council Member Quaremba opposed) **ADOPTED RESOLUTION NO. 22-58**

8. Public Comment

Dwight Esmon stated he agreed with the millage rate of .8000.

Suzy Valentine addressed the budget.

9. Adjournment

There being no further items to discuss, the meeting adjourned at 5:46 P.M.

Respectfully submitted,

________________________________
Debra Filipek, City Clerk

APPROVED:
CITY COUNCIL

Date: __________________________

AUTHENTICATED:

___________________________
Mayor Rick Steinmeyer

**City Council Chambers**
9101 Bonita Beach Road
Bonita Springs, Florida 34135

# CITY COUNCIL
# MEETING MINUTES

September 21, 2022
5:30 p.m.

1. Call to Order

    Mayor Rick Steinmeyer called the meeting to order at 6:00 P.M.

2. Invocation

    Pastor Doug Pratt with First Presbyterian Church provided the invocation.

3. Pledge of Allegiance

    Mayor Steinmeyer led in the Pledge of Allegiance.

4. Roll Call

    Mayor Steinmeyer and all Council Members were in attendance, with Council Members Quaremba and Corrie participating via phone.

5. Approval of Agenda

6. Mayor's Welcome

7. Public Comment on Agenda Items

    Bonnie Whittemore voiced her support for the agenda item relating to parking for the Banyan Tree site.

    Kyle Moran spoke in support of the agenda item relating to parking at the Banyan Tree site and downtown development.

    Jim Magnus also spoke in support parking for the Banyan Tree site.

    Trish Leonard echoed the comments made regarding the Banyan Tree site. She also feels trucks should be prohibited on Old 41.

8. Proclamations and Presentations:

A. Presentation of 10 Years of Service Award to City Employee Matt Feeney

Mayor Steinmeyer next presented Assistant City Manager Matt Feeney with a 10 Years of Service award. City Manager Arleen Hunter thanked Mr. Feeney for his service to the City.

9. Consent Agenda:

Council Member Mike Gibson motioned approval of the Consent Agenda; Council Member Carr seconded; and the motion carried unanimously.

A. Approve the draft August 17, 2022 City Council Meeting Minutes

B. Approve the draft September 7, 2022 City Council Meeting Minutes

C. Approve the Sixteenth Amendment to the Agreement between the City and CH2M Hill Engineers for provision of Community Development services. (Green Sheet No. 22-09-162)

- Opportunity for City Council Comments on Consent Agenda

10. Mayor and Council Member Items:

A. Discussion regarding design for additional parking around the Banyan Tree parcel and direction to staff. (Green Sheet No. 22-09-159)

Mayor Steinmeyer motioned to approve; Council Member Carr seconded.

Council Member Quaremba questioned the need for the parking, the prior intent of Lee County to provide parking, and the implications of choosing this option in consideration of the other features presented by DPZ.

City Manager Arleen Hunter provided the history when the City worked with Lee County to develop the library to provide additional parking at that location. The same location was discussed during negotiations with Rooftop at Riverside for future additional parking.

DPZ was engaged to review the Banyan Tree parcel and redesigned those parking spaces. The other features presented by DPZ will be discussed in a public workshop in the new fiscal year.

City Attorney Rooney explained that the motion is to move forward with designing the parking proposed in Alternative #2 as presented by DPZ and to evaluate the possibility of additional parking in the design process.

The motion carried unanimously.

B. Discussion regarding advisory board meetings. (Green Sheet 22-09-160)

Council Member Gibson provided an overview stating that committee members have expressed a concern about the frequency of meetings and suggested that possibly holding them quarterly would result in more efficiency. His request is for staff to review the governing documents and bring back recommendations for improved efficiency and other possible adjustments for consistency across the boards. His intent regarding frequency of meetings excludes Zoning Board and the Local Planning Agency.

Mayor Steinmeyer motioned as addressed. Council Member Purdon seconded.

The motion carried unanimously.

11. Public Hearing:

A. (Second Reading) AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA; AMENDING THE BONITA SPRINGS LAND DEVELOPMENT CODE, CHAPTER 3-DEVELOPMENT STANDARDS, SECTION 3-263 - BIKEWAYS FACILITIES AND PEDESTRIAN FACILITIES, DIVISION 6-OPEN SPACE, BUFFERING, AND LANDSCAPING, AND SEC. 3-535 - PIPING MATERIALS FOR USE IN RIGHT-OF-WAY; AND CHAPTER 4- ZONING, DIVISION 18- HOME OCCUPATIONS AND DIVISION 37 – SUBORDINATE AND TEMPORARY USES, SUBDIVISION III. - MOBILE FOOD VENDORS, PROVIDING CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING, AND AN EFFECTIVE DATE. (Green Sheet No. 22-09-161)

Council Member Gibson motioned adoption of the Ordinance; Council Member Carr seconded.

No public comments were made.

Jackie Genson briefly addressed a section of the Ordinance relating to portalets at mobile vending sites.

Council Member Gibson amended his motion with the provision disallowing portalets as stated by staff. Council Member Carr amended her second to the motion; and the motion carried unanimously. **ADOPTED ORDINANCE NO. 22-09**

12. City Attorney's Items: None.

13. City Manager's Items:

City Manager Hunter provided the following announcements:

- Construction on the Terry Street roundabout will begin in October.
- The second EAR Workshop will be held on September 29th at City Hall.

- An on-line survey relating to the EAR will become available starting September 19th o through December 16, 2022.

A. Presentation and review of the July Financial Report. (Green Sheet No. 22-09-158)

Ms. Roberson next provided a Powerpoint presentation (copy in Clerk's file) on the July Financial Report.

14. Mayor and Council Member Reports

Mayor Steinmeyer addressed a concern with political signage being placed on the road rights-of-way.

Council Member Carr thanked all for great 9/11 ceremony and the community clean up. She also reported on the MPO meeting and a seminar she attended on grants.

Council Member Purdon thanked Mr. Feeney for his service to the City. He also thanked Council for their support of the millage decrease.

Council Member Quaremba concurred with the Mayor on his concerns relating to signage. She also commended Mr. Feeney and his continued contributions to the City.

Council Member Forbes addressed a movement for solar panels on roofs.

15. Public Comment

Cullum Hasty addressed a concern relating to two cypress trees located on the Midtown site that are scheduled to be cut down.

Ruth Condit addressed the presentation by Barron Collier at the previous Council meeting with concern relating to the aesthetics.

Suzy Valentine addressed the trees on the Banyan Tree site.

16. Adjournment

There being no further items to discuss, the meeting adjourned at 7:07 P.M.

Respectfully submitted,

__________________________________

Debra Filipek, City Clerk

APPROVED:

CITY COUNCIL
Date: ____________________________
AUTHENTICATED:

________________________________
Mayor Rick Steinmeyer

**CITY OF BONITA SPRINGS**
**AGENDA ITEM SUMMARY**

Green Sheet No. 22-10-162
October 19, 2022

**REQUESTED MOTION:** Authorize approval of West Terry Street South Sidewalk Design Project scope of services and fee schedule from McMahon Associates, Inc. in the amount of $895,344.29.

**REQUESTOR:** Matt Feeney, Assistant City Manager

**AGENDA:** Consent

**STRATEGIC PRIORITY:** #5 – Community Aesthetics

---

**BACKGROUND:** On May 18, 2022, City Council approved staff to negotiate with McMahon Associates, Inc. as the design firm for West Terry Street South Sidewalk Design Project.

McMahon has provided their scope of services and fee schedule for West Terry Street South Sidewalk Design Project in the amount of $895,344.29.

**STAFF RECOMMENDATION:** Approve Scope and Fee Schedule from McMahon Associates, Inc. for West Terry Street South Sidewalk Design Project.

**ATTACHMENTS:**

1. Scope of Services and Fee Schedule from McMahon Associates, Inc.

---

**REVIEWERS:**

City Manager: Arleen Hunter
City Attorney: Derek Rooney
City Clerk: Debra Filipek
Department Director: Matt Feeney

Council Action: Approved __ Denied __ Deferred ___ Other_____________________

McMAHON

**EXHIBIT A**

# SCOPE OF SERVICES

**CITY OF BONITA SPRINGS**
**WEST TERRY STREET SOUTH SIDE SIDEWALK DESIGN PROJECT**

## I. PROJECT DESCRIPTION

The City of Bonita Springs (City) desires to construct a six-foot wide sidewalk and with associated drainage infrastructure on the south side of West Terry Street, from US 41 to just east of the Seminole Gulf railroad (approximately 1.71 miles). The sidewalk will shall be constructed within the existing public right-of-way (ROW).

McMahon Associates, Inc. (McMahon) shall provide engineering and design services for the preparation of design documents for the construction of the project. Project shall be designed in accordance with FDOT, Lee County, and City of Bonita Springs design standards.

## II. SERVICES TO BE PROVIDED BY THE CONSULTANT TEAM

The Consultant team consists of the following firms and their related responsibilities:

1. **McMahon Associates, Inc.** – Prime Consultant providing project management, preliminary engineering, public involvement assistance, sidewalk design, pedestrian signal design, drainage design, signing and pavement marking design, utility coordination, public outreach assistance, permitting, bidding assistance and post design services.
2. **Rummel, Klepper & Kahl, (RK&K)** – Providing assistance with drainage and structural issues.
3. **Cella Molnar & Associates, Inc.** – Providing public/community outreach.
4. **Haley Ward** – Providing topographic survey.
5. **Environmental Science Associates (ESA)** – Providing environmental analysis.
6. **Ardaman & Associates** – Providing geotechnical engineering services.

## III. SCOPE OF SERVICES

The Consultant team shall provide civil engineering and design services to design complete sidewalk improvements to include sidewalk, ADA accommodation, sidewalk, drainage, roadway signing & pavement markings, raised crosswalks, traffic evaluation; and prepare project implementation documents including plans, specifications, permits and project cost estimates. Services will generally include the following:

1. Sidewalk Design and Plans Preparation
2. Signing and Pavement Markings for Crosswalks
3. Pedestrian Signals Design at two signalized intersections
4. Raised crosswalks at six (6) existing crosswalks
5. Before and after traffic evaluation
6. Engineer's Cost Estimate
7. Preparation of Specifications
8. Quality Assurance/Quality Control (QA/QC)
9. Utility Coordination
10. Assistance during Bid & Award
11. Post Design Services
12. Drainage Design
13. Permits
14. Public Outreach

15. Topographic Survey
16. Environmental Survey
17. Geotechnical Survey

## SERVICES TO BE PROVIDED BY MCMAHON

**Concept Plans Preparation**

McMahon shall prepare concept typical section(s) and three (3) concept layouts prior to 30% design submittal. The anticipated typical section(s) and concept layouts shall include the following:

- Curb/Gutter with Sidewalk and grass buffer
- Curb/Gutter with Sidewalk without grass buffer
- Curb/Gutter with shared use path

**Plans Preparation**

McMahon shall prepare construction plans for sidewalk, drainage improvements, signing and pavement markings. The sidewalk plans will be prepared on the most current aerial imagery for use as the background in the plans.

Plan sheets will be prepared based on the City Design Standards or Lee County Design Standards/FDOT Design Manual when City standards are not available. The Plans shall include but not limited to the following:

- Key/Cover Sheet
- Drainage Maps
- Typical Sections
- Summary of Quantities
- Summary of Drainage Structures
- Project Network Controls
- General Notes
- Details
- Plan and Profile Sheets
- Side Street Profiles
- Cross Sections
- Temporary Traffic Control Plans (TCP Level I)
- Signing and Pavement Marking Plans

**Traffic Evaluation**

McMahon will complete a multimodal analysis before and after the construction of the sidewalk project proposed along the south side of West Terry Street. The Traffic Evaluation services shall include the following:

Pedestrian/Bicycle Counts
Pedestrian and bicycle counts will be collected at the six (6) midblock crosswalks between US-41 and Old 41. The data will be collected for eight (8) hours on a typical weekday, which would include the morning and afternoon peak periods of the adjacent street, as well as any school peak periods for nearby schools. Pedestrians and bicyclists crossing northbound or southbound using the midblock crosswalks will be recorded, as well as pedestrians/bicyclists travelling eastbound or westbound along the multi-use path and the future sidewalk. Bicyclists using the bicycle lane will also be recorded.

Speed Study/Vehicular Volume
A speed study will be performed for vehicular traffic travelling along W Terry Street between US-41 and old 41. Eastbound and westbound speeds will be collected for a 24-hour period, on one (1) typical weekday, at three (3) locations along the corridor. Vehicular volume will also be collected along with the speed data.

Field Observations
Field observations will be performed along the corridor to evaluate the level of pedestrian and bicycle activity and the interaction with vehicular traffic. Any observed conflicts will be documented. The pedestrian infrastructure will be checked to ensure it is functioning appropriately.

Crash Data Review
A crash analysis will be prepared for the corridor that will compare historical pedestrian and bicycle crashes before and after the installation of the midblock crosswalks and the proposed sidewalk. The data will be obtained using the Signal Four Analytics database. The data will be summarized in tabular and graphical format. The data will summarize details such as crash type, lighting conditions, weather conditions, and severity. Future scenario data will be collected at a minimum of 12 months after completion of sidewalk construction.

Transit Review
Transit routes along the corridor will be identified. Transit stops will be evaluated regarding adequate pedestrian access.

Report
An interim memorandum will be prepared that will summarize the findings of the study before the construction of the proposed sidewalk on the south side of W. Terry Street. After the construction, the above data will be re-collected, and a report will be prepared that will compare the before and after scenarios.

**Permitting**

McMahon shall meet with the Seminole Gulf Railroad to determine potential permitting requirements. McMahon shall prepare all necessary Construction Agreement packages for submittal.

The City shall pay associated Construction Agreement fees.

In addition, McMahon shall assist RK&K in meetings with South Florida Water Management District (SFWMD). McMahon services shall include the following:

- Attend up to one (1) pre-application meeting with the staff of each of the regulatory agencies.
- Attend up to one (1) meeting with each of the regulatory agencies during review of the final permit applications/ Construction Agreement.
- Respond to request(s) for additional information from each regulatory agency.

**Public Outreach**

McMahon will attend and assist Cella Molnar with public stakeholder outreach meetings. This shall include up to two (2) meetings and one (1) council meeting.

**Engineer's Cost Estimate**

At the 60% and 100% (Final) stages, McMahon shall prepare a detailed opinion of probable construction cost based upon the level of design drawings and specifications approved by the City. The cost opinion shall reflect changes in general scope, extent or character of design requirements incorporated during the various design review stages. Opinion of probable construction costs shall be submitted for the City's review at the 60% and 100% (Final) stages.

**Specifications**

McMahon shall prepare and assemble the contract documents consisting of "front-end" documents and technical specifications. The documents shall conform to City Standards and the FOOT Standard Specifications for Road and Bridge work. Specifications shall be submitted for the City's review at the 60% and 100% (Final) stages.

**Quality Assurance/Quality Control (QA/QC)**

McMahon shall provide internal QA/QC reviews on the 30%, 60%, and 100% (Final) of the Plans and Contract Documents (e.g., drawings andspecifications).

**Utility Coordination**

McMahon shall identify utility facilities from plans provided by the Utility Agency Owners (UAO) and shall ensure all conflicts that exist between utility facilities and the construction project are addressed. McMahon shall perform the following utility coordination activities:

1. McMahon shall contact and request from the UAOs type, size, location of their facilities and their easement documents. UAOs will be provided with a base plan and requested to provide a markup showing their utility locations.

2. McMahon shall incorporate the information received from the UAOs in the design plans. Information from SUE efforts shall also be included in the plans.

3. McMahon shall create a matrix that will serve to identify, track, and record the resolution of potential conflicts.

4. McMahon shall schedule and conduct a Utility meeting with all affected UAO(s). McMahon shall be prepared to discuss impacts to be proposed sidewalk improvements including landscape, drainage, lighting, and temporary traffic control plans (TTCP construction phasing). The intent of this meeting shall be to assist the UAOs in identifying and resolving conflicts between utilities and proposed construction before completion of the plans. McMahon shall keep accurate minutes of all the meeting and distribute a copy to all attendees.

5. McMahon shall incorporate the utility color coded markups in the design plans and in the matrix that will highlight the resolution of the conflict at the potential conflict locations.

6. McMahon shall provide utility coordination and follow up. This includes follow-up, interpreting plans, and assisting the UAOs with completion of their work schedules. This includes phone calls, face-to-face meetings, etc., to motivate and ensure the UAO(s) complete and return the required information in a timely manner so as not to delay the project schedule. McMahon shall ensure the resolution of all known conflicts. This task can be applied to all phases of the project.

**Assistance during Bidding and Award**

1. **Prepare Schedule of Bid Items:** McMahon shall prepare the schedule of bid items that will be used in the City's Front-End Document.
2. **Pre-Bid Conference:** McMahon shall attend a pre-bid conference.
3. **Bid Clarification:** McMahon shall provide supplemental information or clarification, as appropriate, to interpret, clarify, or expand the bidding documents to all prospective bidders during the bid period. The information will be provided tothe City to issue as anAddendum.
4. **Contract Award:** McMahon shall attend the bid opening and assist the City in evaluating bids and proposals.

**Post Design Services**

McMahon shall provide design support during construction activities. This includes providing drawing clarifications, assisting with answering any Request for Information (RFI's), Shop Drawing Reviews and attending any requested meetings

## IV. SERVICES PROVIDED BY SUBS

## SERVICES TO BE PROVIDED BY RK&K

**Drainage Design**

It is anticipated that the stormwater drainage for the project will be managed through the closed drainage system on the north side of West Terry Street; that outfalls to the Imperial River.

The south side of West Terry Street, from US 41 to just east of the Seminole Gulf railroad will be designed as a curb and gutter section where the stormwater will be collected in curb inlets and conveyed through cross drains to the north side of the corridor to the Imperial River.

Based on the proposed drainage improvements, the Drainage Design services will include (See Attachment 1 for Scope of Services):

- Create a (pre- and/or post-condition) working drainage basin map to be used in defining the system hydrology.
- Determine floodplain encroachments and coordinate with regulatory agencies
- Design Storm Drain system for proposed improvements along West Terry Street.
- Design French Drain Systems to replace ditch treatment & provide floodplain compensation.
- Perform cross drain analysis for widening over the canal to the east of South Riverside Drive.
- Compile drainage design documentation into report format to be included in permitting applications.
- Prepare cost estimates for the drainage components, except bridges and earthwork for stormwater management and flood compensation sites.

**Permitting**

At the outset of the Design Phase, RK&K and McMahon shall meet with SFWMD to determine potential permitting requirements. RK&K shall prepare all necessary permit application packages for submittal for the following (See Attachment 1 for Scope of Services):

- SFWMD Permit/Modification to existing permits.

Associated permit fees shall be paid by the City.

In addition to preparing the permit applications for appropriate regulatory agencies, RK&K shall assist the City in consultations with SFWMD staff. RK&K services shall include the following:

- Attend up to one (1) pre-application meeting with the staff from SFWMD.
- Attend up to one (1) meeting with SFWMD during review of the final permit applications.
- Respond to request(s) for additional information from SFWMD.

## SERVICES TO BE PROVIDED BY CELLA MOLNAR

**Public Outreach**

Through the duration of the project, Cella Molnar shall be responsible for notifying the project stakeholders about the potential impacts associated with the project. The Public Outreach services shall include the following (See Attachment 2 for Scope of Services):

1. Coordination/Meetings:
   - Cella Molnar shall coordinate and lead public stakeholder outreach meetings at the City's environmental Services Building or Public Library. This shall include up to two (2) meetings and one (1) council meeting.

2. Prepare Presentation Material:
   - Cella Molnar shall prepare brochures and presentation material for each public outreach meeting. The distribution and mailing of presentation and public outreach material shall be performed by The Consultant team.

3. Prepare Mailing List:
   - Cella Molnar shall identify all impacted property owners and tenants.
   - Cella Molnar shall prepare a mailing list of all such entities and shall update the mailing list as needed throughout the duration of the project.

4. Project Web-Site:
   - Cella Molnar shall create a design project website that can be linked back to the City's website. The website shall be updated every month to provide the residents an update on the project. This website is only for the 18-month design duration and not for construction.

## SERVICES TO BE PROVIDED BY HALEY WARD

**Topographic Survey**

Haley Ward shall furnish the services of a professional surveyor to provide survey services consisting of field topography and horizontal locations referenced by baseline stationing. All existing facilities and utilities within the established project limits will be referenced by baseline station with an offset distance (left or right) from baseline for the project. The survey services shall include the following (See Attachment 3 for Scope of Services):

- Horizontal Project Network Control
- Right of Way (Typical R/W width = Varies through the project corridor)
- Vertical Project Network Control
- Baseline Layout at 100-ft intervals
- Reference Points
- Section Ties and Property Ties
- Side street surveys: 25' past the R/W at all intersecting streets and 15' past the R/W at driveways.
- Topography
- Cross-Sections and Tin Creation (DTM) (Cross-Sections at 100-foot intervals to extend 20' beyond the R/W when accessible)
- Drainage: Provide location of inlets and manholes. Provide elevations at top and bottom of structure. Provide invert elevation, pipe size and material of all pipes located, including outfall pipes.
- Provide detailed topographical survey of existing culverts and other items in the canals (endwalls).
- Tree Locations: Locate trees 4" dia. or larger at breast height

Optional Service – Survey, Description, and Sketch in Support of Proposed Right-of-Way Acquisition. On an as-needed basis, Haley Ward will perform individual surveys of specific properties abutting the existing southerly right-of-way of west Terry Street, in support of the proposed acquisition of an additional right of way. In each case, the deliverable will be a new description and accompanying sketch of the proposed acquisition area.

## SERVICES TO BE PROVIDED BY ESA

### Environmental Evaluation, Analysis, and Permitting Assistance

ESA shall furnish the services of a professional environmental engineer to perform the following:

**Environmental Permitting:** ESA will aid the Consultant team with regard to environmental permitting associated with the sidewalk and drainage improvements. The following environmental services will be provided (See Attachment 4 for Scope of Services):

- Conduct listed wildlife species survey
- Conduct native tree survey
- Native vegetation removal and environmental permitting
- ESA will prepare the environmental portions of ERP Sections A, C, and E and the State 404 Permit application form.
- ESA will upload the environmental permit information to SFWMD's e-Permitting database as well as FDEP's permitting database.
- ESA will prepare responses to environmental comments associated with one SFWMD and one FDEP Request for Additional Information (RAI).

## SERVICES TO BE PROVIDED BY ARDAMAN

### Geotechnical Survey

Ardaman shall furnish the services of a professional geotechnical engineer to provide subsurface investigations of the project area. The geotechnical engineering services shall include the following (See Attachment 5 for Scope of Services):

1. 2 SPT borings are proposed to a maximum depth of 30 feet at the canal crossing.
2. 1 Auger boring and 1 Permeability test at 18 locations for swale design and French drain design.

Samples from SPTs will be drilled using procedure consistent with ASTM Standards, with laboratory testing for verification. A Soil Survey Report will be prepared to provide engineering data for design, and plan sheets for presentation of soils information.

## V. EXCLUSIONS AND ASSUMPTIONS

Work described herein is based upon the assumptions listed below. If conditions differ from those assumed in a manner that will affect schedule of Scope of Work, McMahon shall advise the City in writing of the magnitude of the required adjustments. Changes in completion of schedule or compensation to McMahon will be negotiated with the City.

1. City will acquire all required right-of-way to accommodate the proposed improvements prior to design.

2. City will provide Consultant record drawings of all available existing facilities and proposed facilities, which shall serve as the basis of design in this project. The information will be provided to McMahon within 5 calendar days of Notice to Proceed.

3. City personnel will assist in field verification of affected existing City facilities. This includes marking in field (in a timely manner) existing water mains, sanitary sewers & laterals, force mains, and drainage in the field for the Surveyor.

4. The Contract Documents will be prepared as a single contract. No pre-purchase of materials and/or equipment is presumed.

5. A single bidding effort for the project is assumed. Re-bidding of the project is considered Additional Services.

## VI. SUBMITTALS AND DELIVERABLES

McMahon shall be prepared to initiate work on this contract upon receipt of an approved Purchase Order and written authorization to proceed from the City. McMahon will use its best efforts to meet all time schedules reasonably established by the City.

The following key product delivery milestones are based on the project schedule provided in the RFP:

- Concept typical section(s) and concept layouts – One (1) printed set of each of the proposed layouts with associated typical section(s)
- 30% design submittal – One (1) printed set and an electronic copy in PDF format.
- 60% design submittal – One (1) printed set and an electronic copy in PDF format.
- 100% design (Final) submittal – Two (2) sets signed and sealed, and signed and sealed cost estimate, and an electronic copy in PDF format.

**Final Deliverable:** After Contract Award, McMahon shall furnish the As-Bid design drawings, one (1) set of AutoCAD (Version 2022) files and one (1) set of PDF files in electronic format on Compact Disk (CD). Consultant shall also provide one hard copy only of the Contract Documents (i.e., front ends and technical specifications).

The plans will be drawn to a scale of 1" = 40' on 11" x 17" sheets. At the completion of the final design, AutoCAD (Version 2022) design files will be provided to the City.

Opinion of probable construction costs shall be submitted for the City's review at the 60%, and 100% (Final) stages.

Based on the project schedule included in the RFP, the anticipated schedule is as follows:

- NTP - Commence Project – October 6, 2022
- Concept layouts Submittal – February 17, 2023
- 30% design Submittal – August 8, 2023
- 60% design Submittal – December 5, 2023
- 100% design (Final) Submittal – March 7, 2024
- Bid Construction Package – March 28, 2024

## PROJECT SCHEDULE

**SEE EXHIBIT B**

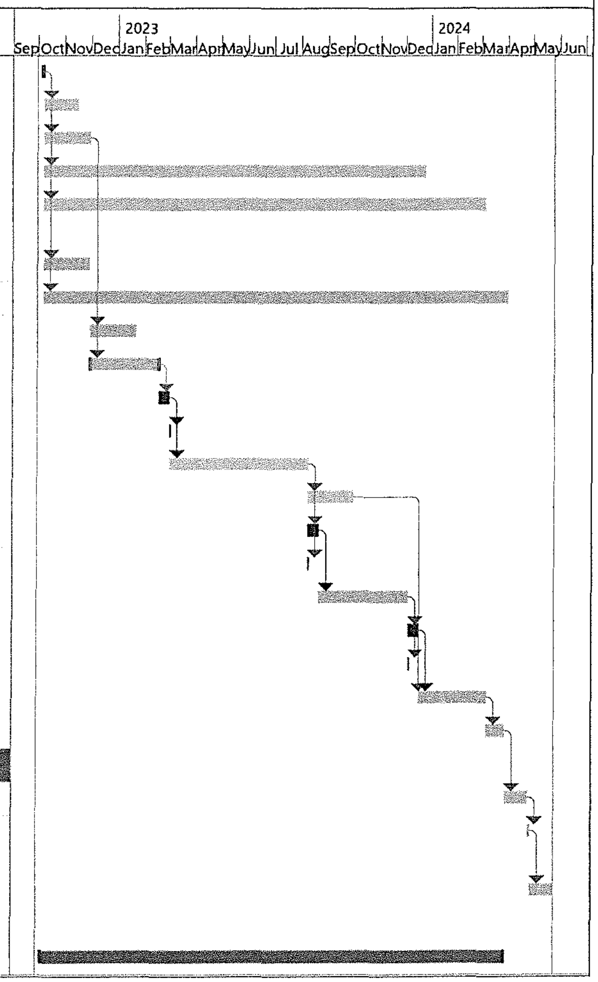
## PROJECT FEE

**SEE EXHIBIT C**

William A. Grieve, P.E.
McMahon, a Bowman Company
Project Manager

# CITY OF BONITA SPRINGS
## WEST TERRY STREET SOUTH SIDE SIDEWALK DESIGN PROJECT
## PROJECT SCHEDULE

| ID | Task Name | Duration | Start | Finish |
|---|---|---|---|---|
| 1 | Notice to Proceed (NTP) | 1 day | Thu 10/6/22 | Thu 10/6/22 |
| 2 | Taffic Evaluation (Before) | 45 days | Thu 10/6/22 | Tue 11/15/22 |
| 3 | Field Survey | 60 days | Thu 10/6/22 | Tue 11/29/22 |
| 4 | Utility Coordination | 500 days | Fri 10/7/22 | Mon 12/25/23 |
| 5 | Permitting including Permit Coordination | 580 days | Thu 10/6/22 | Tue 3/5/24 |
| 6 | Geotechnical Survey | 60 days | Thu 10/6/22 | Tue 11/29/22 |
| 7 | Public Outreach | 610 days | Thu 10/6/22 | Mon 4/1/24 |
| 8 | Environmental Evaluation | 60 days | Tue 11/29/22 | Sat 1/21/23 |
| 9 | Concept Layouts | 90 days | Tue 11/29/22 | Fri 2/17/23 |
| 10 | City Review | 14 days | Fri 2/17/23 | Wed 3/1/23 |
| 11 | Public Meeting | 1 day | Wed 3/1/23 | Thu 3/2/23 |
| 12 | 30% Design Construction Documents | 180 days | Wed 3/1/23 | Tue 8/8/23 |
| 13 | Begin Sketches and Legal Description | 60 days | Tue 8/8/23 | Sat 9/30/23 |
| 14 | City Review | 14 days | Tue 8/8/23 | Mon 8/21/23 |
| 15 | Public Meeting | 1 day | Tue 8/8/23 | Wed 8/9/23 |
| 16 | 60% Design Construction Documents | 120 days | Mon 8/21/23 | Tue 12/5/23 |
| 17 | City Review | 14 days | Tue 12/5/23 | Mon 12/18/23 |
| 18 | Public Meeting | 1 day | Tue 12/5/23 | Wed 12/6/23 |
| 19 | 100% Design Construction Documents | 90 days | Mon 12/18/23 | Thu 3/7/24 |
| 20 | Completed Bid Documents | 24 days | Thu 3/7/24 | Thu 3/28/24 |
| 21 | City Advertise and Bid Project | | | |
| 22 | Bid Assistance | 30 days | Thu 3/28/24 | Wed 4/24/24 |
| 23 | Tabulating/Review Bids and Award Recommendation | 4 days | Wed 4/24/24 | Sat 4/27/24 |
| 24 | City Award | 30 days | Sat 4/27/24 | Fri 5/24/24 |
| 25 | | | | |
| 26 | Design Project Length | 607 days | Thu 10/6/22 | Thu 3/28/24 |



## ESTIMATE OF WORK EFFORT AND COST - PRIME CONSULTANT

Name of Project: West Terry Street South Side Sidewalk Project
County: Lee
City of Bonita Springs Project Number: 0
FPN:
FAP No.:

Consultant Name: McMahon Associates, Inc.
Consultant No.: H22283.01
Date: 8/31/2022
Estimator: William Grieve

| Staff Classification | Total Staff Hours From *SH | Project Manager $160.00 | Principal $260.00 | Senior Engineer II $220.00 | Senior Engineer I $200.00 | Senior Designer $190.00 | Engineer/Planner II $150.00 | Engineer/Planner I $120.00 | Engineer/ Technician $105.00 | Admin/ Graphics $80.00 | | SH By Activity | Salary Cost By Activity | Average Rate Per Task |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Project General and Project Common Tasks | 268 | 86 | 21 | 0 | 54 | 27 | 0 | 0 | 0 | 80 | | 268 | $41,550 | $155.04 |
| 2. Roadway Analysis | 455 | 137 | 23 | 0 | 137 | 46 | 114 | 0 | 0 | 0 | | 455 | $81,140 | $178.33 |
| 3. Roadway Plans | 579 | 174 | 0 | 0 | 116 | 58 | 232 | 0 | 0 | 0 | | 579 | $96,860 | $167.29 |
| 4. Utilities | 231 | 69 | 0 | 0 | 23 | 23 | 116 | 0 | 0 | 0 | | 231 | $37,410 | $161.95 |
| 5. Environmental Permits,and Env. Clearances | 108 | 43 | 0 | 0 | 11 | 11 | 43 | 0 | 0 | 0 | | 108 | $17,620 | $163.15 |
| 6. Signing & Pavement Marking Analysis | 94 | 38 | 0 | 0 | 28 | 9 | 19 | 0 | 0 | 0 | | 94 | $16,240 | $172.77 |
| 7. Signing & Pavement Marking Plans | 90 | 27 | 0 | 0 | 18 | 9 | 36 | 0 | 0 | 0 | | 90 | $15,030 | $167.00 |
| 8. Signalization Analysis | 48 | 0 | 0 | 0 | 0 | 34 | 14 | 0 | 0 | 0 | | 48 | $8,560 | $178.33 |
| 9. Signalization Plans | 44 | 0 | 0 | 0 | 0 | 22 | 22 | 0 | 0 | 0 | | 44 | $7,480 | $170.00 |
| 10. Bidding and Award | 100 | 40 | 0 | 0 | 20 | 10 | 30 | 0 | 0 | 0 | | 100 | $16,800 | $168.00 |
| 11. Post Design Services | 120 | 48 | 0 | 0 | 12 | 12 | 48 | 0 | 0 | 0 | | 120 | $19,560 | $163.00 |
| 12. Traffic Evaluation | 480 | 114 | 76 | 0 | 0 | 0 | 0 | 112 | 176 | 0 | | 480 | $70,440 | $146.75 |
| **Total Staff Hours** | 2,617 | 776 | 122 | 0 | 419 | 261 | 674 | 112 | 176 | 80 | | 2,617 | | |
| **Total Staff Cost** | | $124,160.00 | $31,720.00 | $0.00 | $83,800.00 | $49,590.00 | $101,100.00 | $13,440.00 | $18,480.00 | $6,400.00 | | | $428,690.00 | $163.81 |

Check = $428,690.00

| Basic Services: | |
|---|---|
| Salary Related Costs (McMahon Associates, Inc.): | $428,690.00 |
| ***Basic Services Total:*** | ***$428,690.00*** |

| Reimbursables: | |
|---|---|
| Rummel, Klepper & Kahl, (RK&K), LLP (Drainage/Structural) *See Attachment 1* | $307,155.00 |
| Celia Molnar & Associates, Inc. (Public Outreach) *See Attachment 2* | $42,841.29 |
| Haley Ward, Inc. (Topograhic Survey) *See Attachment 3* | $48,000.00 |
| Environmental Science Associates (Environmental Survey) *See Attachment 4* | $45,830.00 |
| Ardaman & Associates, Inc. (Geotechnical Survey) *See Attachment 5* | $22,000.00 |
| **Subtotal:** | **$465,826.29** |

| Direct Expenses: | |
|---|---|
| McMahon Associates, Inc. (Print) | $828.00 |
| **Subtotal:** | **$828.00** |

| ***Reimbursables Total:*** | ***$466,654.29*** |
|---|---|

| Optional Services: | |
|---|---|
| | |
| | |
| ***Optional Services Total:*** | ***$0.00*** |

***Grand Total Estimated Fees: $895,344.29***

## Project Activity 1: Project Common Tasks and Project General Tasks

Estimator: William Grieve

West Terry Street South Side Sidewalk Project
0

| Task No. | Task | Units | No of Units | Hours/ Unit | Total Hours | Comments |
|---|---|---|---|---|---|---|
| 1.0 | **Public Involvement** | | | | | |
| 1.1 | Management and Coordination | LS | 1 | 40 | 40 | Included for Communication and Coordination with the Public Outreach Subconsultant |
| 1.2 | Public Meeting Attendance/Followup | LS | 3 | 8 | 24 | 2 person x 3 meetings x 4 hrs/meeting |
| | | | | **Public Involvement Subtotal** | **64** | |
| 2.0 | Specifications Package Preparation | LS | 1 | 20 | 24 | Preparation & Assembly of City's front end documents and technical specifications |
| 3.0 | Contract Maintenance and Project Documentation | LS | 1 | 180 | 180 | |
| | | | | **Project Common and Project General Tasks Total** | **268** | |

## Project Activity 2: Roadway Analysis

Estimator: William Grieve

West Terry Street South Side Sidewalk Project
0

| Task No. | Task | Units | No of Units | Hours/ Unit | Total Hours | Comments |
|---|---|---|---|---|---|---|
| 2.1 | Typical Section Package | LS | 1 | 24 | 24 | Based on 3 Typ. Sect. x 8 hrs/TS = 24 hrs |
| 2.2 | Pavement Design Package | LS | 1 | 0 | 0 | |
| 2.3 | Cross-Slope Correction | LS | 1 | 0 | 0 | |
| 2.4 | Horizontal /Vertical Master Design Files | LS | 1 | 80 | 80 | |
| 2.5 | Access Management | LS | 1 | 0 | 0 | |
| 2.6 | Cross Section Design Files | LS | 1 | 120 | 120 | |
| 2.7 | Temporary Traffic Control Plan Analysis | LS | 1 | 36 | 36 | Based on TCP Level 1 with consideration given to maintaining pedestrian traffic & maintaining driveway access |
| 2.8 | Master TTCP Design Files | LS | 1 | 30 | 30 | 24 hrs for driveway and sidestreets traffic + 6 hrs for pedestrian phase = 30 hrs |
| 2.90 | Design Variations and Exceptions | LS | 1 | 24 | 24 | Analysis & documentation to be reviewed and signed by City in areas where width of swale and sidewalk do not meet standards. |
| 2.10 | Design Report | LS | 1 | 0 | 0 | |
| 2.11 | Quantities | LS | 1 | 40 | 40 | Includes identification of pay items |
| 2.12 | Cost Estimate | LS | 1 | 16 | 16 | Includes review of cost from recent bids of City projects and FDOT Historical costs |
| 2.13 | Technical Special Provisions and Modified Special Provisions | LS | 1 | 0 | 0 | |
| | | | | **Roadway Analysis Technical Subtotal** | **370** | |
| 2.15 | Field Reviews | LS | 2 | 6 | 12 | Duration of review = 3 hrs x 2 persons x 2 field reviews = 12 hrs |
| 2.16 | Technical Meetings | LS | 1 | 50 | 50 | Meetings are listed below |
| 2.17 | Quality Assurance/Quality Control | LS | % | 2% | 7 | |
| 2.18 | Independent Peer Review | LS | % | 0% | 0 | |
| 2.19 | Supervision | LS | % | 2% | 7 | |
| | | | | **Roadway Analysis Nontechnical Subtotal** | **76** | |
| 2.20 | Coordination | LS | % | 2% | 9 | |
| | | | | **2. Roadway Analysis Total** | **455** | |

| Technical Meetings | Units | No of Units | Hours/ Unit | Total Hours | Comments | PM Attendance at Meeting Required? | Number |
|---|---|---|---|---|---|---|---|
| 15% Line and Grade | EA | 1 | 6 | 6 | (Also includes Typ Sect.) 3hrs x 2 persons = 6 hrs | yes | 1 |
| 30/90/100% Comment Review Meetings | EA | 3 | 8 | 24 | 3 mtgs x 4 hrs x 2 persons = 24 hrs | yes | 1 |
| Other Meetings | EA | 0 | 0 | 0 | | | 0 |
| **Subtotal Technical Meetings** | | | | **30** | | **Subtotal Project Manager Meetings** | **2** |
| Progress Meetings | EA | 2 | 4 | 8 | | | 1 |
| Phase Review Meetings | EA | 3 | 4 | 12 | | | 1 |
| **Total Meetings** | | | | **50** | **Total Project Manager Meetings** | | **2** |

**Project Activity 3: Roadway Plans**

Estimator: William Grieve

West Terry Street South Side Sidewalk Project
0

| Task No. | Task | Scale | Units | No. of Units or Sheet | Hours/ Unit or Sheet | Total Hours | Comments |
|---|---|---|---|---|---|---|---|
| 3.1 | Key Sheet | | Sheet | 1 | 4 | 4 | |
| 3.2 | Typical Sections | | EA | 3 | 2 | 6 | |
| 3.3 | Typical Section Details | | EA | 2 | 4 | 8 | swale & sidewalk detail |
| 3.4 | General Notes/Pay Item Notes | | Sheet | 1 | 8 | 8 | |
| 3.5 | Plan/Profile Sheet | | Sheet | 16 | 12 | 192 | |
| 3.6 | Special Profile | | Sheet | 8 | 4 | 32 | |
| 3.7 | Back-of-Sidewalk Profile Sheet | | Sheet | 8 | 4 | 32 | |
| 3.8 | Special Details | | EA | 2 | 12 | 24 | |
| 3.9 | Roadway Soil Survey Sheets | | Sheet | 2 | 1 | 2 | |
| 3.10 | Cross Sections | | EA | 180 | 1 | 180 | |
| 3.11 | Temporary Traffic Control Plan Sheets | | Sheet | 6 | 6 | 36 | |
| 3.12 | Utility Verification Sheets (SUE Data) | | Sheet | 11 | 3 | 33 | |
| | | | | Roadway Plans Technical Subtotal | | 557 | |
| 3.13 | Quality Assurance/Quality Control | | LS | % | 2% | 11 | |
| 3.14 | Supervision | | LS | % | 2% | 11 | |
| | | | | 3. Roadway Plans Total | | 579 | |

Project Activity 4: Utilities

Estimator: William Grieve

West Terry Street South Side Sidewalk Project
0

| Task No. | Task | Units | No of Units | Hours/ Unit | Total Hours | Comments |
|---|---|---|---|---|---|---|
| 4.1 | Utility Kickoff Meeting | LS | 1 | 24 | 24 | Meeting is listed below |
| 4.2 | Identify Existing Utility Agency Owner(s) | LS | 1 | 4 | 4 | |
| 4.3 | Make Utility Contacts | LS | 1 | 18 | 18 | 9 UAOs initially idenntified during RFQ process x 2 hrs/UAO = 18 hrs |
| 4.4 | Exception Processing | LS | 1 | 0 | 0 | |
| 4.5 | Preliminary Utility Meeting | LS | 0 | 0 | 0 | |
| 4.6 | Individual/Field Meetings | LS | 1 | 32 | 32 | Meetings are listed below |
| 4.7 | Collect and Review Plans and Data from UAO(s) | LS | 1 | 16 | 16 | |
| 4.8 | Subordination of Easements Coordination | LS | 1 | 9 | 9 | |
| 4.9 | Utility Design Meeting | LS | 1 | 48 | 48 | Meeting is listed below |
| 4.10 | Review Utility Markups & Work Schedules | LS | 1 | 32 | 32 | 8 UAOs x 4 hrs/UAO = 32 hrs |
| 4.11 | Utility Coordination/Followup | LS | 1 | 32 | 32 | 8 UAOs x 4 hrs/UAO = 32 hrs |
| 4.12 | Utility Constructability Review | LS | 1 | 16 | 16 | 8 UAOs x 2 hrs/UAO = 16 hrs |
| 4.13 | Additional Utility Services | LS | 1 | 0 | 0 | |
| 4.14 | Processing Utility Work by Highway Contractor (UWHC) | LS | 1 | 0 | 0 | |
| 4.15 | Contract Plans to UAO(s) | LS | 1 | 0 | 0 | |
| 4.16 | Certification/Close-Out | LS | 1 | 0 | 0 | |
| | | | | 4. Utilities Total | 231 | |

| Technical Meetings | Units | No of Units | Hours/ Unit | Total Hours | Comments | PM Attendance at Meeting Required? | Number |
|---|---|---|---|---|---|---|---|
| Kickoff (see 6.1) | EA | 1 | 24 | 24 | 2 persons x 12 hrs =24hrs | yes | 1 |
| Preliminary Meeting (see 6.5) | EA | 0 | 0 | 0 | | | 0 |
| Individual UAO Meetings (see 6.6) | EA | 0 | 0 | 0 | | | 0 |
| Field Meetings (see 6.6) | EA | 8 | 4 | 32 | 1 field meeting /UAO x 8 UAOs x 4 hrs/mtg = 32 hrs | yes | 9 |
| Design Meeting (see 6.9) | EA | 1 | 48 | 48 | 2 persons x 24 hrs = 48hrs | yes | 1 |
| Other Meetings | EA | 0 | 0 | 0 | | | 0 |
| Total Meetings | | | | 104 | | Total Project Manager Meetings | 11 |

Carries to Tab 3

## Project Activity 5: Environmental Permits

Estimator: William Grieve

West Terry Street South Side Sidewalk Project
0

| Task No. | Task | Units | No. of Units | Hours/ Units | Total Hours | Comments |
|---|---|---|---|---|---|---|
| | **Environmental Permits and Environmental Clearances** | | | | | |
| 5.1 | Preliminary Project Research | LS | 1 | 24 | 24 | Research in SFWMD data base on existing permit information and commitments. |
| | **Permits** | | | | | |
| 5.2 | **Field Work** | | | | | |
| 5.3 | Pond Site Alternatives | per pond site | 0 | 0 | 0 | |
| 5.4 | Establish Wetland Jurisdictional Lines and Assessments | LS | 1 | 0 | 0 | |
| 5.5 | Species Surveys | LS | 1 | 0 | 0 | |
| 5.6 | Agency Verification of Wetland Data | LS | 1 | 0 | 0 | |
| 5.7 | **Complete And Submit All Required Permit Applications** | | | | | |
| 5.8 | Complete and Submit All Required Wetland Permit Applications | LS | 1 | 0 | 0 | |
| 5.9 | Complete and Submit All Required Species Permit Applications | LS | 1 | 0 | 0 | |
| 5.10 | Coordinate and Review Dredge and Fill Sketches | LS | 1 | 0 | 0 | |
| 5.11 | Prepare USCG Permit Application | LS | 1 | 0 | 0 | |
| 5.12 | Prepare Water Management District or Local Water Control District Right of Way Occupancy Permit Application | LS | 1 | 0 | 0 | |
| 5.13 | Prepare Coastal Construction Control Line (CCCL) Permit Application | LS | 1 | 0 | 0 | |
| 5.14 | Prepare USACE Section 408 Application to Alter a Civil Works Project | LS | 1 | 0 | 0 | |
| 5.15 | Compensatory Mitigation Plan | LS | 1 | 0 | 0 | |
| 5.16 | Mitigation Coordination and Meetings | LS | 1 | 0 | 0 | |
| 5.17 | Other Environmental Permits | LS | 1 | 40 | 40 | Seminole Gulf Railroad Construction Agreement |
| | **Environmental Clearances/Reevaluations** | | | | | |
| 5.18 | **Technical support to Department for Environmental Clearances and Reevaluations (use when consultant provides technical support only)** | | | | | |
| 5.19 | NEPA or SEIR Reevaluation | LS | 1 | 0 | 0 | |
| 5.20 | Archaeological and Historical Resources | LS | 1 | 0 | 0 | |
| 5.21 | Wetland Impact Analysis | LS | 1 | 0 | 0 | |

Project Activity 5: Environmental Permits

| Task No. | Task | Units | No. of Units | Hours/ Units | Total Hours | Comments |
|---|---|---|---|---|---|---|
| 5.22 | Essential Fish Habitat Impact Analysis | LS | 1 | 0 | 0 | |
| 5.23 | Protected Speices and Habitat Impact Analysis | LS | 1 | 0 | 0 | |
| 5.24 | **Preparation of Environmental Clearances and Reevaluations (use when consultant prepares all documents associated with reevaluation)** | | | | | |
| 5.25 | NEPA or SEIR Reevaluation | LS | 1 | 0 | 0 | |
| 5.26 | Archaeological and Historical Resources | LS | 1 | 0 | 0 | |
| 5.27 | Wetland Impact Analysis | LS | 1 | 0 | 0 | |
| 5.28 | Essential Fish Habitat Impact Analysis | LS | 1 | 0 | 0 | |
| 5.29 | Protected Species and Habitat Impact Analysis | LS | 1 | 0 | 0 | |
| 5.30 | Contamination Impact Analysis | LS | 1 | 0 | 0 | |
| 5.31 | Asbestos Survey | LS | 1 | 0 | 0 | |
| | **Environmental Permits and Environmental Clearances/Reevaluations Technical Subtotal** | | | | **64** | |
| 5.32 | Technical Meetings | LS | 1 | 32 | 32 | Meetings are listed below |
| 5.33 | Quality Assurance/Quality Control | LS | % | 2% | 1 | |
| 5.34 | Supervision | LS | % | 2% | 1 | |
| | **Environmental Permits and Environmental Clearances Nontechnical Subtotal** | | | | **34** | |
| 5.35 | Coordination | LS | % | 10% | 10 | Includes Subconsultant coordination for Type I CE and Archeological and Historical Resources |
| | **5. Environmental Permits and Environmental Clearances Total** | | | | **108** | |

| Technical Meetings | Units | No of Units | Hours/ Unit | Total Hours | Comments | PM Attendance at Meeting Required? | Number |
|---|---|---|---|---|---|---|---|
| SFWMD | EA | 2 | 8 | 16 | 2 mtg. x 2 persons x 4 hrs duration = 8 hrs | yes | 1 |
| Seminole Gulf Railroad | EA | 2 | 8 | 16 | 2 mtg. x 2 persons x 4 hrs duration = 8 hrs | yes | 1 |
| Other Meetings | EA | 0 | 0 | 0 | | | 0 |
| **Subtotal Technical Meetings** | | | | **32** | | **Subtotal Project Manager Meetings** | **2** |
| Progress Meetings | EA | 0 | 0 | 0 | | | - - |
| Phase Review Meetings | EA | 0 | 0 | 0 | | | - - |
| **Total Meetings** | | | | **32** | | **Total Project Manager Meetings** | **2** |

## Project Activity 6: Signing and Pavement Marking Analysis

Estimator: William Grieve

West Terry Street South Side Sidewalk Project
0

| Task No. | Task | Units | No. of Units | Hours/ Units | Total Hours | Comments |
|---|---|---|---|---|---|---|
| 6.1 | Traffic Data Analysis | LS | 1 | 0 | 0 | |
| 6.2 | Signing and Pavement Marking Master Design File | LS | 1 | 55.5 | 56 | Includes 30 hrs set-up + 15 hrs/mile = 55.5 hrs |
| 6.3 | Quantities | LS | 1 | 10 | 10 | Includes identification of pay items |
| 6.4 | Cost Estimate | LS | 1 | 8 | 8 | Includes review of cost from recent bids of City projects and FDOT Historical costs |
| | **Signing and Pavement Marking Analysis Technical Subtotal** | | | | **74** | |
| 6.5 | Field Reviews | LS | 1 | 8 | 8 | 1 person x 8 hrs for sign inventory |
| 6.6 | Technical Meetings | LS | 1 | 8 | 8 | Meetings are listed below |
| 6.7 | Quality Assurance/Quality Control | LS | % | 2% | 1 | |
| 6.8 | Independent Peer Review | LS | % | 0% | 0 | |
| 6.9 | Supervision | LS | % | 2% | 1 | |
| | **Signing and Pavement Marking Analysis Nontechnical Subtotal** | | | | **18** | |
| 6.10 | Coordination | LS | % | 2% | 2 | |
| | **6. Signing and Pavement Marking Analysis Total** | | | | **94** | |

| Technical Meetings | Units | No of Units | Hours/ Unit | Total Hours | Comments | PM Attendance at Meeting Required? | Number |
|---|---|---|---|---|---|---|---|
| City | EA | 1 | 8 | 8 | 1 mtg. x 2 persons x 4 hrs duration = 8 hrs | yes | 1 |
| **Subtotal Technical Meetings** | | | | **8** | | **Subtotal Project Manager Meetings** | **1** |
| Progress Meetings | EA | 0 | 0 | 0 | | | - - |
| Phase Review Meetings | EA | 0 | 0 | 0 | | | - - |
| **Total Meetings** | | | | **8** | | **Total Project Manager Meetings** | **1** |

## Project Activity 7: Signing and Pavement Marking Plans

Estimator: William Grieve

West Terry Street South Side Sidewalk Project
0

| Task No. | Task | Scale | Units | No of Units | Hours/ Unit | No. of Sheets | Total Hours | Comments |
|---|---|---|---|---|---|---|---|---|
| 7.1 | Key Sheet | | Sheet | 1 | 4 | 1 | 4 | |
| 7.2 | General Notes/Pay Item Notes | | Sheet | 1 | 6 | 1 | 6 | |
| 7.3 | Tabulation of Quantities | | Sheet | 1 | 8 | 1 | 8 | |
| 7.4 | Plan Sheet | | Sheet | 16 | 4 | 16 | 64 | |
| 7.5 | Typical Details | | EA | 1 | 4 | | 4 | |
| **Signing and Pavement Marking Plans Technical Subtotal** | | | | | | **19** | **86** | |
| 7.6 | Quality Assurance/Quality Control | | LS | % | 2% | | 2 | |
| 7.7 | Supervision | | LS | % | 2% | | 2 | |
| **7. Signing and Pavement Marking Plans Total** | | | | | | **19** | **90** | |

## Project Activity 8:Signalization Analysis

Estimator: William Grieve

West Terry Street South Side Sidewalk Project
0

| Task No. | Task | Units | No. of Units | Hours/ Units | Total Hours | Comments |
|---|---|---|---|---|---|---|
| 8.1 | Traffic Data Collection | LS | 0 | 0 | 0 | N/A |
| 8.2 | Traffic Data Analysis | PI | 0 | 0 | 0 | N/A |
| 8.3 | Signal Warrant Study | LS | 0 | 0 | 0 | N/A |
| 8.4 | System Timings | LS | 1 | 4 | 4 | |
| 8.5 | Reference and Master Signalization Design File | PI | 1 | 16 | 16 | |
| 8.6 | Reference and Master Interconnect Communication Design File | LS | 1 | 6 | 6 | |
| 8.7 | Overhead Street Name Sign Design | EA | 0 | 0 | 0 | |
| 8.8 | Pole Elevation Analysis | LS | 1 | 4 | 4 | |
| 8.9 | Traffic Signal Operation Report | LS | 1 | 0 | 0 | |
| 8.10 | Quantities | LS | 1 | 4 | 4 | Includes identification of pay items |
| 8.11 | Cost Estimate | LS | 1 | 4 | 4 | Includes review of cost from recent bids of City projects and FDOT Historical costs |
| 8.12 | Technical Special Provisions and Modified Special Provisions | LS | 0 | 0 | 0 | None anticipated |
| 8.13 | Other Signalization Analysis | LS | 0 | 0 | 0 | None anticipated |
| | **Signalization Analysis Technical Subtotal** | | | | **38** | |
| 8.14 | Field Reviews | LS | 1 | 6 | 6 | 1 reviews x 3 hours x 2 attendees |
| 8.15 | Technical Meetings | LS | 2 | 2 | 4 | 2 meetings with Lee County Traffic Eng x 1 attendee |
| | **Signalization Analysis Nontechnical Subtotal** | | | | **10** | |
| 8.16 | Coordination | LS | % | 0% | 0 | |
| | **8. Signalization Analysis Total** | | | | **48** | |

| Technical Meetings | Units | No of Units | Hours/ Unit | Total Hours | Comments | PM Attendance at Meeting Required? | Number |
|---|---|---|---|---|---|---|---|
| City & Power Company (discuss agreement requirements) | EA | 1 | 8 | 8 | 1 meeting x 2 persons x 4 hrs/meeting = 8 hrs | yes | 1 |
| Maintaining Agency (cities, counties) | EA | 1 | 0 | 0 | | | |
| **Subtotal Technical Meetings** | | | | **8** | | **Subtotal Project Manager Meetings** | **1** |
| Progress Meetings | EA | 0 | 0 | 0 | | | - - |
| Phase Review Meetings | EA | 0 | 0 | 0 | | | - - |
| **Total Meetings** | | | | **8** | | **Total Project Manager Meetings** | **1** |

Carries to 23.13

Carries to Tab 3

## Projct Activity 9: Signalization Plans

Estimator: William Grieve

West Terry Street South Side Sidewalk Project
0

| Task No. | Task | Scale | Units | No of Units | Hours/ Unit | No. of Sheets | Total Hours | Comments |
|---|---|---|---|---|---|---|---|---|
| 9.1 | Key Sheet | | Sheet | 0 | 0 | 0 | 0 | |
| 9.2 | Summary of Pay Items Including Designer Interface (TRNS•Port) Input | | Sheet | 0 | 0 | 0 | 0 | |
| 9.3 | Tabulation of Quantities | | Sheet | 1 | 4 | 1 | 4 | |
| 9.4 | General Notes/Pay Item Notes | | Sheet | 1 | 4 | 1 | 4 | |
| 9.5 | Plan Sheet | | Sheet | 2 | 16 | 2 | 32 | |
| 9.6 | Interconnect Plans | | Sheet | 0 | 0 | 0 | 0 | |
| 9.7 | Traffic Monitoring Site | | EA | 0 | 0 | 0 | 0 | |
| 9.8 | Guide Sign Worksheet | | EA | 0 | 0 | 0 | 0 | |
| 9.9 | Special Details | | Sheet | 1 | 4 | 1 | 4 | |
| 9.10 | Special Service Point Details | | EA | 0 | 0 | 0 | 0 | |
| 9.11 | Mast Arm/Monotube Tabulation Sheet | | PI | 0 | 0 | 0 | 0 | |
| 9.12 | Strain Pole Schedule | | PI | 0 | 0 | 0 | 0 | |
| 9.13 | TCP Signal (Temporary) | | EA | 0 | 0 | 0 | 0 | |
| 9.14 | Temporary Detection Sheet | | PI | 0 | 0 | 0 | 0 | |
| 9.15 | Utility Conflict Sheet | | Sheet | 0 | 0 | 0 | 0 | |
| 9.16 | Interim Standards | | LS | 0 | 0 | 0 | 0 | |
| | | | | | **Signalization Plans Technical Subtotal** | **5** | **44** | |
| | | | | | **9. Signalization Plans Total** | **5** | **44** | |

## Project Activity 10: Bidding and Award

Estimator: William Grieve

West Terry Street South Side Sidewalk Project
0

| Task No. | Task | Units | No. of Units | Hours/ Units | Total Hours | Comments |
|---|---|---|---|---|---|---|
| 10.1 | Prepare Schedule of Bid Items | LS | 1 | 24 | 24 | |
| 10.2 | Respond to Bidders RFI | LS | 1 | 20 | 20 | |
| 10.3 | Assist in Bid Evaluation | LS | 1 | 36 | 36 | Incluudes assistance in the evaluation of 3 lowest bid packages |
| 10.4 | Attend Pre-Bid Conference | EA | 1 | 12 | 12 | 1 mtg. x 2 persons x 5 hrs = 10 hrs |
| 10.5 | Attend Bid Opening | EA | 1 | 8 | 8 | 1 mtg. x 2 persons x 4 hrs = 8 hrs |
| | | | | **Bidding and Award Total** | **100** | |

## Project Activity 11: Post Design Services

Estimator: William Grieve

West Terry Street South Side Sidewalk Project
0

| Task No. | Task | Units | No of Units | Hours/ Unit | Total Hours | Comments |
|---|---|---|---|---|---|---|
| 11.1 | Respond to RFI | LS | 1 | 40 | 40 | |
| 11.2 | Shop Drawing Reviews | LS | 1 | 20 | 20 | Anticipated for the shop drawing review of drainage structures and light poles and luminaires |
| 11.3 | Meetings | LS | 1 | 60 | 60 | Anticipated for meetings and field visits to the project site during construction |
| | | | | Post Design Services Total | 120 | |

McMAHON ASSOCIATES, INC.

Task 12 - Traffic Evaluation

| TASK NO. | WORK ELEMENT | PROJECT MANAGER | PRINCIPAL | Senior Engineer II | Senior Engineer I | Senior Designer | Engineer/Planner II | Engineer/Planner I | Engineer/ Technician | Admin/ Graphics | TOTAL COST/TASK |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | $160.00 | $260.00 | $220.00 | $200.00 | $190.00 | $150.00 | $120.00 | $105.00 | $80.00 | |
| 12.0 | | | | | | | | | | | |
| | Pedestrian/Bicycle Counts | 16 | 12 | | | | | | 120 | | $18,280.00 |
| | Speed Study/Vehicular Volume | 16 | 12 | | | | | | 56 | | $11,560.00 |
| | Field Observations | 16 | 12 | | | | | 40 | | | $10,480.00 |
| | Crash Data Review | 16 | 10 | | | | | 16 | | | $7,080.00 |
| | Transit Review | 10 | 16 | | | | | 16 | | | $7,680.00 |
| | Report | 40 | 16 | | | | | 40 | | | $15,360.00 |
| | TOTAL HOURS/CLASSIFICATION | 114.0 | 78.0 | 0.0 | 0.0 | 0.0 | 0.0 | 112.0 | 176.0 | 0.0 | 480.0 |
| | TOTAL DOLLARS | $18,240.00 | $20,280.00 | $0.00 | $0.00 | $0.00 | $0.00 | $13,440.00 | $18,480.00 | $0.00 | $70,440.00 |

## REIMBURSABLES and DIRECT EXPENSES

Gino Charles

| | Description | Print Sets | Sheets Per Set | Total Sheets | Number of Submittals | Total Copies | Unit Cost | Amount | Comments |
|---|---|---|---|---|---|---|---|---|---|
| City - Sidewalk Plans* | Reproduction/Photocopies | 6 | 100 | 600 | 1 | 600 | $0.300 | $180.00 | 11" x 17" sheets |
| Utility Coordination (Intial) | Reproduction/Photocopies | 2 | 50 | 100 | 1 | 100 | $0.300 | $30.00 | 11" x 17" sheets |
| Utility Coordination (Potholing) | Reproduction/Photocopies | 2 | 80 | 160 | 1 | 160 | $0.300 | $48.00 | 11" x 17" sheets |
| Utility Coordination (Final) | Reproduction/Photocopies | 2 | 80 | 160 | 1 | 160 | $0.300 | $48.00 | 11" x 17" sheets |
| LWDD Right of way permit | Reproduction/Photocopies | 2 | 80 | 160 | 2 | 320 | $0.300 | $96.00 | 11" x 17" sheets |
| SFWMD Permit/Modification to existing permits | Reproduction/Photocopies | 2 | 80 | 160 | 2 | 320 | $0.300 | $96.00 | 11" x 17" sheets |
| | | | | | | | | | |
| Miscellaneous Correspondences (Lump Sum) | Reproduction/Photocopies | 1 | 600 | 600 | 1 | 600 | $0.150 | $90.00 | 8-1/2" x 11" |
| Reports** | Reproduction/Photocopies | 5 | 100 | 500 | 3 | 1500 | $0.150 | $225.00 | 8-1/2" x 11" |
| Design Notebook | Reproduction/Photocopies | 1 | 100 | 100 | 1 | 100 | $0.150 | $15.00 | 8-1/2" x 11" |
| | | | | | | | | | |
| | | | | 0 | | | | | |
| | | | | | | | Total Cost for Copies | $828.00 | |

*Based on 1 set ( 30% (Initial), 60% (Constructability) + 2 sets @ 100% Production Complete) + 2 sets (Contract Award)
**Includes Drainage Report (2 Submittals), Final Geotech Report & Comp Book (2 Submittals)

| Permit Fees | |
|---|---|
| Agency | Permit Fee |
| Seminole Gulf Railroad Construction Agreement | |
| SFWMD Permit/Modification to existing permits | $2,100.00 |
| SFWMD Dewatering Permit (Optional Services) | $500.00 |
| | |
| Permit Fee Total | $2,600.00 |

**CITY OF BONITA SPRINGS**
**AGENDA ITEM SUMMARY**

Green Sheet No. 22-10-163
October 19, 2022

**REQUESTED MOTION:** Authorize approval of design costs for US 41 & Bonita Beach Road Quadrant Plan Northwest Phase I from RK&K in the amount of $1,964,403.91

**REQUESTOR:** Matt Feeney, Assistant City Manager

**AGENDA:** Consent

**STRATEGIC PRIORITY:** #2 Transportation

---

**BACKGROUND:** On July 6, 2022, City Council approved staff to negotiate with RK&K as the design firm for US 41 & Bonita Beach Road Quadrant Plan Northwest Phase I.

RK&K has provided their Scope and Fee Schedule for the US 41 & Bonita Beach Road Quadrant Plan Northwest Phase I in the amount of $1,964,403.91.

**STAFF RECOMMENDATION:** Approve Scope and Fee Schedule from RK&K for US 41 & Bonita Beach Road Quadrant Plan Northwest Phase I

**ATTACHMENTS:**

1. Cost Estimate from RK&K

---

**REVIEWERS:**

City Manager: Arleen Hunter
City Attorney: Derek Rooney
City Clerk: Debra Filipek
Department Director: Matt Feeney

Council Action: Approved __ Denied __ Deferred ___ Other_____________________

## ESTIMATE OF WORK EFFORT AND COST - PRIME CONSULTANT

Name of Project: US 41 & Bonita Beach Road Quadrant Plan Northwest Phase I
County: Lee
FPN: CN-22-02
FAP No.: N/A

Consultant Name: RK&K
Consultant No.: N/A
Date: 9/8/2022
Estimator: Joe Baan

| Staff Classification | Total Staff Hours From "SH Summary - Firm" | Chief Scientist | Community Outreach Specialist | Contract Coordinator | Engineer 1 | Engineer 2 | Engineering Intern | Engineering Technician | Environmental Specialist | Project Manager 2 | Senior Engineer | 0 | 0 | SH By Activity | Salary Cost By Activity | Average Rate Per Task |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | $220.00 | $90.00 | $105.00 | $140.00 | $200.00 | $105.00 | $110.00 | $95.00 | $240.00 | $295.00 | $0.00 | $0.00 | | | |
| 3. Project General and Project Common Tasks | 1,184 | 0 | 296 | 0 | 59 | 118 | 0 | 0 | 0 | 592 | 118 | 0 | 0 | 1,183 | $235,390 | $198.98 |
| 4. Roadway Analysis | 2,486 | 0 | 0 | 0 | 870 | 497 | 497 | 248 | 0 | 249 | 124 | 0 | 0 | 2,485 | $397,005 | $159.76 |
| 5. Roadway Plans | 704 | 0 | 0 | 0 | 246 | 70 | 141 | 141 | 0 | 70 | 35 | 0 | 0 | 703 | $105,880 | $150.61 |
| 6a. Drainage Analysis | 1,004 | 0 | 0 | 0 | 351 | 201 | 201 | 100 | 0 | 100 | 50 | 0 | 0 | 1,003 | $160,195 | $159.72 |
| 6b. Drainage Plans | 480 | 0 | 0 | 0 | 168 | 48 | 96 | 95 | 0 | 48 | 24 | 0 | 0 | 479 | $72,250 | $150.84 |
| 8. Environmental Permits,and Env. Clearances | 736 | 221 | 0 | 0 | 109 | 0 | 0 | 0 | 368 | 74 | 0 | 0 | 0 | 772 | $116,600 | $151.04 |
| 9a. Structures - Misc. Tasks, Dwgs, Non-Tech. | 50 | 0 | 0 | 0 | 18 | 15 | 5 | 5 | 0 | 5 | 3 | 0 | 0 | 51 | $8,680 | $170.20 |
| 9b. Structures - Retaining Walls | 224 | 0 | 0 | 0 | 78 | 67 | 22 | 24 | 0 | 22 | 11 | 0 | 0 | 224 | $37,795 | $168.73 |
| 10. Structures - Miscellaneous | 188 | 0 | 0 | 0 | 66 | 56 | 19 | 19 | 0 | 19 | 9 | 0 | 0 | 188 | $31,740 | $168.83 |
| 11a. Signing & Pavement Marking Analysis | 152 | 0 | 0 | 0 | 38 | 46 | 30 | 15 | 0 | 15 | 8 | 0 | 0 | 152 | $25,280 | $166.32 |
| 11b. Signing & Pavement Marking Plans | 372 | 0 | 0 | 0 | 130 | 37 | 74 | 73 | 0 | 37 | 19 | 0 | 0 | 370 | $55,885 | $151.04 |
| 12a. Signalization Analysis | 329 | 0 | 0 | 0 | 82 | 99 | 66 | 34 | 0 | 33 | 16 | 0 | 0 | 330 | $54,590 | $165.42 |
| 12b. Signalization Plans | 314 | 0 | 0 | 0 | 110 | 31 | 63 | 63 | 0 | 31 | 16 | 0 | 0 | 314 | $47,305 | $150.65 |
| 13. Lighting Analysis | 220 | 0 | 0 | 0 | 55 | 66 | 44 | 23 | 0 | 22 | 11 | 0 | 0 | 221 | $36,575 | $165.50 |
| 14. Lighting Plans | 419 | 0 | 0 | 0 | 147 | 42 | 84 | 83 | 0 | 42 | 21 | 0 | 0 | 419 | $63,205 | $150.85 |
| 19. 3D Modeling | 847 | 0 | 0 | 0 | 296 | 169 | 169 | 86 | 0 | 85 | 42 | 0 | 0 | 847 | $135,235 | $159.66 |
| Total Staff Hours | 9,709 | 221 | 296 | 0 | 2,823 | 1,562 | 1,511 | 1,009 | 368 | 1,444 | 507 | 0 | 0 | 9,741 | | |
| Total Staff Cost | | $48,620.00 | $26,640.00 | $0.00 | $395,220.00 | $312,400.00 | $158,655.00 | $110,990.00 | $34,960.00 | $346,560.00 | $149,565.00 | $0.00 | $0.00 | | $1,583,610.00 | $162.57 |
| | | | | | | | | | | | | | | Check = | $1,583,610.00 | |

| | | |
|---|---|---|
| SUBTOTAL ESTIMATED FEE: | | $1,583,610.00 |
| Subconsultant: | ACI | $23,338.11 |
| Subconsultant: | DMJA | $40,405.78 |
| Subconsultant: | T2UE | $156,520.00 |
| Subconsultant: | Tierra | $108,030.02 |
| SUBTOTAL ESTIMATED FEE: | | $1,911,903.91 |
| Optional Services | | $52,500.00 |
| GRAND TOTAL ESTIMATED FEE: | | $1,964,403.91 |

## ESTIMATE OF WORK EFFORT AND COST - PRIME CONSULTANT

| | | | |
|---|---|---|---|
| Name of Project: | US 41 & Bonita Beach Road Quadrant Plan Northwest Phase I | Consultant Name: | RK&K |
| County: | Lee | Consultant No.: | N/A |
| FPN: | CN-22-02 | Date: | 9/8/2022 |
| FAP No.: | N/A | Estimator: | Joe Baan |

| Staff Classification | Total Staff Hours From "SH Summary - Firm" | Chief Scientist | Community Outreach Specialist | Contract Coordinator | Engineer 1 | Engineer 2 | Engineering Intern | Engineering Technician | Environmental Specialist | Project Manager 2 | Senior Engineer | 0 | 0 | SH By Activity | Salary Cost By Activity | Average Rate Per Task |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | $210.00 | $90.00 | $105.00 | $140.00 | $195.00 | $105.00 | $110.00 | $95.00 | $240.00 | $265.00 | $0.00 | $0.00 | | | |
| 3. Project General and Project Common Tasks | 40 | 0 | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 28 | 4 | 0 | 0 | 40 | $8,500 | $212.50 |
| 4. Roadway Analysis | 122 | 0 | 0 | 0 | 24 | 24 | 24 | 12 | 0 | 12 | 24 | 0 | 0 | 120 | $21,120 | $176.00 |
| 5. Roadway Plans | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $0 | #DIV/0! |
| 6a. Drainage Analysis | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $0 | #DIV/0! |
| 6b. Drainage Plans | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $0 | #DIV/0! |
| 8. Environmental Permits,and Env. Clearances | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $0 | #DIV/0! |
| 9a. Structures - Misc. Tasks, Dwgs, Non-Tech. | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $0 | #DIV/0! |
| 9b. Structures - Retaining Walls | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $0 | #DIV/0! |
| 10. Structures - Miscellaneous | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $0 | #DIV/0! |
| 11a. Signing & Pavement Marking Analysis | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $0 | #DIV/0! |
| 11b. Signing & Pavement Marking Plans | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $0 | #DIV/0! |
| 12a. Signalization Analysis | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $0 | #DIV/0! |
| 12b. Signalization Plans | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $0 | #DIV/0! |
| 13. Lighting Analysis | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $0 | #DIV/0! |
| 14. Lighting Plans | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $0 | #DIV/0! |
| 19. 3D Modeling | 131 | 0 | 0 | 0 | 26 | 26 | 26 | 13 | 0 | 13 | 26 | 0 | 0 | 130 | $22,880 | $176.00 |
| Total Staff Hours | 293 | 0 | 8 | 0 | 50 | 50 | 50 | 25 | 0 | 53 | 54 | 0 | 0 | 290 | | |
| Total Staff Cost | | $0.00 | $720.00 | $0.00 | $7,000.00 | $9,750.00 | $5,250.00 | $2,750.00 | $0.00 | $12,720.00 | $14,310.00 | $0.00 | $0.00 | | $52,500.00 | $181.03 |
| | | | | | | | | | | | | | | Check = | $52,500.00 | |

| | | |
|---|---|---|
| SUBTOTAL ESTIMATED FEE: | | $52,500.00 |
| Subconsultant: | ACI | $0.00 |
| Subconsultant: | DMJA | $0.00 |
| Subconsultant: | T2UE | $0.00 |
| Subconsultant: | Tierra | $0.00 |
| GRAND TOTAL OPTIONAL SERVICES ESTIMATED FEE: | | $52,500.00 |

## ESTIMATE OF WORK EFFORT AND COST - SUBCONSULTANT

| | | | |
|---|---|---|---|
| Name of Project | US 41 & Bonita Beach Road Quadrant Plan Northwest Phase I | Consultant Name: | Archaeological Consultants, Inc. |
| County: | Lee | Consultant No.: | N/A |
| FPN: | CN-22-02 | Date: | 9/8/2022 |
| FAP No.: | N/A | Estimator: | Marion Almy |

| Staff Classification | Total Staff Hours From "SH Summary Firm" | Chief Scientist | Senior Scientist | Chief Archaeologist | GIS Specialist | Senior Archaeologist | Archaeologist | Secretary/ Clerical | Scientist | Staff Classification 9 | Staff Classification 10 | Staff Classification 12 | Staff Classification 13 | SH By Activity | Salary Cost By Activity | Average Rate Per Task |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | $196.41 | $123.37 | $116.47 | $98.08 | $95.66 | $65.29 | $85.82 | $84.69 | $0.00 | $0.00 | $0.00 | $0.00 | | | |
| 8. Environmental Permits,and Env. Clearances | 203 | 21 | 78 | 22 | 18 | 20 | 20 | 10 | 14 | 0 | 0 | 0 | 0 | 203 | $23,338 | $114.97 |
| Total Staff Hours | 203 | 21 | 78 | 22 | 18 | 20 | 20 | 10 | 14 | 0 | 0 | 0 | 0 | 203 | | |
| Total Staff Cost | | $4,124.61 | $9,622.86 | $2,562.34 | $1,765.44 | $1,913.20 | $1,305.80 | $858.20 | $1,185.66 | $0.00 | $0.00 | $0.00 | $0.00 | | $23,338.11 | $114.97 |

Check = $23,338.11

| | |
|---|---|
| SUBTOTAL ESTIMATED FEE: | $23,338.11 |
| Optional Services | $0.00 |
| GRAND TOTAL ESTIMATED FEE: | $23,338.11 |

## ESTIMATE OF WORK EFFORT AND COST - SUBCONSULTANT

Name of Project: US 41 & Bonita Beach Road Quadrant Plan Northwest Phase I
County: Lee
FPN: CN-22-02
FAP No.: N/A

Consultant Name: David M. Jones, Jr. and Associates, Inc.
Consultant No.: N/A
Date: 9/8/2022
Estimator:

| Staff Classification | Total Staff Hours From "SH Summary - Firm" | Sr. Landscape Arch | Landscape Architect | Staff Class-ification 3 | Staff Class-ification 4 | Staff Class-ification 5 | Staff Class-ification 6 | Staff Class-ification 7 | Staff Class-ification 8 | Staff Class-ification 9 | Staff Class-ification 10 | Staff Class-ification 12 | Staff Class-ification 13 | SH By Activity | Salary Cost By Activity | Average Rate Per Task |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | $172.40 | $93.38 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | | | |
| 15. Landscape Analysis | 193 | 116 | 77 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 193 | $27,189 | $140.87 |
| 16. Landscape Plans | 106 | 42 | 64 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 106 | $13,217 | $124.69 |
| Total Staff Hours | 299 | 158 | 141 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 299 | | |
| Total Staff Cost | | $27,239.20 | $13,166.58 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | | $40,405.78 | $135.14 |

Check = $40,405.78

| | | | | | | |
|---|---|---|---|---|---|---|
| SUBTOTAL ESTIMATED FEE: | | | | | | $40,405.78 |
| Survey (Field) | | 37 | 4-person crew | $ - | / day | $0.00 |
| Geotechnical Field and Lab Testing | | | | | | $0.00 |
| SUBTOTAL ESTIMATED FEE: | | | | | | $40,405.78 |
| Optional Services | | | | | | $0.00 |
| GRAND TOTAL ESTIMATED FEE: | | | | | | $40,405.78 |

## ESTIMATE OF WORK EFFORT AND COST - SUBCONSULTANT

Name of Project: US 41 & Bonita Beach Road Quadrant Plan Northwest Phase I
County: Lee
FPN: CN-22-02
FAP No.: N/A

Consultant Name: T2 Utility Engineers, Inc.
Consultant No.: N/A
Date: 9/8/2022
Estimator:

| Staff Classification | Total Staff Hours From "SH Summary - Firm" | Chief Surveyor | Sr. Project Surveyor | CADD | Clerical | Chief Utility Coordinator | Sr. Utility Coordinator | Utility Coordinator | Staff Class-ification 8 | Staff Class-ification 9 | Staff Class-ification 10 | Staff Class-ification 12 | Staff Class-ification 13 | SH By Activity | Salary Cost By Activity | Average Rate Per Task |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | $235.00 | $140.00 | $90.00 | $85.00 | $250.00 | $147.00 | $90.00 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | | | |
| 7. Utilities | 220 | 0 | 0 | 0 | 11 | 22 | 165 | 22 | 0 | 0 | 0 | 0 | 0 | 220 | $32,670 | $148.50 |
| 17a. Survey (Field & Office Support) | 220 | 11 | 59 | 139 | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 220 | $24,290 | $110.41 |
| 17b. Mapping | 304 | 15 | 82 | 192 | 15 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 304 | $33,560 | $110.39 |
| Total Staff Hours | 744 | 26 | 141 | 331 | 37 | 22 | 165 | 22 | 0 | 0 | 0 | 0 | 0 | 744 | | |
| Total Staff Cost | | $6,110.00 | $19,740.00 | $29,790.00 | $3,145.00 | $5,500.00 | $24,255.00 | $1,980.00 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | | $90,520.00 | $121.67 |

Check = $90,520.00

Notes:
1. Crew days are based on 10 hour days

| | | | | |
|---|---|---|---|---|
| **SALARY RELATED COSTS:** | | | | **$90,520.00** |
| OVERHEAD: | | 0.000% | | $0.00 |
| OPERATING MARGIN: | | 0.000% | | $0.00 |
| FCCM (Facilities Capital Cost Money): | | 0.000% | | $0.00 |
| EXPENSES: | | 0.000% | | $0.00 |
| **SURVEY EFFORT** | 28.00 | **Total Crew Days** | | |
| 2 Person Survey Crew | 280.00 | Hours | $ 150.00 / hour | $42,000.00 |
| | | **Total Survey Effort** | | **$42,000.00** |
| **DESIGNATING EFFORT** | 3.00 | **Total Crew Days** | | |
| Designating Crew | 30.00 | Hours | $ 250.00 / hour | $7,500.00 |
| | | **Total Designating Effort** | | **$7,500.00** |
| **LOCATING EFFORT** | 6.00 | **Total Crew Days** | | |
| Locating Crew | 60.00 | Hours | $ 275.00 / hour | $16,500.00 |
| Designating Truck | 0.00 | Hours | $ - / hour | $0.00 |
| | | **Total Locating Effort** | | **$16,500.00** |
| **Maintenance Of Traffic** | 0.00 | **Total Crew Days** | | |
| 8 Hour days | 0.00 | Hours | $ - / hour | $0.00 |
| | | **Total MOT Effort** | | **$0.00** |
| Subconsultant: | | | | $0.00 |
| **SUBTOTAL ESTIMATED FEE:** | | | | **$156,520.00** |
| Optional Services | | | | $0.00 |
| **GRAND TOTAL ESTIMATED FEE:** | | | | **$156,520.00** |

## ESTIMATE OF WORK EFFORT AND COST - SUBCONSULTANT

Name of Project: US 41 & Bonita Beach Road Quadrant Plan Northwest Phase I
County: Lee
FPN: CN-22-02
FAP No.: N/A

Consultant Name: Tierra, Inc.
Consultant No.: 6511-22-217
Date: 9/8/2022
Estimator:

| Staff Classification | Total Staff Hours From "SH Summary Firm" | Principal Engineer | Senior Scientist | Chief Scientist | Senior Engineer | Engineer | Engineering Intern | Senior Engineering Technician | Engineering Technician | Senior Designer | Administrative Assistant | Staff Classification 12 | Staff Classification 13 | SH By Activity | Salary Cost By Activity | Average Rate Per Task |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | $221.77 | $141.17 | $174.47 | $198.71 | $144.77 | $91.30 | $102.30 | $81.10 | $124.43 | $123.28 | $0.00 | $0.00 | | | |
| 8. Environmental Permits,and Env. Clearances | 108 | 0 | 54 | 27 | 0 | 0 | 0 | 11 | 11 | 3 | 3 | 0 | 0 | 109 | $15,094 | $138.48 |
| 18. Geotechnical | 421 | 21 | 0 | 0 | 42 | 63 | 147 | 42 | 42 | 42 | 22 | 0 | 0 | 421 | $51,186 | $121.58 |
| **Total Staff Hours** | 529 | 21 | 54 | 27 | 42 | 63 | 147 | 53 | 53 | 45 | 25 | 0 | 0 | 530 | | |
| **Total Staff Cost** | | $4,657.17 | $7,623.18 | $4,710.69 | $8,345.82 | $9,120.51 | $13,421.10 | $5,421.90 | $4,298.30 | $5,599.35 | $3,082.00 | $0.00 | $0.00 | | $66,280.02 | $125.06 |

Check = $66,280.02

| | | | | |
|---|---|---|---|---|
| SUBTOTAL ESTIMATED FEE: | | | | $66,280.02 |
| Geotechnical Field and Lab Testing | | | | $41,090.00 |
| Contamination Field and Test Units | | | | $660.00 |
| GRAND TOTAL ESTIMATED FEE: | | | | $108,030.02 |

**CITY OF BONITA SPRINGS**
**AGENDA ITEM SUMMARY**

Green Sheet No. 22-10-164
October 19, 2022

**REQUESTED MOTION:** Approve agreement with Florida Gulf Coast University (FGCU) for Water Steward position at FGCU's Vester Field Station.

**REQUESTOR:** Matt Feeney, Assistant City Manager

**AGENDA:** Consent

**STRATEGIC PRIORITY:** #4 – Environmental Protection

---

**BACKGROUND:** On September 2, 2020, Council approved an agreement with Florida Gulf Coast University for the Water Steward position at FGCU's Vester Field Station in Bonita Springs.

Over the past two years the Water Steward has collected water samples from six locations along the Imperial River and Spring Creek. The continuation of the collection of this data will be helpful in gaining an understanding of water quality in both bodies of water.

The agreement is for two (2) years at a cost of $81,890.00 per year.

**STAFF RECOMMENDATION:** Approve agreement with FGCU for Water Steward position.

**ATTACHMENTS:**

1. Scope of Work for the Water Steward

---

**REVIEWERS:**

City Manager: Arleen Hunter
City Attorney: Derek Rooney
City Clerk: Debra Filipek
Department Director: Matt Feeney

Council Action: Approved __ Denied __ Deferred ___ Other_____________________

**Scope of Work II**

**The Bonita Water Steward**

Funds ($81,890 per year) are requested to for a full-time research lab technician and student assistant at the Vester Field Station to monitor for and respond to harmful algae, fish kills, and water quality concerns in the Imperial River, Estero Bay, and along Bonita Beach.

Specific tasks include:

- Collect samples on a weekly basis from the Imperial River (at the US41 bridge) down to New Pass (6 stations);
- Collect samples on a weekly basis in Spring Creek from the US41 bridge down to its mouth in Estero Bay (6 stations);
- Measure water quality parameters at each station (temperature, salinity, oxygen, and pH);
- Collect and analyze samples for nutrients (total nitrogen, nitrate + nitrite, ammonium, total phosphorus, phosphate);
- Collect and analyze samples for harmful algal blooms (red tide and blue green algae in particular);
- Organize (or assist in) efforts to document/remove dead or injured fish sea turtles, manatees, or sharks;
- Organize (or assist in) beach/bay litter clean-up activities;
- Provide monthly water status updates to the Bonita Springs City Council and staff;
- Provide technical assistance in grant proposal opportunities.

**Estimated costs:**

1. Personnel: Nicole Weigold is the Bonita Water Steward and has an annual salary of $42,000 per year. We area also requesting funding for a student assistant ($7,500), as two people are required by FGCU for boat operations and field sampling and the assistant will gain valuable experience to further their careers. Florida Gulf Coast University fringe benefits (40.7% for full-time position; 5.3% for student) amount to an additional $17,490. Total personnel costs: **$66,992 per year**.
2. Sample collection and analysis: Weekly sampling and analysis costs include fuel, field supplies, reagents and supplies for microscopy, and nutrient analysis. These costs are estimated at **$3,000 per year***.
3. Total direct costs = $66,992 + $3,000 = $69,992.
4. The off-campus Facilities and Administrative (F&A) costs at the Vester Field Station are an additional 17% (17% of $69,992 = $11,898).
5. **Total cost: $81,890 per year.**

* Additional funds may be needed for other, more intensive analyses (e.g., metals, herbicides, pesticides and toxins) and/or for event response sampling and analysis.

**CITY OF BONITA SPRINGS**
**AGENDA ITEM SUMMARY**

Green Sheet No. 22-10-165
October 19, 2022

**REQUESTED MOTION:** Ratify the State of Emergency and the Executive Orders issued by the Mayor and City Manager during the Local State of Emergency pursuant to the authority granted by Resolution 22-59

**REQUESTOR:** Arleen M. Hunter, City Manager; Derek Rooney, City Attorney

**AGENDA:** Consent

**STRATEGIC PRIORITY:** N/A

---

**BACKGROUND:**

Governor Ron DeSantis signed Executive Orders 2022-218 and 2022-219, in response to the anticipated landfall of Hurricane Ian and declared a state of emergency, pursuant to Chapter 252, Florida Statute. As Hurricane Ian posed a serious threat to our area, an ultimate landfall directly affected the City of Bonita Springs. The following Executive Orders and Resolutions were prepared and signed by the Mayor and Staff. At this time, it is appropriate for City Council to ratify the documents provided below.

**STAFF RECOMMENDATION:** Approve

**ATTACHMENTS:**

1. Executive order establishing a curfew during the current local state of emergency
2. Amending current curfew to 9 pm for city except for beach
3. Amending beach curfew to 7:00 to 7:00
4. Limiting Access to the Beach
5. Rescinding access limitation to the beach
6. Resolution 22-59
7. Resolution 22-60
8. Resolution 22-61
9. Ratifying the Local State of Emergency

---

**REVIEWERS:**

City Manager: Arleen Hunter
City Attorney: Derek Rooney
City Clerk: Debra Filipek
Department Director:

Council Action: Approved __ Denied __ Deferred ___ Other______________________

**EXECUTIVE ORDER**
**ESTABLISHING A CURFEW DURING THE CURRENT**
**LOCAL STATE OF EMERGENCY**
**HURRICANE IAN**

WHEREAS, the City of Bonita Springs is under a Local State of Emergency as a result of Hurricane Ian; and

WHEREAS, as a result of Hurricane Ian, emergency conditions exist within the City because of damage to buildings and structures and debris on public and private property due to the high winds, rain storm surge and flooding.

NOW THEREFORE the City Manager is authorized by law and pursuant to Resolution 22-59, in order to protect the health and safety of the City, to enact the following emergency measure(s):

1. **Establishment of Curfew.** Until further notice from the City, all persons in the City of Bonita Springs are prohibited from being abroad in vehicles or on foot beginning at 6:00 pm on this 28th day of September, 2022, and continuing until further notice. This curfew shall not apply to those persons actually engaged in the performance of governmental or emergency duties, public service employees proceeding to or from their places of work, members of the media, or others specifically allowed pursuant to the current State of Emergency orders issued by the Governor or Lee County. The Lee County Sheriff's Office is empowered to enforce all provisions of this curfew.

2. **Effective Date and Duration**. This Executive Order shall be effective immediately upon my execution, this 28th day of September, 2022, and shall remain in effect until otherwise terminated or extended in accordance with applicable law.

Arleen M. Hunter
City Manager

**EXECUTIVE ORDER 22-02**
**AMENDING CURRENT CURFEW DURING**
**LOCAL STATE OF EMERGENCY**
**HURRICANE IAN**

WHEREAS, the City of Bonita Springs is under a Local State of Emergency as a result of Hurricane Ian; and

WHEREAS, as a result of Hurricane Ian, emergency conditions exist within the City because of damage to buildings and structures and debris on public and private property due to the high winds, rain, storm surge and flooding; and

WHEREAS, on September 28, 2022, an Executive Order was issued establishing a City-wide curfew beginning at 6:00 pm and continuing until further notice.

NOW THEREFORE the City Manager is authorized by law and pursuant to Resolution 22-59, in order to protect the health and safety of the City, to enact the following emergency measure(s):

1. **Bonita Beach Area Curfew.** Until further notice from the City, all persons in the Bonita Beach areas, including Little Hickory Island and Big Hickory Island, are prohibited from being abroad in vehicles or on foot.

2. **City-wide Curfew.** Except for the area identified above, all persons in the City of Bonita Springs are prohibited from being abroad in vehicles or on foot between the hours of 9:00 pm and 6:00 am, until further notice from the City.

3. **Exempted Persons**. These curfews shall not apply to those persons actually engaged in the performance of governmental or emergency duties, public service employees proceeding to or from their places of work, members of the media, or others specifically allowed pursuant to the current State of Emergency orders issued by the Governor or Lee County.

4. **Enforcement**. The Lee County Sheriff's Office is empowered to enforce all provisions of this curfew.

5. **Effective Date and Duration**. This Executive Order shall be effective immediately upon my execution, this 30th day of September, 2022, and shall remain in effect until otherwise terminated or extended in accordance with applicable law.

Arleen M. Hunter
City Manager

**EXECUTIVE ORDER 22-03**
**AMENDING CURRENT CURFEW DURING**
**LOCAL STATE OF EMERGENCY**
**HURRICANE IAN**

WHEREAS, the City of Bonita Springs is under a Local State of Emergency as a result of Hurricane Ian; and

WHEREAS, as a result of Hurricane Ian, emergency conditions exist within the City because of damage to buildings and structures and debris on public and private property due to the high winds, rain, storm surge and flooding; and

WHEREAS, on September 28, 2022, an Executive Order was issued establishing a City-wide curfew beginning at 6:00 pm and continuing until further notice.

NOW THEREFORE the City Manager is authorized by law and pursuant to Resolution 22-59, in order to protect the health and safety of the City, to enact the following emergency measure(s):

1. **City-wide Curfew Rescinded.** Except for the Bonita Beach Area defined below, the City-wide curfew previously enacted by Executive Order is hereby terminated.

2. **Bonita Beach Area Curfew.** Until further notice from the City, all persons in the Bonita Beach areas, including Little Hickory Island and Big Hickory Island, are prohibited from being abroad in vehicles or on foot between the hours of 7:00 pm and 7:00 am.

3. **Exempted Persons**. This curfew shall not apply to those persons actually engaged in the performance of governmental or emergency duties, public service employees proceeding to or from their places of work, members of the media, or others specifically allowed by law or pursuant to the current State of Emergency orders issued by the Governor or Lee County.

4. **Enforcement**. The Lee County Sheriff's Office is empowered to enforce all provisions of this curfew.

5. **Effective Date and Duration**. This Executive Order shall be effective immediately upon my execution, this 7th day of October, 2022, and shall remain in effect until otherwise terminated or extended in accordance with applicable law.

Arleen M. Hunter
City Manager

# EXECUTIVE ORDER 22-04
# LIMITING ACCESS TO LITTLE HICKORY ISLAND
# STATE OF EMERGENCY
# HURRICANE IAN

WHEREAS, the City of Bonita Springs is under a State of Emergency as a result of Hurricane Ian; and

WHEREAS, as a result of Hurricane Ian, emergency conditions exist within the City of Bonita Springs because of damage to buildings and structures and debris on public and private property as a result of high winds, rain, storm surge and post-storm flooding; and

WHEREAS, Little Hickory Island and other barrier islands within the City of Bonita Springs experienced substantial inundation and storm surge as a result of Hurricane Ian; and

WHEREAS, Hickory Boulevard, the primary public right-of-way on Little Hickory Island, has been severely compromised and unsafe for regular vehicle access; and

WHEREAS, it is necessary for public safety to limit access to essential personnel and residents of the affected area.

NOW THEREFORE, the City Manager, in order to protect the health and safety of the public, is authorized by law and pursuant Resolution 2022-59, including any extensions, hereby puts the following emergency measure(s) in place:

1. **Limited Access.** Until further notice from the City, all pedestrian and vehicular access to Bonita Beach Road west and north of the intersection of Barefoot Beach Boulevard is prohibited. This limitation shall not extend to governmental or emergency response personnel, residents or their authorized licensee, and their vehicles. Residents and authorized licensees must present sufficient proof of residency or authorization, as applicable.

2. **Enforcement.** The Lee County Sheriff's Office is empowered to enforce all provisions of this Order.

3. **Effective Date and Duration**. This Order shall be effective immediately upon my execution, this 7th day of October, 2022, and shall be effective until otherwise terminated or extended in accordance with applicable law.

Arleen M. Hunter, City Manager

**EXECUTIVE ORDER 22-05 (REVISED)**
**RESCINDING LIMITED ACCESS TO**
**LITTLE HICKORY ISLAND**
**STATE OF EMERGENCY**

WHEREAS, the City of Bonita Springs is under a State of Emergency as a result of Hurricane Ian; and

WHEREAS, as a result of Hurricane Ian, emergency conditions exist within the City of Bonita Springs because of damage to buildings and structures and debris on public and private property as a result of high winds, rain, storm surge and post-storm flooding; and

WHEREAS, Little Hickory Island and other barrier islands within the City of Bonita Springs experienced substantial inundation and storm surge as a result of Hurricane Ian; and

WHEREAS, Hickory Boulevard, the primary public right-of-way on Little Hickory Island, has been severely compromised and unsafe for regular vehicle access; and

WHEREAS, on October 7, 2022, Executive Order 22-04 was issued limiting access to Little Hickory Island to essential personnel, residents, and authorized licensees.

NOW THEREFORE, the City Manager, in order to protect the health and safety of the public, is authorized by law and pursuant Resolution 2022-59, including any extensions, hereby puts the following emergency measure(s) in place:

1. **Limited Access Rescinded.** The restrictions enacted by Executive Order 22-04 is hereby rescinded.

2. **Curfew.** The Bonita Beach Area Curfew established by Executive Order 22-03 remains in effect. Until further notice from the City, all persons in the Bonita Beach areas, including Little Hickory Island and Big Hickory Island, are prohibited from being abroad in vehicles or on foot between the hours of 7:00 pm and 7:00 am.

3. **Enforcement.** The Lee County Sheriff's Office is empowered to enforce all provisions of this Order.

4. **Effective Date and Duration**. This Order shall be effective on October 14th, 2022 at 7:00am and shall be effective until otherwise terminated or extended in accordance with applicable law.

Arleen M. Hunter, City Manager

CITY OF BONITA SPRINGS
RESOLUTION NO. 22 - 59
**HURRICANE IAN**

**AN EMERGENCY RESOLUTION OF THE CITY OF BONITA SPRINGS DECLARING A STATE OF LOCAL EMERGENCY RESULTING FROM HURRICANE IAN; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Governor Ron DeSantis signed Executive Orders 2022-218 and 2022-219, in response to the anticipated landfall of Hurricane Ian and has declared a state of emergency, pursuant to Chapter 252, Florida Statutes; and,

**WHEREAS**, forecasting specific to Lee County indicates a strong likelihood of significant impact on this area; and

**WHEREAS**, Hurricane Ian has the potential for causing extensive flooding and potential wind and water damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings and areas; and

**WHEREAS**, Chapter 252, Florida Statutes, provides authority for a political subdivision such as the City of Bonita Springs to declare a State of Local Emergency and to waive the procedures and formalities otherwise required of local governments by law pertaining to:

1. Performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community;

2. Entering into contracts;

3. Incurring obligations;

4. Employment of permanent and temporary workers;

5. Utilization of volunteer workers;

6. Rental of equipment;

7. Acquisition and distribution, with or without compensation, of supplies, materials and facilities;

8. Appropriation and expenditure of public funds.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor on behalf of the City Council of the City of Bonita Springs, Lee County, Florida;

Section 1. Hurricane Ian poses a serious threat to the lives and property of residents of the City of Bonita Springs and hereby declares a State of Local Emergency, effective September 26, 2022 for all territory within the legal boundaries of the City of Bonita Springs.

Section 2. This resolution is an emergency measure necessary for the protection of the public safety, due to the proximity of Hurricane Ian.

Section 3. Pursuant to Chapter 14 of the Bonita Springs Code, the Mayor is authorized to declare a local state of emergency.

Section 4. The City Manager is hereby empowered with plenary authority on behalf of the City Council to take all actions necessary for protection of persons and property authorized by law.

Section 5. Effective Date

This resolution shall take effect immediately upon adoption. Consistent with Florida Statutes §252.38(3), the duration of this state of emergency declared locally is limited to 7 days and may be extended, as necessary by resolution, in 7-day increments.

DULY PASSED AND ENACTED by the Mayor of the City of Bonita Springs, Lee County, Florida, this 26th day of September, 2022.

AUTHENTICATION:

Rick Steinmayer — Mayor

City Clerk

APPROVED AS TO FORM: ______________________
City Attorney

Date filed with City Clerk: 9/26/2022

CITY OF BONITA SPRINGS
RESOLUTION NO. 22 - 60

**AN EMERGENCY RESOLUTION OF THE CITY OF BONITA SPRINGS DECLARING A STATE OF LOCAL EMERGENCY RESULTING FROM HURRICANE IAN; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Governor Ron DeSantis signed Executive Orders 2022-218 and 2022-219, in response to the anticipated landfall of Hurricane Ian and has declared a state of emergency, pursuant to Chapter 252, Florida Statutes; and,

**WHEREAS**, on September 26, 2022 the City declared a local State of Emergency ahead of the landfall of Hurricane Ian; and

**WHEREAS**, Hurricane Ian had a significant impact on this area, the effects of which are still being fully ascertained and include extensive flooding, wind and water damage, not only to public infrastructure but to homes and businesses throughout the City; and

**WHEREAS**, the effects of Hurricane Ian continue to pose a serious threat to the lives and property of residents of the City of Bonita Springs.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor on behalf of the City Council of the City of Bonita Springs, Lee County, Florida;

Section 1. The recitals above are hereby incorporated herein.

Section 2. The current State of Emergency is extended.

Section 3. This resolution shall take effect immediately upon adoption. Consistent with Florida Statutes §252.38(3), the duration of this state of emergency declared locally is limited to 7 days and may be extended, as necessary by resolution, in 7-day increments.

DULY PASSED AND ENACTED by the Deputy Mayor of the City of Bonita Springs, Lee County, Florida, this 3rd day of October, 2022.

AUTHENTICATION:

Deputy Mayor Mike Gibson

Brenda Reetz for Deb Filipek
City Clerk

APPROVED AS TO FORM: ____________________
City Attorney

Date filed with City Clerk: Breno 10/3/22

SEAL

CITY OF BONITA SPRINGS
RESOLUTION NO. 22 - 61

**AN EMERGENCY RESOLUTION OF THE CITY OF BONITA SPRINGS DECLARING A STATE OF LOCAL EMERGENCY RESULTING FROM HURRICANE IAN; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Governor Ron DeSantis signed Executive Orders 2022-218 and 2022-219, in response to the anticipated landfall of Hurricane Ian and has declared a state of emergency, pursuant to Chapter 252, Florida Statutes; and,

**WHEREAS**, on September 26, 2022 the City declared a local State of Emergency ahead of the landfall of Hurricane Ian; and

**WHEREAS**, Hurricane Ian had a significant impact on this area, the effects of which are still being fully ascertained and include extensive flooding, wind and water damage, not only to public infrastructure but to homes and businesses throughout the City; and

**WHEREAS**, the effects of Hurricane Ian continue to pose a serious threat to the lives and property of residents of the City of Bonita Springs.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor on behalf of the City Council of the City of Bonita Springs, Lee County, Florida;

Section 1. The recitals above are hereby incorporated herein.

Section 2. The current State of Emergency is extended.

Section 3. This resolution shall take effect immediately upon adoption. Consistent with Florida Statutes §252.38(3), the duration of this state of emergency declared locally is limited to 7 days and may be extended, as necessary by resolution, in 7-day increments.

DULY PASSED AND ENACTED by the Mayor of the City of Bonita Springs, Lee County, Florida, this 10th day of October, 2022.

AUTHENTICATION:

Mayor

City Clerk

APPROVED AS TO FORM:

City Attorney

Date filed with City Clerk: 10/10/22

**CITY OF BONITA SPRINGS**

**RESOLUTION NO. 2022-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONITA SPRINGS, FLORIDA RATIFYING THE DECLARED STATE OF LOCAL EMERGENCY WHICH PROVIDED FOR EMERGENCY GOVERNMENTAL OPERATIONS RELATED TO HURRICANE IAN; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Bonita Springs places the highest premium on safety of life and property in the City during storm events; and

**WHEREAS**, Hurricane Ian posed a serious potential threat to the residents and property of the City of Bonita Springs; and

**WHEREAS**, the Governor of the State of Florida has promulgated Executive Orders Nos. 22-218 and 22-219 wherein he found that a State of Emergency exists within the State of Florida inclusive of Lee County; and

**WHEREAS**, Chapter 252, Florida Statutes, authorizes municipalities to declare a state of local emergency and to waive procedures and formalities otherwise required of municipalities to take whatever prudent action is necessary to ensure the health, safety, and welfare of the City in the event of a state of local emergency; and

**WHEREAS**, the Section 14-41 of the Bonita Springs City Code authorizes they Mayor to declare a state of emergency to respond to the emergency should a quorum of the City Commission be physically unable to meet; and

**WHEREAS**, Hurricane Ian had a significant impact on this area, the effects of which are still being fully ascertained and include extensive flooding, wind and water damage, not only to public infrastructure but to homes and businesses throughout the City; and

**WHEREAS**, the Mayor hereby requests the Council ratify his execution of Resolution 2022-59 declaring a local state of emergency, any extensions thereof, Resolutions 2022-51, and those emergency actions and orders issued by the City Manager in response to the local state of emergency in response to Hurricane Ian.

**NOW, THEREFORE,** be it resolved by the City Council of the City of Bonita Springs, Florida hereby resolves:

**Section 1.** The recitals above are hereby incorporated herein.

**Section 2.** The City Manager was provided plenary authority on behalf of the City Council to take all actions necessary for protection of persons and property authorized by law.

**<u>Section 3</u>.** All Resolutions authorized by the Mayor and actions taken by the City Manager during the state of local emergency including the prior Declaration of Local Emergency are hereby ratified. Additionally, the current state of emergency is continued as provide in Section 4.

**<u>Section 4</u>.** This Resolution shall take effect immediately upon adoption. Consistent with Florida Statutes §252.38(3), the duration of this state of emergency declared locally is limited to 7 days and may be extended, as necessary by resolution, in 7-day increments.

**DULY PASSED AND ENACTED** by the City Council of Bonita Springs, Florida this ______ day of _______, 2022.

Attest:

By: ____________________________ By: ____________________________
City Clerk Mayor

Reviewed for legal sufficiency:

By: ____________________________________________________________
City Attorney

**CITY OF BONITA SPRINGS**
**AGENDA ITEM SUMMARY**

**Green Sheet No. 22-10-166**
**October 19, 2022**

**REQUESTED MOTION: Adopt Resolution to ratify contract for RFP 22-13 Information Technology Services to the single responsive bidder, TeamLogicIT.**

**REQUESTOR:** Lora Taylor, Communications Director

**AGENDA:** Consent

**STRATEGIC PRIORITY:** Government Transparency

---

**BACKGROUND**: In March 2022, TeamLogicIT was retained to provide System Watch and Remote IT Support for city computers. The service offered critical updates, firewalls, anti-virus, procurement services for hardware and software needs and consulting.

On September 15, 2022, City Staff advertised for sealed bids for a provider to offer these services for a one-year agreement with a two-year renewal option. The City received one sealed bid from TeamLogicIT in the amount of $96,384.00.

Funding for the System Watch and Remote Managed IT Support is included in the current year budget under the GL 00.240.513.3401.

**STAFF RECOMMENDATION:** Adopt resolution to award contract for RFP 22-13 Information Technology Services Support to TeamLogicIT.

**ATTACHMENTS:**

1. Resolution
2. Contract

---

**REVIEWERS:**

City Manager: Arleen Hunter
City Attorney: Derek Rooney
City Clerk: Debra Filipek
Department Director: Lora Taylor

Council Action: Approved __ Denied __ Deferred ___ Other_____________________

**CITY OF BONITA SPRINGS, FLORIDA**

**RESOLUTION 22-**

**A RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA APPROVING THE RECOMMENDATION TO ENGAGE TEAMLOGICIT FOR THE CITY'S INFORMATION TECHNOLOGY SERVICES SUPPORT, RFP 22-13 AND AUTHORIZE STAFF TO ENTER INTO AN AGREEMENT FOR TEAMLOGICIT TO PROVIDE SERVICES FOR A ONE YEAR AGREEMENT WITH AN OPTION FOR A TWO-YEAR RENEWAL.**

**WHEREAS**, the City advertised for Information Technology Services Support and received one qualification and experience submittal from the following: TeamLogicIT.

**WHEREAS**, the Communications Department recommends acceptance of the TeamLogicIT proposal.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Bonita Springs, Lee County, Florida:

Section 1. Ratify the award to TeamLogicIT for the City's Information Technology Services Support.

Section 2. Effective date. This resolution shall take effect immediately and upon adoption.

**DULY PASSED AND ENACTED** by the City Council of the City of Bonita Springs, Lee County, Florida this _____ day of ________, 2022.

AUTHENTICATION

_______________________________ _______________________________

Mayor City Clerk

**ATTACHMENT H**

**Contract Sample**
CITY OF BONITA SPRINGS CONTRACT
INFORMATION TECHNOLOGY SERVICES
RFP # 22-13

Contract No.:_____
City Award Date:_____

# CONTRACT

Made as of the __1st__ day of __October__ in year of 2022._.

BETWEEN the CITY OF BONITA SPRINGS (hereinafter referred to as "City"); Lee County, Florida and the VENDOR:

Check Appropriate Line:

TeamLogicIT
1016 Collier Center Way
Suite 105
Naples, FL, 34135

_____ Individual
_____ Partnership
_____ LLC or Other
_____ Incorporated in the State of Florida

In consideration of the mutual covenants herein set forth, agree as follows:

Vendor hereby agrees to provide and perform the services as set forth in this contract.

ARTICLE 1. WORK
The Vendor shall perform all the work required by the Contract Documents for this project in full accordance with the Specifications.

**PROJECT NAME**: INFORMATION TECHNOLOGY SERVICES

**LOCATION**: CITY OF BONITA SPRINGS

**SCOPE OF WORK:** The City of Bonita Springs invites Information Technology (IT) vendors to propose Information Technology support for the City's Information Technology infrastructure for a one year service agreement, with an additional two year renewal option. Proposals should include but are not limited to the following: patching of servers and workstations, server backups, anti-virus support, dns filtering, advanced spam protection, help desk support, asset monitoring and network monitoring. The proposal should offer full support of the city's information technology infrastructure. The consultant selected would work directly with the city's Information Technology Manager to ensure the city's information technology environment is secure. The consultant would assist the Information Technology Manager in managing the information technology environment to ensure gateway security, end point security, multifactor authentications, identity and access management, mobile protection, remote access, virtual private networks (VPN), back up and disaster security, wireless network security and end user security awareness training.

ARTICLE 2. AMOUNT OF CONTRACT
The City shall pay the Vendor in current funds for the performance of the work, subject to additions and deductions by change order as provided in the Contract Documents, the not-to-exceed unit price of: (express in words and numerals): Ninety-six thousand three hundred and eighty four dollars $ 96,384.00.

ARTICLE 3. PROGRESS PAYMENTS
The City will process payments in accordance with Florida Statutes §218.70, Local Government Prompt Payment Act.

ARTICLE 4. CONTRACT DOCUMENTS

This Contract entered into this date by the City of Bonita Springs, Florida and the Vendor. The parties hereto do mutually agree as follows:

The Vendor shall furnish all services described in the Scope of Work for the amount stated above in strict accordance with the Contract Documents, all of which are made a part hereof and enumerated as follows:

4.1 City of Bonita Springs Contract
- 4.1.1 Solicitation Document
- 4.1.2 Notice to Vendors
- 4.1.3 Instruction to Vendors
- 4.1.4 Vendor's Bid Proposal
- 4.1.5 Certificate of Insurance
- 4.1.6 The following which may be delivered or issued after the effective date of the Contract and are not attached hereto: All written amendments and other documents amending, modifying or supplementing the Contract Documents.

ARTICLE 5. TERMS

Term of contract is for October 1, 2022 through September 30, 2023.

ARTICLE 6. LIQUIDATED DAMAGES

The City and Vendor recognize that time is of the essence to this Contract and that the City will suffer financial loss if the work is not completed within the times specified in the above, plus any extensions thereof allowed by change order. Accordingly, City and Vendor agree that as Liquidated Damages for delay (but not as a penalty) the sum of $[ENTER AMOUNT HERE] per day shall be deducted from monies due the Vendor or paid by the Vendor to the City for each calendar day that expires after the time specified. The City shall have the right to deduct all damages due from the final payment. However, prior to deducting liquidated damages, the City shall give the Vendor seven (7) calendar days' notice prior to submitting the adjusted amount due to Finance for payment. The City reserves the right to effect repairs itself as may be required to remedy any deficiency or to achieve completion and to charge the Vendor for such costs.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 The City and Vendor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

7.2 The Vendor shall not assign or transfer any of its rights, benefits, or obligations, except for transfer that result from transfer or consolidation with a third party, without the prior written approval of the City.

7.3 To the fullest extent permitted by Florida law, the Contractor/Vendor/Consultant shall be liable and agrees to be liable for and shall defend, indemnify and hold harmless the City, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City.

The Vendor shall assume all risk and bear any loss, damage or injury to property or persons occasioned by neglect or accident during the progress of work until the same shall have been completed and accepted. The Vendor agrees to repair restore or rebuild any damages he causes to any property of the City. He shall also assume all blame or loss by reason of neglect or violation of any state of federal law or municipal rule, regulation or order. The Vendor shall give to the proper authorities all required notices relating to the work, obtain all official permits and licenses and pay all proper fees. He shall repair any damage that may have occurred to any adjoining building, structure, utility or private property in the course of this work.

7.4 In any action or proceeding arising between the parties relating to the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorney fees, expenses, and all court costs, including fees and costs incurred through any appeal, from the non-prevailing party.

ARTICLE 8. COMPLIANCE WITH PUBLIC RECORDS LAW

Any contractor acting on behalf of the City of Bonita Springs must comply with Florida public records laws, specifically to:

8.1 Keep and maintain public records required by the City to perform the service.

8.2 Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statutes §119 or as otherwise provided by law.

8.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract if the Contractor does not transfer the records to the City.

8.4 Upon completion of the Contract, transfer, at no cost, to the City of Bonita Springs all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

8.5 The City will consider it a breach of contract should the Contractor fail to comply with any public records request.

8.6 A Contractor who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10

8.7 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (CITY CLERK) AT: 239-949-6262, CITY OF BONITA SPRINGS, 9101 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135, debbie.filipek@cityofbonitasprings.org.**

8.8 If the Contractor is not providing the requested public records, the burden of proof is on the Contractor to show why they did not comply with the request.

**[This space intentionally left blank]**

This Contract may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Contract, it shall not be necessary to produce or account for more than one such counterpart.

In witness whereof, all portions of the Contract Document have been signed or identified by City and Vendor on their behalf.

VENDOR:

By (printed): ____________________________________

By (signature): ____________________________________

Title: ____________________________________

____________________________________
Company Name

CITY OF BONITA SPRINGS:

ATTEST:

By: ____________________________________
City Clerk

Date: ____________________________________

By: ____________________________________
Signature

APPROVED AS TO FORM

By: ____________________________________
City Attorney's Office

| CITY OF BONITA SPRINGS<br>AGENDA ITEM SUMMARY | Green Sheet No. 22-10-167<br>October 19, 2022 |
|---|---|

**REQUESTED MOTION:** Final reading and public hearing of AN ORDINANCE OF THE CITY OF BONITA SPRINGS; AUTHORIZING THE LEASE OF REAL PROPERTY KNOWN AS IMPERIAL CROSSING IN THE OLD 41 DOWNTOWN; AND, PROVIDING FOR EFFECTIVE DATE.

**REQUESTOR:** Derek Rooney, City Attorney

**AGENDA:** City Attorney's Items

**STRATEGIC PRIORITY:** 3) Strengthen/Enhance City Finances, 8) Economic Development

---

**BACKGROUND:**

On May 28, 2021 Barron Collier Companies submitted an unsolicited letter of interest to enter into an agreement to design and construct public recreational and civic facilities under a long term commercial and residential land lease in public-private partnership with the City on Imperial Crossing (Bamboo) parcels in Downtown Bonita. The City received letters of interest from three parties and ultimately selected the proposal from Barron Collier Companies.

Pursuant the City Charter, Section 27, requires the adoption of an ordinance authorizing the conveyance or lease of city real property in excess of $15,000 in value.

**STAFF RECOMMENDATION:** Adopt Ordinance

**ATTACHMENTS:**

1. Ordinance
2. Comprehensive Agreement
3. Lease
4. CBRE Report (to be provided addendum)
5. Auditors Acknowledgement

---

**REVIEWERS:**

City Manager: Arleen Hunter
City Attorney: Derek Rooney
City Clerk: Debra Filipek
Department Director: John Dulmer

Council Action: Approved __ Denied __ Deferred ___ Other____________________

**CITY OF BONITA SPRINGS**
**ORDINANCE NO. 22 -**

AN ORDINANCE OF THE CITY OF BONITA SPRINGS; AUTHORIZING THE LEASE OF REAL PROPERTY KNOWN AS IMPERIAL CROSSING IN THE OLD 41 DOWNTOWN; AND, PROVIDING FOR EFFECTIVE DATE.

**WHEREAS**, the Section 27 of the City of Bonita Springs Charter requires the adoption of an ordinance to authorize the conveyance or lease of real property by the City when the value of such property exceeds $15,000; and

**WHEREAS**, on May 28, 2021 Barron Collier Companies submitted an unsolicited letter of interest to enter into an agreement to design and construct public recreational and civic facilities under a long term commercial and residential land lease in public-private partnership with the City; and

**WHEREAS**, the City subsequently issued a notice to proceed and sought additional proposals pursuant to Section 255.065, Florida Statutes; and

**WHEREAS**, following the June 16, 2021 City Council Workshop and subsequent selection process Barron Collier Companies proposal was selected to develop the project at Imperial Crossing (also known as the Bamboo parcels) supporting City efforts to revitalize the Old 41 Road historic downtown; and

**WHEREAS**, City Council at their October 14, 2022 entered into a comprehensive final agreement to lease the property from the City and develop in accordance with mutually agreed terms.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Bonita Springs, Lee County, Florida:

**SECTION ONE: RECITALS**

The forgoing recitals are hereby adopted as legislative findings and incorporated herein as though set forth below.

**SECTION TWO: AUTHORIZING CONVEYANCE**

City Council of Bonita Springs hereby authorizes the lease of certain real property, described in Exhibit “A” attached hereto for a term not to exceed 99 years and subject to the conditions contained in the Comprehensive Agreement between the City and Barron Collier Companies on October 14, 2022.

**SECTION THREE: EFFECTIVE DATE**

This Ordinance shall take effect immediately upon adoption.

**DULY PASSED AND ENACTED** by the City Council of the City of Bonita Springs, Lee County, Florida, this 14th day of October, 2022.

AUTHENTICATION:

______________________________ ______________________________

Mayor City Clerk

APPROVED AS TO FORM: ___________________________

City Attorney

Vote:

| | |
|---|---|
| Carr | Corrie |
| Purdon | Quaremba |
| Forbes | Steinmeyer |
| Gibson | |

Date filed with City Clerk: ________________________

# COMPREHENSIVE AGREEMENT

THIS COMPREHENSIVE AGREEMENT ("Agreement") is made and entered into this 19th day of October, 2022 by and between the City of Bonita Springs Florida hereinafter referred to the "City"), and Barron Collier Corporation, a Florida corporation (hereinafter referred to as ("BCC").

## RECITALS:

**WHEREAS,** the City solicited proposals for the redevelopment of the downtown Imperial Crossing Project (the "Project") pursuant to Section 255.065, Florida Statutes; and

**WHEREAS**, the City Council finds that the Project involves the ground lease and improvements to certain real property, previously acquired by the City for redevelopment purposes; and

**WHEREAS**, the City Council finds that the proposal serves a public purpose by creating a public recreational, cultural, and parking facility in the heart of the City's Old 41 downtown redevelopment area; and

**WHEREAS,** BCC submitted a proposal for the Project that was accepted by the City Council; and

**WHEREAS**, BCC and the City entered into an Interim Agreement on November 3, 2021 for purposes of finalizing the term of the ground lease and public improvements, described in detail and incorporated herein in the attached lease as Exhibit "1" to this Agreement (hereinafter "Lease"); and

**WHEREAS,** Pursuant to Section 255.065(7), Florida Statutes, City and BCC wish to enter into this Comprehensive Agreement as contemplated by the aforementioned statute.

**NOW, THEREFORE,** the City and the BCC agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. BCC is authorized pursuant to the terms of the Lease to make certain qualifying public park improvements and occupy a portion of the property described more specifically as:

   Approximately 5.3± acres located in the plat of "Bonita Springs" according to the plat thereof recorded in Plat Book 3, Page 26 of the Public Records of Lee County, Florida, including Lots J and K and that part of Lot I South of Leffert Creek and North of the Imperial River and all of Blocks 6 and 7, and Lots 4, 5, 6, 7, and 8 of Block 5, together with the East ½ of the alley vacated by the Lee County Commission, Minutes Book 51, page 442, and the West ½ of the alley vacated by the Lee County Commission, Minutes Book 51, page 442, said lands situate, lying and being in the City of Bonita Springs, Lee County, Florida, commonly known as Imperial Crossing.

4. The City Council finds that the proposed Lease is in the public's best interest and that the property described above will remain in the City's ownership throughout the term of the Lease and that reasonable safeguards have been established to ensure that ownership interest as well as purposed public improvements are protected.

5. The conceptual design of the public recreational and other qualifying project improvements have been reviewed by the City and will be subject to further coordination and review during the entitlement processes outlined in the Lease.

6. The Term of this Comprehensive Agreement shall mirror that of the Lease and shall be extended or terminated as provided therein but shall be effective immediately upon its execution by all parties.

7. BCC shall have the right to assign the Comprehensive Agreement to an affiliate entity established specifically for the Project as provided in the Lease.

10. Contemporaneous with the execution of this Agreement, the parties have executed the Lease attached hereto as Exhibit 1. The Parties shall work together in good faith to finalize any required amendments to the terms of the Lease, including all development obligations contained in or finalized pursuant to this Agreement. Amendments to the Lease that are not material amendments, by no later than 60 days prior to the Outside Entitlement Date, and that may be negotiated and agreed by the Parties in writing prior to the Outside Entitlement Date, upon approval by the City Attorney, without further approval by the City Council, include, but are not limited to, amendments that correct scrivener's errors or resolve internal inconsistencies, amendments that conform the Lease to the approved design plans or City's special assemblage plan requirements, easement agreements, operating agreements as defined in the Lease, amendments that incorporate reasonable and customary lender conditions, and amendments required by law or which otherwise manifest the intent of the parties as of the effective date of this Agreement.

11. If any term, provision or condition contained in this Agreement shall be held invalid or unenforceable the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term, provision and condition to this Agreement shall be valid and enforceable provided that the severed term, provision or condition does not materially affect the parties ability to perform. The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. This Agreement shall not be deemed to have been prepared by the City or Developer, but by both Parties. Venue for any action related to this Agreement shall be in Lee County.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF,** the parties hereto have set their hands and seals the day and year first written above.

Debbie Filipek, City Clerk

______________________________

Clerk

**CITY OF BONITA SPRINGS FLORIDA**

______________________________

Rick Steinmeyer, Mayor

Approved as to form and
legal sufficiency

______________________________

Derek Rooney, City Attorney

**ATTEST:**

______________________________

**Barron Collier Companies**

BY: ______________________________

PRINT**:** ______________________________

TITLE: ______________________________

# GROUND LEASE AGREEMENT

(Downtown Bonita Project – Bonita Springs, Florida)

THIS GROUND LEASE AGREEMENT (this "**Lease**") is made and entered into by and between the City of Bonita Springs, a municipal corporation of the State of Florida ("**Landlord**"), Downtown Bonita LLC, a ________ limited liability company ("**Tenant"**).

W I T N E S S E T H:

WHEREAS, Landlord is the owner of the real property described in Exhibit "A", attached hereto which is located in downtown Bonita Springs, Florida (the "**Entire Development**"), which Entire Development consists of both: (a) "Tenant's Parcel" that is leased to Tenant as more particularly described below, and (b) the "Public Use Lands" (defined below) which is the portion of the Entire Development being retained by Landlord as more particularly described below; and

WHEREAS, subject to the terms and conditions hereof, Landlord and Tenant have agreed upon certain planned improvements to be constructed on the Entire Development, as generally depicted on the conceptual site plan attached hereto as Exhibit "B" (the "**Conceptual Site Plan**"); and

WHEREAS, Landlord desires to lease to Tenant a portion of the Entire Development which is described or otherwise depicted in Exhibit "C", attached hereto to be developed by Tenant into a mixed use project (the "**Tenant's Parcel**"), and

WHEREAS, Landlord will retain that portion of the Entire Development described or otherwise depicted in Exhibit "C", attached hereto, for use by Landlord and members of the public for a public park as more particularly described in this Lease (the "**Public Use Lands**"); and

WHEREAS, Landlord and Tenant desire to enter into this Lease for the purpose of establishing their respective rights and obligations under which Tenant may design, develop, construct and operate a mixed-use project on the Premises consisting of residential multi-family buildings as well as commercial buildings, and related improvements and amenities (including parking lots to serve such buildings) ("**Tenant's Mixed Use Project**"); and

WHEREAS, subject to the terms and conditions hereof, Tenant will also cause certain improvements to be made to the Public Use Lands for the purpose of converting such lands into public city parks located on the north and south banks of the Imperial River, as more particularly described herein.t

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Landlord and Tenant agree as follows:

## ARTICLE I

## CERTAIN DEFINED TERMS

Section 1.1. Certain Definitions. In addition to other terms defined in this Lease, for all purposes of this Lease:

(a) "**Additional Rent**" means any and all amounts other than Base Rent payable by Tenant to Landlord as required under this Lease including, without limitation, Percentage

Rent, the Impositions, sales taxes on Rent, late charges, and all other payments and charges payable by Tenant hereunder or arising from Tenant's use of the Premises.

(b) "**Affiliate**" means any Person that, directly or indirectly, owns or Controls, is owned or Controlled by, or is under common ownership or Control with the Person in question. As used in the preceding sentence, a Person shall be deemed to own another Person if it holds legal or equitable title to more than fifty percent (50%) or more of the common stock, partnership interests, limited partnership interests, membership interests or other ownership interests of such other Person.

(c) "**Association**" or "**Maintenance Association**" shall be as defined in the REA.

(d) "**Base Rent**" shall be as defined in Section 4.1 below.

(e) "**Calendar Year**" shall mean and refer to the period of time commencing on January 1st and ending on December 31st of such year.

(f) "**City Parking Spaces**" are defined in Section 6.3, below.

(g) "**Conceptual Site Plan**" is defined in the "whereas" clauses, above.

(h) "**Control**" (including the correlates of "Controlled" and "Controlling") means, with respect to any Person, (i) ownership directly or indirectly of more than fifty percent (50%) of all equity interests in such Person, (ii) the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies of the specified Person, through the ownership or control of voting securities, partnership interests or other equity interests, by contract or otherwise, or (iii) the power (exercised directly or through one or more subsidiaries) with respect to the Premises, to make all material property related management decisions in the ordinary course of business (subject to such authority as has been delegated to a property manager under a management agreement meeting the requirements of applicable loan documents) and to veto all other decisions.

(i) "**County**" means Lee County, Florida.

(j) "**CPI**" means the Consumer Price Index for All Urban Consumers (all items index) for Cape Coral-Fort Myers as published by the United States Bureau of Labor Statistics of the U.S. Department of Labor, (CPI-U) (Base: 1982-84 = 100), or any most recently published successor index thereto, before seasonal adjustments. If the CPI is converted to a different standard reference base or otherwise revised, then the determination of adjustments provided for herein shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice-Hall, Inc., or any other nationally recognized publisher of similar statistical information. If the CPI ceases to be published, and there is no successor thereto, then such other index as Landlord and Tenant agree upon in writing shall be substituted for the CPI.

(k) "**CPI Adjustment**" means, as of the month of April of each year, the percentage increase or decrease, if any, of the CPI for the month of April of the previous year.

(l) "**Debtor Relief Laws**" means the Bankruptcy Code of the United States, as amended, and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws from time to time in effect affecting the rights of creditors generally.

(m) "**Default Rate**" shall mean an interest rate of twelve percent (12%) per annum.

(n) "**Delivery Date**" shall mean and refer to the date that Tenant notifies Landlord, in writing, that Tenant has obtained all Entitlements required (or desired) by Tenant for the development and improvement of the Premises and Public Use Lands in accordance with the terms of this Lease.

(o) "**Due Diligence Period**" means the period of ninety (90) days commencing on the Effective Date.

(p) **"Effective Date"** shall mean and refer to the date that the LAST of the following occurs (1) this Lease has been approved by the City Council of the Landlord and any applicable Governmental Authority that is required for the Lease to be binding and enforceable, (2) this Lease has been executed and delivered by Landlord, and (3) this Lease has been executed and delivered by Tenant. Upon the request of Landlord or Tenant, the parties hereto shall execute a supplement to this Lease for the purpose of confirming the Effective Date.

(q) "**Entire Development Improvements**" shall mean and refer to those improvements that Tenant is making to the Entire Development which includes both Tenant's Mixed Use Project Improvements and the Park Improvements.

(q) "**Entitlement Period**" shall mean and refer to the period of time commencing upon the expiration of the Due Diligence Period and ending on the Outside Entitlement Date (as defined in Section 3.2, below).

(r) **"Force Majeure Event"** means any one or more of the following that delays or prevents a party from performing an obligation under this Lease: (a) a natural catastrophe such as a flood, an earthquake, a tidal wave, a volcanic eruption, a tornado, a hurricane, a named tropical storm, (b) acts of war, terrorism, (c) labor strikes or lockouts, (d) civil commotions, (e) any moratorium on the issuance by any applicable governmental authority of any licenses, permits or other governmental approvals required by Landlord or Tenant to perform Landlord's Work or Tenant's Work, (f) documented supply chain disruptions and delays beyond the reasonable control and foreseeability of the performing party, and (g) any public health crisis including, but not limited to, pandemics (including without limitation, COVID-19) and epidemics where Tenant or Landlord is not permitted (or is materially impacted) by applicable Laws to perform its work or perform its obligations under this Lease. For the avoidance of doubt, a financial inability to perform is not a Force Majeure Event. Except for the payment of sums of money due from one party to the other, if either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of a Force Majeure Event (a "**Force Majeure Delay**"), the performance of such act shall be excused for the period of the Force Majeure Delay and the period for the performance of such act shall be extended for a period equal to the period of such Force Majeure Delay; provided, however, the party so delayed or prevented from performing shall exercise good faith efforts to remedy any such cause of delay or cause preventing performance. Notwithstanding the foregoing, (y) if any act required for the completion of Tenant's Work (including without limitation, performance of Tenant's Work and obtaining permits and government approvals for the same) is delayed due to a Force Majeure Event, such act shall not be excused for any period of the delay that would have likely been reduced had the party claiming the Force Majeure Event been diligently pursuing such act prior to the Force Majeure Event; and (z) if Landlord or Tenant fails to notify the other of the occurrence of a Force Majeure Event that would entitle it to relief of some nature under this Lease within fifteen (15) days after Landlord or Tenant, as applicable, has actual knowledge of the occurrence of such Force Majeure Event, then Landlord or Tenant, as applicable, shall only be entitled to claim the benefit of such Force Majeure Event with respect to any days of Force Majeure Delay that occur after Landlord or Tenant, as applicable, notifies the other of the occurrence of such Force Majeure Event. Any party claiming Force Majeure Delay shall as soon as reasonably determinable, to the extent the end date of the Force Majeure Delay is undetermined at the time notice is given, provide an additional notice to Landlord or Tenant, as applicable, of the date that the Force Majeure Delay has ended or is anticipated to end.

(s) "**Governmental Authority**" means the Landlord, the County and any other state, city, district or municipal governmental agency having authority over the development, construction and/or ownership and operations of the Entire Development Improvements.

(t) "**Gross Revenue**" means: (i) the actual rent received by Tenant from subtenants, licensees, and other occupants (collectively, "occupants") of the office, retail and other commercial areas of the Premises including any base rent and percentage rent received from such occupants, (ii) the actual rent received by Tenant from the lessees of the apartments on the Premises, and (iii) the actual occupancy fees, license fees and other amounts received by Tenant with respect to the Premises that arise from the use or enjoyment of all or any portion of the Premises, including, without limitation, revenue received by Tenant for parking spaces, use of indoor or outdoor venues, the rental or licensing of signs and advertising space.

Notwithstanding anything to the contrary, "Gross Revenue" shall exclude all of the following: (a) loan proceeds received by Tenant and pertaining to any loans obtained by Tenant whether or not secured by Tenant's leasehold interest in the Premises; (b) proceeds received by Tenant and arising out of the sale or assignment of the Tenant's leasehold interest in the Premises (or any part thereof), or received in connection with a sale or assignment of all or a portion of Tenant's Mixed Use Project, or the sale or transfer of any ownership interest (beneficial or otherwise) in and to the Tenant entity or any of its partners or members or in Tenant's Mixed Use Project; (c) payments made to Tenant from any sub-tenant or licensee of the commercial, office, retail and residential components of the Tenant's Mixed Use Project to the extent that such payments are for reimbursement of "pass-thru" expenses such as utilities, taxes, insurance, association assessments, costs, dues, expenses, and other operating and maintenance costs typically paid to landlords by commercial, office, retail and residential tenants under "triple-net" or under other commercial leases (collectively, "**Pass Through Expenses**"); (d) those items listed on Exhibit "H"; (e) any and all insurance payments, receipts, proceeds and deductibles received by Tenant; (f) monies collected by Tenant from any occupant or from any other third party and pertaining to a reimbursement to Tenant of costs and damages incurred by Tenant and pertaining to property damage, general liability, or other damages or liabilities incurred by Tenant and reimbursable (under applicable law) to Tenant by the applicable sub-tenant or other third party; (g) termination fees paid in connection with a lease, sublease, license or other agreement; (h) receipt of payments for repairs or other work that was occasioned by fire, windstorm; (i) payments received with respect to insurance or condemnation proceeds; (j) any revenue, income or other amounts received by sub-tenants, licensees, or sub-licensees of Tenant but not payable to Tenant under the respective sub-lease or sub-license agreement. [For example, if a sub-tenant of a commercial building in the Premises has gross revenue (from such sub-tenant's business operations at such building) of $500,000 in a Calendar Year, but such sub-tenant only pays Tenant $100,000 in 'base rent' per year (plus Pass Through Expenses), then only the $100,000 in base rent paid by such sub-tenant to Tenant for such Calendar Year shall be included in Tenant's Gross Revenue for such Calendar Year (and the gross revenue of the subtenant and the Pass Through Expenses shall not be included in Tenant's Gross Revenue); (k) sales, excise, luxury, value added or similar taxes imposed upon any Rent by any Governmental Authority and collected by Tenant and paid out by Tenant to such governmental authorities; (l) receipts from vending machines on the Premises utilized by Tenant's employees; (m) amounts paid by Landlord or paid any other party to Tenant or to the Association to maintain, repair or operate the Premises or the Entire Development and any portion thereof; (n) bad debts for any occupants, but in the event of recovery of any portion thereof, such recovery shall be added to Gross Revenue in the year of recovery to the extent any such amounts have been deducted or excluded hereunder and are otherwise defined as Gross Revenue; (o) all parcel post, freight, express or delivery charges collected from occupants; (p) the amounts of any deposits made by customers to customer accounts (including checking or savings accounts, brokerage accounts, and credit or debit card accounts) at any ATM or similar equipment that may accept deposits within the Premises; (q) receipts and fees from or with respect to stamp machines, ATM machines, wherever located; (r) security deposits and advance rents paid by any tenant, subtenant, licensee or other occupant, unless and until applied to the amount of rent owed to Tenant; (s) fees or other charges that are collected by Tenant for parking passes, access cards and the like; (t) fees, charges, costs, or other collections from tenants, subtenants, licensees or other occupants whether or not called "Rent" under an occupancy agreement if reasonably attributable to the management, repair, maintenance, and operation of Tenant's Mixed Use Project; (u) fees, charges, costs, or other collections from tenants, subtenants, licensees or other occupants whether or not called "Rent" under an occupancy agreement if intended to reimburse Tenant for the cost (in whole or part) of providing a service or utilities (including taxes and other charges incurred in connection therewith) such as water, power, gas, sewer, waste disposal, telephone, cable/internet, fuel, supplies, equipment, tools, materials, janitorial, fees to monitor construction, overtime air conditioning or heating charges, waste and refuse disposal, window cleaning, reimbursement of work being performed by Tenant on behalf of an occupant, payment for the costs of engineers and other consultants for review of all plans, specifications and working drawings; (v) attorneys' fees and costs or costs to obtain an estoppel, non-disturbance agreement, or similar document paid by an occupant; (x) receipt of payments of any other amount which Tenant may spend or become obligated to spend by reason of an occupant's default or to compensate Tenant for any other loss or damage which Tenant may suffer by reason of Tenant's default hereunder, including, without limitation, late fees, interest, costs, and attorneys' fees paid by such occupant to Tenant following a default by an occupant; (y) property management fees or other administrative fees paid to Tenant or to the Association for management and operation of the Entire Development, the Premises, or any portion thereof; and (z) payments to Tenant from any Governmental Authority in connection with a program similar to the paycheck protection program that was instituted in connection with the Covid-19 virus.

(u) "**Landlord Delay**" shall mean any delay or delays in substantial completion of Tenant's construction obligations, repair obligations or Tenant's compliance with other obligations under this Lease to the extent caused by: (i) a failure by Landlord to meet a deadline set forth in this Lease (other than by reason of a Tenant Delay, casualty, or a Force Majeure Event), (ii) the interference or misconduct of Landlord, its employees, agents or contractors, or others acting for or on behalf of Landlord, (iii) Concealed or Unknown Conditions, (iv) Change Orders, (v) a Change in Title, or (vi) any failure of Landlord to cooperate with Tenant in connection with Tenant's Work as well as securing the issuance of the Entitlements as required under the Lease; provided however, that there shall not be a Landlord Delay unless and until Tenant provides Landlord with written notice of the event causing such delay and Tenant provides Landlord with an opportunity to cure such delay within five (5) business days of Landlord's receipt of such notice.

(v) "**Laws**" means any federal, state or local constitution, statute, code, ordinance, regulation, judicial or administrative decision or other rule of law.

(w) "**Legal Requirement**" or "**Legal Requirements**" means, as the case may be, any one or more of all present and future Laws, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, even if unforeseen or extraordinary, of every duly constituted governmental authority or agency (but excluding those which by their terms are not applicable to and do not impose any obligation on Tenant, Landlord or the "Premises" (as hereinafter defined)), as the same may be amended from time to time, even if compliance therewith: (i) necessitates structural changes or improvements (including changes required to comply with the "**Americans with Disabilities Act**" or related federal or state legislation) or results in interference with the use or enjoyment of the Premises, or (ii) requires Tenant to carry insurance other than as required by the provisions of this Lease.

(x) "**Leasehold Mortgagee**" means the holder or holders from time to time of one or more promissory notes executed by Tenant evidencing a loan payable to the order of the holder thereof and secured by a deed of trust or mortgage and security agreement encumbering all of Tenant's leasehold estate and right, title and interest of Tenant pursuant to this Lease (such encumbrance, a "**Leasehold Mortgage**").

(y) "**North City Park Parcel**" shall mean and refer to the portion of the Public Use Lands located on the north side of the Imperial River.

(z) "**Park Improvements**" shall mean and refer to the improvements that Tenant will make (or cause to be made) to the North City Park Parcel and South City Park Parcel, as generally described herein and in the Renderings, subject to the terms and conditions hereof.

(aa) "**Park Improvement Costs**" shall mean and refer to all costs and expenses incurred by or on behalf of the Tenant with respect to: (a) designing, engineering permitting and constructing the Park Improvements and the City Parking Spaces, (b) the cost of permits, approvals, impact fees and other fees paid by Tenant with respect to the Park Improvements and the City Parking Spaces, and (c) the actual, reasonable cost of an environmental insurance policy if obtained by Tenant in Tenant's sole discretion in connection with this Lease, and the deductibles, if paid by Tenant in connection with a claim on such policy.

(bb) "**<u>Park Maintenance Costs</u>**" shall mean and refer to all costs and expenses incurred by the Association and/or the Landlord during the Term of this Lease in owning, maintaining, repairing, replacing, altering, managing, and operating the North City Park Parcel, South City Park Parcel, any Park Improvements located thereon, and any additional improvements that may be constructed thereon from time to time in accordance with this Lease. In addition, the costs and expenses of owning, maintaining, repairing, replacing, altering, managing and operating the City Parking Spaces shall also be included in Park Maintenance Costs, including, but not limited to, all costs for (a) utilities, (b) supplies, (c) insurance maintained by Landlord and/or the Association (including but not limited to, public liability and property damage, flood, windstorm, and/or fire and extended coverage), (d) services of independent contractors, (e) compensation (including employment taxes and fringe benefits) of all persons who perform regular duties connected with the day-to-day management, operations, maintenance, repair and overhaul of the North City Park Parcel, South City Park Parcel, any Park Improvements, including, without limitation, office personnel, engineers, janitors, painters, floor waxers, window washers, parking attendants, watchmen and gardeners, (f) management of the North City Park Parcel, South City Park Parcel, any Park Improvements or any portion of it, (g) rental expenses for personal property used in the management, maintenance, operation and repair of the North City Park Parcel, South City Park Parcel, any Park Improvements, (h) performance of, or any costs incurred or allocated to the North City Park Parcel, South City Park Parcel, any Park Improvements in connection with any declarations relating to a condominium association or other property owner's association, reciprocal easement agreements, or covenants, conditions, and restrictions, and (i) the costs of any capital improvements made to the North City Park Parcel, South City Park Parcel, any Park Improvements after the date of the Lease. However, for the avoidance of doubt, "Park Maintenance Costs" shall NOT include the costs incurred by the Tenant in the initial design and initial construction of the Park Improvements and City Parking Spaces.

(cc) "**<u>Park Parcels</u>**" shall mean and refer to the North City Park Parcel and South City Park Parcel. The Park Parcels comprise the entirety of the Public Use Lands.

(dd) "**<u>Percentage Rent</u>**" shall be determined in accordance with Section 4 below.

(ee) "**<u>Permitted Encumbrances</u>**" shall mean only those certain covenants, restrictions, reservations, liens, conditions, encroachments, easements, encumbrances and other matters of title that affect the Premises on <u>Exhibit "G"</u>, or as otherwise mutually agreed to in writing between the parties during the Due Diligence Period.

(ff) "**<u>Person</u>**" shall mean any person, corporation, limited liability company, partnership (general or limited), joint venture, association, trust, governmental entity or other business entity or organization.

(gg) "**<u>Plans</u>**" shall have the meaning given to such term in Section 5.1 of this Lease.

(hh) "**<u>Premises</u>**" shall mean and refer to the land comprising Tenant's Parcel, the Tenant's Mixed Use Project Improvements, together with all rights, privileges, easements, and appurtenances pertaining thereto or referenced in this Lease including, without limitation, Tenant's easement rights under the REA. For the avoidance of doubt, the "Premises" and "Tenant's Parcel" do NOT include the Public Use Lands.

(ii) "**Preliminary Parking Plan**" shall mean and refer to the conceptual parking plan attached hereto as Exhibit "D", which depicts the general proposed location and configuration of certain parking spaces and parking lot improvements to be made to Tenant's Parcel and the Public Use Lands.

(jj) "**Tenant's Mixed Use Project Improvements**" means the building, structures, fixtures, parking areas, and other improvements, which may be constructed from time to time on the Premises by Tenant, including, without limitation, residential apartment buildings containing up to one hundred and twenty (120) units, plus commercial buildings that will contain up to ten thousand (10,000) square feet of restaurant, retail, quasi-retail, and/or support space. For the avoidance of doubt, Tenant's Mixed Use Project Improvements do not include any improvements made on the Public Use Lands.

(kk) "**Public Use Lands**" shall be as defined in the "whereas" clauses, above.

(ll) "**REA**" shall be as defined in Section 8.2, below.

(mm) "**Renderings**" shall mean and refer to the conceptual renderings for the Entire Development, as reflected on Exhibit "E", attached hereto, which are hereby conceptually accepted by Landlord.

(nn) "**Rent**" means Base Rent, Percentage Rent and Additional Rent.

(oo) "**Rent Commencement Date**" shall mean and refer to the earlier of: (i) the date that a temporary certificate of occupancy that allows Tenant to open and operate its business in Tenant's Mixed Use Project Improvements, (ii) a final certificate of occupancy or its equivalent is issued for any portion of the Tenant's Mixed Use Project Improvements, or (iii) three (3) years from the end of the Due Diligence Period. Upon the request of either party, Landlord and Tenant shall confirm to the other, in writing, the specific Rent Commencement Date.

(pp) "**Rent Credit Cap**" shall mean an amount equal to One Million Nine Hundred Thousand Dollars ($1,900,000.00), plus the cost of any Change Orders entered into under section 5.3(g), below.

(qq) "**South City Park Parcel**" shall mean and refer to the portion of the Public Use Lands located on the south side of the Imperial River.

(rr) "**Tenant Delay**" shall mean any delay or delays in substantial completion of Landlord's construction or repair obligations under this Lease to the extent due to (a) Tenant's failure to comply with the approval deadlines for Tenant's Plans that are specifically set forth in this Lease, or (b) Tenant's changes and requested changes to Tenant's Plans after approval thereof by Landlord except to the extent such changes are required by the applicable Governmental Authority; provided however, that there shall not be a Tenant Delay unless and until Landlord provides Tenant with written notice of the event causing such delay and Landlord provides Tenant with an opportunity to cure such delay within five (5) business days of Tenant's receipt of such notice

(ss) "**Tenant’s Work**" shall mean and refer to the design and construction of the Tenant's Mixed Use Project Improvements and the Park Improvements.

**EXHIBITS**:

| | |
|---|---|
| A | Entire Development legal description |
| B | Conceptual Site Plan |
| C | Tenant's Parcel and Public Use Lands |
| D | Preliminary Parking Plan |
| E | Renderings |
| F | REA Core Concepts |
| G | Permitted Title Encumbrances |
| H | Gross Revenue Exclusions |
| I | Examples of Base Rent calculations and Percentage Rent calculations |

## ARTICLE II

## GRANT AND TERM OF LEASE

Section 2.1. Leasing Clause. Subject to the terms and conditions contained in this Lease, Landlord hereby leases, demises and lets to Tenant and Tenant hereby takes and leases from Landlord the Premises.

Section 2.2. Term of Lease. Subject to the provisions hereof, Tenant shall have and hold the Premises for a term ("**Term**") commencing on the Effective Date and ending on the ninety-ninety (99$^{th}$) anniversary of the Effective Date (the "**Expiration Date**"), unless earlier terminated as provided herein.

## ARTICLE III

## DUE DILIGENCE/ENTITLEMENT PERIOD/PERMITTING

Section 3.1 Due Diligence.

(a) Landlord hereby agrees to deliver, within ten (10) days after the Effective Date, (via an online drop-box) to Tenant all topographical, engineering, environmental and other studies, surveys, engineering plans, development agreements, licenses, permits, plans, existing title commitments and other like materials with regard to the Entire Development, in Landlord's possession or reasonable control (however, Landlord shall not be required to provide Tenant with any financial pro formas of Landlord).

(b) During the Due Diligence Period and the Entitlement Period, Tenant may make such surveys, inspections and tests of and/or reports and other documents concerning the Entire Development as Tenant may reasonably desire, with such activities being conducted by Tenant, at Tenant's sole cost and expense. Because Tenant is not entitled to possession of the Premises until the Delivery Date, Tenant agrees that Tenant shall notify Landlord no less than one (1) business day in advance (which notice may be telephonic or by email) of any on-site tests or inspections so that Landlord can authorize Tenant's inspectors, as agents of Landlord, to access the Premises for such on-site tests and inspections, including, without limitation, having borings, hydrologic, environmental, soils and other pre-development studies, analyses and/or tests undertaken by Tenant's agents, employees and/or contractors (collectively, the "**Inspections**"). Provided, however, that any intrusive tests and/or inspections shall be subject to the Landlord's prior written approval, to be granted or withheld in Landlord's sole discretion, as to the nature and scope thereof. All persons accessing the Premises to conduct tests and inspections shall be required to provide evidence of comprehensive liability insurance in an amount of not less than $2,000,000 per occurrence and $4,000,000 in the aggregate, together with property damage of not less than $2,000,000 and shall deliver a certificate of such insurance coverage to Landlord. All Inspections shall be performed at Tenant's expense but without liability for payment of Rent or of any other charges required to be paid by Tenant hereunder, but otherwise subject to the terms and conditions of this Lease. Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all liabilities, obligations, claims, demands, losses, damages, actions or causes of action, reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and costs) imposed upon or incurred by or asserted against Landlord by reason of, or directly related to, the Inspections, but such indemnification shall not apply to any liability related to the negligence of Landlord, nor to any liability that may arise from Tenant discovering and/or reporting any conditions affecting the Premises (including, without limitation, the presence of hazardous materials or substances or any other environmental contamination). Tenant's indemnity obligation in this Section shall survive any termination of this Lease. Tenant may cancel this Lease at any time during the Due Diligence Period for any reason by providing written notice to Landlord prior to the expiration of the Due Diligence Period.

Section 3.2 Tenant's Entitlement Period. Tenant's obligations hereunder are conditioned upon receipt by Tenant of certain entitlements for the development, construction and operation of the Entire Development Improvements, which entitlements (the "**Entitlements**") shall, for purposes of this Lease, mean and refer to the following (in each instance, with all appeal periods having expired):

(a) site development plan approval ("special assemblage") by Landlord;

(b) issuance of an environmental resource permit by the South Florida Water Management District;

(c) any other approvals required to be obtained from Landlord or from any other Governmental Authority for construction, use and operation of the Entire Development;

(d) the vacation (or relocation, as determined by Tenant) of any public or private utility easements encumbering the Premises and/or Park Parcels as of the Effective Date, to the extent such vacation or relocation is deemed necessary or advisable by Tenant (in its reasonable discretion) for the construction of the Entire Development Improvements; and

(e) issuance of any other state or federal permits required by Tenant.

Tenant will work diligently and use commercially reasonable efforts to obtain the Entitlements during the Entitlement Period. The terms and conditions of all Entitlements must be acceptable to Tenant, in Tenant's reasonable discretion. Landlord shall cooperate with Tenant and if requested or required by any governmental agency, Landlord shall execute any consents or other forms required (or requested) by such agency to confirm Tenant's right to apply for and obtain the Entitlements. In addition, with respect to the Entitlements that Tenant desires to obtain from the Landlord, the Landlord agrees that all of such Entitlements shall be granted "fast-track" status by the Landlord and Landlord shall instruct its staff and outside consultants accordingly.

Landlord and Tenant agree that if, for any reason, Tenant has not obtained the Entitlements permitting Tenant's Permitted Use of the Premises and the development, construction and operation of the Entire Development Improvements, in accordance with plans and specifications mutually acceptable to Landlord and Tenant by no later than May 1, 2024, which date shall be extended by Landlord Delay (the "**Outside Entitlement Date**") then Tenant shall have the right to terminate this Lease, without penalty, by furnishing unconditional written notice thereof to Landlord by no later than ninety (90) days after the Outside Entitlement Date (the "**Entitlement Termination Deadline**"). Additionally, if at any time Tenant determines, in Tenant's sole discretion, that Tenant will be unable to secure the necessary Entitlements permitting Tenant's Permitted Use of the Premises and the development, construction and operation of the Entire Development Improvements, in accordance with plans and specifications mutually acceptable to Landlord and Tenant, then Tenant shall have the right to terminate this Lease, without penalty, by providing Landlord with not less than thirty (30) days prior written notice thereof. If Tenant terminates this Lease pursuant to this Section 3.2, and such termination is due (in whole or in part) to Landlord failing or refusing to approve any Entitlement that Landlord has the "discretionary authority" to approve, then by no later than thirty (30) days after Tenant terminates this Lease, Landlord shall reimburse Tenant and amount equal to the total actual costs and expenses incurred by Tenant in conducting Tenant's inspections and evaluations of the Premises, and applying for and pursuing the Entitlements (collectively, the "**Pursuit Costs**") and the foregoing obligation shall survive the termination of this Lease. By way of clarification, Landlord does not have discretionary authority to waive provisions of the Florida Building Code or other provisions of Florida Statutes; similarly, discretionary authority does not include administrative or quasi-judicial approvals governed by the Bonita Springs City Code. Tenant shall provide Landlord with commercially reasonable documentation evidencing such Pursuit Costs.

Section 3.3 Delivery of Possession to Tenant: Landlord shall deliver possession of the Premises to Tenant on the Delivery Date (as defined, above).

## ARTICLE IV

## BASE RENT AND PERCENTAGE RENT

Section 4.1. Base Rent.

(a) From the Effective Date and running through the day prior to the Rent Commencement Date, Tenant shall occupy the Premises without payment of rent, including Base Rent, Percentage Rent and Additional Rent but otherwise subject to all of the terms and conditions of this Lease. During such time period, Landlord shall be responsible for paying all Impositions and fees and/or charges coming due, if any.

(b) Commencing upon the Rent Commencement Date, Tenant agrees to pay Landlord, without prior demand therefor, and without set-off or deduction, a base rent (the "**Base Rent**"), in advance, in the following amounts:

1) Commencing on the Rent Commencement Date and continuing through the last day of the first full Calendar Year after the Rent Commencement Date, the annual Base Rent shall be Ninety-nine Thousand Dollars ($99,000.00), payable in advance in equal monthly installments. If the Rent Commencement Date is not the first day of a Calendar Year, then the annual Base Rent for the period of time commencing on the Rent Commencement Date and ending at the end of such partial Calendar Year shall be pro-rated on the basis of the number of days from the commencement of such calendar year to and including the end of such partial Calendar Year bears to 365. (By way of clarity, if the Rent Commencement Date is not January 1st of a Calendar Year, then the one (1) year period referenced herein will contain the previous partial calendar year plus the following full Calendar Year).

2) Commencing with the beginning of the Calendar Year after the Rent Commencement Date and continuing for each Calendar Year thereafter, the Base Rent shall be increased by a fixed two percent (2%).

Section 4.2 Percentage Rent. Commencing on the Rent Commencement Date and continuing at all times thereafter during the Term of this Lease, in addition to Base Rent, Tenant shall pay to the Landlord for each Calendar Year a sum calculated as follows (the "**Percentage Rent**"): The difference between (i) two and one-half percent (2.5%) multiplied by the Gross Revenue for such Calendar Year and (ii) the Base Rent for such Calendar Year. The Percentage Rent shall be payable quarterly (in arrears, and by no later than twenty (20) days after the end of each calendar quarter (plus sales tax) without any prior demand therefor, and without any set-off or deduction whatsoever except as specifically provided in the Lease. In the event of a partial Calendar Year, the Percentage Rent will be proportionately reduced based upon the period of time contained in such partial Calendar Year. .

An example of the Base Rent calculations and Percentage Rent calculation is attached as Exhibit "I".

Section 4.3 Statements of Gross Revenue. Within twenty (20) days after the end of each calendar quarter during the Term of this Lease, Tenant shall submit to Landlord an accurate, unaudited, written statement signed by Tenant or on its behalf by a duly authorized officer or representative, showing the full amount of Tenant's Gross Revenue during the previous calendar quarter. Within one hundred twenty (120) days after the end of each Calendar Year, Tenant shall submit to Landlord a statement signed by and officer of Tenant, showing accurately and in reasonable detail the full amount of Tenant's Gross Revenue during the immediately preceding calendar year and the total Percentage Rent that should have been paid for such calendar year (the "Annual Reconciliation"). If the Annual Reconciliation reflects that Tenant overpaid the Percentage Rent actually due for such calendar year, then Tenant may deduct the amount of such overpayment from future quarterly payments of Percentage Rent (and in the last year of the Term, Landlord shall refund Tenant the overpayment within sixty (60) days after expiration of the Term). If the Annual reconciliation reflects that Tenant underpaid the Percentage Rent for such calendar year, then Tenant shall remit the addition Percentage Rent due for such calendar year to Landlord concurrently with the delivery of such Annual Reconciliation to Landlord.

Section 4.4 Books of Account and Audits. Tenant shall, at all times during the Term of this Lease, keep at the Premises or at the general office of the Tenant, full, complete and accurate books of account and records in accordance with generally accepted accounting practices with respect to all operations of the Tenant's business conducted in, upon or from the Premises. Tenant shall retain such books and records, and other documents and papers in any way relating to the operation of such business, for at least three (3) years from the end of the Calendar Year to which they are applicable, or, if an audit is required or a controversy should arise between the parties hereto regarding the rent payable hereunder, until such audit or controversy is terminated beyond any appeal or challenge period. Such books and records shall at all reasonable times during the retention period referred to above be open to the inspection of Landlord or its duly authorized representative, who shall have full and free access to the same, shall have the right to make photo or electronic copies of the same, and the right to require of Tenant, its agents and employees, such information or explanation with respect to the same as may be necessary for a proper examination thereof. If it is determined that the actual Gross Revenue for any period covered by any statement required pursuant to Section 4.3 hereof shall exceed the amount thereof shown in said statement by five percent (5%) or more, Tenant shall pay the actual real expenses (not to exceed $10,000 per audit, subject to CPI Adjustment) incurred in determining the actual Gross Revenue for such period. Under no circumstances shall the auditor be compensated on a contingency fee basis. Landlord shall keep confidential all Gross Sales, sales reports, and financial statements and all other information supplied by Tenant hereunder; however, Landlord has the right to reveal such information to mortgagees, prospective purchasers and prospective mortgagees and to Landlord's managers, employees, agents, development and administrative officers and personnel, professional and legal advisors and consultants who have a need to know, provided that all such recipients shall, as a condition to the receipt of such information, agree to be bound by the confidentiality provisions hereof, and Landlord shall further have the right to reveal such information as may be required by law or in connection with legal proceedings. Also, the auditor shall be bound to such confidentiality provisions referenced herein. Tenant acknowledges that any financial materials submitted to the Landlord pursuant to this Lease may be subject to public records law.

Section 4.5 Relationship of Parties. Anything to the contrary notwithstanding, the Landlord shall in no event be deemed to be a partner or engaged in a joint venture with, or an associate of, Tenant in the conduct of its business, Nothing in this Lease shall be deemed or construed to confer upon Landlord any interest in the business of the Tenant. The relationship of the parties during the Term of this Lease shall at all times be that of Landlord and Tenant.

Section 4.6. Additional Rent. Tenant hereby agrees to pay all Additional Rent to Landlord, together with applicable sales tax thereon, or to such other Person as Landlord may direct or as is required under this Lease at such time as such Additional Rent is due and payable as required under this Lease.

Section 4.7. Late Charge. If any installment of Base Rent or Percentage Rent is not paid within five (5) business days after the same is due, then with respect to the 2nd and any subsequent late payment during any Calendar Year, Tenant shall pay to Landlord on demand, as Additional Rent, a late charge equal to two percent (2%) on such overdue installment of Base Rent or Percentage Rent ("**Late Charge**").

Section 4.8 Sales Tax. Tenant shall be responsible for paying all applicable sales tax that may be levied from time to time on any amounts due and payable by Tenant hereunder and shall remit such sales tax to Landlord concurrently with Tenant's payments of Rent and Additional Rent hereunder.

## ARTICLE V

## APPROVALS; PLANS, IMPROVEMENTS; ALTERATIONS;

Section 5.1. Approval of Plans and Specifications. Provided that Tenant does not elect to terminate this Lease pursuant to the express terms of this Lease, Tenant will, at its sole expense, cause its architect ("**Tenant's Architect**") to complete all exterior elevations and a detailed site plan for the Tenant's Mixed Use Project Improvements and Park Improvements (collectively, the "**Plans**"), however Tenant shall coordinate its further design of the Park Parcels and Park Improvements with Landlord's Parks and Recreation Director. Tenant shall submit the same to Landlord for review and consideration and Landlord will have sixty (60) days to approve or disapprove the Plans, and the Landlord shall be required to approve such Plans so long as they are substantially consistent with the Conceptual Site Plan and Renderings. In addition, if Tenant makes any changes to the Plans due to requests (or requirements) of any governmental agency, then Landlord shall be required to approve the Plans in spite of such changes. Failure by Landlord to approve or disapprove the Plans within such thirty (30) day period will constitute an approval by Landlord. In the event Landlord disapproves of the Plans within such thirty (30) day period, Landlord will advise Tenant of Landlord's objections to the Plans (and will specify, in writing, the reasons for Landlord's disapproval) and Tenant will incorporate Landlord's objections and comments into the Plans within thirty (30) days of receipt thereof and resubmit the same to Landlord. Any comments which Landlord requests to be incorporated into the Plans shall be reasonable. Notwithstanding the foregoing, the changes requested by Landlord shall not: (a) "materially increase" the cost of construction of any portion of the Entire Development Improvements, and (b) shall not delay completion of the Tenant's Mixed Use Project and the

Park Improvements by more than ninety (90) days beyond date referenced in Section 5.3 (b) for completion. In the event Tenant desires or is required by the County or other Governmental Authority to materially modify the Plans, Tenant shall submit such modifications to Landlord for review and consideration following the same procedure as set forth above for the initial approval of the Plans. As used herein, the term "materially increase" shall mean by more than $100,000 in the aggregate for all changes.

Section 5.2 Adjustment of Premises & Park Boundaries. It is acknowledged that the common boundary line between Tenant's Parcel and the North City Park Parcel and South City Park Parcel has been based initially upon the Conceptual Site Plan and Renderings, and that adjustments in the exact location of such boundary line may be reasonably required in conjunction with Tenant’s design of the Plans and obtaining of the Entitlements. Landlord and Tenant will work in good faith during the design and Entitlement process, and upon final approval of the Plans by Landlord and Tenant, Landlord and Tenant will prepare and execute and amendment to this Lease (and to any memorandum of lease) for the purpose of making any adjustments to Tenant's Parcel and its common boundary with the North Park Parcel and/or South Park Parcel so that (a) the Premises physically includes (and only includes) Tenant’s Parcel, as reflected in such final Plans, and (b) the Public Use Lands physically includes (and only includes) the Park Improvements and the City Parking Spaces.

Section 5.3. Construction of the Entire Development Improvements; Rent Credit.

(a) Provided that this Lease is not terminated by Tenant pursuant to the express terms of this Lease, Tenant covenants and agrees, at its sole expense, to construct with all reasonable due diligence the Tenant's Mixed Use Project Improvements and Park Improvements in a good and workmanlike manner and substantially in accordance with the final Plans approved by Tenant and Landlord and any other applicable governmental authorities. In addition to the other insurance requirements set forth in this Lease, from the commencement of construction until completion of the Entire Development Improvements, Tenant shall maintain or cause its contractors to maintain, mutually agreeable general liability and other types of insurance insuring Landlord and Tenant against all hazards normally insured against in the construction of projects similar to the Entire Development Improvements. Additionally, Tenant shall secure construction bonds for Tenant’s Mixed Use Park Project Improvements and the Park Improvements, in amounts and form mutually agreed upon by the parties or as required by Tenant’s construction lender.

(b) Tenant shall use commercially reasonable efforts to commence construction of the Tenant's Mixed Use Project Improvements or Park Improvements no later than one hundred and eighty two-hundred seventy (180) days after the expiration of the Entitlement Period and Landlord’s approval of the Plans (the "**Commencement Deadline**"). Construction shall be deemed to have commenced upon the issuance of a building permit for any portion of the Entire Development Improvements at the Premises and/or Public Use Lands and commencement of physical site work. The Commencement Deadline shall be extended on a day-for-day basis by any delay due to a Force Majeure Event and/or a Landlord Delay. Tenant shall endeavor in good faith to substantially complete the construction of the Park Improvements by no later than one-hundred eighty (180) days after the issuance of a certificate of occupancy for the first residential building constructed on the Premises, subject to extension on a day-for-day basis by any delay due to a Force Majeure Event or a Landlord Delay.

(c) Landlord shall cooperate with Tenant and upon request of Tenant shall grant Tenant and Tenant’s contractors and sub-contractors with temporary licenses to access the Public Use Lands for the purpose of constructing the Entire Development Improvements. Upon reasonable request, Landlord shall also grant to Tenant and Tenant’s contractors temporary licenses for construction staging within the Public Use Lands.

(d) Landlord agrees that Tenant shall receive the benefit of any applicable impact fee credits that may be available with respect to Tenant's Parcel and arising out of any past improvements and uses of Tenant's Parcel occurring not more than fifty (50) years prior to the Effective Date.

(e) Landlord agrees that Tenant shall be entitled to a credit against all Rent otherwise due hereunder, in the amount of the Park Improvement Costs, but such credit shall not exceed the Rent Credit Cap even if the actual Park Improvement Costs incurred by Landlord exceed the Rent Credit Cap. Upon completion of the Park Improvements, Tenant shall provide Landlord with commercially reasonable evidence of the total Park Improvement Costs incurred by Tenant. Tenant shall have the right to off-set all Rent payments otherwise due from Tenant to Landlord hereunder each month of the Term until the Tenant has received the full benefit of the Rent Credit Cap.

(f) Upon the reasonable request of Tenant, Landlord shall cooperate in good faith and shall grant perpetual utility easements to any public or private utility provider that requests (or requires) one or more easements over Tenant's Parcel and/or Public Use Lands for the purposes of facilitating the delivery of utility services to the Premises and/or the Public Use Lands.

(g) Landlord shall have the right to request minor changes to the Tenant's final Plans pertaining to the Park Improvements; provided, however, that any such changes shall be requested in writing, shall be generally consistent with the nature and scope of the work and shall comply with applicable governmental requirements. It shall be reasonable for Tenant to require Landlord to pay for any reasonable net cost increases in advance of construction of the work contemplated by a Change Order, or alternatively, Tenant, in its sole discretion may add the cost of the Change Order to the Rent Credit Cap. Tenant shall have the right to reject any Change Order that will cause an unreasonable delay unless otherwise agreed to by Tenant in its sole but reasonable discretion. Any such changes that are authorized as provided in the previous sentence are referred to herein as "**Change Orders**." All actual, reasonable fees and expenses of Tenant's architect and/or engineer in preparing any Change Orders requested by Landlord shall be paid by Landlord.

Section 5.4. Landlord Duty to Cooperate. Landlord shall reasonably cooperate with Tenant in the performance of Tenant’s construction of the Tenant’s Work and shall not take any action or impose any rules or regulations that unreasonably interfere with the efficient and expeditious conduct of Tenant’s Work. Tenant shall have no obligation to abide by any rules or regulations imposed by Landlord that interfere with the efficient and expeditious conduct of Tenant’s Work not lawfully enacted or imposed by the Landlord or other Governmental Authority; provided, however, Landlord shall not be required to waive Tenant's compliance with building codes or land development codes. Without limiting the foregoing, Landlord shall promptly sign and execute such documents or otherwise evidence its approval, consent or grant of authority, as required by any public authorities having jurisdiction thereover, to facilitate issuance to Tenant of necessary licenses or permits to make or perform Tenant’s Work or promptly respond to Tenant that it cannot sign such documents or approve such documents and state the reason why. In the event Landlord fails to so sign and execute such documents or otherwise evidence its approval, consent or grant of authority or to provide reasonable grounds for refusing to do so, within thirty (30) business days following Landlord’s receipt thereof from Tenant, then each day following the sending of a second (2nd) copy of the notice stating "FAILURE TO RESPOND WITHIN 30 BUSINESS DAYS WILL CONSTITUTE LANDLORD DELAY," shall constitute a Landlord Delay until Landlord signs and executes such documents or otherwise evidences its approval, consent or grant of authority or provides reasonable grounds for refusing to do so.

Section 5.5 Concealed or Unknown Conditions Encountered during Tenant's Work. Should Tenant or its agents or contractors encounter concealed or unknown conditions during the performance of any of

Tenant's Work, including conditions below the surface of the ground (including, without limitation, variable fill, asphalt, organic material, muck, abandoned utility lines, archeological and anthropological finds, historical finds, buried equipment, garbage or debris, or abandoned underground storage tanks and piping related thereto) and/or Hazardous Materials (collectively referred to as "**Concealed or Unknown Conditions**"), Tenant will, notify Landlord within fifteen (15) days after Tenant has actual knowledge of the occurrence of such conditions and shall only be entitled to claim the benefit or relief if such notice is timely provided. Tenant will thereafter within forty-five (45) days provide from a reputable engineer or contractor of an estimate of time that it will take to remove and correct the Concealed or Unknown Conditions. If the Concealed or Unknown Conditions will: (i) in Tenant's reasonable estimation take longer than 60 days to remove and correct; or (ii) if such removal and correction in fact takes longer than 120 days; or (iii) if the cost is estimated to remove and/or remediate to be more than $500,000 subject to CPI Adjustment; or (iv) is likely to in Tenant's opinion, is likely to result in an recorded environmental covenant; or (v) may materially and adversely affect the reasonable value of Tenant's Mixed Use Project or the ability to lease any of Tenant's Mixed Use Project Improvements; or (vi) prevent Tenant from obtaining financing in Tenant's reasonable opinion for Tenant's Mixed Use Project, then in any of such events, Tenant, in its sole discretion, shall have the option to be exercised within fifteen (15) days of such determination, to terminate the Lease, by giving thirty (30) days written notice to Landlord, whereupon the parties shall be released from all obligations under the Lease except for those specific indemnities that survive such termination. This obligation shall survive termination of the Lease. Should Tenant not terminate the Lease, then any time period required to remove or correct Concealed or Unknown Conditions including the time period to assess and prepare plans and obtain permits relating to such work shall be a Landlord Delay.

Section 5.6 Alterations by Tenant; Park Alterations by Landlord. At any time during the Term, Tenant, at its sole expense, may make interior, exterior and structural alterations, additions, modifications including demolition of any portion of Tenant's Mixed Use Project Improvements, subject to receipt by Tenant of all necessary permits and approvals. Any such demolition, alterations or additions by Tenant on the Park Parcels shall be subject to Landlord's prior written approval. All alterations and additions made in accordance with this Section shall be constructed in accordance with all applicable Legal Requirements, shall become part of the Tenant's Mixed Use Project Improvements and shall remain the property of Tenant during the Term. Landlord may make, from time-to-time and at Landlord's sole cost and expense, additional improvements to the Park Parcels, subject to the prior written approval of Tenant, which approval shall not be unreasonably withheld so long as the Park Parcels remain improved as 'passive-use' city parks. Under no circumstances shall: (a) any permanent stages, band-shells, or covered areas be constructed on the Park Parcels, and (b) any other improvement be constructed on the Park Parcels that would obstruct views from anywhere on the Premises to the Imperial River or that would otherwise be deemed an 'eye sore' by Tenant (in Tenant's reasonable discretion) (subparagraphs (a) and (b) herein are referred to as "Park Alterations"). Additionally, no Park Alterations shall be higher than 10 feet, which height limitation shall be measured perpendicular from the floor (or ground) elevation to the top of the Park Alteration, including any screening, parapet, penthouse, mechanical equipment, architectural embellishment, or similar appurtenance.

Section 5.7. Zoning and Permits. Subject to Landlord's obligations hereinabove, Tenant, at its sole cost and expense shall be responsible for and shall obtain all governmental permits and approvals necessary or appropriate for the initial construction of the Entire Development Improvements including, but not limited to: (i) all required building permits and approvals, including the payment by Tenant of all applicable permit and impact fees, and (ii) tap permits or "connections" for water and sanitary sewer services to the Premises. Landlord agrees, upon Tenant's request, to cooperate with Tenant, at no cost to Landlord, and to join in applications for zoning matters, building permits, certificates of occupancy, and all other applications for licenses, permits and approvals for which the signature of Landlord or the owner is required by applicable law.

Section 5.8. Surrender of Improvements. All of Tenant's Mixed Use Project Improvements shall remain the property of the Tenant until the expiration or termination of this Lease. Upon the expiration or termination of this Lease, Tenant's Mixed Use Project Improvements (with the exception only of movable trade fixtures, furniture, furnishings, or other personal property owned by Tenant or owned or leased by Tenant's subtenants and licensees) shall be surrendered to and become the absolute property of Landlord.

Section 5.9. Mechanic's and Materialmen's Liens; Waiver of Landlord's Lien Rights.

(a) Pursuant to Florida Statutes 713.10, it is the intent of the parties hereto that the interest of Landlord in the Premises and the Entire Development shall not be subject to any mechanics or materialmen's liens filed because of or arising from Tenant's (or any other tenant or subtenant's) failure to make payments in connection with any buildings or improvements installed or constructed on the Premises and the Entire Development by Tenant.

(b) Landlord hereby waives its right to assert any lien rights (whether arising under statute or otherwise) against the Premises and the Entire Development and all improvements thereon, and any personal property owned by Tenant, its subtenants and licensees and located from time to time upon the Premises.

(c) Tenant agrees that it will pay or cause to be paid all costs for work done and/or materials supplied to the Premises and the Entire Development by Tenant, and that it will keep the Premises and the Entire Development free and clear of all mechanics and/or materialmen's liens on account of work done and/or materials supplied by or for Tenant or by or for any person claiming under Tenant. Tenant hereby agrees to and shall indemnify and save Landlord free and harmless against liability, loss, damages, costs, expenses, reasonable attorneys' fees, and costs at all trial and appellate levels and all other expenses on account of claims of lien of laborers and/or materialmen or others for work performed or materials or supplies furnished for Tenant or persons claiming under Tenant.

It is hereby expressly prohibited and Tenant shall have no authority whatsoever to create any mechanics or materialmen liens on Landlord's interest in the Premises, or the Entire Development and all persons contracting with Tenant for the improvement, alteration, or repair of any building or other improvements on the Premises and the Entire Development and all materialmen, contractors, mechanics, laborers are hereby charged with notice that they must look solely to the Tenant and to the Tenant's interest only in the Premises to secure the payment of any claim, bill or bills for work done, or material furnished during the Term of this Lease. Landlord shall have the right to execute a notice of non-responsibility in accordance with Chapter 713.10 of the Florida Statutes and record such instrument in the Public Records of the county where the Premises is located prior to Tenant commencing any work, including, without limitation, Tenant's Work.

If any mechanic's or materialman's lien is filed against the Premises or the Entire Development as a result of any additions, alterations, repairs, installations or improvements made by Tenant, or any other work or act of Tenant, Tenant shall discharge or bond same within sixty (60) days from the filing of the lien. If Tenant shall fail to discharge or bond the lien within such sixty (60) day period, Landlord may bond or pay the lien or claim for the account of Tenant. Any monies advanced or costs incurred by Landlord for any of the aforesaid purposes shall be paid by Tenant to Landlord on demand as Additional

Rent. Nothing contained in this Lease shall be construed as Landlord's consent to subject Landlord's estate in the Premises or the Entire Development to any mechanics or materialmen lien under the lien law of the State of Florida.

(d) Landlord agrees that it will pay or cause to be paid all costs for work done and/or materials supplied to the Premises and the Entire Development by Landlord, and that it will keep the Premises and the Entire Development free and clear of all construction and/or materialmen's' liens on account of work done and/or materials supplied by or for Landlord or by or for any person claiming under Landlord. Landlord hereby agrees to and shall indemnify and save Tenant free and harmless against liability, loss, damages, costs, expenses, reasonable attorneys' fees, and costs at all trial and appellate levels and all other expenses on account of claims of lien of laborers and/or materialmen or others for work performed or materials or supplies furnished for Landlord or persons claiming under Landlord. It is hereby expressly prohibited and Landlord shall have no authority whatsoever to create any mechanics or materialmen liens on Tenant's interest in the Premises, and the Entire Development and all persons contracting with Landlord for the improvement, alteration, or repair of any building or other improvements on the Premises and the Entire Development, and all materialmen, contractors, mechanics, laborers are hereby charged with notice that they must look solely to the Landlord and to the Landlord's interest only in the Premises and the Entire Development to secure the payment of any claim, bill or bills for work done, or material furnished during the Term of this Lease.

If any mechanic's or materialman's lien is filed against the Premises or the Entire Development as a result of any additions, alterations, repairs, installations or improvements made by Landlord, or any other work or act of Landlord, Landlord shall discharge or bond same within sixty (60) days from the filing of the lien. If Landlord shall fail to discharge or bond the lien within such sixty (60) day period, Tenant may bond or pay the lien or claim for the account of Landlord. Any monies advanced or costs incurred by Tenant for any of the aforesaid purposes shall be paid by Landlord to Tenant on demand. Nothing contained in this Lease shall be construed as Tenant's consent to subject Tenant's leasehold estate in the Premises or the Entire Development to any mechanics or materialmen lien under the lien law of the State of Florida.

## ARTICLE VI

## USE OF PREMISES; USE OF PARK PARCELS; PARKING

It is recognized that the successful development and enjoyment of the Tenant's Mixed Use Project by Tenant (and it's sub-tenants and guests), and the improvement of the Park Parcels by Tenant and Landlord and subsequent use of the Park Parcels by the public is necessarily dependent on certain agreements and commitments by the Landlord and the Tenant hereinbelow, to ensure that the Tenant's Mixed Use Project and Park Parcels will complement each other, both aesthetically and in terms of compatible uses. Therefore, Landlord and Tenant agree that that, in addition to the other terms and conditions of this Lease, the use of the Premises and Park Parcels shall be subject to the following:

Section 6.1. Use of Premises.

(a) Subject to receipt of the necessary Entitlements, the Premises shall be used for the development, construction and operation of the Tenant's Mixed Use Project and for any other lawful commercial, residential or retail use (the "**Permitted Use**")**.** Tenant shall have exclusive control, possession, occupancy, use, and management of the Premises, subject only to the Permitted Encumbrances. Tenant shall have the exclusive right to install signage on or at the Premises during Term of this Lease. Tenant may enter into, terminate, or modify any existing or future contract for management or operation of the Premises or provision of any services to the Premises.

(b) Tenant shall not permit any unlawful occupation, business or trade to be conducted on the Premises or any use to be made thereof contrary to applicable Legal Requirements. Tenant shall not use, occupy or permit any of the Premises to be used or occupied, nor do or permit anything to be done in or on any of the Premises, in a manner which would (i) make void or voidable any insurance which Tenant is required hereunder to maintain then in force with respect to any of the Premises, (ii) affect the ability of Tenant to obtain any insurance which Tenant is required to furnish hereunder, or (iii) cause any injury or damage to any of Tenant's Mixed Use Project Improvements.

(c) Subject to all of the provisions of this Lease, so long as no Event of Default exists hereunder, Landlord covenants to do no act to disturb the peaceful and quiet occupation and enjoyment of the Premises by Tenant and any subtenants.

Section 6.2 Use of Park Parcels. The Landlord covenants and agrees that the Park Parcels shall at all times be maintained in a first-class condition and used only for passive use public parks, generally open to and accessible by the public free of charge, with limited ‘special events’ and for no other use or purpose. Without limiting the generality of the foregoing, the following terms and conditions shall also apply to the Landlord’s use and operation of the Park Parcels (and the terms of this Section 6.2 and the height limitations in Section 5.6 shall be included in the REA):

(a) All sub-tenants, guests and invitees of any portion of the Premises shall have the same rights to access, use and enjoy the Park Parcels as any other member of the public at large.

(b) The North Park Parcel shall open no earlier than sunrise each day and shall close no later than 30 minutes after sunset each day.

(c) The South Park Parcel may be open as late as any business that may be open from time to time within the commercial components of the Tenant's Mixed Use Project.

(d) No portion of the Park Parcels shall be used as a ‘dog park’.

(e) Any boating activities in the Imperial River shall be limited to non-motorized vessels such as canoes, kayaks, and paddleboards.

(f) Concerts or other ‘special events’ (on either or both Park Parcels) shall not take place more frequently than once (1) per calendar quarter and for not more than two days per event and Landlord shall be responsible for ensuring that the Park Parcels are cleaned and restored promptly after the occurrence of any special events; provided, however ‘farmer’s markets’ (may be conducted on a weekly basis). For purposes hereof, a ‘special event’ shall mean and refer to any organized gathering at either Park Parcel (whether organized by Landlord or by a third party) for a non-Passive Use event (by way of example, but not limitation, an outdoor theatrical events, music festival or an art festival).

(g) The following activities shall be prohibited on the Park Parcels: any motorized activity (including electric motors), sports fields or sport facilities, golf courses, swimming pools, outdoor theatres, gymnasium, meeting space, game rooms, horseback riding, camping, hunting, paintball, skateboarding.

Upon receipt of notice by Landlord that the use of the Park Parcels is not in compliance with the requirements of this Section 6.2 (or the REA), the Landlord shall cease-and desist such action (if such violations are occurring with the permission of Landlord) and shall take prompt and commercially reasonable enforcement action against the offending parties.

Section 6.3. City Parking. The Preliminary Parking Plan depicts certain parking spaces to be located on the South Park Parcel (the "**City Parking Spaces**"). Concurrently with constructing the Tenant's Mixed Use Project Improvements, Tenant shall design and construct the City Parking Spaces at Tenant's expense, and the Landlord shall have the right (at Landlord's expense) to place signage in front of each of the City Parking Spaces for the purpose of designating such parking spaces for the use of members of the public that are visiting the Park Parcels. Once constructed by the Tenant, the Association shall thereafter maintain, repair and replace the City Parking Spaces, at the Landlord's expense, in accordance with the terms of the REA.

Section 6.4 Parking at Premises. For the avoidance of doubt, all parking areas located from time to time within the Premises are exclusive to Tenant, its sub-tenants and sub-licensees and their respective agents, employees, contractors, and invitees, and neither Landlord, nor any member of the public, agent, contractor, licensee or invitee of Landlord shall have any right to use such parking areas. Tenant shall have the right to designate that such parking areas are for Tenant's exclusive use and construct barriers to enter such areas if desired by Tenant and tow such unauthorized vehicles if desired by Tenant.

## ARTICLE VII

## TAXES AND ASSESSMENTS

Section 7.1. Payment of Taxes. The parties shall work together to obtain a separate assessment of the real estate taxes for the Premises. Subject to the Excluded Taxes (as defined herein below), from and after the Rent Commencement Date and subject to the provisions of Section 7.3 hereof relating to contests, Tenant shall, at least fifteen (15) days before delinquent or interest or penalties are due thereon, pay and discharge (all of the following being herein collectively called the "**Impositions**"): all taxes of every kind and nature (including real, ad valorem, personal property, franchise, withholding, profits and gross receipts taxes) on or with respect to the Premises; all charges and/or taxes imposed by any governmental body for any easement or agreement maintained solely for the benefit of the Premises; all general and special assessments (payable in installments if permitted), levies, permits, inspection and license fees on or with respect to the Premises; all water and sewer rents and other utility charges on or with respect to the Premises; all other public charges and/or taxes whether of a like or different nature, even if unforeseen or extraordinary, imposed or assessed upon or with respect to the Premises, during Term of this Lease, against Landlord, Tenant or any portion of the Premises as a result of or arising in respect of the occupancy, leasing, use, maintenance, operation, management, repair or possession thereof, or any activity conducted on the Premises, or the Base Rent, Percentage Rent or Additional Rent, including without limitation, sales tax, occupancy tax or excise tax levied by any governmental body on or with respect to such Base Rent, Percentage Rent or Additional Rent. If received by Landlord, Landlord shall promptly deliver to Tenant any bill or invoice with respect to any Imposition. Nothing herein shall obligate Tenant to pay, and the term "Impositions" shall exclude, federal, state or local (i) documentary stamp transfer taxes due on deeds as the result of a conveyance by (or suffered by) Landlord (other than this Lease), (ii) franchise, capital stock or similar taxes if any, of Landlord, (iii) income, excess profits or other taxes, if any, of Landlord, determined on the basis of or measured by its net income, (iv) any estate, inheritance, succession, gift, capital levy or similar taxes, unless the taxes referred to in clauses (ii) and (iii) above are in lieu of or a substitute for any other tax or assessment upon or with respect to any of the Premises which, if such other tax or assessment were in effect at the commencement of Term of this Lease, would be payable by Tenant, or (v) any real estate taxes or special assessments levied on the value of Tenant's Parcel or Tenant's interest in Tenant's Parcel (as opposed to taxes levied on the assessed value of the Tenant's Mixed Use Project Improvements) (collectively, the "**Excluded Taxes**"). In the event that any assessment against any of the Premises may be paid in installments, Tenant shall have the option to pay such assessment in installments; and in such event, Tenant shall be liable only for those installments which become due and payable during Term of this Lease. Landlord and Tenant shall work together to obtain a separate tax identification number for the parcels that comprise the Premises. Landlord shall be responsible for all Impositions, if any against the Park Parcels.

All Impositions for any Calendar Year a portion of which falls either before the Rent Commencement Date or after the end of Term of this Lease will be prorated by multiplying the amount of Impositions for such Calendar Year by a fraction having as its numerator the number of days in such Calendar Year that fall within Term of this Lease following the Rent Commencement Date and having as its denominator the total number of days in such Calendar Year.

Landlord will pay or cause to be paid to the appropriate Governmental Authorities, prior to delinquency, (if any) all taxes, assessments, levies or related charges due and payable to such authorities with respect to the Public Use Lands.

Section 7.2. Indemnity for Impositions. Tenant will not permit any lien or judgment for Impositions for which Tenant is responsible hereunder to be enforced against Tenant's Parcel or Tenant's Mixed Use Project Improvements. Tenant agrees to protect, defend, indemnify and save Landlord harmless from the payment of Impositions for which Tenant is responsible hereunder and any loss, cost, expense (including court costs and reasonable attorneys' fees), or liability ever incurred or suffered by Landlord as a result of Tenant's failure to pay the Impositions or any portion thereof in accordance with the provisions hereof. Landlord will not permit any lien or judgment for Impositions for which Landlord is responsible hereunder to be enforced against Tenant's Parcel or Tenant's Mixed Use Project Improvements. Landlord agrees to indemnify and save Tenant harmless from the payment of Impositions for which Landlord is responsible hereunder and any loss, cost, expense (including court costs and reasonable attorneys' fees), or liability ever incurred or suffered by Tenant as a result of Landlord's failure to pay the Impositions or any portion thereof in accordance with the provisions hereof.

Section 7.3. Tenant's Right to Contest. Tenant may in good faith and at its sole cost and expense (in its own name or in the name of Landlord, or both, as Tenant may determine appropriate) contest the validity or amount of (i) the Impositions, and (ii) any other taxes, charges, assessments, or other amounts, charged or assessed against the Premises, provided that the payment thereof may not be deferred during the pendency of such contest. If requested by Tenant, Landlord will join Tenant as a party to any such contest; provided, that Landlord shall not be obligated to incur any expense in connection therewith. Nothing herein contained, however, shall be construed to authorize Tenant to allow or to permit the Premises, or any part thereof, to be sold by any county, city, state, municipal, or other governmental authority for the non-payment of any Impositions.

## ARTICLE VIII

## MAINTENANCE ASSOCIATION; MAINTENANCE OF PARK IMPROVEMENTS

Section 8.1. Maintenance Association. The Maintenance Association has been or will be established to be responsible for (a) the day-to-day, as well as extraordinary maintenance, repair and replacement of the Park Parcels and Park Improvements, and (b) any maintenance and/or repair activities pertaining to the Premises and for which the Landlord and Tenant may (in their sole discretion) contract for with the Maintenance Association. The Maintenance Association shall be governed by a board of directors consisting of four (4) members, two (2) of which shall be appointed by the Tenant, and two (2) of which shall be appointed by the City manager (and, for the avoidance of doubt, the City manager may appoint himself/herself). The members of the Maintenance Association shall be the Tenant and the Landlord, and the board of directors of the Maintenance Association may appoint officers to carry out the day-to-day functions of the Maintenance Association.

Section 8.2. REA. The Landlord, Tenant and the Maintenance Association shall enter into a reciprocal easement, maintenance and cost sharing agreement (the "**REA**"), pursuant to which the Maintenance Association shall be granted access rights to the Public Use Lands for maintenance and repair work, Tenant shall be granted access rights (for itself and its sub-tenants and invitees) to the Public Use Lands and the Maintenance Association shall agree to undertake maintenance and repair obligations for the (subject to reimbursement from Landlord). The final form of the REA will be agreed upon, signed and recorded by no later than ninety (90) days after the expiration of the Entitlement Period, and shall be consistent with the business terms set forth on Exhibit "F" attached hereto. The Landlord agrees that the final approval and execution of the REA by the Landlord shall be an administrative act and the Landlord's city manager (or such city manager's designee) is hereby authorized to execute the final REA on behalf of Landlord so long as the REA has been reviewed and approved (as to legal sufficiency) by the Bonita Springs City Attorney.

## ARTICLE IX

## TITLE AND CONDITION

Section 9.1. Title and Condition.

(a) The Premises are demised and let subject only to (i) the Permitted Encumbrances, (ii) all Legal Requirements, and (iii) the condition of the Premises as of the Effective Date; without representation or warranty by Landlord except as set forth in Section 9.1(b) below or as otherwise stated in the Lease.

(b) Landlord represents and warrants to Tenant, with the understanding that Tenant is entering into this Lease in reliance thereon, that:

(i) Landlord owns fee simple title to the Entire Development has the full power and authority to enter into and perform this Lease according to its terms and the individual executing this Lease on behalf of Landlord is authorized to do so and no joinder or approval of another person is required with respect to Landlord's right and authority to enter into this Lease.

(ii) Landlord, in order to induce Tenant to enter into this Lease, hereby represents, warrants and covenants, throughout Term of this Lease that:

(aa) The Landlord is, under the laws of the State, a duly created and validly existing government constituted as a municipal corporation of the State.

(bb) The Landlord has the power to contract and to be contracted with, to sue and to be sued, to plead and to be impleaded, to have a seal and to exercise all other powers of a political subdivision not inconsistent with the Constitution and laws of the State.

(cc) The Landlord has full right, power and authority to execute, deliver and perform its obligations under this Lease.

(dd) This Lease has been duly executed and delivered by the Landlord and, when duly executed and delivered by the Tenant shall constitute a legal, valid and binding obligation of the Landlord enforceable against the Landlord in accordance with its terms.

(ee) The execution, delivery and performance of this Lease will not conflict with or constitute a breach of or default under any commitment, agreement or instrument to which the Landlord is a party or by which it is bound. Tenant is the only lessee of the Premises. As of the Effective Date, no other Person has the right to lease, use or occupy the Premises, other than Tenant.

(ff) There is no litigation, administrative proceeding or investigation pending (nor, to the actual knowledge of the Landlord, is any such action threatened) which in any way adversely affects, contests, questions or seeks to restrain or enjoin the Landlord's enabling legislation or any of the proceedings or actions taken by the Landlord leading up to the execution, delivery or performance of this Lease.

(iii) Landlord has not granted to any third party the right to use or occupy any portion of the Entire Development and Landlord has no actual knowledge of any claim by any third party of the right to do so;

(iv) Landlord has not received written notice of and has no actual knowledge of any existing or threatened action, suit or proceeding affecting any portion of the Entire Development (including, without limitation, proposed or threatened condemnation), in any court or before or by any federal, state, county or municipal or other governmental instrumentality;

(v) All Impositions payable with respect to the Entire Development which are due and payable or allocable to the period ending as of the day before the Rent Commencement Date, and all prior periods have been (or will be) paid by Landlord (or Landlord's predecessor in title) and Landlord shall be responsible for the timely filing of all returns, reports or other documents required by any taxing authority claiming jurisdiction with respect to any such Impositions;

(vi) To Landlord's actual knowledge after due inquiry, and except as disclosed in any environmental reports obtained by Landlord (and delivered to Tenant during the Due Diligence Period) or obtained by Tenant during the Due Diligence Period, the Premises has not been used for the disposal of or to refine, generate, manufacture, produce, store, handle (except in legal quantities used for commercial or retail purposes), treat, transfer, release, process, or transport any Hazardous Materials (as defined below) and no underground storage tanks are located on the Premises;

(vii) There are no leases, rental or other contracts or agreements or encumbrances which are not referenced in Exhibit "G" and which burden and encumber the Entire Development;

(viii) The uses and improvements contemplated by the Entire Development, Conceptual Site Plan and Renderings are consistent with the ordinances and regulations of the City of Bonita Springs in effect as of the Effective Date (as they pertain to the Premises and/or Park Parcels), and the Landlord will not implement or otherwise approve any changes to such ordinances and regulations if the effect would cause the Entire Development, Conceptual Site Plan and/or Renderings to be inconsistent with such ordinance and regulations;

(ix) Landlord represents to Tenant to its actual knowledge that no liens for delinquent taxes or assessments exist against the Entire Development. Landlord covenants and agrees that it will not enter into or record (or permit or suffer others to record) new instruments affecting the Premises or the Entire Development or modify any of the Permitted Encumbrances. At any time prior to the Rent Commencement Date of the Lease, Tenant may obtain from its title company an updated title commitment. If any updated title commitment discloses any title exceptions (not created by Tenant) that are not Permitted Encumbrances (herein a "**New Title Exception**"), then Landlord shall have thirty (30) days after receiving the updated title commitment within which to attempt to cure, remove, or work around such title exception to the reasonable satisfaction of Tenant, the title company and any Leasehold Mortgagee. In the event that Landlord is unable or unwilling to effect such cure, then Tenant, at its option may: (i) elect to terminate this Lease by providing written notice to Landlord, or (ii) if such New Title Exception was created in violation of Landlord's covenants in this Section, Tenant may exercise its rights and remedies for default under the Lease including the right to terminate the Lease, (iii) satisfy or pay off such New Title Exception if same is a lien and set off such payment against monthly Rent until Tenant is reimbursed in full, or (iv) waive in writing the right to object to such New Title Exception. Any new title exception not accepted by Tenant hereunder shall be referred to as a "**Change in Title**". Landlord shall execute and deliver customary affidavits (gap, no-lien and possession) as may reasonably required by the title company to delete the standard exceptions.

(c) All representations and warranties of Landlord contained in this Lease shall be deemed made as of the Effective Date and the Rent Commencement Date and shall continue throughout the Term of this Lease. Landlord shall indemnify, defend and hold Tenant harmless against any loss, cost, claim, liability or expense arising from any of the representations or warranties contained in this Lease not being true and correct as of the Effective Date and throughout Term of this Lease. As used herein, Landlord's "actual knowledge" shall mean the current actual knowledge of the Landlord's City Manager, without investigation and without the imputation of the knowledge of others, and without personal liability for said City Manager.

## ARTICLE X

## MAINTENANCE AND REPAIR OF PREMISES AND IMPROVEMENTS;

## COMPLIANCE WITH LAWS; INSURANCE

Section 10.1. Repair and Maintenance.

(a) At all times prior to the Delivery Date, Landlord shall retain possession of the Premises and shall be responsible, at Landlord's expense, for all maintenance and repairs of the Premises.

(b) Commencing on and after the Delivery Date (and subject to the terms of Section 13.1, which shall control with regard to the parties' responsibilities to repair and restore the Premises in the event of casualty or condemnation), Tenant, at its sole cost and expense, shall throughout the Term keep and maintain the Improvements and all other portions of the Premises in good repair and condition and shall make all repairs, replacements and renewals, foreseen or unforeseen, ordinary or extraordinary, necessary to put or maintain the Premises in such state of repair and condition.

Section 10.2. Compliance with Laws. After the Delivery Date and for the remainder of Term of this Lease, Tenant shall comply with and cause the Premises to be in material compliance with (i) all Legal Requirements applicable to the Premises or the uses conducted on the Premises, and (ii) the terms of any easements, covenants, conditions and restrictions affecting the Premises which are Permitted Encumbrances or are created after the Effective Date of this Lease with Tenant's written approval. If any additions, alterations, changes, repairs or other work of any nature, structural or otherwise, shall be required or ordered or become necessary at any time during Term of this Lease because of any of these requirements, the entire expense of the same, irrespective of when the same shall be incurred or become due, shall be the sole liability of Tenant; provided, however, that nothing herein shall limit or otherwise modify Landlord's liability for any breach of any representation or warranty under Section 9.1(b) above, or Landlord's liability under Section 9.1(c) above or for breach of any other terms and conditions in the Lease. Notwithstanding the foregoing provided that during the course of such contest Tenant shall comply with all Legal Requirements, including that being contested, (i) Tenant may in good faith and at its sole cost and expense (in its own name or in the name of Landlord or both, as Tenant may determine appropriate) contest alleged violations of law, rules and regulations, and (ii) Tenant shall not be deemed to have defaulted under or breached this Lease as a result of its failure to comply with any Legal Requirements until a final and unappealable court order against Tenant has been entered enforcing the same and the period of time reasonably necessary to effect compliance therewith has passed. If requested by Tenant, Landlord will join Tenant as a party to any such contest; provided, however, that Landlord shall not be obligated to incur any expense in connection therewith. Landlord shall promptly give Tenant a copy of any notice of any kind regarding the Premises or any Impositions and any notice of nonrenewal or threatened nonrenewal of any approval that Landlord receives from applicable Governmental Authority, utility company, insurance carrier or otherwise.

Section 10.3. Casualty Insurance. Commencing on and at all times after the Delivery Date, Tenant at its sole expense shall keep or cause to be kept, all Improvements on the Premises insured against loss by fire and all of the risk and perils usually covered by an "all risk" endorsement to a policy of fire insurance upon property comparable to the Tenant's Mixed Use Project Improvements, including, without limitation, wind coverage, vandalism and malicious mischief endorsements, in an amount equal to at least one hundred percent (100%) of the replacement cost of Tenant's Mixed Use Project Improvements. Tenant shall furnish to Landlord evidence of coverage and any renewals or replacements of this insurance. Landlord (and if requested in writing by Landlord, Landlord's mortgagee) shall be named an additional insured under this policy. Notwithstanding anything to the contrary set forth herein, Tenant shall not be required to obtain and maintain the insurance described in this Section 10.3 until immediately prior to the termination of the builder's risk insurance on Tenant's Mixed Use Project Improvements described in Section 10.4 below.

Section 10.4. Builder's Risk Insurance. Beginning on or prior to the date that Tenant commences construction of any portion of the Entire Development Improvements and continuing until completion of construction of the Entire Development Improvements, Tenant at its sole expense shall maintain or cause to be maintained builder's risk insurance covering the construction of the Entire Development Improvements, in an amount not less than the full insurable value of the Entire Development Improvements, and materials supplied in connection with the Entire Development Improvements. Tenant shall furnish to Landlord evidence reasonably acceptable to Landlord of coverage and any renewals or replacements of this insurance. Landlord (and if requested in writing by Landlord, Landlord's mortgagee) shall be named as an additional insured under this policy.

Section 10.5. Certificates. Within five (5) days of the Effective Date, Tenant shall deliver to Landlord certificates of the insurance required under this Lease (except for those certificates that are required to be delivered pursuant to the Lease at a later date). Each certificate shall provide that the insurer will not cancel the policy except after thirty (30) days prior written notice to Landlord, provided, however, that only ten (10) days' prior notice shall be required for non-renewal or cancellation due to non-payment of premium. Prior to the expiration of each such insurance policy, Tenant shall deliver to Landlord copies of a renewal policy or binder which shall comply with the foregoing provisions with respect to prior notice of cancellation thereof being given by the insurance company to Landlord. In the event of the failure of Tenant to procure and deliver such renewal policy or policies or binder or binders therefor within the time above prescribed, Landlord shall be permitted to do so and the premiums charged therefor shall be borne and paid promptly by Tenant, together with a ten percent (10%) administrative fee.

Section 10.6. Liability Insurance. Commencing on and after the Delivery Date, Tenant agrees to maintain or cause to be maintained at all times thereafter during Term of this Lease comprehensive general liability insurance as well as umbrella liability coverage, in which Landlord (and if requested in writing by Landlord, Landlord's mortgagee) shall be named as an additional insured with minimum limits of liability in respect of personal injury of not less than Two Million and No/100 Dollars ($2,000,000.00) for each person and Two Million and No/100 Dollars ($2,000,000.00) for each occurrence/ Four Million ($4,000,000.00) in the aggregate, and an umbrella liability policy providing for not less than Ten Million ($10,000,000.00) in liability coverage. With respect of property damage a broad form policy with minimum limits of One Million and No/100 Dollars ($1,000,000.00) for each occurrence (each of such amounts shall be subject to be increased from time to time as Landlord may reasonably request based on CPI Adjustment). All insurance policies required by this provision shall be obtained by Tenant at Tenant's expense. Said insurance policies shall provide for at least thirty (30) days 'notice to Landlord before cancellation, provided, however, that only ten (10) days' prior notice shall be required for non-renewal or cancellation due to non-payment of premium, and shall include a waiver of subrogation by the insurance carrier in a form reasonably acceptable by Landlord. It is agreed that the insurance coverages required herein may be maintained as part of master or umbrella policies of insurance covering other property of Landlord or Tenant, as applicable.

Landlord and Tenant shall each maintain worker's compensation insurance in the statutorily required amounts or such other alternative coverage(s) as may be permitted under the Laws of the State of Florida.

Section 10.7. Premiums. All premiums and charges for all of said insurance policies shall be paid by Tenant when due. If Tenant shall fail and neglect to make any payment when due, Landlord may, but shall not be obligated to, upon fifteen (15) days prior written notice, make such payment or carry such policy, and the amount of any premium paid by Landlord shall be repaid by Tenant to Landlord by no later than ten (10) days after written demand, together with a ten percent (10%) administrative fee.

Section 10.8 Waiver of Subrogation. Landlord and Tenant each releases the other and the other's officers, members, partners, owners, directors, agents (including, without limitation, any managing agent, management company and property manager) and employees (individually and collectively, the "**Released Parties**"), from any and all liability for loss or damage to the releasing party's respective property located at the Entire Development, which loss or damage is covered by insurance (or self-insurance) required to be carried hereunder. The foregoing waiver shall apply regardless of the cause, including, but not limited to, claims caused by any of the Released Parties. If either party maintains a deductible or self-insured retention, it is intended that the foregoing release include the amount of any such deductible or self-insured retention carried by the releasing party. Landlord and Tenant shall each cause its respective property insurance carrier to waive all rights of recovery against the Released Parties with respect to any such loss or damage.

## ARTICLE XI

## ASSIGNMENT AND SUBLETTING

Section 11.1. Assignment; Subleasing. Tenant, without the approval of Landlord, and at any time and from time to time during the Term of this Lease except as provided in Section 11.2, shall have the right to assign this Lease, or its rights hereunder, to any person or entity in Tenant's sole discretion. Upon any assignment by Tenant of all of its rights under this Lease to any assignee that expressly assumes all obligations of "Tenant" under this Lease, Tenant shall be automatically released from all obligations and liabilities under this Lease except for any liabilities already accrued by Tenant. Any assignee of Tenant's rights hereunder shall provide Landlord with written notice of such assignment by no later than sixty (60) days after the effective date of such assignment. In addition, notwithstanding anything to the contrary in this Article XI or the Lease, Tenant, without the approval of Landlord, and at any time and from time to time during the Term of this Lease, shall have the right to sublet and/or sub-license all or any portion of the Premises to any third parties, and lease, license and sublease the residential and commercial areas of the Premises, in Tenant's sole discretion. Notwithstanding the forgoing, Tenant may not sublet and/or sub-license the Premises to any subtenant and/or sub-licensee to which Tenant has any direct or indirect beneficial ownership interest in without Landlord's express authorization and provision relating to the proper calculation of Gross Revenue.

Section 11.2 Stabilization Date. Tenant will not assign the Lease or sell its right, title and interest in the entirety of the Premises, or be relieved of its obligations under the Lease prior to the expiration of twelve (12) months following the "Stabilization Date" (as defined below) except as follows: (a) as collateral security for a mortgage loan held by an institutional lender, (b) any assignment, sale, or any transfer to a Leasehold Mortgagee, or any assignment, sale, or any transfer pursuant to Article XII, or (c) as allowed pursuant to Section 11.1 or Section 11.3. Within twelve (12) months following the Stabilization Date, this Section 11.2 shall automatically terminate without any other further action required, but upon written request of Tenant, Landlord shall promptly execute a certificate in recordable form that this Section 11.2 is no longer applicable (which certificate may be executed by the City Manager and shall be binding upon the Landlord without any further authority or actions required). Notwithstanding anything to the contrary, this Section 11.2 shall not apply to and there shall not be any restrictions with respect to the following: (a) any Leasehold Mortgagee, Successor Tenants, or any other Person that succeeds to the interest of Tenant or to Leasehold Mortgagee under this Lease as a result of foreclosure proceedings, the granting of an assignment, lease, or other transfer in lieu of foreclosure, or through any other means, and (b) any changes, sales, assignments, or other transfers in the composition of the Persons owning any interest in Landlord's entity, including corporate interests, partnership interests, limited partnership interests, and membership interests. As used herein, the "**Stabilization Date**" shall means that ninety percent (90%) or more of the residential apartments located on the Premises have executed leases, (bb) Tenant's Work has been substantially completed (excepting minor punch list items), and (cc) Tenant is not in default under the Lease beyond applicable notice and cure periods. Notwithstanding anything to the contrary, this Section 11.2 shall be deleted and shall be no longer applicable within twenty-four (24) months following the Rent Commencement Date (whether or not the Stabilization Date occurred).

Section 11.3. Recognition. If for any reason this Lease is terminated prior to the expiration of Term of this Lease, Landlord agrees such termination will not result in a termination of any "Qualified Sublease" (as defined below) and any Qualified Sublease will continue for the duration of its term and any extensions thereof as a direct lease between Landlord and the subtenant thereunder, with the same force and effect as if Landlord had originally entered into such sublease as the landlord thereunder. Landlord will execute an instrument evidencing Landlord's agreement to recognize a particular Qualified Sublease in accordance with foregoing provisions within twenty (20) days after notice from Tenant (or direct written request. From such subtenant) that the subtenant thereunder has requested such an instrument. As used herein, a "**Qualified Sublease**" means a sublease or sub-license agreement entered into between Tenant and a subtenant or sublicensee (a) that demises or licenses any portion of the Premises to a bona fide sub-tenant or sub-licensee at an arm's-length rate, and (b) the term of which (including any extension options) does not extend beyond the existing Term of this Lease (including any then-exercised extensions) at the time such sublease/sublicense is signed.

## ARTICLE XII

## FINANCING

Section 12.1. Tenant's Financing. Notwithstanding any provision of this Lease to the contrary, Tenant shall have the right, at any time and from time to time during the Term of this Lease and any extensions thereof, and in each case without the consent of Landlord, to grant one or more leasehold mortgages encumbering all or any portion of the leasehold estate created by this Lease (whether or not such mortgage shall also cover other properties), and give as collateral to Leasehold Mortgagee an assignment of and security interest in (a) Tenant's interest in Tenant's Mixed Use Project Improvements and Tenant's interest (as ground tenant) in and to the Premises, (b) the rents, income, receipts, revenues, issues and profits issuing to the Tenant from the Premises, (c) any subleases entered into by Tenant, and (d) Tenant's entire interest in this Lease and the leasehold estate created hereby. Notwithstanding the foregoing, Tenant shall not have the right to encumber or subordinate the Landlord's estate in the Premises. Tenant shall immediately notify Landlord in writing of the name and address of any Leasehold Mortgagee.

Section 12.2. Landlord's Financing. Landlord may, in its sole discretion, grant a mortgage or similar lien encumbering Landlord's estate in the Premises (a "**Fee Mortgage**"); such Fee Mortgage shall recognize all of Tenant's (and any Leasehold Mortgagee's) rights hereunder (and/or under any SNDA to which the holder of each Fee Mortgage is a party), and shall be subject to this Lease and subordinate to this Lease and any renewals, amendments and replacements hereof, including, without limitation, any new lease made pursuant to the provisions of this Article and the term, rights and leasehold estate of Tenant hereunder and thereunder and to any Leasehold Mortgages. The provisions of this Section 12.2 shall be self-operative, without the necessity of any other written consent or subordination by the holder of any Fee Mortgage. However, upon request of Tenant, Landlord shall at any time or times cause the holder of each Fee Mortgage to execute, acknowledge and deliver to Tenant and each Leasehold Mortgagee, provided that Tenant pays any reasonable costs incurred by Landlord in respect thereof, any instrument reasonably required by Tenant or any Leasehold Mortgagee (or the holder of each Fee Mortgage's joinder to an SNDA) to confirm the terms in this Section 12.2.

Section 12.3. No Amendments or Merger; Right to Cure; New Lease; Insurance Adjustments and Awards.

(a) Amendments. Without limiting the provisions of Section 12.3(e) hereof, if Tenant or Tenant's Leasehold Mortgagee has provided Landlord with written notice of the existence of such Leasehold Mortgage (which notice must include a street address and contact person for such Leasehold Mortgagee), there shall be no cancellation, termination, waiver, surrender, acceptance of surrender, amendment, change or modification of this Lease by joint action of Landlord and Tenant, or by Tenant or Landlord alone without, in each case, the prior written consent of Leasehold Mortgagee (and if any such action is taken without the prior written consent of Leasehold Mortgagee, then such action shall be effective as between Tenant and Landlord, but shall not be effective as against Leasehold Mortgagee, unless the same is permitted without consent under the terms of the Leasehold loan documents).

(b) No Merger. There shall be no merger of (i) Landlord's fee title to the Premises, on the one hand, with (ii) this Lease and the Tenant's leasehold estate, on the other hand, notwithstanding that said fee title and this Lease or leasehold estate may be owned by the same Person or Persons. Without limiting the generality of the foregoing, no merger shall result from the acquisition by Tenant of the Premises (or the devolution upon any one entity of both the fee interest of Landlord and the leasehold estate of Tenant).

(c) Concurrent Notices. If Tenant or Tenant's Leasehold Mortgagee has provided Landlord with written notice of the existence of such Leasehold Mortgage (which notice must include a street address and contact person for such Leasehold Mortgagee), then thereafter, Landlord shall, upon serving Tenant with any notice of default or termination, simultaneously serve a copy of such notice upon Leasehold Mortgagee, and no such notice of default or termination to Tenant shall be effective against the Leasehold Mortgagee unless and until a copy is so served upon Leasehold Mortgagee in the manner provided in this Lease for the giving of notices (but Landlord's failure simultaneously to serve a copy of such notice upon Leasehold Mortgagee shall not constitute an event of default by Landlord giving rise to any remedy exercisable by Tenant). Each notice of default given by Landlord will state the amounts of whatever Rent and other payments herein provided for are then claimed to be in default (or, in the case of any other default, shall describe the default(s) with reasonable specificity). Notwithstanding anything to the contrary in this Lease, Leasehold Mortgagee following the occurrence of a default under the Leasehold Mortgage may (but shall not be obligated to) exercise all of Tenant's rights under this Lease.

(d) Right to Cure. In the event of any default by Tenant under this Lease that is reasonably susceptible to cure, Leasehold Mortgagee shall have the same period, commencing upon written notice to each such Leasehold Mortgage of such default, to remedy or cause to be remedied the default complained of as Tenant has hereunder to cure such default, plus an additional twenty (20) days in the case of default may be cured by the payment of money and the maintenance of insurance and forty-five (45) days in the case of any other default which is capable of being cured by the Leasehold Mortgagee (such forty-five (45) day period shall be extended for a reasonable period of time to gain possession of the interest of Tenant under this Lease through legal proceedings if necessary to cure such default), and Landlord shall accept performance by such Leasehold Mortgagee within the time specified herein as timely performance by Tenant; provided, however, that (i) nothing contained herein shall be deemed to impose upon any Leasehold Mortgagee the obligation to perform any obligation of Tenant under this Lease or to remedy any default by Tenant hereunder, (ii) as pertains to the Leasehold Mortgagee, Landlord waives any default by Tenant that is not susceptible to cure, and (iii) Leasehold Mortgagee shall be diligently prosecuting such cure. Any provision of this Lease to the contrary notwithstanding, no performance by or on behalf of a Leasehold Mortgagee shall cause it to become a "mortgagee in possession" or otherwise cause it to be deemed to be in possession of the Premises or bound by or liable under this Lease. In addition, the parties agree that if there is more than one (1) Leasehold Mortgagee (or collateral assignee), or if there are Leasehold Mortgages and loans made by Tenant Mezzanine Lenders, then only one Leasehold Mortgagee or Tenant Mezzanine Lender designated as the lead lender by intercreditor agreement among the Leasehold Mortgagees and Tenant Mezzanine Lender (the "**Designated Lender**") shall be entitled to exercise the cure rights described in this Section 12.3(d) on behalf of all Leasehold Mortgagees and Tenant Mezzanine Lenders.

(e) No Right to Terminate. Notwithstanding any provision to the contrary, Landlord shall not have the right to terminate this Lease or re-enter the Premises by reason of a default by Tenant that is reasonably susceptible of cure by Leasehold Mortgagee, during the period specified in Section 12.3(d), above, in which Leasehold Mortgagee is entitled to cure a default by Tenant, as long as:

(i) all monetary defaults by Tenant under this Lease have been cured;

(ii) in the case of a non-monetary default by Tenant under this Lease, Leasehold Mortgagee shall have notified Landlord within forty-five (45) days after receipt of notice of default from Landlord of its intention to cure and such Leasehold Mortgagee thereafter prosecutes the same to completion with reasonable diligence and continuity prior to the expiration of such Leasehold Mortgagee's cure period specified in Section 12.3(d);

(iii) if possession of the Premises is required in order to cure the default in question, Leasehold Mortgagee (A) shall have entered into possession of the Premises with the permission of Tenant for such purpose or (B) shall have notified Landlord of its intention to institute foreclosure proceedings and shall have instituted foreclosure proceedings, to obtain possession directly or through a receiver, in each case within sixty (60) days after receiving from Landlord a copy of a default notice, and thereafter prosecutes such proceedings with reasonable diligence and continuity or receives an assignment of this Lease in lieu of foreclosure from Tenant, and, upon obtaining possession pursuant to clause (A) or clause (B) above, commences promptly to cure the default in question and prosecutes the same to completion with reasonable diligence and continuity and within the time frames set out in Section 12.3(d); or

(iv) if Leasehold Mortgagee shall have proceeded pursuant to this Section 12.3(e) and, during the period specified in Section 12.3(d), such default by Tenant under this Lease is cured;

provided, that, in each case the Leasehold Mortgagee shall have delivered to Landlord its non-binding notice of intention to take the action described in subparagraphs (ii) or (iii) of this Section 12.3(e), and that during the period in which such action is being taken (and any foreclosure proceedings are pending), all Base Rent, Percentage Rent and Additional Rent is paid when due. Notwithstanding the foregoing, at any time after the delivery of the aforementioned notice of intention, the Leasehold Mortgagee may notify Landlord, in writing, that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, in which case Landlord may immediately terminate this Lease (a "**Leasehold Mortgagee Termination Waiver**"). For all purposes of this Lease, the term "foreclosure proceedings" shall include, in addition to proceedings to foreclose a mortgage, where applicable, any foreclosure or similar proceedings commenced by a collateral assignee with respect to its collateral assignment.

(f) New Lease. In the event of a termination of this Lease for any reason whatsoever, including, but not limited to, the rejection of this Lease by Tenant or a trustee in connection with any bankruptcy proceeding, provided that a Leasehold Mortgagee Termination Waiver shall not have occurred, Landlord will promptly upon obtaining knowledge of such termination, notify Leasehold Mortgagee of such termination and the amount of the sums then due to Landlord under this Lease, and the Leasehold Mortgagee shall have, within a period of forty-five (45) days), the right to require Landlord to (and Landlord shall) enter into a new lease of the Premises with the Leasehold Mortgagee or its nominee or designee (or the Designated Lender, if there are multiple Leasehold Mortgages and/or loans made by Tenant Mezzanine Lenders) in accordance with the following provisions:

(i) The Leasehold Mortgagee or its nominee or designee shall be entitled to such new lease if the Leasehold Mortgagee shall make written request upon Landlord for such new lease on or before the date which is forty-five (45) days after the date on which the Leasehold Mortgagee shall have received the notice from Landlord of such termination and Leasehold Mortgagee pays to Landlord (A) by no later than ten (10) days after such Leasehold Mortgagee requests such new lease with Landlord all sums then due to Landlord under this Lease, including all Base Rent, Percentage Rent and Additional Rent, and (B) simultaneously with the execution and delivery of the new lease, and as a condition precedent to the effectiveness thereof, all sums then due to Landlord under this Lease, including all Base Rent, Percentage Rent, Additional Rent and all expenses of Landlord, including reasonable attorneys' fees and reasonable court costs incurred by Landlord in connection with any and all defaults by Tenant, the termination of this Lease and the preparation of the new lease;

(ii) Such new lease shall be for what would have been the remainder of the Term of this Lease (if this Lease had not been terminated), effective as of the date of such termination, and at the same Rent and upon the same terms, provisions, covenants and agreements as herein contained (other than ministerial changes);

(iii) Such new lease shall have the same priority as the lease it replaces. Such new lease shall, however, be subject to the same conditions of title as this Lease is subject to on the date immediately preceding such termination. For the avoidance of doubt, if the lease being replaced is prior to any mortgage or other lien, charge or encumbrance on Landlord's estate in the Premises, then the new lease shall also be prior to any Fee Mortgage or other lien, charge or encumbrance on Landlord's estate in the Premises;

(iv) Upon the execution and delivery of a new lease under this Section, all subleases at the Premises which have become direct leases between Landlord and the subtenant shall thereupon be assigned and transferred without recourse, representation or warranty by Landlord to the tenant named in such new lease. Between the date of termination of this Lease and the earlier of (a) the date of execution and delivery of the new lease and (b) the date such Leasehold Mortgagee's option to request a new lease pursuant to this Section expires if such Leasehold Mortgagee does not exercise such option, Landlord shall not enter into any new leases or subleases of any portion of the Premises, cancel or modify any then existing subleases (other than termination by reason of subtenant default), or accept any cancellation, termination or surrender thereof without the prior written consent of each Leasehold Mortgagee, not to be unreasonably withheld, conditioned or delayed.

(g) <u>Claims for Insurance Proceeds or Awards</u>. No property insurance claims shall be settled and no agreements will be made in respect of any award without, in each case, the prior written consent of the Leasehold Mortgagee, not to be unreasonably withheld, conditioned or delayed, unless otherwise provided in the applicable Leasehold Mortgage.

(h) <u>Arbitrations and Disputes</u>. In the event of any arbitration, appraisal or other dispute resolution proceeding, or any proceeding or dispute relating to the application or determination of any insurance, casualty or condemnation proceeds, to which Landlord and Tenant are parties, each Leasehold Mortgagee shall be entitled to (but not obligated to) participate in such proceeding. Such participation shall, to the extent reasonably required by the Leasehold Mortgage, and subject to the rights of third parties, include: (i) the right to receive copies of all notices, demands, and other written communications and documents at the same time they are served upon or delivered to Landlord or Tenant; (ii) filing any papers contemplated or permitted by such proceedings; and (iii) attending and participating in all hearings, meetings, and other sessions or proceedings relating to such dispute resolution; <u>provided</u>, <u>however</u>, that the Leasehold Mortgagee shall have no greater rights in such proceeding than Tenant.

(i) <u>Recognition Agreement</u>. Upon request of Tenant, Landlord shall execute and deliver to any Leasehold Mortgagee a subordination, non-disturbance and attornment agreement (an "**<u>SNDA</u>**") in form reasonably acceptable to Landlord and such Leasehold Mortgagee. Such SNDA shall (i) be consistent with the provisions of this Lease regarding Leasehold Mortgages and the rights of Leasehold Mortgagee(s), and (ii) confirm that the lien of the Lease is senior in priority to any Fee Mortgage, and (iii) provide, among other things, for the continuation of the Lease in the event that the Landlord sells, transfers or assigns Landlord's Estate, or is the subject of any bankruptcy proceeding or any foreclosure of the Fee Mortgage by the Fee Mortgagee.

Section 12.4. Delay for Foreclosure. Without limiting anything set forth in Section 12.3, in the event that Landlord has given Leasehold Mortgagee notice of Tenant's default under Section 12.3 and Mortgagee desires to cure Tenant's default but is unable to do so while Tenant is in possession of the Premises, or during the period of time that Leasehold Mortgagee's proceedings are stayed by reason of Tenant being subject to Chapter 7 or 11 of the Bankruptcy Code of the United States, as amended, or if Landlord has elected to terminate this Lease and Leasehold Mortgagee desires to obtain a new lease pursuant to Section 12.3 but has not yet acquired Tenant's leasehold interest in this Lease, then Leasehold Mortgagee shall have the right to postpone the specified date for effecting a cure of this Lease or obtaining a new lease for a period reasonably sufficient to enable Leasehold Mortgagee or its designee to acquire Tenant's interest in this Lease by foreclosure of its Leasehold Mortgage or otherwise, as long as Landlord is paid the Base Rent, Percentage Rent and other sums due under this Lease during the postponement. Leasehold Mortgagee shall exercise the right to extend the cure period or the date for obtaining a new lease by giving Landlord notice prior to the last date that Landlord would otherwise be entitled to elect a cure or obtain a new lease and by tendering to Landlord any Base Rent, Percentage Rent and other charges then in default.

Section 12.5. Nonliability for Covenants. The provisions of this Article XII are for the benefit of Leasehold Mortgagee and Landlord and may be relied upon and shall be enforceable by Leasehold Mortgagee. Neither Leasehold Mortgagee nor any other holder or owner of the indebtedness secured by the Leasehold Mortgage or otherwise shall be liable upon the covenants, agreements or obligations of Tenant contained in this Lease, unless and until Leasehold Mortgagee or that holder or owner acquires the interest of Tenant.

Section 12.6. No Subordination of Fee. Nothing contained in this Lease shall be or ever will be construed as a subordination of Landlord's fee interest in the Premises or its reversionary interest in Tenant's Mixed Use Project Improvements to any Leasehold Mortgage. Upon the expiration or termination of this Lease, except as specifically otherwise provided in this Article XII, any Leasehold Mortgage of Tenant's interest in the Premises shall be null and void and any subleases of Tenant shall be deemed terminated unless, with respect to any subleases, a recognition and attornment agreement has been executed in connection with a sublease pursuant to this Lease, in which event the sublease may remain in effect pursuant to its terms and subject to the terms of the applicable recognition and attornment agreement.

Section 12.7. Certain Transfers. Notwithstanding any provision of this Lease to the contrary, Landlord agrees, if Leasehold Mortgagee or any other Person succeeds to the interest of Tenant under this Lease as a result of foreclosure proceedings, transfers of the Lease or interest in the Lease in lieu of foreclosure, or through any other means (any such person, a "**Successor Tenant**"):

(a) The Successor Tenant shall become a substituted Tenant under this Lease without necessity of any consent of, approval by or notification to Landlord;

(b) If the Successor Tenant is the Leasehold Mortgagee or a nominee or designee of Leasehold Mortgagee, such Person shall be required to assume Tenant's obligations under this Lease, including all obligations which have accrued as of the date of such assignment, however Landlord shall look solely to the interest of such Successor Tenant in the Premises in the event of the breach or default by such Successor Tenant under the terms of this Lease and Landlord agrees that any judgment or decree to enforce the obligations of such Successor Tenant shall be enforceable only to the extent of such interest of such Successor Tenant in the Premises.

Section 12.8. Recognition Agreement. Landlord agrees that it will, from time to time, and at Tenant's request, execute a ground lessor/recognition agreement with and in favor of any Leasehold Mortgagee in connection with Tenant financing or refinancing all or part of the purchase of Tenant's interest in the Lease and/or the construction or renovation of Tenant's Mixed Use Project Improvements. Such agreement shall be in form and content reasonably acceptable to such Leasehold Mortgagee and Landlord and will be provided by Landlord upon the written request of Leasehold Mortgagee or Tenant within fifteen (15) days of written request therefor. Tenant agrees that it will, from time to time, and at Landlord's request, execute a ground lessee/recognition agreement with and in favor of any mortgagee of Landlord in connection with Landlord financing or refinancing all or any part of Landlord's fee simple interest in the Premises. Such agreement shall be in form and content reasonably acceptable to such mortgagee and Tenant and will be provided by Tenant upon the written request of Landlord's mortgagee or Landlord within fifteen (15) days of written request therefor.

Section 12.9. Proceeds of Insurance; Condemnation. Notwithstanding anything in this Lease to the contrary, Landlord agrees that (i) Leasehold Mortgagee shall be entitled to participate in any adjustment or settlement regarding insurance or condemnation proceeds or awards that would otherwise be paid to Tenant, to collect and hold any such proceeds or awards (and, if such proceeds or awards are paid to Landlord, the same shall be promptly paid to such Leasehold Mortgagee) and (ii) Leasehold Mortgagee shall have the right, in its sole discretion, to determine and direct whether any such proceeds or awards (that would otherwise be paid to Tenant) are made available for the restoration of Tenant's Mixed Use Project Improvements or are applied to the repayment of the loan secured by the Leasehold Mortgage. If Leasehold Mortgagee makes such proceeds available to Tenant for restoration, Leasehold Mortgagee may hold such funds as depository. Landlord hereby subordinates all rights (if any) it may have under the Lease to receive such insurance proceeds and condemnation proceeds payable and attributable to Tenant's Mixed Use Project Improvements, to protect Leasehold Mortgagee's right to receive such proceeds. During the term of any Leasehold Mortgage, Landlord waives any requirement under this Lease requiring that Landlord be named as a loss payee under any casualty or property insurance policy maintained by Tenant.

Section 12.10. Tenant Mezzanine Financing**.** Provided Tenant provides to Landlord a written notice expressly referencing this Section 12.10 of this Lease and setting forth the name and address of any lender having a security interest in the direct or indirect equity or other ownership interest in Tenant (whether or not such security interest shall also cover other equity or ownership interests in one or more other Persons) (each, a "**Tenant Mezzanine Lender**"), Landlord shall thereafter deliver to each Tenant Mezzanine Lender a copy of each notice of default or Lease termination given to Tenant at the same time as, and whenever any such notice of default or notice of termination shall thereafter be given by Landlord to Tenant, and no such notice of default or notice of termination by Landlord shall be deemed to have been duly given to Tenant unless and until a copy thereof shall have been so given to each such Tenant Mezzanine Lender. Subject to the terms of Section 12.10, Tenant Mezzanine Lenders shall (A) thereupon have a single period (for all Tenant Mezzanine Lenders) of ten (10) days more (than Tenant) in the case of a default in the payment of Base Rent, Percentage Rent or Additional Rent and thirty (30) days more (than Tenant) in the case of any other default which is capable of being cured by a Tenant Mezzanine Lender (subject to extension upon the terms set forth in Section 12.10, with such terms being applied (with the necessary changes being made so that the terms apply to the Tenant Mezzanine Lenders), after notice of such default is given to Tenant Mezzanine Lenders, for curing the default, causing the same to be cured by Tenant or otherwise, and (B) within such period and otherwise as herein provided, have the right to cure such default, cause the same to be cured by Tenant or otherwise or cause an action to cure a default to be commenced, and Landlord shall not have the right to terminate this Lease or to reenter the Premises, by reason of a default by Tenant, until the cure period has expired without a cure having been made; provided, however, that nothing contained herein shall be deemed to impose upon any Tenant Mezzanine Lender the obligation to perform any obligation of Tenant under this Lease or to remedy any default by Tenant hereunder. For the avoidance of doubt, so long as Landlord timely notifies any Tenant Mezzanine Lender pursuant to this Section 12.10, the additional cure rights afforded to Tenant Mezzanine Lenders hereunder shall run concurrently with any cure rights that may be provided hereunder to any Leasehold Mortgagee. Landlord shall accept performance by a Tenant Mezzanine Lender of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant. Any provision of this Lease to the contrary notwithstanding, no performance by or on behalf of a Tenant Mezzanine Lender shall cause it to become a "mortgagee in possession" or otherwise cause it to be deemed to be in possession of the Premises or bound by or liable under this Lease. Notwithstanding any provision of this Lease to the contrary, (i) the rights of any Tenant Mezzanine Lenders (as described in this Section 12.10 or elsewhere in this Lease) shall be subject to the rights of any Leasehold Mortgagee, whose rights shall take precedence and (ii) in the event that Leasehold Mortgagee and one or more Tenant Mezzanine Lenders (the "**Affected Tenant Mezzanine Lenders**") simultaneously close on loans to Tenant and any affiliate of Tenant, respectively, as part of a related financing and the obligations of Tenant under the Leasehold Mortgage documents have been paid and satisfied in full, all rights granted to such Leasehold Mortgagee under this Lease shall be deemed granted to the Affected Tenant Mezzanine Lenders until the mezzanine loans made by such Affected Tenant Mezzanine Lenders have been paid and satisfied in full. Notwithstanding anything to the contrary contained herein provided, no Person shall be entitled to the rights and benefits of Tenant Mezzanine Lender hereunder unless: (i) such mezzanine loan must by its terms be paid in full no later than the Expiration Date, and (ii) such mezzanine loan shall not be secured by a lien on all or any portion of the Landlord's Estate, Tenant's leasehold interest in the Premises or Tenant's Estate in the other Premises.

Section 12.11. Further Cooperation. Upon the written request of Tenant, Landlord agrees to amend this Section 12 of this Lease to incorporate any changes or clarifications requested by Tenant or any proposed lender of Tenant (or any lender of any purchaser of Tenant’s interest in this Lease) to secure such lender’s agreement to provide debt financing for the construction of the Entire Development and/or acquisition of the Tenant’s interest in the Premises; provided, however, in no event shall Landlord be required to amend this Lease in violation of Section 12.6. Further, Landlord shall promptly, under documentation reasonably satisfactory to the requesting party acknowledge any subtenant's non-disturbance and recognition rights; agree directly with Leasehold Mortgagee that it may exercise against Landlord all of Leasehold Mortgagee's rights in the Lease; certify (subject to any then exception reasonably specified) that this Lease is in full force and effect, that no default exists, the date through which Rent has been paid and other similar matters reasonably requested.

Section 12.12 Lease Impairments. Any Lease Impairment (as defined herein) made without Leasehold Mortgagee's consent shall (at Leasehold Mortgagee's option) be null, void, and of no force or effect, and not bind Tenant or Leasehold Mortgagee. As used herein, a "**Lease Impairment**" means Tenant's: (a) amending, canceling, modifying, restating, surrendering, or terminating this Lease, including upon any casualty or condemnation; (b) consenting or failing to object to a bankruptcy sale of any Premises; (c) subordinating this Lease or the leasehold estate to any other estate or interest in the Premises; or (d) waiving the terms of this Lease.

Section 12.13 Miscellaneous. Notwithstanding anything to the contrary in this Lease, Leasehold Mortgagee may: (a) exercise its right through an affiliate, assignee, designee, nominee, subsidiary or other person acting in its own name or in Leasehold Mortgagee's name (and anyone acting under this clause shall automatically have the same protections, rights and limitations of liability as Leasehold Mortgagee, (b) refrain from curing any defaults; (c) abandon such cure at any time; or (d) withhold consent or approval for any reason or no reason, except where this Lease states otherwise. Any such consent or approval must be written. To the extent that Leasehold Mortgagee's rights under this Lease apply after this Lease terminates, they shall survive termination. If the leasehold estate and the fee estate are ever commonly held, they shall remain separate and distinct estates and shall not merge without Leasehold Mortgagee's consent.

ARTICLE XIII

CASUALTY AND CONDEMNATION

Section 13.1. Casualty. If the Tenant's Mixed Use Project Improvements shall be damaged or rendered wholly or partially untenantable by fire or other casualty during Term of this Lease, no Rent shall abate during such period, whether Tenant's Parcel and Tenant's Mixed Use Project Improvements are tenantable or not, and:

(a) if there are at least forty (40) full Calendar Years remaining in Term of this Lease (measured from the date of the casualty) Tenant shall promptly rebuild or repair the Tenant's Mixed Use Project Improvements to substantially their former condition or better (subject to Tenant's right to alter the Premises as otherwise referenced in the Lease), at Tenant’s sole cost and expense.

(b) If there are if there are at least twenty (20) full Calendar Years remaining in the Term of this Lease (measured from the date of the casualty) but less than 40 Calendar Years, and if Landlord notifies Tenant, in writing and by no later than ninety (90) days after the occurrence of such casualty (the "**Notice Deadline**"), that Landlord will amend this Lease (and does in fact amend the Lease) to grant Tenant the right to extend the Term of this Lease at least two (2) times, for ten (10) additional years per extension (a "**13.1(b) Extension Grant Notice**"), then Tenant shall promptly rebuild or repair the Tenant's Mixed Use Project Improvements to substantially their former condition or better, at Tenant’s sole cost and expense. If Landlord fails or refuses to provide a 13.1(b) Extension Grant Notice to Tenant by no later than the Notice Deadline, then Tenant shall not be required to rebuild or repair Tenant's Mixed Use Project Improvements and Tenant shall have the right, but not the obligation, to terminate this Lease by furnishing written notice thereof to Landlord by no later than ninety (90) days after the Notice Deadline and in such event this Lease shall be terminated and the parties hereto shall have no further obligations hereunder provided the Premises are surrendered in a safe condition and except for any obligations that survive the termination or expiration of this Lease. Base Rent during such extension terms shall be calculated pursuant to Section 4.1.

(c) If there are if there are at less than twenty (20) full Calendar Years remaining in the Term of this Lease (measured from the date of the casualty), and if Landlord notifies Tenant, in writing and by no later than the Notice Deadline, that Landlord will amend this Lease (and does in fact amend the Lease) to grant Tenant the right to extend the Term of this Lease at least three (3) times, for ten (10) additional years per extension (a "13.1(c) Extension Grant Notice"), then Tenant shall promptly rebuild or repair the Tenant's Mixed Use Project Improvements to substantially their former condition or better, at Tenant’s sole cost and expense. If Landlord fails or refuses to provide a 13.1(c) Extension Grant Notice to Tenant by no later than the Notice Deadline, then then Tenant shall not be required to rebuild or repair the Tenant's Mixed Use Project Improvements and Tenant shall have the right, but not the obligation, to terminate this Lease by furnishing written notice thereof to Landlord by no later than ninety (90) days after the Notice Deadline and in such event this Lease shall be terminated and the parties hereto shall have no further obligations hereunder provided the premises are surrendered in a safe condition and except for any obligations that survive the termination or expiration of this Lease. Base Rent during such extension terms shall be calculated pursuant to Section 4.1.

(d) Landlord shall use commercially reasonable efforts to promptly restore all portions of the Public Use Lands affected by a casualty to their condition immediately preceding such casualty at Landlord's sole cost and expense. In the event of any rebuilding under this Article XIII, such shall be performed in accordance with the requirements of Sections 5.3 and 5.4 above.

Section 13.2. Condemnation.

(a) Unless this Lease is terminated pursuant to Section 13.2(b), if a portion of Tenant's Parcel and Tenant's Mixed Use Project Improvements shall be taken by condemnation or other eminent domain proceedings pursuant to any law, general or special, by an authority ("**Condemning Authority**") having the power of eminent domain, or is sold to a Condemning Authority under threat of the exercise of that power, this Lease shall continue and there shall be no abatement of the Rent.

(b) If a portion of Tenant's Parcel and Tenant's Mixed Use Project Improvements are so taken or sold, and that portion in Tenant's reasonable judgment is material to Tenant's use and occupancy of the Premises to the extent that the remaining portion is not commercially viable, or if all of the Premises is so taken or sold, Tenant may terminate this Lease by giving written notice to Landlord. This Lease shall then terminate on the day following the vesting of title in the Condemning Authority, except as provided below and except with respect to obligations and liabilities of Landlord and Tenant under this Lease that have arisen on or before the date of termination. Base Rent, Percentage Rent and Additional Rent and other charges under this Lease shall be prorated as of the date of termination, and upon termination Tenant shall satisfy and cause to be released any mortgages (including any Leasehold Mortgage), liens or other encumbrances placed or suffered to be placed on the Premises by Tenant. In the event that Tenant shall fail to exercise its option to terminate this Lease as provided in this subsection, or in the event that a part of the Premises shall be taken under circumstances under which Tenant will have no such termination option, Tenant shall be entitled to all condemnation proceeds reasonably attributable to Tenant's interest therein under this Lease and Tenant shall have the sole responsibility for restoring Tenant's Mixed Use Project Improvements to a complete architectural unit.

(c) Any award or compensation paid on account of any taking or sale described in this Section 13.2 wherein this Lease is terminated shall be allocated between Landlord and Tenant as follows: (i) first to Tenant for the value of Tenant's leasehold interest in the Premises taken; (ii) next, to Tenant for the value of any Tenant's Mixed Use Project Improvements taken, less the value of Landlord's reversionary interest in those Tenant's Mixed Use Project Improvements, (iii) next, to Tenant in the outstanding amount secured by any outstanding Leasehold Mortgage, less (i) and (ii), and then finally, the balance to Landlord.

## ARTICLE XIV

## DEFAULT; CERTAIN RIGHTS AND REMEDIES

Section 14.1. Default (Landlord/Tenant).

(a) The occurrence of any one or more of the following events (any such event being specified herein as a "**failure**" or "**default**") shall constitute an Event of Default under this Lease: (i) a failure by Tenant to make (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which had or might have the effect of preventing Tenant from complying with the provisions of this Lease): (x) any payment of Base Rent, Percentage Rent which continues unremedied for a period of thirty (30) days after Tenant's receipt of written notice from Landlord, specifying in reasonable detail the amount of money not paid and the nature and calculation of same, or (y) any payment of Additional Rent or other sum herein required to be paid by Tenant which continues unremedied for a period of thirty (30) days after receipt of written notice thereof is given to Tenant by Landlord; (ii) failure by Tenant to perform and observe, or a violation or breach of, any other provision in this Lease and such default shall continue for a period of thirty (30) days after written notice thereof is given by Landlord to Tenant or if such default is of such a nature that it cannot reasonably be cured within such period of thirty (30) days, such period shall be extended for such longer time as is reasonably necessary provided that Tenant has commenced to cure such default within said period of thirty (30) days, and is actively, diligently, continuously and in good faith proceeding to remedy such default and, in any event cures such default within one hundred and twenty (120) days after notice thereof; (iii) Tenant shall (A) voluntarily be adjudicated a bankrupt or insolvent, (B) or voluntarily consent to the appointment of a receiver or trustee for itself or for any of the Premises, (C) voluntarily file a petition seeking relief under any Debtor Relief Law, or (D) voluntarily file a general assignment for the benefit of creditors; (iv) a court shall enter an order, judgment or decree appointing, with the voluntary consent of Tenant, a receiver or trustee for Tenant or for the Premises or approving a petition filed against Tenant which seeks relief under any Debtor Relief Law, and such order, judgment or decree shall remain in force, undischarged or unstayed, one hundred twenty (120) days after it is entered; (v) Tenant shall in any insolvency proceedings be liquidated or dissolved or shall voluntarily commence proceedings towards its liquidation or dissolution; or (vi) the estate or interest of Tenant in the Premises shall be levied upon or attached in any proceeding and such estate or interest is about to be sold or transferred or such process shall not be vacated or discharged within one hundred twenty (120) days after such levy or attachment.

(b) If any Event of Default shall have occurred, Landlord shall have the right at its option, then or at any time thereafter, to do any one or more of the following without demand upon or notice to Tenant:

(i) If Tenant does not cure such Event of Default within the cure period stated above, Landlord may give Tenant written notice of termination of this Lease, subject to the rights of any Leasehold Mortgagee to receive notice of and cure such default. If Tenant (or Leasehold Mortgagee) has cured the Event of Default and paid to Landlord, as liquidated damages, the Late Charge on the past-due Rent (which amount shall be in addition to the past-due Rent), Landlord's notice of termination shall be deemed null and void.

(ii) Landlord may give Tenant notice of Landlord's intention to terminate this Lease on a date specified in such notice. At the option of Landlord, upon the date therein specified, unless the Event of Default for which the termination is effected has been cured by Tenant, the Term of this Lease and the estate hereby granted and all rights of Tenant hereunder shall expire and terminate as if such date were the date hereinabove fixed for the expiration of the Term of this Lease, but Tenant shall remain liable for all its obligations hereunder through the date hereinabove fixed for the expiration of the Term of this Lease, including its liability for Base Rent, Percentage Rent and Additional Rent as hereinafter provided. Landlord's right, at Landlord's option, to accelerate all or a portion of any Base Rent, Percentage, and Additional Rent for the unexpired portion of the Term of the Lease is hereby acknowledged and accepted by Tenant.

(iii) Landlord may, whether or not the Term of this Lease shall have been terminated pursuant to clause (i) above give Tenant notice to surrender the Premises to Landlord on a date specified in such notice, at which time Tenant shall surrender and deliver possession of the Premises to Landlord unless the Event of Default for which the termination is affected has been cured by Tenant. Upon or at any time after taking possession of the Premises, Landlord may remove any persons or property therefrom. Landlord shall be under no liability for or by reason of any such entry, repossession or removal. No such entry or repossession shall be construed as an election by Landlord to terminate this Lease unless Landlord gives a written notice of such intention to Tenant pursuant to clause (i) above.

(iv) After repossession of any of the Premises pursuant to clause (ii) above, whether or not this Lease shall have been terminated pursuant to clause (i) above, Landlord shall make a good faith, diligent attempt to relet the Premises or any part thereof to such tenant or tenants for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease) for such rent, on market rate terms (which may include concessions or free rent) and for such uses as Landlord, in its reasonable discretion, may determine; and Landlord shall collect and receive any rents payable by reason of such reletting. The rents received on such reletting shall be applied (A) first to the actual expenses of such reletting and collection, including without limitation necessary renovation and alterations of the Premises, actual attorneys' fees and any actual real estate commissions paid, and (B) thereafter toward payment of all sums due or to become due Landlord hereunder. If a sufficient amount to pay such expenses and sums shall not be realized or secured, then Tenant shall pay Landlord any such deficiency monthly, and Landlord may bring an action therefor as such monthly deficiency shall arise. Landlord shall not, in any event, be required to pay Tenant any sums received by Landlord on a reletting of the Premises in excess of the Rent provided in this Lease, but such excess shall reduce any accrued present or future obligations of Tenant hereunder. Landlord's re-entry and reletting of the Premises without termination of this Lease shall not preclude Landlord from subsequently terminating this Lease as set forth above. Landlord may make such alterations as Landlord in its reasonable discretion may deem advisable. Tenant agrees to pay Landlord, as Additional Rent, immediately upon demand, all reasonable expenses incurred by Landlord in obtaining possession, in performing alterations and in reletting any of the Premises, including fees and commissions of attorneys, architects, agents and brokers.

(v) Landlord may exercise any other right or remedy now or hereafter existing by law or in equity.

(vi) all amounts due Landlord by reason of an Event of Default shall bear interest at the Default Rate, commencing on the date of such default and continuing through the date Landlord receives payment from Tenant (and regardless of any notice or cure period).

(c) In the event of any expiration or termination of this Lease or repossession of any of the Premises by reason of the occurrence of an Event of Default, Tenant shall pay to Landlord Base Rent, Percentage Rent, Additional Rent and all other sums required to be paid by Tenant to and including the date of such expiration, termination or repossession and, thereafter, Tenant shall, until the end of what would have been Term of this Lease in the absence of such expiration, termination or repossession, and whether or not any of the Premises shall have been relet, be liable to Landlord for and shall pay to Landlord as liquidated and agreed current damages: (i) Base Rent, Percentage Rent, Additional Rent and all other sums which would be payable under this Lease by Tenant in the absence of such expiration, termination or repossession, less (ii) the net proceeds, if any, of any reletting pursuant to Section 14.1(b)(iv) and from tenants under any subleases, after deducting from such proceeds all of Landlord's reasonable expenses in connection with such reletting (including all reasonable repossession costs, brokerage commissions, legal expenses, attorneys' fees, employees' expenses, costs of alteration and expenses of preparation for reletting). Tenant hereby agrees to be and remain liable for all sums aforesaid and Landlord may recover such damages from Tenant and institute and maintain successive actions or legal proceedings against Tenant for the recovery of such damages. Nothing herein contained shall be deemed to require Landlord to wait to begin such action or other legal proceedings until the date when Term of this Lease would have expired by limitation had there been no such Event of Default.

(d) Each of Tenant and Landlord (herein called "**Paying Party**") agrees to pay to the other party (herein called "**Demanding Party**") any and all reasonable costs and expenses incurred by the Demanding Party in connection with any litigation or other action instituted by the Demanding Party to enforce the obligations of the Paying Party under this Lease, to the extent that the Demanding Party has prevailed in any such litigation or other action. Any amount payable by Tenant to Landlord pursuant to this Section 14.1(d) shall be due and payable by Tenant to Landlord as Additional Rent. Except as otherwise specifically provided within this Lease each party shall bear their own attorneys' fees and court costs**.**

(e) If Landlord fails or refuses to comply with any of its obligations under this Lease (or under the REA) an such failure continues after the expiration of a thirty (30) day written notice and cure period, then Tenant shall be entitled to terminate this Lease and/or pursue all other legal and/or equitable remedies available under applicable law, including, without limitation, the right to seek injunctive relief and/or the right to self-help. All remedies of Tenant shall be cumulative and non-exclusive and the exercise by Tenant of one remedy shall not be deemed a waiver by Tenant of any other available remedies. If, as a result of a Landlord default hereunder (or under the REA) that remains uncured after the applicable notice and cure period, then in addition to all other remedies, Tenant may (but shall not be required to) endeavor to cure such default, at Landlord's expense, and in such event Landlord shall reimburse Tenant for all costs and expenses incurred by Tenant in curing (or attempting to cure) such Landlord default, by no later than Thirty (30) days after receipt of written demand from Tenant, failing which Tenant shall be entitled to off-set such amounts against Rent due or to become due hereunder.

NOTWITHSTANDING ANYTHING IN THIS LEASE TO THE CONTRARY, NEITHER THE LANDLORD NOR THE TENANT SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES OR LOST OPPORTUNITY OR LOST PROFITS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE AND WHETHER OR NOT ARISING FROM

THE OTHER PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT, AND NO MULTIPLIER OR SIMILAR CONCEPT SHALL BE APPLIED FOR PURPOSES OF CALCULATING LOSSES.

Notwithstanding anything to the contrary, Landlord's right to terminate the Lease and re-enter the Premises and take possession of the Premises (and collect damages from Tenant, but only to the extent Tenant's interest in the Premises) shall constitute Landlord's sole and exclusive remedy for any default or Event of Default. Landlord expressly waives, releases and relinquishes any and all right to recover damages or any other sum, or have any other remedy against Tenant except to the extent to Tenant's interest in the Premises.

ARTICLE XV

INDEMNIFICATION

Section 15.1. Indemnification.

(a) Except as set forth in Section 10.8, Tenant agrees to indemnify, defend (with counsel reasonably acceptable to Landlord) and hold Landlord harmless from and against any and all Claims resulting from or otherwise associated with any injuries to persons or damage to property occurring on the Premises during the Term of this Lease and/or arising out of or relating to Tenant's use and/or occupancy thereof. Except as set forth in Section 10.8, Landlord agrees to indemnify, defend (with counsel reasonably acceptable to Tenant) and hold Tenant harmless from and against any and all Claims resulting from or otherwise associated with any injuries to persons or damage to property occurring on, under or about the Public Use Lands during the Term of this Lease and/or arising out of or relating to Landlord's use and/or occupancy thereof. "**Claims**" means claims, demands, causes of action, judgments, liens, losses, liabilities and costs (including reasonable attorneys' fees and court costs).

(b) The obligations of both Landlord and Tenant under this Section 15.1 shall survive any termination of this Lease. Tenant's obligation of indemnification shall not apply to the extent that any such liability, loss, damage, penalty, cost, expense, cause of action, suit, claim, demand or judgment is caused by the negligence of Landlord, its agents, employees or contractors or the intentional wrongful act of Landlord, its agents, employees or contractors. Landlord's obligation of indemnification shall not apply to the extent that any such liability, loss, damage, penalty, cost, expense, cause of action, suit, claim, demand or judgment is caused by the negligence of Tenant, its agents, employees or contractors or the intentional wrongful act of Tenant, its agents, employees or contractors.

(c) Notwithstanding, the foregoing or any other provision herein to the contrary, nothing in this Lease shall be deemed to affect the rights, privileges, immunities, exemptions, limitations of liability, affirmative defenses or defenses of Landlord under Section 768.28, Florida Statute, and other applicable laws or at common law with respect to tort actions or claims for damages due to Landlord's claim of sovereign immunity.

(d) NOTWITHSTANDING ANYTHING IN THIS LEASE TO THE CONTRARY, NEITHER THE LANDLORD NOR THE TENANT SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES OR LOST OPPORTUNITY OR LOST PROFITS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE AND WHETHER OR NOT ARISING

FROM THE OTHER PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT, AND NO MULTIPLIER OR SIMILAR CONCEPT SHALL BE APPLIED FOR PURPOSES OF CALCULATING LOSSES.

ARTICLE XVI

HAZARDOUS SUBSTANCES; CONCEALED OR UNKNOWN CONDITIONS

Section 16.1 Hazardous Materials.

(a) "Environmental Laws" means all Laws relating to (i) emissions, discharges, spills, releases or threatened releases of Hazardous Materials onto or into, or the presence of Hazardous Materials on or in, land, ambient air, surface water, groundwater, watercourses, publicly or privately owned treatment works, drains, sewer systems, wetlands, or septic systems, (ii) the use, treatment, storage, disposal, handling, manufacturing, transportation, or shipment of Hazardous Materials, or (iii) the protection of human health or the environment.

(b) "Hazardous Materials" means any substance (i) the presence of which requires special handling, storage, investigation, notification, monitoring, or remediation under any Environmental Laws, (ii) which is toxic, explosive, corrosive, erosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, (iii) which is or becomes regulated by any Governmental Authority, or (iv) the presence of which causes or threatens to cause a bona fide risk to human health or the environment or a nuisance to the Entire Development, or the Premises or to adjacent properties or premises.

(c) "Hazardous Materials Liabilities" as used herein means all claims, damages, losses, forfeitures, expenses or liabilities arising from or caused in whole or in part, directly or indirectly, by a breach by the other party of its representations, warranties or covenants hereunder that pertain to Hazardous Materials, including, without limitation, all costs of defense (including reasonable attorneys' fees and other costs of litigation), all consultants' fees, and all costs of investigation, repair, remediation, restoration, cleanup, detoxification or decontamination, and/or preparation and implementation of any closure, remedial action or other required plan.

Section 16.2 Landlord's Obligations. Landlord represents and warrants that to the best of Landlord's actual knowledge as of the Effective Date: (i) the Premises and the Park Parcels are in compliance with all Environmental Laws, and (ii) there are no Hazardous Materials in, on or about the Premises or Park Parcels. During the Term of this Lease, Landlord will not use, generate, place, store, release or otherwise dispose of, or permit the use, generation, placing, storage, release or disposal of, Hazardous Materials in the Entire Development, except in accordance with all Environmental Laws. If during the performance of Tenant's Work, or at any time during Term of this Lease, Hazardous Materials are discovered in any portion of the Entire Development or the Premises which were not placed on the Premises by Tenant, its agents, employees, or contractors, then such Hazardous Material shall be deemed a Concealed or Unknown Condition and the parties obligations with respect thereto shall be governed by Section 5.5; provided however, the following shall also apply to Landlord's obligations with respect to Hazardous Materials:

(a) In connection with the preceding paragraph, if any Hazardous Materials must be removed from the Premises and disposed of offsite (i.e., not within the Entire Development), such Hazardous Materials shall remain the property of the Landlord and any such removal and disposal of such Hazardous Materials to an off-site location shall be the responsibility and obligation of the Landlord at its sole cost and expense. In performing its obligations hereunder, Landlord shall execute all manifests and other documents which are required to cause the Hazardous Materials to be removed from the Premises and disposed of at an off-site location, and all required authorizations and permits from governmental agencies shall be obtained in the name of the Landlord.

(b) Landlord shall not remediate the Hazardous Materials unless Landlord shall present to Tenant the Remediation Plan (the "**Remediation Plan**") for Tenant's prior written approval. If the presence of any Hazardous Materials that Landlord is required to remediate or remove pursuant to this Lease or the remediation or removal thereof precludes the normal operation of Tenant's business from all or any portion of the Premises or the Entire Development and Tenant notifies Landlord of such preclusion, then Rent will equitably abate during the performance of such remediation or removal in proportion to the nature and extent of the interference with Tenant's normal operation.

(c) Landlord will indemnify, defend and hold Tenant and the shareholders, officers, directors, partners, members, managers, employees, agents, contractors, subtenants, assignees, licensees, concessionaires and customers ("Affiliated Parties") of Tenant harmless from and against, and reimburse Tenant for all Hazardous Materials Liabilities asserted against Tenant arising out of a breach of the representations, warranties or obligations and covenants set forth in this Article XVI.

Section 16.3 Tenant's Obligations. During Term of this Lease, Tenant will not use, generate, place, store, release or otherwise dispose of Hazardous Materials in the Premises or Entire Development, except in accordance with all Environmental Laws. In the event of a breach of the foregoing, Tenant will promptly undertake remediation or removal in accordance with all Environmental Laws. Tenant will indemnify, defend and hold Landlord harmless from and against, and reimburse Landlord, its officers, officials, employees, agents, invitees and contractors for, all Hazardous Materials Liabilities asserted against or incurred by Landlord as a result of a breach of Tenant's, its agents, employees or contractors obligations under this Section 16.3.

Section 16.4 Survival. The provisions of this Article XVI will survive the expiration or earlier termination of this Lease.

## ARTICLE XVII

## MISCELLANEOUS

Section 17.1. Estoppel Certificates. Landlord and Tenant shall, at any time and from time to time upon not less than fifteen (15) days prior request by the other party, execute, acknowledge, and deliver to the other party a statement in writing certifying that (i) this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications) and, if so, the dates to which the Rent and any other charges have been paid in advance, (ii) that no default hereunder on the part of the Landlord or Tenant, as the case may be, exists (except that if any such default does exist, the certifying party shall specify such default), and (iii) such other information related to the business terms of this Lease, as may be reasonably requested by the requesting party, it being intended that any such statement delivered pursuant to this Section 17.1 may be relied upon by any prospective purchaser or encumbrancer (including assignees) of the Premises.

Section 17.2. Release. If requested by Landlord, Tenant shall, upon termination of this Lease, execute and deliver to Landlord an appropriate release, in form proper for recording, of all Tenant's interest in the Premises.

Section 17.3. Non-Merger. There shall be no merger of this Lease, the leasehold estate created hereby with the fee estate in and to the Premises by reason of the fact that this Lease, the leasehold estate created thereby or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in and to the Premises, or any portion thereof, and no such merger shall occur unless and until all persons at the time having any interest in the fee estate and all persons having any interest in this Lease, the leasehold estate including the holder of any mortgage upon the fee estate in and to the Premises, shall join in a written instrument effecting such merger.

Section 17.4. Holdover. Should the Tenant continue to occupy the Premises after the expiration of Term of this Lease or after a forfeiture incurred, whether with or against the consent of the Landlord, such tenancy shall be a tenancy at sufferance and in no event a tenancy from month to month, or from year to year, and Base Rent and Percentage Rent due and payable hereunder shall be paid for such tenancy at sufferance period at a rate equal to 200% of the greater of the Base Rent or Percentage Rent in effect immediately prior to such sufferance period (plus Additional Rent), plus applicable sales tax.

Section 17.5. Notices. All communications, notices and exchanges of information contemplated herein or required or permitted to be given in connection with this Lease shall be in writing, and shall be deemed to have been given and to be effective (i) when delivered personally (including delivery by express or courier services), or (ii) if mailed, on the date received after being deposited in the United States first class mail as registered or certified mail, postage prepaid, return receipt requested, provided that such communications, notices and exchanges are addressed or transmitted to the other party as follows:

If to Landlord: City of Bonita Springs
Attn: City Manager
9101 Bonita Beach Rd SE
Bonita Springs, Florida 34135

with a copy to: City of Bonita Springs
Attn: Finance Director
9101 Bonita Beach Rd SE
Bonita Springs, Florida 34135

If to Tenant: ________________________
_________________________
_________________________
Attention: ________________
Fax No.: ________________

with a copy to: ________________________
________________________
________________________
Attention: _______________
Fax No.: ________________

Each party hereto shall have the right, by giving not less than five (5) days prior written notice to the other parties hereto, to change any address of such party for the purpose of notices under this Section 17.5.

Section 17.6. Successors and Assigns. The word "**Landlord**" as used in this Lease shall extend to and include any and all Persons, who at any time or from time to time during Term of this Lease shall succeed to the interest and estate of Landlord in the Premises; and all of the covenants, agreements, conditions, and stipulations herein contained which inure to the benefit of and are binding upon Landlord shall also inure to the benefit of and shall be, jointly and severally, binding upon the successors, assigns, and grantees of Landlord, and each of them, and any and all Persons who at any time or from time to time during the Term of this Lease shall succeed to the interest and estate of Landlord in the Premises hereby demised. The word "**Tenant**" as used in this Lease shall extend to and include any and all Persons who at any time or from time to time during the Term of this Lease shall succeed to the interest and estate of Tenant hereunder and all of the covenants, agreements, conditions, and stipulations herein contained which inure to the benefit of or are binding upon Tenant shall also inure to the benefit of and be jointly and severally binding upon the successors, assigns, or other representatives of Tenant, and of any and all Persons who shall at any time or from time to time during the Term of this Lease succeed to the interest and estate of Tenant hereby created in the Premises.

Section 17.7. Modifications; Landlord Approvals. This Lease may be modified only by written agreement signed and delivered by Landlord and Tenant. By approving and executing this Lease, Landlord agrees that with respect to any lease amendments, consents or review and approval rights that the Landlord may (or by its nature must) grant after the Effective Date hereof, the then acting City Manager of the City of Bonita Springs or the then acting Director of Planning of the City of Bonita Springs shall each be authorized to execute such lease amendment and/or grant such approval or consent on behalf of the Landlord and execute any estoppels required pursuant to this Lease, as an administrative action, except where Landlord’s governing board would be required to approve.

Section 17.8. Descriptive Headings. The descriptive headings of this Lease are inserted for convenience in reference only and do not in any way limit or amplify the terms and provisions of this Lease.

Section 17.9. No Joint Venture. The relationship between Landlord and Tenant at all times shall remain solely that of Landlord and Tenant and shall not be deemed a partnership or joint venture.

Section 17.10. Partial Invalidity. If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to any person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each Term of this Lease shall be valid and be in force to the fullest extent permitted by law.

Section 17.11. Governing Law. This Lease is being executed and delivered, and is intended to be performed, in the State of Florida and the laws of such state and of the United States shall govern the rights and duties of the parties hereto and the validity, construction, enforcement, and interpretation hereof, without reference to conflicts of laws  Venue for any action shall be in the Lee County, Florida.

Section 17.12. Entire Agreement. This Lease embodies the entire agreement between Landlord and Tenant relating to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto.

Section 17.13. Multiple Counterparts. This Lease may be executed in a number of identical counterparts, each of which constitutes an original and all of which constitute, collectively, one agreement; provided, however, that in making proof of this Lease, it shall not be necessary for any party hereto to produce or account for more than one such counterpart.

Section 17.14. Time of Essence. It is expressly agreed by the parties hereto that time is of the essence with respect to this Lease.

Section 17.15. Quiet Enjoyment. So long as this Lease has not been terminated, Landlord covenants that Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for Term of this Lease, subject to the terms of this Lease, without molestation, hindrance, or disturbance by or from Landlord or anyone claiming by or through Landlord.

Section 17.16. Memorandum of Lease. Each of Landlord and Tenant shall execute, acknowledge and deliver to the other a written Memorandum of this Lease to be recorded after the Effective Date, in the appropriate land records of the jurisdiction in which the Premises is located, in order to give public notice and protect the validity of this Lease. In the event of any discrepancy between the provisions of said recorded Memorandum of this Lease and the provisions of this Lease, the provisions of this Lease shall prevail. Tenant agrees to pay when due and payable any and all charges, recording costs and taxes required in connection with the recordation of this Lease or such Memorandum of Lease. Upon the expiration or termination of this Lease Tenant shall, upon written request of Landlord, promptly execute and record a termination of such memorandum of lease, in form and content reasonably acceptable to Landlord.

Section 17.17. Attorneys' Fees. Except where specifically provided herein, in the event that at any time during the Term of this Lease either Landlord or Tenant shall institute any action, proceeding or appeal against the other relating to the provisions of this Lease, each party shall bear its own attorney's fees and costs, and even where excepted, in no case shall there be any award of attorney's fees for the determination or entitlement of attorney's fees.

Section 17.18. Consents. Unless otherwise expressly stated herein, whenever Landlord's or Tenant's consent or approval is required under this Lease, such consent or approval shall not be unreasonably withheld, qualified or delayed, which qualification shall specifically apply, without limitation, to all approvals and consents required of Landlord.

Section 17.19. **Waiver of Jury Trial. THE PARTIES HERETO HEREBY MUTUALLY WAIVE ANY RIGHT TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS LEASE, ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS LEASE, OR IN CONNECTION WITH ANY OF THE TRANSACTIONS RELATED HERETO OR CONTEMPLATED HEREBY, OR THE EXERCISE OF ANY PARTY'S RIGHTS OR REMEDIES HEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. A COPY OF THIS PARAGRAPH MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY**

**AND BARGAINED AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY. NONE OF THE PARTIES HERETO HAVE REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THEY WOULD NOT, IN THE EVENT OF SUCH DISPUTE OR CONTROVERSY, SEEK TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH.**

Section 17.20 Brokerage Commissions. Each Party represents and warrants to the other that no other broker, agent, commission salesman or other person has represented the warranting Party in the negotiations for and procurement of this Lease and of the Premises, and that no commissions, fees or compensation of any kind are due and payable in connection herewith to any such person or entity. Each Party further warrants that any compensation arrangement with the party or parties excepted from the foregoing warranty has been reduced to writing in its entirety in a separate agreement signed simultaneously with or before this Lease by the Party who owes or should pay the commission or compensation. Each of Landlord and Tenant agrees to indemnify and hold the other harmless from and against any and all costs or claims of any agent, broker or other person claiming to be acting on behalf of the indemnifying Party for fees, commissions or other compensation by reason of the transaction contemplated by this Lease or otherwise resulting from breach by the indemnifying Party of the representations in this Section.

Section 17.21 Waivers. One or more waivers of any covenant, term or condition of this Lease by either party cannot be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval cannot be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Section 17.22 Captions and No Construction Against Drafter. The captions used herein are for convenience only and do not limit or amplify the provisions hereof. Whenever herein the singular number is used, the same includes the plural, and words of any gender include each other gender. Landlord, Tenant and their separate advisors believe that this Lease is the product of their joint efforts, that it expresses their agreement, and that it should not be interpreted in favor of either Landlord or Tenant or against either Landlord or Tenant merely because of their efforts in its preparation.

Section 17.23 **Radon Gas Disclosure**. Section 404.056(5) of the Florida Statutes requires the following notice to be provided: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

Section 17.24 Title. Notwithstanding anything to the contrary in this Lease, all of Tenant's Mixed Use Project Improvements and all furniture, fixtures and equipment located in, on or at the Premises or otherwise constituting part of the Premises shall during the Term of this Lease be owned by and belong to Tenant. All benefits and burdens of ownership of the foregoing, including title, depreciation, tax credits, and all other tax items shall be and remain in Tenant during the Term of this Lease.

Section 17.25 Equipment Liens. If at any time or from time to time Tenant desires to enter into or grant any equipment lien, then upon Tenant's request, Landlord shall execute a commercially reasonable form of waiver of any landlord lien rights, together with other reasonable documentation required by the equipment finance company waiving Landlord's right to any right, title or interest in the financed furniture, fixtures or equipment.

Section 17.26 Performance Under Protest. If a dispute arises about performance of any obligation under this Lease, the party against which such obligation is asserted shall have the right to perform it under protest, which shall be regarded as voluntary performance. A party that has performed under protest may institute appropriate proceedings to recover any amount paid or the reasonable cost of otherwise complying with any such obligation with interest at the Default Rate.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

**LANDLORD:**

CITY OF BONITA SPRINGS, a municipal corporation of the State of Florida

By:________________________________________
Name:______________________________________
Title:_______________________________________

**TENANT:**

[INSERT NAME], LLC,
a Florida limited liability company

By:______________________________________________
Name:____________________________________________
Title:_____________________________________________

Exhibit "A"

Entire Development legal description

Exhibit "B"

Conceptual Site Plan

## Exhibit "C"

Tenant's Parcel and Public Use Lands

Exhibit "D"

Preliminary Parking Plan

Exhibit "E"

Renderings

Exhibit "F"

REA Core Concepts

1. The Tenant will be granted a perpetual non-exclusive ingress/egress easement through the Public Use Lands.
2. The Association shall have a perpetual, non-exclusive blanket easement for access over the Public Use Lands, for purposes of performing its maintenance and repair responsibilities.
3. The Tenant (and its sub-tenants and sub-licensees) shall have a perpetual non-exclusive access easement to the Park Parcels, for the purpose of use and enjoyment of the same.
4. For the avoidance of doubt, neither the Landlord nor the public shall be granted access nor use rights to any portion of the Premises.
5. The Maintenance Association will be responsible for (a) the day-to-day as well as extraordinary maintenance and repair of the Park Parcels and Park Improvements, and (b) any maintenance and/or repair activities pertaining to the Premises and for which the Landlord and Tenant may (in their sole discretion) contract for with the Association.
6. The Maintenance Association shall be governed by a board of directors consisting of four (4) members, two of which shall be appointed by the Tenant, and two of which shall be appointed by the City manager (and, for the avoidance of doubt, the City manager may appoint himself/herself).
7. The members of the Association shall be the Tenant and the Landlord, and the board of directors of the Association may appoint officers to carry out the day-to-day functions of the Association. From time-to-time, as invoiced by the Association to the Landlord and/or Tenant, the Landlord and Tenant shall pay to the Association their share of Association Expenses, in accordance with the following guidelines and procedures:

(a) The Landlord shall be responsible for paying one hundred percent (100%) of all Park Maintenance Costs and _____% [*To be determined during Due Diligence Period*] of the Association Insurance Costs (as hereafter defined);

(a) The Tenant shall be responsible for paying all Association Expenses that are not the responsibility of the Landlord under sub-section (a), immediately, above.

(b) For purposes hereof "Association Insurance Costs" shall mean and refer to fidelity insurance and O&E insurance that the Association may maintain on the officers and directors of the Association, general liability insurance that the Association shall maintain (providing not less than $2,000,000 per occurrence/ $4,000,000 in the aggregate) with respect to liability claims (as to injury to property and/or person), and an umbrella liability policy of insurance providing the Association with at least $10,000,000 in excess liability coverage and property insurance in the amount of $_________ [*To be determined during Due Diligence Period*] covering the common areas of the Entire Development. The liability insurance policies of the Association shall name both Landlord and Tenant as additional insureds (as well as any lender of Tenant). The Association shall also be permitted to carry such other insurance and to increase the limits of insurance to those types of coverages and limits that are customarily from time to time carried for similar developments.

(c) The Association shall keep records in reasonable detail (and shall instruct all maintenance and supply vendors to prepare and submit proposals, bids and all invoices in reasonable detail) so that Park Maintenance Costs may be segregated from all other Association Expenses. Without limiting the generality of the foregoing, whenever the Association is obtaining bids or other proposals for work that will be undertaken at both the Premises and the Park Parcels, the Association shall obtain separate bids for that portion of the work to be performed at the Premises vs. the portion of the work to be performed at the Park Parcels, and Landlord and Tenant shall be provided with copies of all accepted proposals, so that Landlord and Tenant are provided with reasonable assurances that the pricing provided (as well as any discounts available due to economies of scale) is consistent between the work at the Premises and the work at the Park Parcels.

(d) The Association shall have the right to invoice Landlord and/or Tenant, in advance, for routine and/or non-routine maintenance and repair work and Landlord and Tenant shall pay such invoices by no later than thirty (30) days after receipt of the same. Without limiting the generality of the foregoing, the Association shall have the right to promulgate an annual maintenance budget based on the Association's good faith estimate Association Expenses, and in such event, may invoice the Landlord and Tenant on a monthly or quarterly basis (in advance and at the Association's discretion) to provide the Association with day-to-day funds to pay for such anticipated recurring expenses.

(e) All amounts due and owing to the Association by Landlord or Tenant shall, if not paid when due, bear interest at the annual rate equal to the Default Rate The Association shall maintain the Park Parcels in at least an appearance and condition that is substantially consistent with other city parks of the Landlord. However, it is acknowledged that keeping the Park Parcels in a reasonably attractive condition is essential for a proper overall presentation and enjoyment of the Entire Development and that the Tenant would not make the considerable investment in the Entire Development that the Tenant intends to make without assurances that the Park Parcels will be appropriately and consistently maintained. Therefore, the Tenant shall have the right to instruct the Association to enhance its maintenance efforts (in both frequency and/or scope of services) with respect to the Park Parcels, and in such event, the Association shall implement such instructions and all additional costs and expenses thereof shall nevertheless be included in the Park Maintenance Costs for which Landlord is solely responsible. The Association shall have the right to impose an administrative and/or management fee for compensating an operator to carry out its duties under the REA.

# <u>Exhibit "G"</u>

## Permitted Title Encumbrances

To be mutually agreed during the Due Diligence Period by the parties in writing (and if not so agreed upon, then "None").

## Exhibit "H"

Gross Revenue Exclusions

- Application Fees
- Administrative Fees including credit or background check fees, or additional fees imposed for the manner of payment by a tenant (for example, auto debit, check or credit card)
- Cleaning Fees
- Penalties or fines for tenant's non-compliance with lease obligations
- Pet Fees
- Utility Set up/Disconnect Fee
- Transfer Fee
- Break Lease Fee/Termination Fee
- Utility Administration Fee
- Late Fee
- Legal Fees
- NSF (not sufficient funds) Fee due to a returned check or other payment
- Additional Fee imposed for a monthly to month lease
- Pet Rent
- Technology Fee (Smart Tech)
- Liability Insurance payments
- Washer/Dryer fees received or upfront capital purchase
- Utility Billing Fee
- Water/Sewer Reimbursements
- Cable/Intranet
- Trash
- Pest Control
- Deposit Insurance Premium (rather than posting a security deposit, an extra fee is imposed on rent to protect the landlord in event of a default).
- Valet Trash Service
- Laundry room Income
- Vending Income
- Credit Reporting revenue
- Cable/Internet revenue
- Security Deposits
- Fees received for managing packages for occupants

Exhibit "I"

Examples of Base Rent calculation and Percentage Rent calculation

(The schedules set forth below are for example purposes only to show the calculation method of Base Rent after expiration of the first ten calendar years and to show the calculation method for Percentage Rent. The schedules set forth below contain hypothetical numbers for Gross Revenue, Base Rent, Percentage Rent Break Point and Percentage Rent (except that Base Rent for the first ten years is correct pursuant to the Lease). To the extent there is a conflict between this Exhibit "I" and the Lease, the terms of the Lease shall control.

Example of Base Rent Calculation:

Exhibit "I"

Example of Percentage Rent Calculation:

ASHLEY & BROWN & SMITH
CERTIFIED PUBLIC ACCOUNTANTS

PHONE: 941.639.6600 I FAX: 941.639.6115
366 E OLYMPIA AVE, PUNTA GORDA, FL 33950
AshleyBrownCPAS.com

September 5, 2022

City of Bonita Springs
Arlene Hunter, City Manager
9101 Bonita Beach Road
Bonita Springs, FL 34135

We are writing to provide acknowledgment that as the City's auditors we are available and willing to assist management in an advisory capacity to ensure the City maintains compliance with the underlying reporting requirements prescribed by the Governmental Accounting Standards Board (the "GASB"). We have been in discussions with the City's Finance Department regarding the proposed land lease agreement for the Downtown Property. We believe there is adequate guidance issued by GASB and other resources are available to properly account for the transaction. We are available to assist to ensure the City continues to present and report the results of financial transactions in accordance with the standards issued by GASB and other applicable authoritative agencies.

We appreciate the opportunity to be the City's auditors and advisors on this or any other matters.

Very respectfully,

Ashley, Brown & Smith, CPA's, P.A.