

**FIRST AMENDMENT TO ABSOLUTE NET
NON-SUBORDINATED LAND LEASE
(Azul Property)**

LESSOR:

CITY OF STUART, FLORIDA

and

LESSEE:

NEW URBAN TRIANGLE, LLC

Dated as of May 14, 2018

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EXHIBITS

- "A" Land Survey of Leased Property and Legal Description
- "B" Conceptual Site Plan and Elevation (2 Pages)
- "C" Permitted Title Exceptions
- "D" Memorandum of Lease (Form)
- "E" Memorandum of Right of First Refusal (Form)

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THIS FIRST AMENDMENT TO ABSOLUTE NET NON-SUBORDINATED LAND LEASE (the "Lease"), executed on the dates hereinafter set forth , between **CITY OF STUART**, a Florida municipal corporation ("Lessor", "City", or "Stuart City Commission", as appropriate), and **NEW URBAN TRIANGLE, LLC**, a Florida limited liability company ("Lessee", or "New Urban", as appropriate), for the following uses and purposes:

RECITALS

WHEREAS, on June 22, 2015, the Stuart City Commission, pursuant to Resolution No. 54-2015, and the Stuart Community Redevelopment Agency ("SCRA"), pursuant to Resolution No. 01-2015CRA, and both in receipt of the prior duly authorized Request for Developer Qualifications (RFDQ #2015-154), accepted the responsive submittal as a Statement of Qualifications from New Urban Communities Corporation ("NUC"), a Florida for profit corporation, for the sale or lease of that certain property informally known as the "Triangle Property," and more properly described in **Exhibit "A"** (the "Property") for a commercial redevelopment project of the entire Property (the "Triangle Project" or "Project" as appropriate), subject to the negotiation of business terms; and

WHEREAS, NUC formed NEW URBAN to enter into the Lease, and to own and construct the Project; and

WHEREAS, the City has studied the issues regarding the calculation of Tax Increment Funding (TIF), and has determined that it is in the best interest of the City and the Community Redevelopment Area to lease the Property to a bona fide development entity, such as NEW URBAN; and

WHEREAS, the City, as fee simple title owner of the Property, desires to lease the Property to NEW URBAN; and

WHEREAS, at a duly called public meeting on January 25, 2016, the SCRA approved the business terms and recommended approval of an Absolute Net Non-Subordinated Land Lease (the "Lease") by the Stuart City Commission, and the Stuart City Commission approved the Lease and authorized and directed its execution by the duly Authorized Representatives of the City, as Lessor; and

WHEREAS, NEW URBAN approved the Lease, and authorized and directed its execution by the duly Authorized Representatives of, and on behalf of, NEW URBAN, as Lessee; and

WHEREAS, the fully-executed Lease dated February 23, 2016, was recorded July 7, 2016, in Official Records Book 2864, at Page 2532, of the public records of Martin County, Florida; and

WHEREAS, a Memorandum of Lease was recorded was recorded July 7, 2016, in Official Records Book 2864, at Page 2585, of the public records of Martin County, Florida; and

WHEREAS, Lessor and NEW URBAN desire to modify certain terms and provisions in the Lease as set forth in this First Amendment to Absolute Net Non-Subordinated Land Lease (this "First Amendment").

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NOW THEREFORE, in consideration of the mutual promises and covenants set forth below and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

AGREEMENT

1. **RECITALS.** The foregoing recitals are true, correct, and incorporated into this First Amendment.
2. **DEFINITIONS.** The following sections of the Lease are revised and amended as follows (~~deletions~~/additions):

2.1 As to each of the following definitions, use of the masculine gender shall be considered and construed to include correlative words of the feminine and neuter genders. Unless the context shall indicate otherwise, the singular shall indicate otherwise, the singular shall include the plural as well as the singular number.

2.1.1 "Act" or "Action" means any lawful action taken by the Stuart City Commission or the SCRA, as duly authorized in Chapter 163 or Chapter 166, Florida Statutes, the Charter of the City of Stuart, Florida, and the ordinances and resolutions of the City.

2.1.2 "Absolute Net Rent" means that Lessee shall be required to pay all rent, plus all of the costs of ownership and operation of the Project in accordance with the terms of this Lease, including but not limited to insurance, real estate taxes, repair and replacement, cleaning, and utilities.

2.1.3 "Additional Rent" means any additional obligation of the Lessee to reimburse the Lessor for sums paid on behalf of the Lessee for all taxes when due or insurance premiums, when due, and as required to be maintained by the Lessee during any Term of this Lease. It shall also mean any other sum that is due to the Lessor from the Lessee as a result of its default, including but not limited to sums paid on behalf of the Lessee, and Lessor's reasonable attorneys' fees and costs.

2.1.4 "Authorized Representative" means the natural or corporate Person or Persons designated and appointed from time to time as such by either party.

2.1.5 "Building Construction Plans" means the plans and specifications submitted by the Lessee and approved by the City that conform to the requirements of the Florida Building Code, and when approved, are satisfactory for the details of construction of the structures on the Property which, upon the final inspection and approval by the Building Official shall become the Leasehold Improvements.

2.1.6 "Building Official" means that Person or those Persons authorized under City's ordinances and the Florida Building Code to perform building inspections and issue on behalf of the City of Stuart a Certificate of Occupancy, a Temporary Certification of Occupancy, or a Certificate of Completion, as provided by law.

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2.1.7 "Building Permit" means for all or each part of the Project to be constructed on the Leased Property, any permit, including demolition or foundation only permits, issued by the City of Stuart as the governmental authority having jurisdiction over construction on the Property.

2.1.8 "Certificate of Occupancy" means the final Certificate of Occupancy or Certificate of Completion, as appropriate, issued for the Leasehold Improvements by a Building Official pursuant to the Florida Building Code.

2.1.9 "City" means the City of Stuart, a municipal corporation created under the laws of the State of Florida.

2.1.10 "City Codes" or "Codes" means the ordinances and codes of the City of Stuart that regulate the development and construction of the Project and each Building, including but not limited to: the Stuart City Charter, the Stuart City Code of Ordinances, the Stuart Land Development Code, The Stuart Comprehensive Plan, and the Florida Building Code, including all of its separate codes, standards, provisions, and appendices.

2.1.11 "City Commission" or "Stuart City Commission" means the elected governing body of the City, by whatever name known or however constituted from time to time.

2.1.12 "Construction Commencement Date" means the date on which the Lessee commences or causes a Contractor to commence construction of any part of the Leasehold Improvements. Lessor acknowledges and agrees that the mobilization of equipment onto the Leased Property shall constitute "commencing" construction for all purposes under this Lease.

2.1.13 "Construction Completion Date" means the date on which construction for all of the Leasehold Improvements are substantially complete in accordance with the terms of this Lease, as evidenced by a Certificate of Occupancy or a Certificate of Completion.

2.1.14 "Construction Financing" means the funds provided by the Construction Lender under the Construction Loan for the hard and soft construction and development costs related solely to developing any part of the Leasehold Improvements, including the design, professional consulting, construction and equipping costs, and the costs for the Leasehold Improvements to be made on the Leased Property, which may be secured by a Leasehold Mortgage, security interest, pledge, lien or other encumbrances and includes all modifications, renewals, extensions and replacements thereof and future advances thereunder against the Lessee's Leasehold Interest in the Leased Property and/or the Leasehold Improvements.

2.1.15 "Construction Financing Documents" means any commitment, agreement, note, leasehold mortgage or other instrument evidencing and securing the Construction Loan, as amended, modified, renewed, extended, replaced or restated from time to time.

2.1.16 "Construction Lender" or "Leasehold Mortgagee" means any Person providing a Construction Loan. For all purposes under this Lease, including without limitation) Article 28, the Leasehold Mortgagee shall be FIRST GREEN BANK, a Florida corporation ("FIRST GREEN BANK"), until such time as the Construction Loan made, or to be made, by FIRST GREEN BANK to Lessee is

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paid in full. Thereafter, the "Leasehold Mortgagee" may change to the Person providing Long Term Financing for the Leasehold Interest.

2.1.17 "Construction Loan" means funds in the principal amount evidenced in the commitment made by Construction Lender in favor of the Lessee for the construction of all or any part of the Leasehold Improvements which are secured by a Leasehold Mortgage.

2.1.18 "Contractor" means one or more Persons constituting a general contractor or major subcontractor properly licensed or registered by the State of Florida, or other appropriate jurisdiction to the extent required by applicable law, authorized to perform construction contractor services in the State of Florida, registered with the City as required by applicable law, insured to the extent required by applicable law, and bonded.

2.1.19 "Due Diligence Period" means that certain period of time commencing on the Effective Date and terminating on the Lease Commencement Date.

2.1.20 "Effective Date" means the date upon which this Lease has been executed by the last of Lessor and Lessee.

2.1.21 "Existing Improvements" means the buildings, structures, and any other improvements located on the Leased Property prior to the Lease Commencement Date.

2.1.22 "Expiration Date" means the date on which this Lease expires.

2.1.23 "Final Development Approval" means the issuance of all of the following: (a) the Stuart City Commission approves the Plans and Specifications, as evidenced by adoption of a Commercial Planned Unit Development (CPUD) Ordinance for the Project, and the Lessor or its successor in interest, executes an Acceptance of the CPUD; and (b) all other approvals, Permits and licenses from the City and all other governmental and quasi-governmental entities and agencies for development and operation of the Project. As used in this Lease, the term "CPUD" shall refer to that City of Stuart, Florida Resolution No. 2333-2016 adopted October 24, 2016, and recorded April 5, 2017, in O.R. Book 2916, at Page 2437, of the public records of Martin County, Florida; as amended by City of Stuart, Florida Resolution No. 77-2017 adopted June 26, 2017, and recorded July 14, 2017, in O.R. Book 2937, at Page 735, of the public records of Martin County, Florida.

2.1.24 "Improvements" means collectively the Existing Improvements and the Leasehold Improvements.

2.1.25 "Index" means the index of consumer prices, now known as the "Consumer Price Index" developed and updated for Urbanized Areas within the defined Southern Region of the United States of America ("CPI-U-South Region") published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the publication of this Consumer Price Index is discontinued, comparable statistics as to the purchasing power of the consumer dollar published by a responsible financial periodical selected by Lessor, and approved by Lessee, shall be used for making such future computations.

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2.1.26 Reserved.

2.1.27 "Lease" means this Lease between the Lessor and the Lessee, for the Leased Property which permits and requires the development and operation of the Project, including all attached exhibits, as amended, modified, or restated from time to time.

2.1.28 "Lease Commencement Date" means the date on which this Lease commences as provided in Article 7.

2.1.29 "Lease Year" means every twelve (12) month period of the Lease Term with the initial Lease Year beginning on the Rent Commencement Date.

2.1.30 "Lessee" means NEW URBAN, and any permitted successor or assignee thereof.

2.1.31 "Leasehold Interest" means the Lessee's interest under this Lease as well as any equitable interest in the Leased Property, the Leasehold Improvements, and all easements and rights appurtenant thereto, as provided by this Lease and applicable law.

2.1.32 "Leasehold Improvements" means the improvements constructed by or on behalf of the Lessee on the Leased Property, including, all structures on and improvements to the Leased Property.

2.1.33 "Leasehold Mortgage" means a mortgage on all or some of the Leasehold Improvements to secure the payment of a Construction Loan.

2.1.34 "Leased Property" or "Property" means the real property described in **Exhibit "A"**.

2.1.35 "Lender" or "Leasehold Mortgagee" means any Person providing Long Term Financing to the Lessee for the Leasehold Interest.

2.1.36 "Long Term Financing" means financing provided by a Lender to the Lessee secured by the Leasehold Interest and may be used to replace the Construction Financing.

2.1.37 "Major Alteration" means any addition, alteration, change or improvement to the exterior of any of the Leasehold Improvements that constitutes a substantial deviation from those depicted on the approved Plans and Specifications, provided, however, such term shall not include any changes required by applicable laws or ordinances, periodic maintenance activities such as replanting or replacing of landscaping, repainting exteriors (including, without limitation, change of color schemes) and replacing damaged, worn or obsolete fixtures, or replacing approved signage.

2.1.38 "Permit" means any zoning, variance, conditional use approval, zoning approval, or other development order respecting land use and compliance with City Codes, and consents, waivers, or variances, required to be granted, awarded, issued, or given by any governmental authority relative to the regulation of land use or zoning in order for construction of the Leasehold Improvements, or any part thereof, to commence, continue or be completed. This term includes a Building Permit, but the term Building Permit, does not include any other Permit.

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2.1.39 "Person" means any natural person, firm, partnership (general or limited), corporation, company, joint venture, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee, or other person acting in a similar representative capacity.

2.1.40 "Plans and Specifications" mean each and every of the plans and specifications and including those separately identified as Exhibits in the approved Commercial Planned Unit Development Ordinance ("CPUD") for the Project, and including all Demolition Permits for the Existing Improvements, and all of the Building Plans and Permits for the Leasehold Improvements, including such plan documents and specifications as may be later submitted, amended, modified, or restated from time to time, all of which must be substantially consistent with the scale, height, quality, and content of the Conceptual Site Plan (SP-1) and elevation Drawing (EXH-1) attached hereto as **Exhibit "B."**

2.1.41 "Project" or "Triangle Project" means, collectively, the demolition of the Existing Improvements, the construction and development of the Leasehold Improvements, and the operation and maintenance of the Leasehold Improvements, after approval of the CPUD Ordinance. It shall also mean that upon issuance of the Certificate of Occupancy, and thereafter, to include the rental of individual residential units, and maintenance of common areas, parking, and the general safe and efficient operation of the Property throughout the entire Term of the Lease.

2.1.42 "Project Professionals" means any architects, engineers, consultants, planners, construction managers, contractors, or any other persons, or combination thereof, retained or employed by Lessee in connection with the planning, design, construction, completion and opening of the Project.

2.1.43 "Rent" means all rent, as the case may be, as provided in Article 6, together with all taxes due and owing on the Property or the Lease, all unpaid liability or casualty insurance premiums as described in the Lease, and any late rent that is due and owing.

2.1.44 "Rent Commencement Date" The Rent Commencement Date shall begin no later than January 1, 2019 subject to extension for Unavoidable Delays.

2.1.45 "Residential Tenant" means any Person renting or leasing one or more individual residential dwelling units within the Leasehold Improvements for its use primarily as a non-commercial dwelling unit.

2.1.46 "RFDQ" means the Request for Developer Qualifications for the Triangle Project (RFDQ Number 2015-154) published by the City soliciting qualifications from persons interested in redeveloping the Leased Property.

2.1.47 "Right to Contest" means the procedure set forth in Article 18 for challenging any lien, payment, charge, or compliance with any law, rule, regulation or other legal requirement as described therein.

2.1.48 "Space Lease" means any rental, lease, sub-sublease or other arrangement between Lessee and any Space Tenant.

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2.1.49 "Space Tenant" means any tenant, subtenant, licensee, or other occupant of any portion of the Leasehold Improvements which does not comprise or which is not intended to be used primarily as a residential dwelling unit.

2.1.50 "State" means the State of Florida, and any applicable agency, department, office or official of the government of the State of Florida.

2.1.51 "Statement of Qualifications" means the submittal of qualifications for redevelopment of the Leased Property, dated May 6, 2015, submitted by the Lessee to the City in response to the RFDQ.

2.1.52 "Stuart Community Redevelopment Agency" or "SCRA" means the duly authorized community redevelopment agency or agency board for the City of Stuart, under prevailing Florida law.

2.1.53 "Unavoidable Delay" means those events constituting excuse from timely performance by a party hereto from any of its obligations hereunder, as such events are more specifically defined in and subject to the conditions described in Article 39 hereof.

3. LEASE.

The Lessor leases to the Lessee, and the Lessee accepts from the Lessor, the Leased Property upon and subject to the terms of this Lease. Lessee accepts the Property in "AS IS" and "Where IS" condition, without any warranties express or implied, or other Permitted Title Exceptions as set forth in **Exhibit "C"** attached hereto, and included herein. Notwithstanding the foregoing, Lessee may terminate this Lease at any time prior to expiration of the Due Diligence Period, if, in Lessee's sole discretion, Lessee is not satisfied with the results of any test, inspection, survey, or study performed by Lessee, or with any other condition relating to the Premises, including, without limitation, the status of title, zoning laws, land use laws, the environmental condition of the Leased Property, or the status of permits or approvals.

4. USES.

4.1 **Construction and Maintenance.** Subject to the terms and conditions of this Lease, Lessee shall use the Leased Property to demolish the Existing Improvements and to construct, develop, operate, and maintain the Leasehold Improvements on the Leased Property during the entire Term of this Lease.

4.2 **Residential Use.** Lessee shall have the right to use the Property as rental apartments and to sublease the Property to Residential Tenants (which shall permit Home Occupations, as defined in the Stuart Land Development Code) without Lessor's prior written consent. Lessee shall also have the right to use the Property for such other ancillary or accessory uses as may be permitted by the Lessor and/or the Stuart City Manager, in writing, from time to time. Lessee shall have the right to sublease the Property to third parties without Lessor's prior written consent, provided that such subleases only permit use of the Property in accordance with the terms hereof. This "use" restriction shall not be altered by any subsequent subletting to a Residential Tenant or Space Tenant by the Lessee without the Lessor's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

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4.3 **Ancillary or Accessory Uses.** Prior to leasing any space or unit to a Space Tenant, the Lessee shall only be required to obtain the written approval of the Stuart City Manager, which approval shall be subject to a determination that the proposed use is ancillary or accessory to the primary residential use of the Leased Property, and that all required governmental and non-- governmental approvals, taxes, and permits have been obtained. Such approvals may be reasonably conditioned by the City Manager as to: time and days of operation, amount of area used for operations and storage, location, advertising, lighting, sound, and any other condition which may affect the primary residential use of the Leasehold Property. Such uses may include, but shall not be limited to: a leasing office, a newsstand, a cafe or coffee shop, a dry cleaning drop-off, a sundry kiosk, a bicycle rental, a parking valet, a swimming pool concession, or similar uses.

4.4 **Use of Public Property and Rights of Way.** Certain public rights of way (including, but not limited to, the FEC right-of-way) and public property have been included within the described Leased Property, primarily for the purpose of having the Lessee construct and maintain additional public parking, landscape areas and other public amenities all as must be shown on the approved Plans and Specifications. As part of the public-private partnership of this development, the Lessee shall be permitted to include said areas in its calculations for the use of the Leased Property, the Permits and all other governmental and quasi-governmental approvals. Stuart has provided documentation that it has a public right of way sufficient for public parking. As a condition of the development order, the Tenant is required to construct parking spaces. In the event that the FEC prevails in an action to terminate the right of way and /or remove the parking constructed by the Tenant, then the City of Stuart shall be responsible for all costs and expenses related to the removal of the parking improvements constructed in said right of way by the tenant and will indemnify and hold Tenant harmless from all costs related to the removal of the parking spaces including {without limitation}: fines, attorney's fees and costs. Further, the tenant shall continue to receive a credit for the spaces as if they continued to exist.

4.5 **Reservation of "Air Rights."** The Lessor specifically reserves unto itself the "air rights" above any and all of its public rights or way and public property included in the Leased Property, but not including the parcels described as the "Triangle Site." The City as Lessor has a separate right to construct parking above part of the private land now occupied by the surface parking lot of "Sterling Towers," and while there is no current plan to use it, there has been discussion to do so, and to include a parcel acquired from the Florida Department of Transportation during the development of the new "Roosevelt Bridge" on US Highway 1, and to incorporate the public right of way for First Street from Albany Avenue to US Highway 1. Notwithstanding anything set forth herein to the contrary, in no event shall Lessor use the rights described herein in a manner which would adversely affect the Project. At the same time, the Lessee acknowledges that the Lessor, as a public governmental entity, may at some future time construct any structure within its air rights, which Lessor's City Commission affirmatively determines will not adversely affect the Project; provided, however, that such right is conditioned upon Lessee's receipt of prior written notice from Lessor which sets forth specific details reasonably acceptable to Lessee of the proposed project to be constructed within Lessor's air rights prior to submission of any application related to such project.

4.6 **Demolition of Existing Improvements.** All Existing Improvements on the Property have been demolished by Lessee.

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5. LEASE TERM (99 YEARS TOTAL).

5.1 **Term.** The Term of this Lease shall commence on the Lease Commencement Date and shall continue for a period of **Ninety-nine (99) years**, and shall end at 11:59 P.M. on the day prior to the 99th anniversary of the Lease Commencement Date (the "Term").

6. ABSOLUTE NET RENT.

In consideration of the warranties, representations and covenants made by Lessee in this Lease, Rent payable under this Lease shall be as follows:

6.1 **Contingency Payments in Lieu of Tax Increment Funds (TIF):** If, and only if, the Certificate of Occupancy or a temporary certificate of occupancy has not yet been issued related to the Project on or before April 30, 2020, then by no later than March 31, 2021, Lessee shall make an additional rent payment to the Lessor in the amount of Ninety-nine Thousand Six Hundred (\$99,600) Dollars in lieu of the Tax Increment Funds (TIF) which would have otherwise been payable to the City by the County on the Leasehold Improvements. This payment shall escalate at the rate of 2.5% per year after payment of the initial payment hereunder as provided in 6.5. 1. This contingency payment in lieu of TIF shall expire following the issuance of Certificate of Occupancy or a temporary certificate of occupancy related to the Project.

6.2 **Lease Commencement Date through Rent Commencement Date.** Commencing on the Lease Commencement Date, and continuing until the Rent Commencement Date, Lessee shall not be required to make any rent payments, except for the payment of additional rent for any Taxes (as hereinafter defined) and insurance related to the Project which payments shall be made by Lessee prior to delinquency (the "Additional Rent"). The Additional Rent shall be due and payable commencing on the Lease Commencement Date and shall continue through the end of the Term. "Taxes" as used herein, means all real property taxes and assessments, local improvement taxes, whether a general or special, that are levied, rated, charged or assessed against the Premises or any part thereof, and any and all sales or use taxes due on Rent to the Lessor from time to time by any lawful taxing authority, whether federal, state, municipal, school or otherwise, and any and all taxes which are imposed in lieu of, or in addition to any such real property taxes whether of the foregoing character or not and whether in existence on the Lease Commencement Date. Notwithstanding the foregoing, Lessee shall not be required to pay and Taxes shall not include any taxes or assessments levied by the City which are not of generally applicability to all parties other than Lessee. Lessor and Lessee acknowledge and agree that this Lease shall be on an Absolute Net Rent Basis (that is sometimes colloquially called a "triple net lease") subject to the terms and conditions set forth herein.

6.3 **Rent Commencement Date through Year 7.** Commencing on the Rent Commencement Date and continuing through the end of the Seventh Lease Year, Lessee shall pay Rent in an amount equal to Sixteen Thousand Dollars (\$16,000.00) annually.

6.4 **Lease Years 8 through 12.** Commencing on the first month in the eighth (8th) Lease Year, the Lessee shall pay Rent in an amount equal to Forty-Eight Thousand Dollars (\$48,000.00) annually through the end of the twelfth (12th) Lease Year.

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6.4.1 **Rent Credit for Demolition Year.** The Rent due and payable during the first (1st) Lease Year and continuing through the twelfth (12th) Lease Year recognizes and credits the cost of demolition of the Existing Improvements in the total amount of not more than \$240,000, and shall serve as a rent credit therefore of \$20,000 per year for 12 years, or until paid in full. The Lessee shall have the obligation to provide reasonable proof of its actual "out of pocket" costs for demolition which will serve as the basis for the Rent credit. The rent credit is not a sum that will be transferred between the parties but is rather an amount that has been contemplated as consideration for this Lease and shall not be increased or decreased based upon the actual demolition costs.

6.5 **Years 13 through the remainder of Term.** Commencing on the first month of the thirteenth (13th) Lease Year and for each year thereafter during the Term, the Lessee shall pay Rent in amount equal to Eighty Thousand Dollars (\$80,000.00) annually.

6.5.1 **Rent Escalator:** Commencing on the first month of the fourteenth (14th) Lease Year, and continuing on each and every Lease Year thereafter during the Term the rent shall be increased at an escalation rate of an additional two and one-half (2.5%) percent of the prior year's rent amount.

6.6 **Rent Payments.** Payments of Rent shall be paid monthly to "The City of Stuart" or its assignee, in advance, and received by the Lessor or assignee no later than close of business on the first (1st) day of each calendar month, and sent by electronic payment to an account designated in writing from time to time by the City.

6.7 **Late Rent Payments.** Payments received by the Lessor which are later than the fifteenth (15th) day of any calendar month shall include an additional late rent payment of \$1,000.00 or eight (8%) percent of the current Base Rent payment, whichever is greater, at the time of the late rent payment.

6.8 **Additions to Rent.** All unpaid insurance and Taxes required herein shall be considered as additional "rent," and it shall be the responsibility of the Lessee to assure prompt payment by the Lessee, when due, of the same.

7. EFFECTIVE DATE; LEASE COMMENCEMENT DATE; CERTIFICATE OF OCCUPANCY; AND REAL ESTATE COMMISSION.

7.1 **Upon the Effective Date.** This Lease shall be effective on the Effective Date, and **within forty-five (45) days** thereafter, subject to extension for Unavoidable Delays, the Lessee shall prepare and shall make complete application to the City for a CPUD ordinance for the Property, including all of its proposed Plans and Specifications. During this period, Lessee shall also commence the advertising and public notices necessary to meet the public hearing schedules, and make a presentation to the public boards considering the CPUD ordinance, the Plans and Specifications and the Leasehold Improvements proposed.

7.2 **City Actions.** Within thirty (30) days after receipt of a complete application for a CPUD for the Property from New Urban, the City shall review the application, shall prepare and promulgate a suitable CPUD Ordinance draft, and shall schedule the public hearings necessary for consideration by the Community Redevelopment Board, the Land Planning Agency, and the City Commission in compliance with applicable law. The City shall promptly review and respond to all applications submitted by Lessee

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related to the Property and shall cooperate with Lessee in all respects to ensure the prompt processing of said applications.

7.3 **Lease Commencement Date.** This Lease shall commence on November 3, 2016, which is thirty (30) days following the date of the last Final Development Approval.

7.4 **Demolition Permit Application and Demolition.** All demolition has been completed by Lessee.

7.5 **Building Permit Application.** Lessee has already filed a complete application for a Building Permit for all of the vertical construction on the Leased Property. **Within thirty (30) days** after the effective of this First Amendment, the Tenant shall take all necessary steps to satisfy the requirements for issuance of the Building Permit in compliance with applicable law including the payment of all fees due for the issuance of same.

7.6 **Construction Security:** Prior to obtaining a Building Permit for the vertical construction on the Property, and continuing until the date of the issuance of a final Certificate of Occupancy, the Lessee shall furnish to the Lessor, and maintain in full force and effect, a surety bond, letter of credit, or other irrevocable instrument or account in a form acceptable to the City Attorney in the City Attorney's reasonable discretion, in an amount equal to \$300,000.00 (the "Construction Security"). Lessor acknowledges and agrees that: (a) Lessor shall only have the right to draw upon the Construction Security after a default by Lessee under this Lease which continues beyond any applicable notice and cure periods and (b) Lessor shall not have the right to utilize the Construction Security without the Construction Lender's prior written consent in order to provide the Construction Lender with the option to complete the Project. The Construction Security shall be released upon Lessor's written certification that the Project is eighty (80%) completed.

8. CONSTRUCTION OF LEASEHOLD IMPROVEMENTS AND DAMAGES.

8.1 **Construction to comply with Codes.** Upon issuance of a Building Permit by the City, the Lessee shall commence construction of the Leasehold Improvements in accordance with the Plans and Specifications approved by the Lessor, and in accordance with the procedures set forth in this Article 8, and the Florida Building Code. All costs of demolition of the Existing Improvements, and all costs of construction of the Leasehold Improvements shall be borne by, and timely paid for, by the Lessee.

8.2 **Lessee's Right to Contract.** Lessee shall have the right to enter into separate contracts and agreements for the development, construction, use, and maintenance of all of the Leasehold Improvements, and for Space Leases, if any, without Lessor's consent. At least fourteen (14) days prior to any demolition, or construction in the public rights of way, or on Leased Property which is not on the Triangle Site, the Lessee shall coordinate directly with the City's Public Works Director or his designee. The Lessor shall not be liable to any contractor, or material provider, for any fee, or cost incurred by the Lessee.

8.3 **Contractors and Construction Means and Methods.** Contractors for the Leasehold Improvements shall be selected and construction work shall be completed in accordance with the following:

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8.3.1 Lessee shall select Contractors to demolish the Existing Improvements and construct the Leasehold Improvements substantially in accordance with the Plans and Specifications.

8.3.2 Each Contractor shall be required to continue to pursue and prosecute the construction of the Leasehold Improvements using commercially reasonable efforts, except for Unavoidable Delays.

8.3.3 All construction work on the Leasehold Improvements shall be done substantially in accordance with the Plans and Specifications.

8.3.4 Commencing with the issuance of a Building Permit for vertical construction of the Leasehold Improvements, the Lessee shall make no less than quarterly written reports to the Lessor's Authorized Representative, approved by Lessee, as to the actual progress of the construction of the Leasehold Improvements.

8.4 **Proper Location.** The location of the Leasehold Improvements shall be as specifically located and set forth in the Plans and Specifications approved by the City.

8.5 **Utility Relocations.** Any modification, renovation, or relocation of any utilities upon City-owned lands or adjacent public or private rights of way shall be at the expense of the Lessee without recourse to the City, and such activities shall not affect the payment of Rent due under this Lease; provided however, that the foregoing shall be subject to review and approval by Lessee during the Due Diligence Period.

8.6 **Timely (24 Month) Construction Required.** Following issuance of the Building Permit for vertical construction of the Leasehold Improvements, Lessee shall have twenty-four (24) months within which to complete the entire Project subject to extension for Unavoidable Delays.

8.7 Removed.

8.8 **Procedural Review of Building Plans.** The following items and conditions shall govern the review and approval of the Building Construction Plans for the Leasehold Improvements:

8.8.1 Lessee has already provided Final Plans to the Building Department of the City and the Final Plans submitted by Lessee have been approved by the City.

8.8.2 Lessor acknowledges that Lessee shall have the right to seek approval for and make variations in the Building Construction Plans, and the approved Plans and Specifications during the review of the plans, or during performance of the construction work, subject to the City's codes and ordinances.

8.8.3 Lessee may, at any time during the Term of this Lease, at Lessee's sole cost and expense, make or permit to be made any demolition, alteration, or change of, in, or to the Improvements or any part thereof or any building or improvement which is currently erected thereon without Lessor's consent; subject to the Lessee being responsible for any and all financial obligations associated therewith; provided, however, that: (i) Lessor shall have the right to approve changes that constitute Major Alterations, which approval shall not be unreasonably withheld, conditioned or delayed; (ii) such work shall be performed in a good and workmanlike manner and shall be completed free of any mechanic's and

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materialmen's liens; and (iii) that Lessee shall have obtained the approval of the Building Department of the City, if required, under applicable City Codes.

8.9 **Major Alteration of Leasehold Improvements.** In the event Lessee plans to make any demolition, alteration, or change in or to the Leasehold Improvements that constitutes a Major Alteration, the proposed plans and drawings for said proposed Major Alteration shall be submitted to the Lessor for its approval in accordance with the terms of Section 8.8.1 above.

8.10 **Removal of Existing Tenants.** Lessor shall provide all notices and shall take all other required action to terminate all existing leases (the "Existing Leases") related to the Property and to cause all existing tenants to vacate the Property on or prior to the Lease Commencement Date. Lessor's failure to satisfy all of the requirements set forth in this Section 8.10 shall constitute an Unavoidable Delay for all purposes under this Lease until such requirements are fully satisfied.

9. OWNERSHIP OF IMPROVEMENTS.

9.1 During the term of this Lease, the vertical and horizontal improvements constructed as part of the Leasehold Improvements will be owned and maintained by the Lessee. The Existing Improvements shall continue to be owned by the Lessor, until they shall be demolished by the Lessee, but shall be subject to any Leasehold Interest of the Lessee pursuant to this Lease.

9.2 Lessee shall be entitled to depreciation on the buildings, other structures, improvements and fixtures comprising the Leasehold Improvements which are now or shall subsequently be erected upon the Leased Property.

9.3 Upon the expiration or termination of this Lease, all of the Leasehold Improvements, and any remaining personal property on the Leased Property shall become the sole property of the Lessor.

10. PERMITS, FEES, AND APPROVALS. Lessor and Lessee agree to the following procedure with respect to permits and development permit fees for the Project contemplated by this Lease:

10.1 **Governmental Approvals.** Lessor agrees to use its commercially reasonable efforts to provide or secure all governmental or quasi-governmental approvals, licenses and permits necessary to construct and operate the Project, **with the specific understanding that Lessor's governing body, as a matter of the public trust, will not, and cannot, waive or relinquish any of its own governmental or regulatory power or authority, either now or in the future.** If requested by Lessee, Lessor will join in any application for any permit or permits for the Leasehold Improvements, or, alternatively, recommend to and urge any other governmental authority to which application for a permit or permits has been made that such permit or permits be issued or approved. Upon obtaining any such permit or permission, the Lessor shall have a continuing obligation to maintain in full force and effect, and in good standing, all of the foregoing approvals, licenses and permits. Lessor's willful or negligent failure to do so shall constitute a default of Lessor and an Unavoidable Delay, and in addition to any other remedies, the Lessee shall have the right to obtain such approvals, licenses and permits.

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10.2 **Waiver or Credit for Building Permit Fees.** Lessor agrees, to the extent permitted by law, contract, or covenant to waive, credit, or rebate, its normal and customary fees for Building Permits for the demolition of the Existing Improvements and the construction of the Leasehold Improvements.

10.3 **Impact Fees. Lessee shall be responsible for the payment of all Impact Fees to the City and County.** The City has negotiated with the School Board as it pertains to the “student station fees”. Currently, the School Board has agreed that the application for permit can be processed for permit without the payment of the special “student station assessment”. However, the School Board maintains that it will not reserve capacity. Therefore, if the Tenant fails to apply for or make all payments necessary for the issuance of a building permit and the capacity runs out it will be due to the delay of the tenant and not caused by the City.

11. REZONING AND LEASE CONTINGENCY.

If rezoning or any variances or conditional use approvals are required to implement the Lessee's proposed Plans and Specifications, and proposed Site Plan for the Project, the Lessee shall be responsible for procuring such rezoning, variances, or conditional use approvals through normal rezoning and permitting procedures and shall pay all legal or related expenses. **Lessee's obligations under this Lease shall be contingent upon obtaining the Final Development Approvals, including, but not limited to, a Commercial Planned Unit Development (CPUD) Ordinance necessary for the intended Project. In the event that Lessee does not obtain such Final Development Approvals with terms and conditions acceptable to Lessee, then in accordance with Section 7.3 of the Lease, Lessee shall have the right to terminate this Lease upon written notice to Lessor, whereupon Lessee and Lessor shall be relieved of all rights, obligations and liabilities hereunder except as may be otherwise set forth herein.**

12. RIGHT OF ACCESS TO THE LEASED PROPERTY AND REQUIRED DOCUMENTS.

12.1 Commencing on the Effective Date and continuing throughout the Due Diligence Period, Lessee shall have the right to enter onto and physically inspect the Leased Property and conduct its due diligence related thereto. Lessee and Lessee's officers, employees, consultants, attorneys and other authorized representatives shall have the right to reasonable access, upon reasonable prior notice to the Lessor, onto the Leased Property and to all records of Lessor related thereto (including without limitation title information, surveys, environmental assessment reports and other information concerning the condition of the Leased Property), at reasonable times, for the purpose of inspecting the Leased Property, taking soil and ground water samples, conducting hazardous materials inspections and other environmental tests and assessments, including, but not limited to, Phase I and Phase II environmental assessments and geotechnical reports. Lessee agrees not to disrupt the normal business operations of the Leased Property, or to hamper the salvage rights of the Lessor. Lessee shall have the right to extend the Due Diligence Period by not more than sixty (60) days, if Lessee determines it is necessary to perform a Phase II Environmental Assessment of the Leased Property. Lessee shall notify Lessor in writing of its election to extend the Due Diligence Period, prior to the end of the original term of the Due Diligence Period. Within sixty (60) days after receipt of notice from Lessee, Lessor shall remediate any hazardous substances or other environmental issues identified by the Phase I or Phase II environmental assessments to a standard permitting the unrestricted future use of the Leased Property and remove any underground storage tanks, and Lessor shall cure any encroachment, encumbrance or other defect disclosed by any survey or title information which shall not be acceptable to Lessee. Lessor's failure to timely comply with

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said requirement shall be deemed an Unavoidable Delay for all purposes under this Lease until such requirement has been satisfied.

12.2 Lessor shall give Lessee any authorizations which may be reasonably required by any third party in order to gain access to records or other information pertaining to the Leased Property or the use.

12.3 As of the Effective Date, Lessor has provided to the Lessee the following documents, if the same are held by the Lessor: exceptions;

12.3.1 Copy of existing owner's title insurance policy and all applicable title

12.3.2 Copy of survey and/or proposed legal description of the Leased Property (if different from the legal description in the owner's title insurance policy);

12.3.3 Copies of all existing permits; and

12.3.4 Copies of all environmental site assessment reports in the City's possession for the Leased Property and any adjoining areas.

13. REPRESENTATIONS AND WARRANTIES.

13.1 Lessee represents and warrants to the Lessor that each of the following statements is true and accurate as of the Effective Date, and agrees the Lessor may rely upon each of the following statements:

13.1.1 Lessee is a Florida for profit corporation duly organized and validly existing under the laws of the State of Florida, has all requisite power and authority to carry on its business as now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party, is qualified to do business in the State of Florida, and has consented to service of process upon a designated agent for service of process in the State of Florida. Lessee shall not later contest this Lease on the basis of a lack of authority or ultra vires act by Lessee.

13.1.2 This Lease and, to the extent such documents presently exist in a form accepted by the Lessor and Lessee, each document contemplated or required by this Lease to which Lessee is or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, Lessee, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof: (a) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein; or, (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on Lessee.

13.1.3 This Lease and, to the extent such documents presently exist in form accepted by the Lessor and Lessee, each document contemplated or required by this Lease to which Lessee is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of Lessee enforceable against Lessee in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect

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creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

13.1.4 There are no pending or, to the knowledge of Lessee, actions threatened in writing or proceedings before any court or administrative agency against Lessee which question the validity of this Lease or any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of Lessee.

13.1.5 To the best of Lessee's actual knowledge, Lessee has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by Lessee, and has paid, or caused to be paid, all taxes shown to be due and payable on such returns or on any assessments levied against Lessee.

13.1.6 All financial information and other documentation, including that pertaining to the Project or Lessee, delivered by Lessee to the Lessor, was, on the date of delivery thereof, true and correct to the best of Lessee's actual knowledge.

13.1.7 The principal place of business and principal executive offices of Lessee are in the corporate limits of the City of Delray Beach, in Palm Beach County, Florida. Lessee shall have the affirmative duty to notify the Lessor, in writing, of any change of address for its principal offices.

13.1.8 The execution, delivery, consummation, and performance under this Lease will not violate or cause the Lessee to be in default of any provisions of its governing documents or rules and regulations or any other agreement to which Lessee is a party or constitute a default there under or cause acceleration of any obligation of the Lessee thereunder.

13.2 Lessor represents, and agrees that Lessee may rely upon, the following statements:

13.2.1 Entering into this Lease is a valid, binding and permissible activity within the power and authority of the Lessor and does not violate any City Code, Charter provision, rule, resolution, ordinance, policy or agreement of the Lessor or constitute a default by the Lessor of any agreement or contract to which it is a party.

13.2.2 All steps, acts and conditions required to be done as a condition precedent to the execution of this Lease have been done, and the Lessor has full authority to enter into this Lease. Lessor shall not later contest this Lease on the basis of lack of authority or an ultra vires act by Lessor.

13.2.3 Lessor owns fee simple title to the Leased Property, except that certain portions of the Leased Property, as noted on the Survey as shown in **Exhibit "A"** are either subject to restriction placed upon them by the Florida Department of Transportation, or are city public rights-of-way, all of which shall be subject to Lessee's review during the Due Diligence Period.

13.2.4 The individuals executing this Lease and related documents on behalf of Lessor are duly authorized to take such action, which action shall be, and is, binding on Lessor.

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14. PROPERTY CONDITION.

14.1 The Leased Property is subject to certain described public rights-of-way or easements for public access, utilities, or similar situations, all as described in **Exhibit "C"** (the "Permitted Exceptions"), and as may be shown on the Land Survey in **Exhibit "A."** The Lessee acknowledges that it has made a thorough and complete inspection of the Leased Property and accepts this Lease and the Leased Property and the Existing Improvements and is fully advised of its extent and condition, subject to Lessee's inspection rights during the Due Diligence Period in accordance with the terms hereof. The Lessee fully accepts the Leased Property in its present "as is, where as" physical state and condition subject to Lessee's inspection rights during the Due Diligence Period in accordance with the terms hereof and all other terms and conditions of this Lease.

14.2 Lessor agrees to eliminate all of the following items, if any, as are identified in writing by Lessee prior to the Lease Commencement Date:

14.2.1 Reversionary interests discovered during the Due Diligence Period;

14.2.2 Liens or other encumbrances; and

14.2.3 Any other matters that would prevent Lessee from using the Leased Property for its intended purpose in accordance with the terms of this Lease.

14.3 Lessor covenants and agrees that any liens, encumbrances or other matters on the Leased Property identified by Lessee as to be unacceptable shall be settled, satisfied, or released by Lessor, at Lessor's sole cost and expense, prior to the Lease Commencement Date. Lessor's failure to timely comply with said requirement shall be deemed an Unavoidable Delay for all purposes under this Lease until such requirement has been satisfied.

15. GENERAL OBLIGATIONS OF THE PARTIES. The following constitute obligations and covenants of the parties, their successors and assigns:

15.1 Lessee shall keep and maintain all Leasehold Improvements and Existing Improvements (prior to their demolition) on the Leased Property in a safe and secure manner, and in compliance with all governmental laws and requirements. Lessee shall have the right, at its own cost, to contest by appropriate legal proceedings, diligently conducted, the validity or applicability of complying with such laws or requirements. Lessor, on written request, shall sign any appropriate papers, or join in any such contest or empower Lessee to act in the name of Lessor as may be necessary or proper to permit Lessee to contest such laws or requirements. Any city code violations which may occur on the Property, following the Lease Commencement Date, shall be the responsibility of the Lessee, only if caused by and allowed to continue by the Lessee.

15.2 In the event of a breach of any of the provisions of this Lease, resulting in an action before a judicial or non-judicial tribunal, the prevailing party shall be entitled to recover from the non-prevailing all costs, expenses, reasonable attorneys' fees which may be incurred or sustained by reason of such breach, including, but not limited to, all reasonable attorneys' fees incurred through all appeals.

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15.3 Each party covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the other party in and to the Leased Property covered by this Lease, and that no person shall ever be entitled to any lien, directly or indirectly, derived through or under the other party, or its agents or servants, or on account of any act or omission of the other party, except for any lien reserved upon the Lessee's (or Lessee's successors and/or assigns) leasehold interests in the Leased Property by a Leasehold Mortgagee. All persons contracting with the Lessee, or furnishing materials or labor to the Lessee, or to its agents or servants, as well as all persons whomsoever, shall be bound by this provision of this Lease. The Lessee shall not be deemed to be the agent of the Lessor as to confer upon a laborer bestowing labor upon the Leased Property, or upon a materialman who furnishes material incorporated in the construction of improvements upon the Leased Property, a lien upon the Lessor's estate under the provisions of Chapter 713, Florida Statutes, and subsequent revisions of that law. **UNDER CHAPTER 713 OF THE FLORIDA STATUTES, THIRD PARTIES ARE HEREBY NOTIFIED THAT THEY MAY NOT IMPOSE A LIEN ON THE LESSOR'S INTEREST IN THE LEASED PROPERTY FOR LABOR, SERVICES OR MATERIALS FURNISHED TO, OR AT THE REQUEST OF LESSEE AND ANY SUCH LIENS ARE HEREBY PROHIBITED.** If, notwithstanding said notice, any third party files a mechanic's lien purportedly against the Lessor's estate for or on account of labor, services or materials provided to or at the request of Lessee, Lessee shall dispose of the claim and ensuing litigation as Lessee deems appropriate at Lessee's expense, provided that if such party commences a foreclosure action with respect to such lien, Lessee shall transfer the lien to security as provided by Florida law or otherwise bond or cause the same to be discharged of record within thirty (30) days thereafter to prevent the foreclosure of Lessor's estate.

15.4 Reserved.

15.5 **Payment of All Taxes.** For all portions of the Leased Property that are not tax-exempt, from and after the Lease Commencement Date, Lessee agrees to pay when due all real property taxes and special assessments of whatsoever kind levied and assessed against the Leased Property, if any. From and after the Lease Commencement Date, the Lessee further agrees to pay when due all sales and use taxes, and any and all other taxes or assessments imposed upon and being the liability of the Lessee and arising out of this Lease, including any sales taxes due on rental payments.

15.5.1 The Lessee shall have the right to review or protest, or cause to be reviewed or protested, by legal proceedings, any such taxes, assessments, or other charges imposed upon or against the Leased Property or the improvements built and placed on the Leased Property, and in case any such real property taxes, assessments, or other charges shall, as a result of such proceedings or otherwise, be reduced, cancelled, set aside or to any extent discharged, the Lessee shall pay the amount that shall be finally assessed or imposed against the Leased Property or the improvements built and placed on them by the Lessee, which are finally determined to be due and payable on any such disputed or contested items. All expenses of such litigation, including court costs, shall be paid by Lessee free of all expenses to Lessor. The term "legal proceeding", as used above, shall be construed as including appropriate appeals from any administrative actions, judgments, decrees or orders and certiorari proceedings and appeals from orders entered in them. If required by law, Lessor agrees to join in any such legal proceeding or empower Lessee to act in the name of Lessor.

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15.5.2 Lessor will cooperate with Lessee in any filing or appeal to the Martin County Property Appraiser pertaining to the Lessee's use of the Leased Property for purposes of determining ad valorem real property taxes. In connection therewith, the Lessor and Lessee understand and agree that the development contemplated by this Lease is being undertaken by Lessee as a community redevelopment project.

15.6 The Lessee agrees, at its expense, to keep and maintain the Leased Property, the improvements, furnishings, fixtures and personal property located thereon in a good state of repair and condition, normal wear and tear or damage by the elements excepted.

15.7 After the Construction Completion Date, Lessee may not, without the prior written consent of Lessor, which consent will not be unreasonably delayed, withheld, or conditioned, make any Major Alteration to all or any part of the Leasehold Improvements located on the Leased Property owned and controlled by Lessee or Lessee's successors or assigns.

15.8 The Lessee at its expense agrees to deliver the Leased Property to the Lessor upon the termination of this Lease in a good state of repair and condition at the time of surrender wear and tear and events of casualty excepted, subject to the terms and conditions of this Lease.

15.9 Lessor covenants, warrants and agrees that Lessee, and Lessee's successors and assigns, shall be entitled to peacefully enjoy, to occupy, and to possess the Leased Property throughout the Lease Term without interference, hindrance or molestation.

15.10 Simultaneously with the execution of this Lease, a Memorandum of Lease in substantially the form attached hereto as **Exhibit "D"** shall be executed by Lessee and Lessor and recorded in the public records of Martin County, Florida. The cost of recording shall be borne by Lessee.

16. CONDEMNATION.

16.1 Lessor represents and warrants to Lessee that Lessor has not received any notice, nor is it aware of any pending action to take by condemnation, all or any portion of the Property. In the event of a taking of all of the Leased Property or so much of it so as to render the Leased Property unfit for purposes intended by this Lease as determined by Lessee in its reasonable discretion, for any public or quasi-public purpose, under any statute or by right of eminent domain, the Lessee's liability to perform the terms and conditions of this Lease shall cease, but the Lessee shall be entitled to any claim against the condemnor to which the Lessee may be entitled. Lessor shall refund to Lessee any Rent or other sums paid by Lessee for the period after the termination date of this Lease. In the event that Lessee is not a party to such condemnation, Lessee shall receive any portion of an award or compensation to the Lessor which is attributable to the fair market value of Lessee's Leasehold Interest, less the value of the reversionary interest in the Leasehold Improvements, as determined by any court or courts of competent jurisdiction. Notwithstanding anything set forth herein to the contrary, to the full extent under applicable law, Lessor hereby waives any and all rights to take any portion of the Leased Property by eminent domain or condemnation proceeding. Lessor shall have no interest in any such award, compensation or payment, or any portion thereof, made in respect of the Leasehold Interest or the Leasehold Improvements, all of which shall belong to and be paid to Lessee.

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16.2 In the event of a partial taking by condemnation or eminent domain so that the part not so taken shall be feasible for the continued operation of the Project for the purposes intended by the Lessee as determined by Lessee in its reasonable discretion, then this Lease shall continue in full force and effect, and Lessee shall receive that portion of the award or compensation allocable to its Leasehold Interest and all awards for any improvements located on the Property. Lessee shall use the proceeds received by the Lessee pursuant to this Article 16 for purposes of restoring those portions of the improvements upon the remainder of the Leased Property and impacted by the condemnation to as near their former condition as circumstances will permit, but only to the extent that Lessee receives proceeds sufficient to cover said restoration and in no event shall Lessee be required to pay any amounts in connection with said restoration.

16.3 In determining whether repair or restoration is feasible, the Lessee shall consider, among other factors: (i) the cost of repairing or restoring the improvements affected by the condemnation; (ii) the amount of damage or destruction involved and the condemnation proceeds available to pay for the repair or restoration of the improvements affected by the loss; (iii) the effects of the loss on the Project's ability to operate in a commercially reasonable manner, and whether it is commercially reasonable to attempt to repair or restore; (iv) Lessee's ability to obtain all necessary Permits and other governmental approvals required to repair or restore, and operate the Project in compliance with all applicable City codes and ordinances and all other applicable governmental laws and to a reasonably commercial standard or condition; and (v) the length of time remaining in the Lease Term at the time of the condemnation.

17. DEFAULTS AND REMEDIES.

17.1 **Lessee's Defaults.** Each of following events shall be events of default by Lessee under this Lease ("Event of Lessee's Default"):

17.2 **Failure to Commence.** Subject to Unavoidable Delay and the terms of Section 17.5 below, should Lessee fail to commence construction of the Leasehold Improvements as provided in this Lease, this Lease and the Leasehold Interest shall terminate. Upon such termination, Lessee shall surrender the Leased Property to the Lessor in good condition and repair normal wear and tear excepted. Upon such surrender, neither party shall have any further right or obligation under this Lease.

17.2.1 **Failure to Commence Remedies.** In the event there shall be a material default by Lessee under this Lease PRIOR to the Construction Commencement Date, and such material default shall continue after the expiration of the applicable grace period set forth in Section 17.5, subject to Unavoidable Delay, Lessor shall have the following rights and remedies:

(a) The Lessor, by notice in writing transmitted to the Lessee, as provided in the paragraph entitled "NOTICES", may at its option declare the Lessee's interest under this Lease ended and without further force and effect. The Lessor is then authorized call in any bond or surety and to re-enter and repossess the Leased Property and the improvements and personal property on them and the Lessee does in such event waive any demand for possession of the Leased Property, and agrees to surrender and deliver up the Leased Property peaceably to Lessor. The Lessee covenants that no surrender or abandonment of the Leased Property or of the remainder of the term shall be valid unless accepted by the Lessor in writing. The Lessor shall use commercially reasonable efforts to re-let the Leased Property in the event of an abandonment or surrender or attempted surrender or attempted abandonment of the Leased

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Property by the Lessee. Upon the Lessee's abandonment or surrender or attempted abandonment or attempted surrender of the Leased Property, the Lessor shall have the right to retake possession of the Leased Property or any part of them, and such retaking of possession shall not constitute an acceptance of the Lessee's abandonment or surrender.

17.3 Failure to Complete. In the event there shall be a material default by Lessee under this Lease AFTER the Construction Commencement Date but PRIOR to the issuance of a Certificate of Occupancy, and such material default shall continue after the expiration of the applicable grace period set forth in Section 17.5, subject to Unavoidable Delay, Lessor shall have the right to all legal and equitable remedies under applicable law, including but not limited to the Lessor shall be authorized to call in any bond or surety, and to re-enter and repossess the Leased Property and the improvements and personal property thereon. The Lessee covenants that no surrender or abandonment of the Leased Property or of the remainder of the term shall be valid unless accepted by the Lessor in writing. The Lessor shall use commercially reasonable efforts to re-let the Leased Property in the event of an abandonment or surrender or attempted surrender or attempted abandonment of the Leased Property by the Lessee. Upon the Lessee's abandonment or surrender or attempted abandonment or attempted surrender of the Leased Property, the Lessor shall have the right to retake possession of the Leased Property or any part of them, and such retaking of possession shall not constitute an acceptance of the Lessee's abandonment or surrender. In addition, the Lessor may use the surety to demolish or complete the Leasehold Improvements, and to then seek to re-let the Leasehold Improvements. Notwithstanding anything set forth in this Lease to the contrary, in no event shall Lessor be responsible for any consequential, indirect or punitive damages.

17.3.1. Failure to Complete; Remedies. In the event there shall be a material default by Lessee under this Lease AFTER the issuance of the Certificate of Occupancy for the Leasehold Improvements, and such Material Default shall continue after the expiration of the applicable grace period set forth in Section 17.5, Lessor shall have the right to all legal and equitable remedies under applicable law including the remedies set forth herein regarding the Lessee's failure to repair and maintain the Leased Property, excepting, however, Lessor shall expressly not have the right to terminate this Lease or obtain the right of re-entry or repossession of the Leased Property, except upon the failure to pay Rent which continues beyond any applicable notice and cure period. As indicated hereinabove, notwithstanding anything set forth in this Lease to the contrary, in no event shall Lessor be responsible for any consequential, indirect or punitive damages.

17.4 Lessor's Damages for Abandonment. If after issuance of the Certificate of Occupancy, the Leasehold Improvements are effectively "abandoned" for more than thirty (30) consecutive days, subject to Unavoidable Delay and written notice to the Lessee and an opportunity to cure said default in accordance with Section 17.5, Lessor may declare an Event of Lessee's Default, terminate the Lease, collect any past due Rent through the end of the current quarter of the Lease Year, call-in and surety available, and take control of the Leased Property. Lessor's right to terminate the Lease, collect any past due rents, call-in any surety, and take control of the Leased Property shall be the sole and exclusive remedy of Lessor in the event that Lessee abandons the

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Lease Property. For purposes of this Lease, the term "abandoned" shall not mean any period of time during which any portion of the Leasehold Improvements are unoccupied (a) during initial "lease-up" of the Project following issuance of the Certificates of Occupancy; or (b) as a result of a Tenant ceasing operations for any reason whatsoever.

17.5 Notice and Cure. If any of the Events of Lessee's Defaults set forth in this Article 17 occur, or if Lessee shall fail in the performance of any term of this Lease, then the Lessor, or its agent, shall send to the Lessee a written notice of default, specifying the nature of the default, and Lessee shall, within sixty (60) days after the date of the notice, cure and remedy the default, and this Lease shall then continue as before; provided, however, in the event such breach cannot with due diligence be cured within a period of sixty (60) days, and if written notice of the default shall have been given to Lessee, and if Lessee, prior to the expiration of sixty (60) days from and after the giving of such notice commences to eliminate the cause of such default and proceeds to cure and uses commercially reasonable efforts to cure such default and does so cure such default within a reasonable period of time, then Lessee shall not be in default under this Lease. Failure of the Lessor to insist upon the strict performance of any of the covenants, conditions and agreements of this Lease in any one or more instances, shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions and agreements.

17.6 Lessor's Defaults. Each of the following events shall be events of default by Lessor under this Lease ("Event of Lessor's Default"):

17.7 Failure to Perform; Notice and Cure. If Lessor shall fail in the performance of any material term of this Lease, then the Lessee, or its agent, may send to the Lessor a written notice of default, specifying the nature of the default, and Lessor shall, within sixty (60) days after the date of the notice, cure and remedy the default, and this Lease shall then continue as before; provided, however, in the event such breach cannot with due diligence be cured within a period of sixty (60) days, and if written notice of the default shall have been given to Lessor, and if Lessor, prior to the expiration of sixty (60) days from and after the giving of such notice commences to eliminate the cause of such default and proceeds to cure and uses commercially reasonable efforts to cure such default and does so cure such default within a reasonable period of time, then Lessor shall not be in default under this Lease. Failure of the Lessee to insist upon the strict performance of any of the covenants, conditions and agreements of this Lease in any one or more instances, shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions and agreements.

17.8 Lessee's Rights for Lessor's Default. In the event there shall be an Event of Lessor's Default and such Event of Lessor's Default shall continue after any applicable grace period, Lessee shall have the right to terminate this Lease and all legal and equitable remedies under applicable law.

17.9 Time and Performance are the Essence of the Lease. Lessor and Lessee each covenant and agree promptly to perform, comply with and abide by this Lease, and each agree that time of payment and of performance of material obligations are of the very nature and essence of this Lease.

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17.10 **Non-Disturbance of Residential Tenants.** Lessor agrees that in the enforcement of Lessor's rights under this Lease, Lessor will not disturb the occupancy of any Residential Tenant or Space Tenant who is not then in default of its Rental Agreement or Lease or Space Lease.

18. RIGHT TO CONTEST.

Subject to the conditions set forth in Section 18.1 below, the Lessor or Lessee each may, at its sole discretion and expense, after prior written notice to the other party hereto, contest by appropriate action or proceeding conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any lien, any payment of any taxes, assessments, impact fees or other public charges of a similar nature that may from time to time be levied upon or assessed by any appropriate governmental authority against Lessee, the Project (or any part thereof), the Leased Property, furniture, fixtures, equipment or other personal property thereon, and the revenues generated from the use or operation of any or all of the above, any other payment specifically identified in this Lease, or compliance with any law, rule, regulation, or other such legal requirement.

18.1 The right to contest any charge, payment or requirement pursuant to this Article 18 is subject to the following:

18.1.1 Such proceeding shall toll and suspend the execution or enforcement of such charge, payment or requirement;

18.1.2 Such proceeding will not create any risk of impairment of the acquisition or preparation of the Leased Property, the construction, completion, operation or use of the Project, the Leased Property, or any part thereof, in any material respect, and neither the Project or Leased Property, nor any part of the Project or the Leased Property, would be subject to any risk of being involuntarily sold, forfeited or lost or the acquisition of the Leased Property or the construction, equipment, or completion of the Leasehold Improvements or any part thereof be delayed or prohibited;

18.1.3 Such proceeding will not subject any other party to criminal liability or risk of material civil liability for failure to comply therewith, or involve risk of any material claim against such party; and

18.1.4 The party seeking the benefit of this Section 18 shall have furnished to the other parties such security, if any, as may be required in such proceeding or as may be reasonably requested by the others, to protect the Project and the Leased Property, and any part thereof, and any interest of such parties hereunder.

19. DISPUTE RESOLUTION.

In the event of any dispute arising out of or in any related to this Lease, or any of the transactions or occurrences described or contemplated herein, the parties shall be obligated to follow the following dispute resolution procedures:

19.1 **First Step.** The parties, by and through their respective Authorized Representatives or their designees, shall attempt to negotiate a resolution of the dispute by direct discussions. Such negotiation shall be initiated by written demand by one party to another, and the negotiations may occur with or without counsel, as the parties elect.

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19.2 **Second Step.** In the event that any dispute is not resolved under Section 19.1 within three weeks of written demand for negotiation, the parties shall mediate the dispute under the statutes and rules governing mediation in the State of Florida. The parties shall first attempt to select a mediator by mutual agreement. Any mediator selected, or sought to be appointed as provided below, shall be a mediator certified by the Supreme Court of the State of Florida to mediate civil cases. If they cannot do so within thirty (30) days either party may petition the Chief Judge of the Nineteenth Judicial Circuit of Florida to appoint an appropriate mediator. Such mediation shall be without prejudice to further voluntary or court-ordered mediation in the event it is unsuccessful. The costs of obtaining the appointment of a mediator, the fees and expenses of the mediation, or any other cost or charge of the mediation shall be borne equally by the parties, unless otherwise agreed.

19.3 **Third Step.** Notwithstanding Section 19.2, above, if there is an emergency or a determination by either party of irreparable damage or harm, that party may seek an injunction as provided by law.

19.4 **Fourth Step.** If any dispute is not resolved pursuant to the foregoing process, either party may resort to any other legal or equitable remedies available to them under this Lease and applicable law.

20. OWNERSHIP AT TERMINATION OR EXPIRATION.

20.1 Subject to the provisions of Section 20.2 below, any improvements and fixtures located on the Leased Property at termination of the Lease shall become the sole property of the Lessor.

20.2 Any trade fixtures or personal property installed, attached to or located on the Leased Property by Lessee or any of Lessee's subtenants, whether or not attached to the freehold, shall be and remain such Lessee's or subtenant's property and may be removed by the Lessee or subtenant prior to the termination of the Lease, provided that the Lessee or subtenant shall repair, restore and save the Lessor harmless from all damage to any of the Leased Property including improvements located thereon and owned or controlled by the Lessee or subtenant, caused by such removal. While this Lease is in effect, nothing herein is intended to prevent the Lessee or a subtenant from being entitled to depreciation on the improvements and fixtures that are now or shall subsequently be erected upon the Leased Property. All personal property not removed by the Lessee within thirty (30) days of the Termination of the Lease, shall become the sole property of the Lessor. In the context of this section, "subtenants" shall include both Residential Tenants and Space Tenants.

21. LIABILITY INSURANCE.

Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to Lessor in its reasonable discretion. **The coverages required herein shall be written on occurrence-type basis and the Lessor shall be listed as an additional insured.** Unless otherwise agreed in writing by the Lessor's Authorized Representative, the amount, form, and type of insurance shall conform to the following minimum requirements:

21.1 Lessee shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations required by law. Additionally, the policy, or separately obtained

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policy, must include Employers Liability Coverage of at least \$100,000 each person - accident, \$100,000 each person - disease, \$500,000 aggregate - disease.

21.2 Lessee shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability Form filed by the Insurance Services Office. Lessor shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of \$1,000,000 per occurrence, and per accident, combined single limit for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policies coverage and the total amount of coverage required.

21.2.1 Commercial General Liability coverage must be provided, including bodily injury and property damage liability for premises, operations, products and completed operations, and independent contractors. Fire Legal Liability insurance must be endorsed on this policy with limits no less than \$100,000 per occurrence.

21.2.2 Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

21.3 Lessee shall require Contractors during construction of the Leasehold Improvements to provide or cause to be provided, pay for and keep in full force and affect, the types and amounts of insurance customarily carried by contractors and subcontractors on jobs comparable to this Project as reasonably determined by Lessee, including but not limited to Workers' Compensation, vehicle and general liability insurance.

21.4 Required insurance shall be documented by certificates of insurance that provide that Lessor shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. The name of this Lease must be listed on the certificate. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by Lessor, an ACORD 25. Lessee shall replace any cancelled, adversely changed, restricted or non-renewed policies with new policies acceptable to Lessor and shall file with Lessor Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the Lessor the Lessee shall, upon instructions of Lessor, cease all operations under the Lease until directed by Lessor, in writing, to resume operations. The "Certificate Holder" address should read: City of Stuart, 121 SW Flagler Avenue, Stuart, FL 34994.

21.5 Lessee's required coverages shall be considered primary and all other insurance shall be considered as excess, over and above the Lessee's coverage.

21.6 Notwithstanding anything in this Lease to the contrary, Lessor waives any rights of action for negligence against Lessee, which may arise during the Term for damage to the Property or to the property therein resulting from any fire or other casualty of the kind which is covered by All Risk property insurance policies carried by Lessee.

21.7 For separate consideration, the sufficiency and amount of which is agreed by both parties, Lessee shall indemnify, defend and save harmless the Lessor from and against any and all claims, suits, actions, damages and causes of action arising during the term of this Lease, for any personal injury,

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bodily injury, loss of life or damage to property sustained on the Leased Property, or to or about the Leasehold Improvements placed on the Leased Property, or their appurtenances, or upon adjacent sidewalks or streets excepting therefrom public streets maintained by Lessor, and from and against all costs, counsel fees, expenses, liabilities, judgments and decrees incurred in or arising out of any such claim, the investigation of them, or the defense of any action or proceeding brought on them, and from and against any orders, judgments and decrees which may be entered in them. Lessee shall also specifically defend any action or proceeding brought against Lessor as the result of any such claim for bodily injury, loss of life or damage to property, at no cost or expense to Lessor. If Lessee has supplied Lessor with evidence of insurance covering any of the aforementioned risks, no claim shall be made against Lessee unless and until the insurer shall fail or refuse to defend or pay all or any part thereof.

21.8 Notwithstanding that each party to this Lease shall carry liability insurance, and shall even name each other as additional insureds, the Lessor hereunder shall only be liable for claims, torts, actions, damages, suits, and causes of action derived from its own actions or inactions and for those of its officials, employees and agents. It is the intent of this Lease that the City of Stuart, as Lessor, shall be responsible only for its own tort liability, and not that of the Lessee, and the Lessee specifically acknowledges the limitations of liability afforded to the Lessor by the provisions of Section 768.28, Florida Statutes, which are fully claimed by the Lessor. The Lessee shall not be deemed to be in default under the provision of this Article 21 if all or a portion of insurance required under this paragraph is not commercially available.

21.9 Lessor and Lessee hereby waive, or agree to cause their respective insurers to waive subrogation or consent to a waiver of right of recovery, or to agree that the insurance is not invalidated if the insured has waived, or has waived before the casualty, the right to recover against the other party.

22. CASUALTY AND CASUALTY INSURANCE.

22.1 Lessee shall determine the amount and type of property and casualty insurance required herein. However, at a minimum, the Lessee shall provide an All Risk Policy in the amount of at least eighty (80%) percent of the replacement value of the Leasehold Improvements. The Lessor shall be named as a beneficiary of any such policy "as its interest may appear." It shall be the Lessee's sole obligation to insure the Leasehold Improvements, and the Lessor shall have the right, following written notice to Lessee, but not the obligation to provide such insurance, if the Lessee fails to do so. The cost of such insurance shall become additional Rent to the extent unpaid by Lessee. Notwithstanding this provision, the Lessee shall obtain all other coverages required herein.

22.2 If a casualty loss affecting all or that part of the improvements located on the Leased Property should occur for all or that part of the Leasehold Improvements, the Lessee shall promptly notify the Lessor about the loss ("Notice of Loss"). The Notice of Loss shall include the date on which the loss occurred and the determination of the Lessee, in its reasonable opinion, as to whether the repair or restoration of the improvements affected by the loss is feasible. If repair or restoration is feasible as determined by Lessee, the proposed construction schedule and budget for implementing such repair or restoration shall be sent to Lessor within ninety (90) days after delivery of the Notice of Loss, subject to Unavoidable Delay. The Lessee recognizes and agrees that this Lease is a "non-subordinated land lease" and that Lessee is solely responsible for repairs to any and all Leasehold Improvements on the land. Such

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repairs shall be pursued in a timely and workmanlike manner, and without delay, subject to Unavoidable Delay.

22.3 If the Lessee determines in its reasonable opinion that repair or restoration is feasible, the casualty insurance proceeds ("Proceeds") if any, shall be used, collected and disbursed to pay for the repair or restoration in accordance with the proposed construction schedule and budget for implementing such repair or restoration. If any Proceeds remain after paying for the repair or restoration, they shall be disbursed to the Lessee.

22.4 If the Lessee determines in its reasonable opinion that repair and restoration is not feasible, Lessee will not be obligated to make such repair or restoration. In that event, the Proceeds shall be used to clear that portion of damaged or destroyed improvements affected by the loss, and the cleared lands shall be surrendered to the Lessor. Upon such surrender, this Lease shall terminate as to that surrendered portion. If Proceeds remain after paying for the cost of clearing that portion of the damaged or destroyed improvements affected by the loss, the Proceeds shall be then used to pay any additional costs incurred by the Project as a result of such loss and severance. Thereafter, any remaining Proceeds shall be disbursed to the Lessee. The time between the date of the casualty and the date on which Notice of Loss is given shall be considered an Unavoidable Delay under this Lease. Lessee will not be obligated to make any repair or restoration that is feasible, unless and until Lessee's time for performance has been extended by a period of time sufficient to repair or restore such loss and complete the balance of the Project.

22.5 Subject to Lessee's determination that repair or restoration of the Leasehold Improvements is feasible in accordance with 22.1 above, Lessee is required to rebuild if the Leasehold Improvements are destroyed in whole or in part by fire, flood, or windstorm damage, or other casualty, or any combination thereof, whether insured or noninsured, or whether totally destroyed or partially damaged. Monthly rent payments to the City during such occurrence shall be forgiven during a period of disruption after the date of such casualty, and only if the Lessee is not collecting Rents from the sub-tenants. This Lease shall not be terminated during such period provided Lessee is using good faith efforts to cause the Leasehold Improvements to be reconstructed in an expeditious manner provided, however, Lessee shall not be penalized for its inability to obtain permits or building materials or skilled labor due to the consequences of the event that caused the casualty (for instance, a hurricane). Restitution of the Leasehold Improvements is the prime objective of the Lessor, subject however, to the terms of 22.1 above.

23. ASSIGNMENT.

23.1 Lessee may assign this Lease to a third party subject to consent by Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. The Lessor shall respond within forty (40) calendar days of the receipt of all necessary information (including information about the financial and experience ability of the assignee to perform under this Lease), for an assignment by the Lessee. Such consent must be obtained formally by affirmative action of the Lessor's City Commission prior to any assignee taking control or occupancy of the Property or any portion thereof. Nothing herein shall prevent the Lessee from renting individual residential units to third parties, without the Lessor's approval.

23.2 Lessor's criteria to approve an assignment of this Lease shall be the following:

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23.2.1 The City Commission, in its reasonable discretion, must be satisfied that the assignee intends to use the Leased Property in a manner that is consistent with uses allowed by this Lease.

23.2.2 The City Commission must be satisfied in its reasonable discretion that the assignee possesses the financial capacity, a good reputation, and sound managerial ability to operate the Project successfully on the Leased Property.

24. SUCCESSORS IN INTEREST.

The covenants and agreements contained in this Lease shall be binding on and inure to the benefit of the respective permitted successors and assigns of the parties whether by merger or otherwise. Wherever used, the singular number shall include the plural, and the use of any gender shall be applicable to all genders.

25. NOTICES.

All notices required by law and by this Lease to be given by one party to the other shall be in writing, and the same may be served as follows:

25.1 All notices, demands, requests for approvals or other communications given by either party to another shall be in writing signed by the party or its counsel identified below, and shall be sent by (a) registered or certified mail, postage prepaid, return receipt requested, (b) courier service, or (c) hand delivery to the office for each party indicated below and addressed as follows:

To Lessee:

New Urban Triangle, LLC
200 Congress Park Drive, Suite 201
Delray Beach, Florida 33445
Attention: Timothy Hernandez

Copy to:

Law Firm of John C. Primeau, P.A.
2625 Weston Road
Weston, FL 33331
Attn: John Primeau

To the Lessor:

City Manager
City of Stuart
121 SW Flagler Avenue
Stuart, FL 34994

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Copy to:

City Attorney
City of Stuart
121 SW Flagler Avenue
Stuart, FL 34994

To the Leasehold Mortgagee:

First Green Bank
12 SW 12th Street
Fort Lauderdale, FL 33316
Attn: Linda Parsons, Sr. V.P.

Copy to:

Brinkley Morgan
One Financial Plaza
100 Southeast 3rd Avenue, 23rd Floor
Fort Lauderdale, FL 33394
Attn: Philip J. Morgan, Esq.

25.2 Any such notice shall be considered delivered: (a) on the date of hand delivery, (b) on the first business day after the date of deposit with an overnight courier, and (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as non-deliverable, as the case may be, if mailed by certified mail. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as later changed), shall be deemed to have been an effective delivery as provided in this Section 25. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other party, and such notices shall be effective upon receipt. Until a written notice of change of address is received as to any particular party hereto, all other parties may rely upon the last address given.

26. ESTOPPEL CERTIFICATES.

26.1 Lessor agrees that, at any time and from time to time during the term of this Lease, within twenty (20) days after request by the Lessee, the Lessor will execute, acknowledge and deliver to any prospective Space Tenant, assignee, mortgagee or other person designated by Lessee, a certificate stating: (a) that this Lease is unmodified and in force and effect (or if there have been modifications, that this Lease is in force and effect as modified, and identifying the modification agreements); (b) confirming that the Rent has been paid in full and the date of the last payment; (c) whether or not there is any known existing default by either party hereto, and, if there is any such default, specifying the nature and extent thereof; (d) whether or not there are any known setoffs, defenses, or counterclaims against enforcement of the obligations to be performed hereunder; and (e) any other information relating to this Lease reasonably requested by the Lessee.

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26.2 Lessor will provide estoppel certificates to the lenders of Lessee or any Space Tenant which certificates shall confirm: (a) the term of the Lease, (b) no defaults under the Lease, and (c) other matters reasonably requested by the Space Tenant's lender, if applicable.

26.3 In the event Lessee or any Space Tenant obtains Construction Financing and/or Long Term Financing for the Leasehold Improvements or any other financing, Lessor agrees to cooperate with said lender(s) in connection with requests by said lenders for commercially reasonable "lender protection" terms provided said terms impose no additional obligation to or risk to Lessor.

26.4 Lessor agrees to enter into "non-disturbance" agreements with any Space Tenant, pursuant to which Lessor will not disturb the occupancy of any Space Tenant that is not then in default of its Space Lease.

27. SEVERABILITY.

If any paragraph, subparagraph, sentence, clause, provision, or part of this Lease shall be held invalid for any reason, the remainder of this Lease shall not be affected.

28. LEASEHOLD MORTGAGES.

28.1 No mortgage may be placed on the underlying fee simple interest of the City or on the Leasehold Improvements, provided, however, Lessee shall have the right to grant a mortgage on the Leasehold Interest pursuant to the terms of this Article 28.

28.2 Lessee may not mortgage, pledge or encumber all or any part of the Leasehold Interest, without the prior written consent of the Lessor, except to a Leasehold Mortgagee. The provisions of this Article 28 and any other provisions contained in this Lease which benefit a Leasehold Mortgagee shall only apply to Leasehold Mortgagees under mortgages complying with the terms of this Article 28.

28.3 No Leasehold Mortgagee shall have the rights or benefits described in this Article 28, nor shall the provisions of this Article 28 be binding upon Lessor with respect to any such mortgage or any assignment thereof, unless or until such Leasehold Mortgagee shall deliver to Lessor an executed counterpart of such mortgage, together with a statement signed and acknowledged by such Leasehold Mortgagee that such mortgage will be subject and subordinate to the rights of Lessor hereunder. Nothing contained in such a mortgage or contained herein, whether express or implied, shall have the effect of subordinating any interest or estate of Lessor in and to the Leased Property, to the lien of such a mortgage.

28.4 If Lessee shall mortgage all or any part of the Leasehold Interest to a Leasehold Mortgagee(s), in compliance with Sections 28.2 and 28.3 of this Lease, the following provisions shall apply until the subject mortgage has been satisfied:

28.4.1 There shall be no cancellation or surrender of this Lease by joint action of Lessor and Lessee without the prior consent in writing of the Leasehold Mortgagee(s), not to be unreasonably withheld.

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28.4.2 There shall be no modification of this Lease which would materially increase the Rent hereunder or shorten the Lease Term, by joint action of Lessor and Lessee, without the prior consent in writing of the Leasehold Mortgagee(s), not to be unreasonably withheld.

28.4.3 Provided Lessee has provided Lessor written notice of the name and notice address of its Leasehold Mortgagee, Lessor, upon serving Lessee any notice of default or any other notice or demand required under this Lease, shall also serve a copy of such notice upon such Leasehold Mortgagee, and no notice or demand by Lessor to Lessee shall be deemed to have been duly given unless and until a copy thereof has been so served.

28.4.4 Any Leasehold Mortgagee shall have the right to perform any term or condition of this Lease to be cured or performed by Lessee, and Lessor shall accept such performance by such Leasehold Mortgagee with the same force and effect as if furnished by Lessee, provided that such Leasehold Mortgagee remedies any monetary default no later than fifteen (15) days after same may be remedied by Lessee hereunder, and remedies any non-monetary default or performs such term or condition no later than the date that is thirty (30) days after the last date by which such default may be remedied by Lessee hereunder.

28.4.5 In the event that the Leasehold Mortgagee is unable to cure such default without first obtaining control or title to the Leasehold Interest, Lessor shall provide the Leasehold Mortgagee an extended period of time in which to obtain control or title to the Leasehold Interest and to effectuate such cure, provided that the Leasehold Mortgagee commences proceedings to obtain control or title to the Leasehold Interest within sixty (60) days of receipt of a notice called for pursuant to this Section 28.4 and diligently prosecutes such action or actions and commences to and diligently proceeds to cure such default upon obtaining possession or title to the Leasehold Interest, in its name, by its designee, or through a court appointed receiver. In the event that such proceedings are not necessary to enable the Leasehold Mortgagee to cure such default, the periods for curing the same shall not be extended as described in the preceding sentence. Nothing in this paragraph will, in any way, prevent Lessor from filing an action for non-payment of rent, subject to Leasehold Mortgagee's right to cure after receiving notice of a default.

28.5 The leasehold mortgagee of all or any portion of that part of the Leasehold Property covered by the Leasehold Mortgagee(s) may become the legal owner and holder of the Lessee's interest, which shall not disturb any Residential Lease or Residential Tenant, except for the failure to pay residential rent or other default of a Residential lease, except that such leasehold mortgagee may assign the Residential lease(s) to any Leasehold assignee at any time whether prior or subsequent to the construction or completion of the Leasehold Improvements constructed or to be constructed the Leased Property covered by the Leasehold Interest in lieu of foreclosure provided that all obligations of Lessee hereunder are fulfilled in accordance with the terms of this Lease, including Section 28.4 regarding the right of an Leasehold Mortgagee to cure defaults hereunder.

28.6 In the event that a Leasehold Mortgagee, or its designee, shall become the owner or holder of the Lessee's interest by foreclosure of its mortgage or by assignment of the Lease in lieu of foreclosure or otherwise, the leasehold mortgagee, or its designee, shall stand in the shoes of the Lessee for all purposes of the Lease, including the payment of Rent.

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(Azul Property)**

29. ASSIGNMENT BY LESSOR.

29.1 Lessor shall only transfer, convey, or mortgage its interest in the Leased Property or this Lease, or any portion thereof (subject to the Lessee's "Right of First Refusal" provided below) on the following terms. Any such transfer, conveyance, or mortgage shall be subject to this Lease (provided the Lessee agrees to attorney to such transferee or mortgagee), and the transferee or mortgagee shall acknowledge in writing that its interest in the Leased Property is subject to this Lease (including Lessee's Right of First Refusal provided below) and, with respect to a purchaser or transferee, that it assumes all the obligations and liabilities of the Lessor hereunder. At the closing of the transfer of its interest in the Leased Property and this Lease in accordance with this paragraph, Lessor shall be released from any liability hereunder arising after the closing of the transfer.

29.2 In consideration of Lessee's execution of this Lease, Lessor hereby grants to Lessee for the entire Term of this Lease a right of first refusal ("Right of First Refusal") with respect to the Leased Property, subject to the terms and provisions set forth below. In the event Lessor receives an offer to purchase the Leased Property or any portion thereof during the Term of this Lease, which the Lessor intends to accept ("Offer"), Lessor shall provide to Lessee written notice of receipt of the Offer together with a copy of the Offer within five (5) days of receipt of the Offer by Lessor. The giving of such notice shall constitute an offer by Lessor to sell the Leased Property (or applicable portion thereof) to the Lessee at the same purchase price as contained in the Offer and otherwise in accordance with the terms and provisions of the Offer. Not later than ninety (90) days after receipt of such notice, the Lessee may elect to purchase the Leased Property (or applicable portion thereof) at the purchase price in accordance with the terms and provisions of the Offer by delivery to the Lessor of **all of the following within such ninety (90) day period:**

29.2.1 A written notice of the election of the Lessee to acquire the Leased Property (or applicable portion thereof); and

29.2.2 A check made payable to the trust account of the attorneys for the Lessor, as escrow agent, in the amount of the deposit set forth in the Offer; and the Offer.

29.2.3 A duly executed sales agreement which contains the terms and provisions of

29.3 In the event the Lessee fails to elect to purchase the Leased Property (or applicable portion thereof) within said ninety (90) day period and in accordance with the foregoing, then Lessor shall be free to accept the Offer and the Leased Property (or applicable portion thereof) may be sold and conveyed to the buyer under the Offer free and clear of the Right of First Refusal (subject to the provisions of Paragraph 29.01 above). In the event the sale of the Leased Property pursuant to the Offer does not occur, the Right of First Refusal granted to Lessee pursuant to the provisions of this Paragraph 29 will apply to any subsequent proposed sale or transfer of the Leased Property by the Lessor. In the event the sale of the Leased Property pursuant to the Offer does occur, the Right of First Refusal granted to Lessee pursuant to the provisions of this Paragraph 29 will apply to any subsequent proposed sale or transfer of the Leased Property by Lessor's successor in interest.

**FIRST AMENDMENT TO ABSOLUTE NET NON-SUBORDINATED LAND LEASE
(Azul Property)**

29.4 Notwithstanding anything to the contrary contained in this Paragraph 29, the Right of First Refusal herein shall not apply to Lessor's conveyance, sale or transfer of the entire Leased Property to a duly created agency of the Lessor, provided such conveyance, sale or transfer is subject to all the terms, conditions and covenants in this Lease, including this Paragraph 29, and such transferee expressly assumes in writing all terms, conditions and covenants in this Lease applicable to the Lessor hereunder, including, but not limited to, the terms of the Right of First Refusal, and such written assumption is recorded in the Public Records of the County.

29.5 Simultaneously with the execution of this Lease, a Memorandum of Right of First Refusal in substantially the form attached hereto as **Exhibit "E"**, shall be executed by Lessee and Lessor and recorded in the public records of Martin County, Florida. The cost of recording shall be borne by Lessee.

30. COMPLETE AGREEMENT.

The parties mutually represent and warrant to each other that this Lease constitutes the final and complete agreement of the parties on its subject matter and may not be changed, modified, discharged or extended except by written instrument duly executed by the parties. The parties agree that no previous representations or warranties shall be binding upon either party nor has the execution of this Lease been induced on the part of any party except as expressed in writing in this Lease.

31. NON-DISCRIMINATION.

Lessee shall not discriminate against contractors, sublessees or users of the Existing Improvements or Leasehold Improvements with regard to race, creed, color, handicap, familial status, disability, marital status, religion, national origin or content of speech. Lessee accepts sole responsibility for ensuring such non-discriminatory access to the Leased Property.

32. SUBROGATION.

The Lessor shall have the option, after sixty (60) calendar days' prior written notice to Lessee and without waiving or impairing any of Lessor's rights, to pay any sum or perform any act required of the Lessee not timely performed by Lessee under this Lease which remains outstanding after all notice and cure rights, and the amount of any such payment and the value of any such performance, together with interest on them, shall be secured by this Lease, and shall be promptly due and payable to the Lessor as Additional Rent.

33. CONFORMITY TO LAW.

Lessee acknowledges that the Leased Property and the Existing Improvements, and Leasehold Improvements to be constructed thereon are subject to all applicable laws, and to provisions and restrictions governing land use and zoning, site and structure design, compliance with building, environmental and occupational codes as determined by the applicable governing entity or instrumentality having jurisdiction.

**FIRST AMENDMENT TO ABSOLUTE NET NON-SUBORDINATED LAND LEASE
(Azul Property)**

34. LICENSES AND PERMITS.

Lessee shall, at its own expense, obtain all necessary permits, and pay all licenses, fees, and taxes required to comply with all applicable laws relative to development and operation to be conducted on the Leased Property in accordance with this Lease. Upon Lessor's written request, at reasonable intervals, Lessee agrees to provide Lessor with a copy of such permits and payments related to the Leased Property.

35. RADON GAS.

Section 404.056, Florida Statutes requires that the following notification be given for real estate transactions of this type:

RADON GAS: 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.

36. RESTRAINTS UPON USE.

Lessee understands and agrees that its use of the Leased Property is expressly subject to all applicable zoning and building restrictions in the City Codes, and the terms of this Lease. The Lessee shall comply in all particulars with all pertinent rules, regulations, laws and ordinances duly and legally promulgated by any governmental authority.

37. NO MERGER.

There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Leased Property or any part thereof by reason of the fact that the same person may acquire or hold, directly or indirectly, this Lease or the leasehold estate hereby created or any interest in this Lease or in such leasehold estate as well as the fee estate in the Leased Property or any interest in such fee estate.

38. SUBORDINATION.

Lessor hereby subordinates in favor of any leasehold mortgagee any right to a Lessor's lien against the furnishings, fixtures, machinery, equipment, furniture, inventory and/or any other items of personal property which is owned by Lessee or tenants of Lessee, and now located or may hereafter be delivered or installed in or upon any of the improvements situated upon the Leased Property. This subordination is self-executing and no further evidence of the subordination must be produced. However, if requested by any leasehold mortgagee, Lessor shall execute and deliver a subordination agreement in the form reasonably required by such leasehold mortgagee within fifteen (15) business days of written request and the governing body of Lessor hereby authorizes and instructs its Authorized Representative to sign and deliver such subordination agreement when found not to be inconsistent with the purpose and intent of this Article 38.

**FIRST AMENDMENT TO ABSOLUTE NET NON-SUBORDINATED LAND LEASE
(Azul Property)**

39. UNAVOIDABLE DELAY.

In the event either party hereto is delayed in the performance of any act required hereunder by reason of an Unavoidable Delay, performance of such act shall be excused for the period of the Unavoidable Delay and the period for the performance of such act shall be extended for a period equivalent to the period of the Unavoidable Delay and all dates, time periods, deadlines as contained in this Lease shall be extended by the time period caused by any and all Unavoidable Delays. "Unavoidable Delay" means any of the following events or conditions or any combination thereof: acts of God, acts of the public enemy, riot, insurrection, war, terrorism, pestilence, archaeological excavations required by law, unavailability of materials after timely ordering of same, epidemics, quarantine restrictions, freight embargoes, fire, lightning, hurricanes, earthquakes, tornadoes, floods, extremely abnormal and excessively inclement weather (as indicated by the records of the local weather bureau for a five-year period preceding the Lease Commencement Date), strikes or labor disturbances, delays due to proceedings under Chapters 73 and 74, Florida Statutes, restoration in connection with any of the foregoing, the City's failure to timely respond to or approve the application for any Permit or governmental or quasi-governmental approval related to the Project, or any other cause beyond the reasonable control of the party performing the obligation in question, including, without limitation, such causes as may arise from the act of the other party to this Agreement, or acts of any governmental authority.

40. GOOD FAITH AND FAIR DEALING.

Lessor and Lessee hereby agree to interpret the terms, conditions and provisions of this Lease in good faith exercising reasonable business judgment, and to attempt to resolve any and all issues, disputes or conflicts that may arise hereunder in a reasonable and fair manner. Lessor acknowledges and agrees that, except as may be otherwise expressly set forth in this Lease, in all instances in which Lessor has the right to approve or consent to any matter set forth in this Lease, Lessor shall not have the right to unreasonably withhold, condition or delay such consent or approval.

41. TENTH YEAR REVIEW.

41.1 Tenth Year Lease Review shall be initiated by the Lessor every ten years of the Initial Lease and Renewal Lease Terms, with respect to the following:

41.1.1 Improvements in technology or other aspects of the facilities subject to the Lease;

41.1.2 Changes in management and operations of facilities such as those subject to the Lease that may provide improved operations and increased efficiencies;

41.1.3 Review of the history of the Lease during the preceding ten year period and consideration of corrections, or amendments of the Lease, and any improvements to facilities or operations

41.1.4 Such other issues either party desires to discuss and consider for review and possible amendment of the Lease.

**FIRST AMENDMENT TO ABSOLUTE NET NON-SUBORDINATED LAND LEASE
(Azul Property)**

41.2 The Tenth Year Lease Review shall not permit either party to unilaterally amend the compensation features or any other terms of the Lease, but the parties may mutually agree to amendments to the Lease as a result of such review.

42. RELATIONSHIP OF THE PARTIES I NO JOINT VENTURE.

The parties hereby agree that it is their intention to create only the relationship of Lessor and Lessee, and neither this Lease, nor any term, provision, payment or right hereunder shall in any way or for any purpose, constitute or cause Lessor to become or be deemed a partner of Lessee in the conduct of its business, or otherwise, or to cause Lessor to become or be deemed a joint adventurer or a member of a joint enterprise with Lessee, nor shall this Lease, or any term or payment required herein, confer or be deemed to confer any interest upon Lessor in the conduct of Lessee's business.

43. EXCULPATION.

Notwithstanding anything to the contrary provided in this Lease, neither Lessor, nor any officer, director, trustee, employee, agent, advisor or affiliate of Lessor, nor any holder of a superior interest in the Property, whether direct or indirect, shall have any personal liability with respect to any of the provisions of this Lease and, if Lessor is in breach or default with respect to its obligations or otherwise.

Notwithstanding anything to the contrary provided in this Lease, neither Lessee, nor any officer, director, trustee, employee, agent, advisor or affiliate of Lessee, nor any holder of a superior interest in the Property, whether direct or indirect, shall have any personal liability with respect to any of the provisions of this Lease and, if Lessee is in breach or default with respect to its obligations or otherwise.

44. LEASE FOR BENEFIT OF PARTIES HERETO.

Nothing in this Lease, whether express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the Lessor, Lessee or their officers, directors or incorporators, any right, remedy or claim under or by reason of this Lease or any covenant, condition or stipulation thereof; and the covenants, stipulations or agreements contained in this Lease are and shall be for the sole and exclusive benefit of the aforementioned parties, and their permitted successors and assigns.

45. QUIET ENJOYMENT.

Lessor agrees that Lessee, upon paying the Rent and all impositions and other charges herein provided for and performing all the covenants and conditions of this Lease, shall (subject to Lessor's rights specified in this Lease) lawfully and quietly occupy the Premises during the term of this Lease as against Lessor or any persons claiming under or through Lessor.

**FIRST AMENDMENT TO ABSOLUTE NET NON-SUBORDINATED LAND LEASE
(Azul Property)**

46. UNDERSTANDINGS AND AGREEMENTS.

All understandings and agreements between the parties are merged into this Lease, which fully and completely expresses the parties' agreement, and the same is entered into after full investigation; neither party is relying on any statement or representation made by the other not embodied in this Lease.

47. SEVERABILITY.

If any of the provisions of this Lease, or any article, section, clause, phrase, word, or the application thereof, in any circumstances is held invalid, the validity of the remainder of this Lease, and of the application of any such provision, action, sentence, clause, phrase, or word, in other circumstances, shall not be affected thereby.

48. COVENANTS RUN WITH THE LAND.

All provisions of this Lease and all exhibits attached hereto, and any amendments thereof, shall be construed as covenants running with the Land, and of every part thereof and interest therein.

49. CAPTIONS.

The captions used in this Lease and upon the exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Lease or exhibits hereto.

50. GOVERNING LAW AND VENUE.

This Lease shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Florida, without regard to principles of conflicts of law. Venue of all proceedings in connection herewith shall be in Martin County, Florida, and each party hereto hereby waives whatever their respective rights may have been in the selection of venue.

51. AUTHORITY OF LESSEE AND LESSOR.

51.1 Lessee is a limited liability company, and each individual executing this Lease on behalf of the company is duly authorized to execute and deliver this Lease on behalf of the company in accordance with a duly adopted resolution of the Managing Member(s) of the company, and that this Lease shall as of the Effective Date be binding upon the company in accordance with its terms. Lessee shall, within ten (10) days after the execution of this Lease, deliver to Lessor a certified copy of a resolution of the Managing Member(s) of the company authorizing or ratifying the execution of this Lease.

51.2 Lessor is a municipal corporation, and each individual executing this Lease on behalf of the Lessor is duly authorized to execute and deliver this Lease on behalf of the Lessor in accordance with a duly adopted resolution of the Stuart City Commission, and that this Lease shall as of the Effective Date be binding upon the Lessor in accordance with its terms. Lessor shall, within ten (10) days after the execution of this Lease, deliver to Lessee a certified copy of a resolution of the City Commission authorizing or ratifying the execution of this Lease.

**FIRST AMENDMENT TO ABSOLUTE NET NON-SUBORDINATED LAND LEASE
(Azul Property)**

52. BROKER'S REPRESENTATION.

Each party hereby represents to the other that it has dealt with **Florida Commercial Enterprises, LLC, 309 SE Osceola Street, #104, Stuart, FL 34994; (772) 223-3646**, as a Real Estate Broker in connection with the negotiation, execution and delivery of this Lease. Each party shall, and does hereby, agree to indemnify and hold the other party harmless from and against any losses, damages, penalties, claims or demands of whatsoever nature arising from a breach of its foregoing representation including, without limitation, reasonable attorneys' fees and expenses.

Nonetheless, the parties acknowledge that Florida Commercial Enterprises, LLC is entitled to a brokerage commission which shall be paid by Lessor in accordance with a separate agreement by and between Lessor and Florida Commercial Enterprises, LLC. The representations and indemnifications set forth in this Section shall survive the cancellation or termination of this Lease.

53. SUCCESSORS AND ASSIGNS.

Except as otherwise provided in this Lease, the conditions, covenants and agreements contained in this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

54. INDEPENDENT COUNSEL AND CONSTRUCTION.

Lessor and Lessee each acknowledge and warrant that each has been represented or has had an opportunity to be represented by independent counsel, and has executed this Lease after being fully advised as to its legal effect and significance. This Lease is the result of negotiations between the parties and their respective attorneys, and shall be construed in an even and fair manner, regardless of the party who drafted this Lease or any provision thereof.

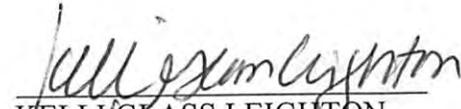
[ALL SIGNATURES ON THE FOLLOWING TWO (2) PAGES]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals on this 14th day of May, 2018.

Executed and delivered
in the presence of:

LESSOR:
CITY OF STUART, FLORIDA
A Florida Municipal Corporation


Print Name: Ryanne N. Cavo


KELLI GLASS LEIGHTON
Mayor


Print Name: MARY R. KINDEL



ATTEST:

CHERYL WHITE
City Clerk

APPROVED AS TO FORM
AND CORRECTNESS:


MICHAEL J. MORTELL
City Attorney

FIRST AMENDMENT TO ABSOLUTE NET NON-SUBORDINATED LAND LEASE
(TriangleAzul Property)

*Executed and delivered
in the presence of:*

LESSEE:

NEW URBAN TRIANGLE, LLC,
a Florida limited liability company

By: NEW URBAN TRIANGLE
MANAGER, LLC, a Florida
limited liability company

Laura Dee
Print Name:

Laura Dee
Print Name:

[Signature]

OSCAR SIBRANES

[Signature]
KEVIN E. RICKARD, as Manager

**FIRST AMENDMENT TO ABSOLUTE NET NON-SUBORDINATED LAND LEASE
(TriangleAzul Property)**

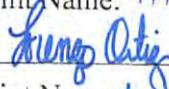
JOINDER AND CONSENT BY LEASEHOLD MORTGAGEE

The undersigned Leasehold Mortgagee hereby joins in and consents to this First Amendment.

*Executed and delivered
in the presence of:*



Print Name: INGRID BRENER



Print Name: Lorenzo Ortiz

LEASEHOLD MORTGAGEE:

**FIRST GREEN BANK, a Florida
corporation**

By:



Linda Parsons SVP

STEPHEN J. BROWN, INC.

LICENSED BUSINESS NUMBER: 6484

SURVEYORS • DESIGNERS • LANDPLANNERS • CONSULTANTS

619 EAST 5TH STREET; STUART, FLORIDA 34994

(772) 288-7178

LEGAL DESCRIPTION

Being known as a portion of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and Lot 10, Block 4, Portion of Block 1, Portion of Lot 1, Block 3, and Abandoned alley in Block 4 and Portion of Abandoned West 1st Street. Also a portion West 1st Street Right-of Way and a portion of Albany Avenue Right-of Way. All lying within the Plat of POTSDAM as Recorded in Plat Book 1, Page 28, Public Records of Palm Beach (Now Martin) County, Florida, and being more particularly described as follows:

Beginning at the Southwest corner of Lot 9, Block 4, thence South 89°36'51" East along the North line of West 2nd Street a distance of 52.80 feet to a point of curve ; said curve being concaved to the North, having a radius of 265.32 feet, a central angle of 15°47'50" thence in a counter clockwise direction along the arc of said curve and the North line of West 2nd Street a distance of 73.15 feet to the intersection with Akron Avenue ; thence North 00°33'11" East along the West line of Akron Avenue a distance of 103.56 feet to the intersection with the West line of Dixie Highway ; thence North 47°02'45" West along the West line of Akron Avenue a distance of 325.51 feet to a point of curve ; said curve being concaved to South , having a radius of 15.00 feet , a central angle of 132°24'05", thence in a counter clockwise direction along the arc of said curve and Dixie Highway a distance of 34.66 feet to the intersection with the East line of Albany Avenue ; thence South 00°33'11" West along said East line of Albany Avenue a distance of 33.34 feet to a point of intersection with the extended North line of West 1st Street ; thence North 89°35'17" West along the North line of West 1st Street a distance of 140.97 feet to a point of intersection with the East line of U.S. Highway No. 1; thence South 05°04'18" East along the East line of U.S. Highway No. 1 a distance of 40.18 feet to a point on the South line of West 1st Street and a point of curve ; said curve being concaved to the Southeast , having a radius of 15.00 feet , a central angle of 89°51'32" , thence in a counter clockwise direction along the arc of said curve and the East line of U.S. Highway No. 1 a distance of 23.53 feet to a point ; thence South 00°33'11" West along said East line a distance of 14.35 feet to a point ; thence South 89°35'17" East a distance of 152.00 feet to a point on the East line of Albany Avenue ; thence South 00°33'11" West along the East line of Albany Avenue a distance of 190.18 feet to a point ; thence South 41°18'07" East along said East line a distance of 23.56 feet to a point on the North line of West 2nd Street ; thence South 83°10'32" East along said North line a distance of 100.33 feet to a point ; thence South 89°36'51" East continuing along the North line of West 2nd Street a distance of 24.55 feet to the point and place of beginning. Containing 71,146 square feet or 1.63 acres.

NOTES :

ALL BEARINGS ARE REFERENCED TO THE EAST LINE OF PROPERTY CALCULATED AS S 00°33'11" W, ALL OTHERS RELATIVE THERETO.

THIS LAND DESCRIPTION SHALL NOT BE VALID UNLESS:

A) PROVIDED IN ITS ENTIRETY CONSISTING OF 2 SHEETS, WITH SHEET 2 BEING THE SKETCH OF DESCRIPTION.

B) REPRODUCTIONS OF THIS DESCRIPTION AND SKETCH ARE SIGNED AND SEALED WITH AN EMBOSSED SURVEYOR'S SEAL.

FILE:

JOB #: 4972-01-01

DRAWN BY: R.F.C.

CHECKED BY: S.J.B.

DATE: 01/20/2016

SCALE: N/A

SHEET: 1 OF 2

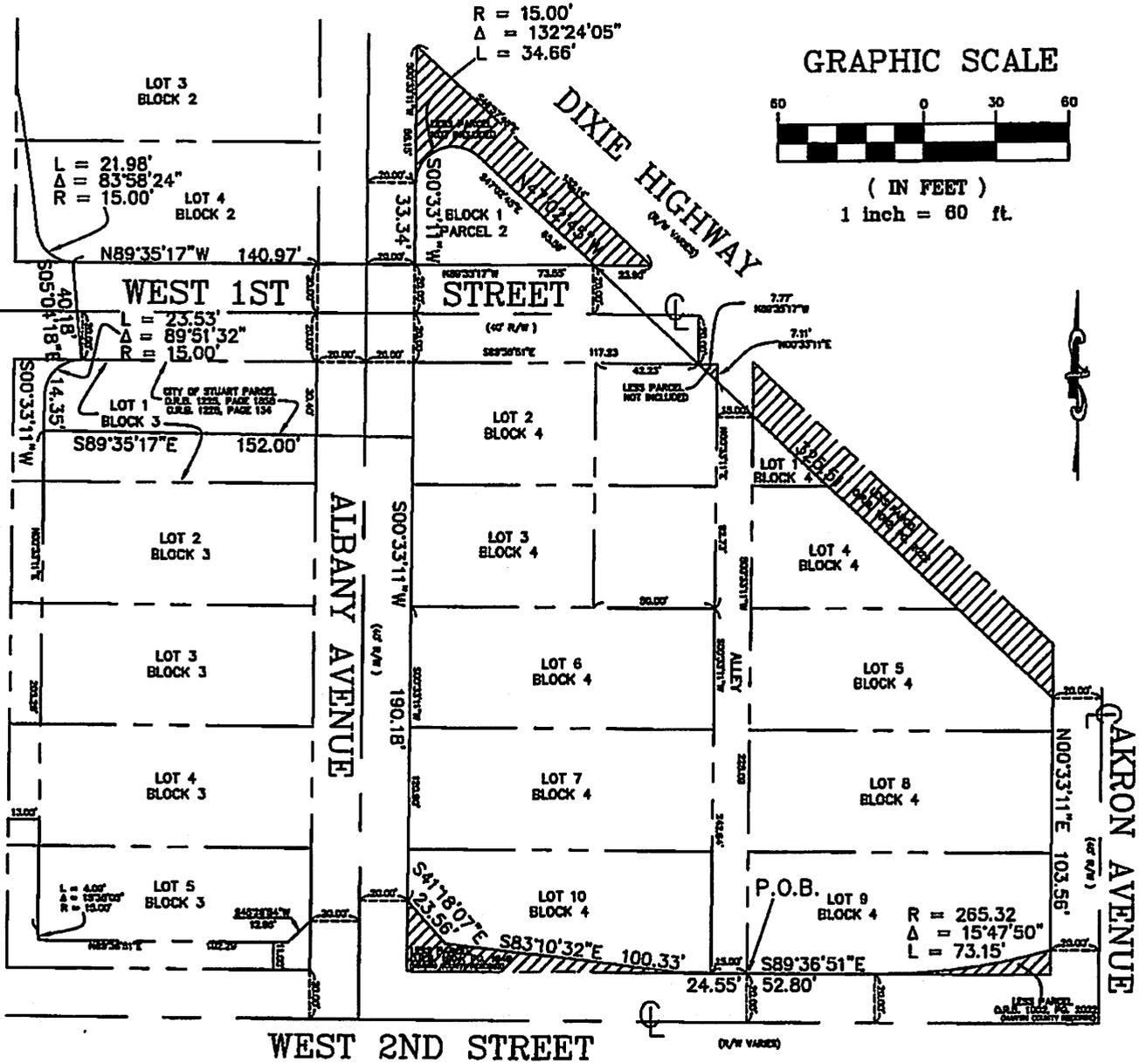
STEPHEN J. BROWN, INC.

LICENSED BUSINESS NUMBER: 6484

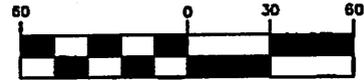
SURVEYORS • DESIGNERS • LANDPLANNERS • CONSULTANTS

619 EAST 5TH STREET; STUART, FLORIDA 34994

(772) 288-7178



GRAPHIC SCALE



(IN FEET)

1 inch = 60 ft.

NOT A BOUNDARY SURVEY
STEPHEN J. BROWN, INC.

LEGEND

O.R.B. = OFFICIAL RECORDS BOOK
P.G. = PAGE
P.O.B. = POINT OF BEGINNING
L = LENGTH
R = RADIUS
R/W = RIGHT-OF-WAY

STEPHEN J. BROWN, PROFESSIONAL SURVEYOR AND MAPPER
REGISTRATION NO. 4049, STATE OF FLORIDA.
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

FILE:

JOB #:	4972-01-01
DRAWN BY:	R.F.C.
CHECKED BY:	S.J.B.
DATE:	01/20/2016
SCALE:	1" = 60'
SHEET:	2 OF 2

Stuart Triangle Apartments

SITE PLAN



UNIT MIX:	
180' - 11 (22%)	
200' - 22 (88%)	
350' - 4 (1%)	
48 UNITS	

PARKING:	
48 ON-SITE	(18 GARAGE, 30 SURFACE)
73 ON-STREET	0 1.52 sq/ft
17 ADJACENT LOT	
80 TOTAL SPACES	0 1.80 sq/ft



MSA ARCHITECTS
ARCHITECTS & PLANNERS
1122418

New Urban Communities

SP-1

Stuart Triangle Apartments

CORNER VIEW OF WEST 2ND ST AND AKRON AVE.

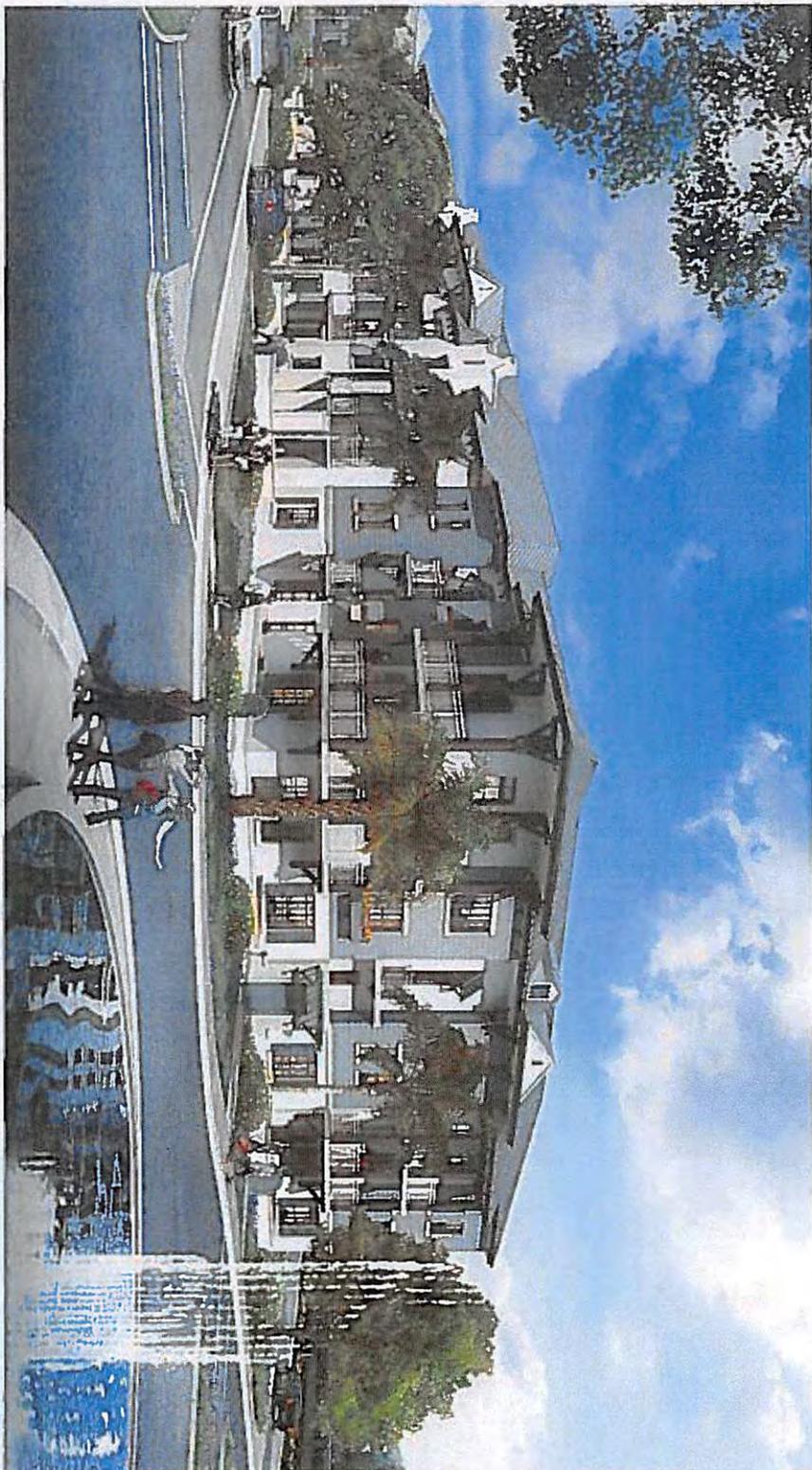


Exhibit C
Permitted Exceptions

None

This instrument prepared by:
Michael J. Mortell
City Attorney
121 SW Flagler Avenue
Stuart, FL 34997

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made as of the 23rd day of February, 2016, by and between **CITY OF STUART, FLORIDA**, a Florida municipal corporation ("**Lessor**"), with its principal address at 121 SW Flagler Avenue, Stuart, FL 34994, and **NEW URBAN TRIANGLE, LLC**, a Florida limited liability company, with its principal place of business at 398 NE 6th Avenue, Delray Beach, Florida 33483 ("**Lessee**").

WITNESSETH

WHEREAS, the Lessor is the owner in fee simple of the real property located in Martin County, Florida, which is more particularly described in **Exhibit "A"**, attached hereto and incorporated herein by reference (the "**Leased Property**"); and

WHEREAS, Lessee and Lessor have entered into that certain **Absolute Net - Non-Subordinated Land Lease (Triangle Property)** on February 23, 2016, with respect to the Leased Property (the "**Lease**"), which provides that Lessor shall lease the Leased Property to Lessee and Lessee shall make certain improvements thereon, all in accordance with the terms, covenants and conditions set forth in the Lease; and

WHEREAS, Lessor and Lessee desire to enter into this Memorandum to give notice of said Lease and all of its terms, covenants and conditions to the same extent as if the same were fully set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, Lessee and Lessor hereby agree as follows:

1. The above recitals are true and correct and are hereby incorporated into this Memorandum by this reference. All terms used but not defined herein shall have the meaning ascribed to them in the Lease.

2. The initial term of the Lease shall commence on the Lease Commencement Date and shall terminate on the day prior to the ninety-ninth (99th) anniversary of such date.

3. Each party covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the other party

Memorandum of Lease
City of Stuart and New Urban Triangle

in and to the Leased Property covered by the Lease, and that no person shall ever be entitled to any lien, directly or indirectly, derived through or under the other party, or its agents or servants, or on account of any act or omission of the other party, except for any lien reserved upon the Lessee's (or Lessee's successors and/or assigns) leasehold interests in the Leased Property by a Leasehold Mortgagee. All persons contracting with the Lessee, or furnishing materials or labor to the Lessee, or to its agents or servants, as well as all persons whomsoever, shall be bound by this provision of the Lease. The Lessee shall not be deemed to be the agent of the Lessor as to confer upon a laborer bestowing labor upon the Leased Property, or upon a materialman who furnishes material incorporated in the construction of improvements upon the Leased Property, a lien upon the Lessor's estate under the provisions of Chapter 713, Florida Statutes, and subsequent revisions of that law. **UNDER CHAPTER 713 OF THE FLORIDA STATUTES, THIRD PARTIES ARE HEREBY NOTIFIED THAT THEY MAY NOT IMPOSE A LIEN ON THE LESSOR'S INTEREST IN THE LEASED PROPERTY FOR LABOR, SERVICES OR MATERIALS FURNISHED TO, OR AT THE REQUEST OF LESSEE AND ANY SUCH LIENS ARE HEREBY PROHIBITED.** If, notwithstanding said notice, any third party files a mechanic's lien purportedly against the Lessor's estate for or on account of labor, services or materials provided to or at the request of Lessee, Lessee shall dispose of the claim and ensuing litigation as Lessee deems appropriate at Lessee's expense, provided that if such party commences a foreclosure action with respect to such lien, Lessee shall transfer the lien to security as provided by Florida law or otherwise bond or cause the same to be discharged of record within thirty (30) days thereafter to prevent the foreclosure of Lessor's estate.

4. The sole purpose of this Memorandum is to give notice of said Lease and all its terms, covenants and conditions to the same extent as if the same were fully set forth herein. The Lease contains certain other rights and obligations in favor of Lessor and Lessee which are more fully set forth therein.

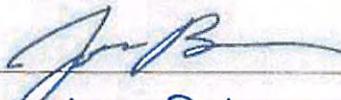
5. The terms, covenants and conditions contained in the Lease shall (i) be binding upon and inure to the benefit of the parties hereto, their respective successors and permitted assigns, for the entire term of the Lease and any extensions thereof, and (ii) be construed as covenants running with the Leased Property described in Exhibit "A" attached hereto. This Memorandum is made and executed by the parties hereto for the purpose of recording the same in the office of the Public Records of Martin County, Florida, and is subject in each and every respect, to the rents and other terms, covenants and conditions of the Lease, and this Memorandum is executed and delivered with the understanding and agreement that the same shall not in any manner or form whatsoever, alter, modify or vary the rents and other terms, covenants and conditions of the Lease.

[NO FURTHER TEXT ON THIS PAGE.]

Memorandum of Lease
City of Stuart and New Urban Triangle

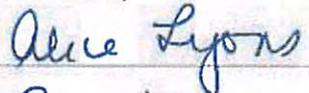
IN WITNESS WHEREOF, Lessee and Lessor have caused this Memorandum to be executed as of the day and year first above written.

Executed and delivered
in the presence of:



John Baker

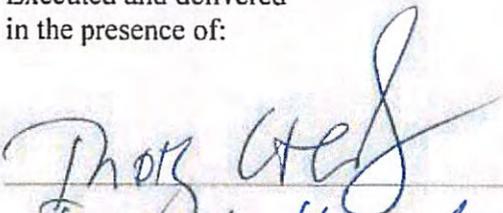
(Print Name)



Alice Lyons

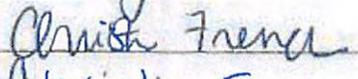
(Print Name)

Executed and delivered
in the presence of:



Timothy L. Hernandez

(Print Name)



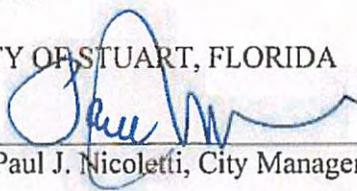
Christi French

(Print Name)

Lessor:

CITY OF STUART, FLORIDA

By:



Paul J. Nicoletti, City Manager

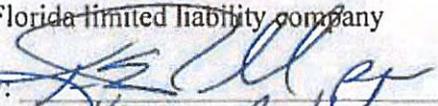
Lessee:

NEW URBAN TRIANGLE, LLC,
a Florida limited liability company

By:

Name:

Title:



Kevin Rich
Pres.

Memorandum of Lease
City of Stuart and New Urban Triangle

STATE OF FLORIDA

COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 28 day of June, 2016, by Paul Nicoletti, City Manager of the City of Stuart, Florida. He is personally known to me or has produced a valid Florida drivers' license as identification.

(SEAL)



ALICE L. LYONS
MY COMMISSION # FF 033589
EXPIRES: July 21, 2017
Bonded Thru Budget Notary Services

Alice L Lyons
Printed/Typed Name:
Notary Public-State of Florida
Commission Number:

STATE OF FLORIDA

COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 1st day of June, 2016, by Kevin Pickard, as President of New Urban Triangle, LLC, a Florida limited liability company. He is personally known to me or has produced a valid driver's license as identification.

(SEAL)



CHRISTI FRENCH
Notary Public - State of Florida
My Comm. Expires Nov 19, 2016
Commission # EE 844091
Bonded Through National Notary Assn.

Christi French
Printed/Typed Name: Christi French
Notary Public-State of Florida
Commission Number EE 844091

Exhibit A

STEPHEN J. BROWN, INC. LICENSED BUSINESS NUMBER: 6484
SURVEYORS • DESIGNERS • LANDPLANNERS • CONSULTANTS
619 EAST 5TH STREET, STUART, FLORIDA 34984 (772) 288-7178

LEGAL DESCRIPTION

Being known as a portion of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and Lot 10, Block 4, Portion of Block 1, Portion of Lot 1, Block 3, and Abandoned alley in Block 4 and Portion of Abandoned West 1st Street. Also a portion West 1st Street Right-of Way and a portion of Albany Avenue Right-of Way. All lying within the Plat of POTSDAM as Recorded in Plat Book 1, Page 28, Public Records of Palm Beach (Now Martin) County, Florida, and being more particularly described as follows.

Beginning at the Southwest corner of Lot 9, Block 4, thence South 89°36'51" East along the North line of West 2nd Street a distance of 52.80 feet to a point of curve; said curve being concaved to the North, having a radius of 265.32 feet, a central angle of 15°47'50" thence in a counter clockwise direction along the arc of said curve and the North line of West 2nd Street a distance of 73.15 feet to the intersection with Akron Avenue; thence North 00°33'11" East along the West line of Akron Avenue a distance of 103.56 feet to the intersection with the West line of Dixie Highway; thence North 47°02'45" West along the West line of Akron Avenue a distance of 325.51 feet to a point of curve; said curve being concaved to South, having a radius of 15.00 feet, a central angle of 132°24'05", thence in a counter clockwise direction along the arc of said curve and Dixie Highway a distance of 34.66 feet to the intersection with the East line of Albany Avenue; thence South 00°33'11" East along said East line of Albany Avenue a distance of 33.34 feet to a point of intersection with the extended North line of West 1st Street; thence North 89°35'17" West along the North line of West 1st Street a distance of 140.97 feet to a point of intersection with the East line of U.S. Highway No. 1; thence South 05°04'18" East along the East line of U.S. Highway No. 1 a distance of 40.18 feet to a point on the South line of West 1st Street and a point of curve; said curve being concaved to the Southeast, having a radius of 15.00 feet, a central angle of 89°51'32", thence in a counter clockwise direction along the arc of said curve and the East line of U.S. Highway No. 1 a distance of 23.53 feet to a point; thence South 00°33'11" West along said East line a distance of 14.35 feet to a point; thence South 89°35'17" East a distance of 152.00 feet to a point on the East line of Albany Avenue; thence South 00°33'11" West along the East line of Albany Avenue a distance of 190.18 feet to a point; thence South 41°18'07" East along said East line a distance of 23.56 feet to a point on the North line of West 2nd Street; thence South 83°10'32" East along said North line a distance of 100.33 feet to a point; thence South 89°36'51" East continuing along the North line of West 2nd Street a distance of 24.55 feet to the point and place of beginning.
Containing 71,146 square feet or 1.63 acres.

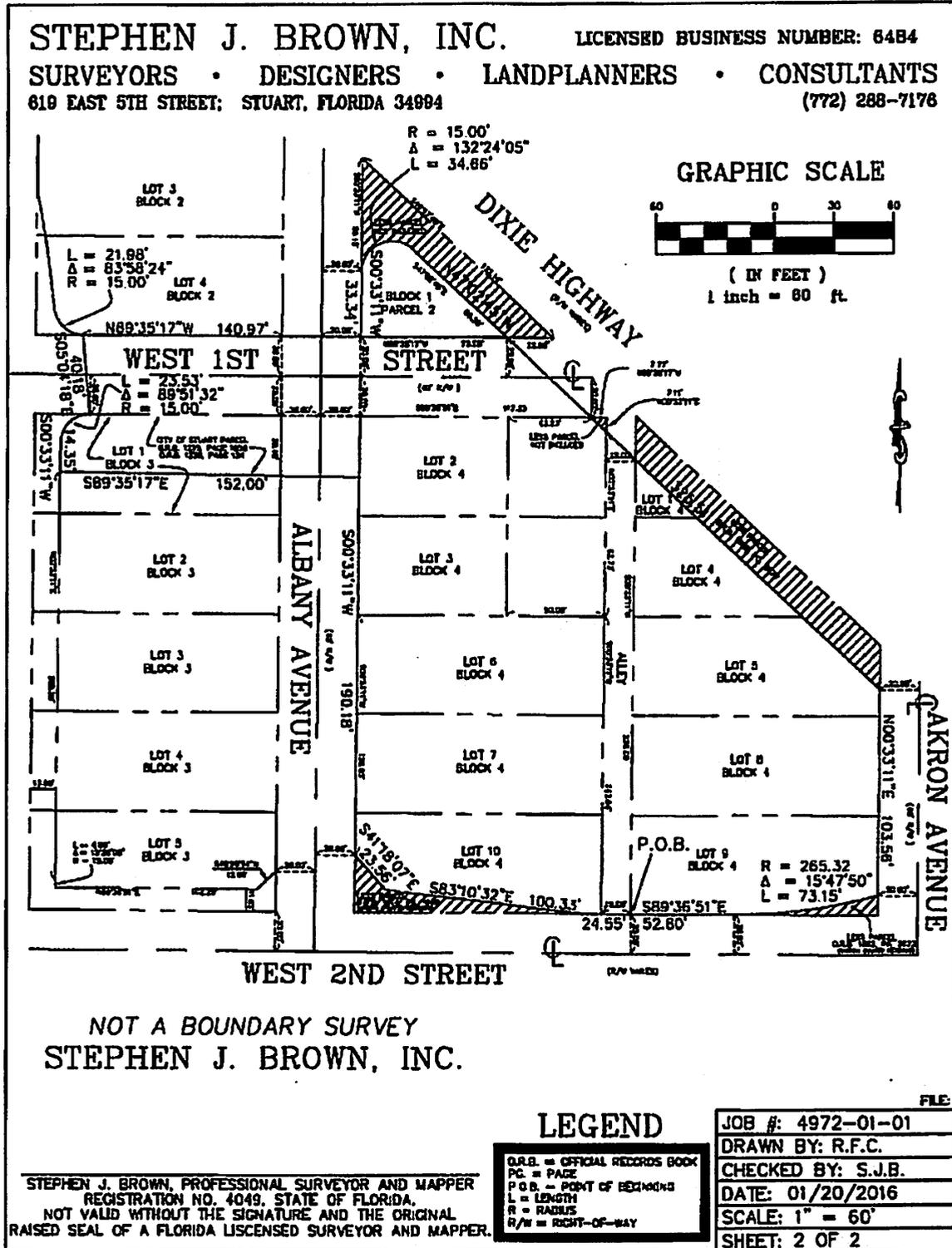
NOTES :

ALL BEARINGS ARE REFERENCED TO THE EAST LINE OF PROPERTY CALCULATED AS S 00°33'11" W, ALL OTHERS RELATIVE THERETO.
THIS LAND DESCRIPTION SHALL NOT BE VALID UNLESS:
A) PROVIDED IN ITS ENTIRETY CONSISTING OF 2 SHEETS, WITH SHEET 2 BEING THE SKETCH OF DESCRIPTION.
B) REPRODUCTIONS OF THIS DESCRIPTION AND SKETCH ARE SIGNED AND SEALED WITH AN EMBOSSED SURVEYOR'S SEAL.

FILE:

JOB #:	4972-01-01
DRAWN BY:	R.F.C.
CHECKED BY:	S.J.B.
DATE:	01/20/2016
SCALE:	N/A
SHEET:	1 OF 2

Memorandum of Lease
 City of Stuart and New Urban Triangle



This instrument prepared by:
Michael J. Mortell
City Attorney
121 SW Flagler Avenue
Stuart, FL 34997

MEMORANDUM OF RIGHT OF FIRST REFUSAL

THIS MEMORANDUM OF RIGHT OF FIRST REFUSAL ("Memorandum") is made as of the 23rd day of February, 2016, by and between **CITY OF STUART, FLORIDA**, a Florida municipal corporation ("Lessor"), with its principal address at 121 SW Flagler Avenue, Stuart, FL 34994, and **NEW URBAN TRIANGLE, LLC**, a Florida limited liability company, with its principal place of business at 398 NE 6th Avenue, Delray Beach, Florida 33483 ("Lessee").

WITNESSETH

WHEREAS, the Lessor is the owner in fee simple of the real property located in Martin County, Florida, which is more particularly described in Exhibit "A", attached hereto and incorporated herein by reference (the "Leased Property"); and

WHEREAS, Lessee and Lessor have entered into that certain Absolute Net - Non-Subordinated Land Lease (Triangle Property) on February 23, 2016, with respect to the Leased Property (the "Lease"), which provides that Lessor shall lease the Leased Property to Lessee and Lessee shall make certain improvements thereon, all in accordance with the terms, covenants and conditions set forth in the Lease; and

WHEREAS, Lessor and Lessee desire to enter into this Memorandum to give notice: (i) that Lessee has the right to purchase the Leased Property pursuant to the terms of that certain right of first refusal (the "Right of First Refusal") as further described in the Lease and (ii) of all of the terms, covenants and conditions of the Right of First Refusal to the same extent as if the same were fully set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, Lessee and Lessor hereby agree as follows:

1. The above recitals are true and correct and are hereby incorporated into this Memorandum by this reference. All terms used but not defined herein shall have the meaning ascribed to them in the Lease.

2. The sole purpose of this Memorandum is to give notice: (a) that the Lessee has the right to purchase the Leased Property pursuant to the terms of the Right of First Refusal and

**Memorandum of Right of First Refusal
City of Stuart and New Urban Triangle**

(b) of all of the terms, covenants and conditions of the Right of First Refusal to the same extent as if the same were fully set forth herein.

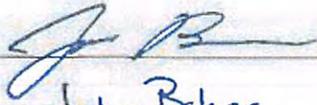
3. The terms, covenants and conditions of the Right of First Refusal contained in the Lease shall (i) be binding upon and inure to the benefit of the parties hereto, their respective successors and permitted assigns, for the entire term of the Lease and any extensions thereof, and (ii) be construed as covenants running with the Leased Property described in Exhibit "A" attached hereto. This Memorandum is made and executed by the parties hereto for the purpose of recording the same in the office of the Public Records of Martin County, Florida, and is subject in each and every respect, to the rents and other terms, covenants and conditions of the Lease, and this Memorandum is executed and delivered with the understanding and agreement that the same shall not in any manner or form whatsoever, alter, modify or vary the rents and other terms, covenants and conditions of the Lease.

[NO FURTHER TEXT ON THIS PAGE.]

Memorandum of Right of First Refusal
City of Stuart and New Urban Triangle

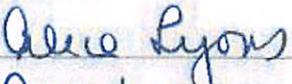
IN WITNESS WHEREOF, Lessee and Lessor have caused this Memorandum to be executed as of the day and year first above written.

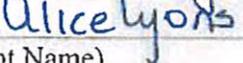
Executed and delivered
in the presence of:



John Baker

(Print Name)

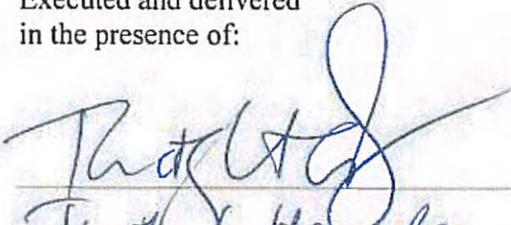


Alice Lyons


Alice Lyons

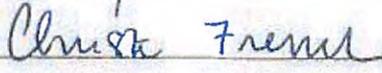
(Print Name)

Executed and delivered
in the presence of:



Timothy L. Hernandez

(Print Name)



Christi French

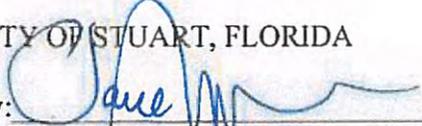


Christi French

(Print Name)

Lessor:

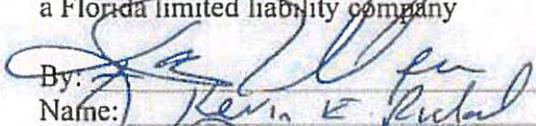
CITY OF STUART, FLORIDA

By: 

Paul J. Nicoletti, City Manager

Lessee:

NEW URBAN TRIANGLE, LLC,
a Florida limited liability company

By: 

Name: Kevin E. Rich
Title: pres

Memorandum of Right of First Refusal
City of Stuart and New Urban Triangle

STATE OF FLORIDA

COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 28 day of June, 2016, by Paul Nicoletti, City Manager of the City of Stuart, Florida. He is personally known to me or has produced a valid Florida drivers' license as identification.

Alice L Lyons

(SEAL)



ALICE L LYONS
MY COMMISSION # FF 033589
EXPIRES: July 21, 2017
Bonded Thru Budget Notary Services

Printed/Typed Name:
Notary Public-State of Florida
Commission Number:

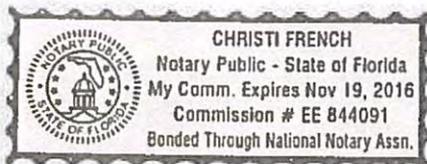
STATE OF FLORIDA

COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 1st day of June, 2016, by Kevin Pickard, as President of New Urban Triangle, LLC, a Florida limited liability company. He is personally known to me or has produced a valid driver's license as identification.

Christi French

(SEAL)



CHRISTI FRENCH
Notary Public - State of Florida
My Comm. Expires Nov 19, 2016
Commission # EE 844091
Bonded Through National Notary Assn.

Printed/Typed Name: Christi French
Notary Public-State of Florida
Commission Number EE 844091

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STEPHEN J. BROWN, INC. LICENSED BUSINESS NUMBER: 8484
SURVEYORS • DESIGNERS • LANDPLANNERS • CONSULTANTS
619 EAST 5TH STREET; STUART, FLORIDA 34984 (772) 288-7178

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B) REPRODUCTIONS OF THIS DESCRIPTION AND SKETCH ARE SIGNED AND SEALED WITH AN EMBOSSED SURVEYOR'S SEAL

FILE:

JOB #: 4972-01-01
DRAWN BY: R.F.C.
CHECKED BY: S.J.B.
DATE: 01/20/2016
SCALE: N/A
SHEET: 1 OF 2

Memorandum of Right of First Refusal
 City of Stuart and New Urban Triangle

