

KARL N. FLAGG
MAYOR - COMMISSIONER

MARY LAWSON BROWN
VICE MAYOR - COMMISSIONER

ALLEGRA KITCHENS
COMMISSIONER

VERNON MYERS
COMMISSIONER

JAMES NORWOOD, JR.
COMMISSIONER



ELWIN C. "WOODY" BOYNTON, JR.
CITY MANAGER

BETSY JORDAN DRIGGERS
CITY CLERK

MATTHEW D. REYNOLDS
FINANCE DIRECTOR

GARY S. GETCHELL
CHIEF OF POLICE

MICHAEL LAMBERT
CHIEF FIRE DEPT.

DONALD E. HOLMES
CITY ATTORNEY

Regular meeting 2nd and 4th Thursdays each month at 6:00 p.m.

December 13, 2010

TO MESSRS: MARY LAWSON BROWN, ALLEGRA KITCHENS, VERNON MYERS
AND JAMES NORWOOD, JR.:

You are hereby notified that a special called meeting of the Palatka City Commission is called to be held on Monday, December 20, 2010, at the regular meeting place of the Palatka City Commission at Commission chambers, 201 N 2nd Street, Palatka, Florida, to commence at 6:00 p.m.

The primary purpose of the meeting is to discuss the consideration & acceptance of the Downtown Palatka/Riverview Property Redevelopment Lease with CDP, Inc. (Tabled from December, 9, 2010)

An agenda will be published prior to the meeting.

/s/ Karl N. Flagg
Karl N. Flagg, MAYOR

We acknowledge receipt of a copy of the foregoing notice of a special meeting on the 13th day of December, 2010.

/s/ Mary Lawson Brown
COMMISSIONER

/s/ Vernon Myers
COMMISSIONER

/s/ James Norwood, Jr.
COMMISSIONER

/s/ Allegra Kitchens
COMMISSIONER



Memorandum

CITY OF PALATKA
Karen M. Venables
Assistant City Clerk
201 N. 2nd Street
Palatka, FL 32177
Phone: 386-329-0100 ext. 231
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kvenables@palatka-fl.gov

To: Members, Palatka City Commission

From: Karen M. Venables
Assistant City Clerk

cc: Elwin C. "Woody" Boynton, Jr., City Manager

Date: December 17, 2010

Re: Lease Agreement – City of Palatka and CDP, Inc.

Attached please find the most recent (as of 12/17/10) updated Phase I lease agreement between The City of Palatka and Community Development Partners, Inc., for the Thursday, December 20, 2010, 6:00 p.m. City Commission meeting, tabled from the December 9, 2010 meeting. The Phase II lease will be revised accordingly.

In addition I have attached the revised questions and issues that were raised prior to the December 9th meeting. It is my understanding each of these items have been addressed in the attached lease.

~~MASTER PHASE I~~ LEASE AGREEMENT

Between

**The City of Palatka
a Florida Municipal Corporation,**

Landlord,

and

**Community Development Partners, Inc.,
a Georgia Corporation,**

Tenant.

Dated ~~July~~ December ____, 2010

MASTER PHASE I LEASE AGREEMENT

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- EXHIBIT A - Legal Description of the Premises
EXHIBIT B - Landlord's Work

MASTER-PHASE I LEASE AGREEMENT

THIS MASTER-PHASE I LEASE AGREEMENT (this “**Lease**”) is made and entered into as of ~~July~~ December _____, 2010 (the “**Effective Date**”), by and between the **CITY OF PALATKA**, (the “**City**”) a Florida municipal corporation, whose address is 201 N. 2nd Street, Palatka, Florida 32177 and (hereinafter referred to as “**Landlord**”), and **COMMUNITY DEVELOPMENT PARTNERS, INC.**, (“**Developer or CDP**”) a Georgia corporation, whose address is 120 North McDonough Street, Jonesboro, Georgia, 30236 (hereinafter referred to as “**Tenant**”).

RECITALS

1. Landlord currently is the owner of the land and the improvements consisting of the City owned “100” Block ~~and the former High Rise Site~~, generally known as the property comprising all or major portions of ~~two One City blocks east of 2nd Street, west of Memorial Drive, south of Reid Street and south-north of Reid Street~~ St. John’s Avenue, and ~~north of the First Presbyterian Church and as legally described in Exhibit A attached hereto and made a part hereof and shortly to be operated~~ available to be developed as residential apartments, retail, offices and restaurants and a hotel, ~~plus additional commercial space~~, together with all improvements and personal property now located thereon or to be located thereon during the Term (as hereinafter defined), together with all appurtenances, easements, rights of way and other rights belonging to or in any way pertaining to the said premises (such real estate, improvements, personal property, appurtenances, easements, rights of way and other rights hereinafter referred to as the “**Premises**”).

2. The Premises currently are subject to a Preliminary Development Agreement Between Landlord and Tenant dated August 27, 2009 with respect to certain rights and obligations in connection with the negotiation of the terms and conditions for the development of the Project.

4. Tenant desires to lease the Premises ~~including the 100 Block building~~, from Landlord pursuant to the terms of this Lease and to hold, maintain, operate, and sell or otherwise dispose of its interest in the Premises hereunder (the “**Leasehold Interest**”).

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

ARTICLE 1

DEFINITIONS

Capitalized terms used herein and not otherwise defined shall have the following meanings:

“Adverse Consequences” means all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, reasonable amounts paid in settlement, liabilities, obligations, taxes,

liens, losses, expenses and fees, including court costs and reasonable attorneys' fees and expenses.

“Affiliate” means any Person which directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a Member. For purposes hereof, the terms “control,” “controlled,” or “controlling” shall include, without limitation, (i) the ownership, control or power to vote ten percent (10%) or more of the beneficial interest of any such Person, as the case may be, directly or indirectly, or acting through one or more Persons, (ii) the control in any manner over the managing member(s) or the election of more than one director or trustee (or Persons exercising similar functions) of such Person, or (iii) the power to exercise, directly or indirectly, control over the management or policies of such Person.

“Base Rent” shall have the meaning set forth in Section 4.1.

“Building” shall have the meaning set forth in the Recitals.

“Building Systems Equipment” shall have the meaning set forth in Section 8.4.

“CERCLA” shall have the meaning set forth in Section 28.1(b).

“Claim” shall have the meaning set forth in Section 28.1(a).

“Code” shall have the meaning set forth in the Recitals.

“Collateral” shall have the meaning set forth in Section 19.8.

“Commencement Date” shall have the meaning set forth in Section 3.1.

“Covenants” shall have the meaning set forth in Section 8.3(b).

“Default” shall have the meaning set forth in Section 19.1.

“Designated Prime Rate” means the prime rate of interest published from time to time in the Wall Street Journal or other source as the parties may agree, adjusted as such prime rate adjusts.

“Entity” means any general partnership, limited partnership, corporation, joint venture, trust, limited liability company, business trust, cooperative or association.

“Environmental Laws” shall have the meaning set forth in Section 28.1(b).

“Environmental Reports” means that certain Phase I Environmental Site Assessment prepared by Eco Dynamics Corporation regarding the Premises.

“Event of Bankruptcy” or “Bankruptcy” means, as to a specified Person:

(i) the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of such Person in an involuntary case under the federal bankruptcy

laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of his property, or ordering the winding-up or liquidation of his affairs and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days; or

(ii) the commencement by such Person of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by him to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of such Person or for any substantial part of his property, or the making by him of any general assignment for the benefit of creditors, or the taking of action by the Person in furtherance of any of the foregoing.

~~“Existing Equipment” shall have the meaning set forth in Section 8.4.~~

~~“Expiration Date” shall have the meaning set forth in Section 3.1.~~

~~“FF&E” means any and all “furniture, fixtures, and equipment,” as such term is commonly understood in the hotel industry, of the Hotel, including any and all: fixtures, furnishings, equipment, furniture, and other items of tangible personal property now or hereafter located in, on or at the Premises or in the Hotel or used in connection with the use, occupancy, operation, promotion, marketing, repair, or maintenance of all or any part of the Premises, other than stocks of food and other supplies held for consumption in normal operation; appliances; machinery, equipment; athletic equipment (including weight machines, stair machines, stationary bicycles, dumbbells, free weights, treadmills, and all other exercise equipment of whatever form); bicycles, carts; signs; artwork (including paintings, prints, graphics, sculpture, and other artwork, of any kind); office furnishings and equipment; guest room furniture and furnishings; and specialized equipment for kitchens, laundries, bars, restaurant, public rooms, and health and recreational facilities; linens; dishware; two way radios; telephones; switchboards; switching equipment and machines; satellite dishes; partitions, screens, awnings, shades, blinds, and floor coverings; hall and lobby equipment; heating, lighting, plumbing, ventilating, refrigerating, and incinerating equipment; elevators; escalators; air conditioning and communications machines; plans or systems with appurtenant fixtures; vacuum cleaning systems; call or beeper systems; security systems; sprinkler systems and other fire prevention and extinguishing apparatus and materials; all computer, data processing and related equipment, including peripherals, diskettes, manuals, hand held data entry units, and network wiring, cabling, peripherals, and equipment; antennas; all equipment, manual, mechanical or motorized, for the construction, maintenance, repair and cleaning of parking areas, walks, underground ways, truck ways, driveways, common areas, roadways, highways and streets; ducts; building supplies wherever located; tools; all vehicles used or useful in operation of the Hotel; all marketing materials, videotapes, promotional materials, brochures, and presentations used or useful in marketing and promotion of the Hotel.~~

~~“FIFRA” shall have the meaning set forth in Section 28.1(b).~~

–“Force Majeure” means any delay or failure in performance caused by acts beyond a Person’s reasonable control, including, without limitation, acts of God, war, vandalism, sabotage, accidents, fires, floods, strikes, labor disputes, mechanical breakdown, shortages or delays in obtaining suitable parts or equipment, material, labor, or transportation, acts of subcontractors, interruption of utility services, acts of any Governmental Authority, or any similar cause (excluding financial inability).

–“Governmental Authority” means any state, federal, local, municipal or other governmental authority, agency, or licensing authority of any kind whatsoever, including any so-called “business improvement district” or similar Entity or organization.

–“Hazardous Materials” shall have the meaning set forth in Section 278.1(c).

~~–“Hotel” means the hotel to be built on the former High Rise Site with approximately 110 guestrooms in the Building, together with the related commercial space located within the Premises.~~

~~–“Hotel Franchise Agreement” shall have the meaning set forth in the Recitals.~~

~~–“Hotel Management Agreement” shall have the meaning set forth in the Recitals.~~

–“Impositions” shall have the meaning set forth in Section 45.2.

–“Landlord” shall have the meaning set forth in the heading of this Lease and shall include any successor thereto.

–“Landlord’s Work” shall have the meaning set forth in Section 78.1(a).

~~–“Lease Termination Notice” shall have the meaning set forth in Section 3.3(a).~~

~~–“Lease Termination Payment” shall have the meaning set forth in Section 3.3(a).~~

–“Lease Year” shall have the meaning set forth in Section 3.2.

–“Manage” shall have the meaning set forth in Section 278.1(d).

–“Monthly Base Rent” shall have the meaning set forth in Section 4.1(a).

~~–“Mortgage” shall have the meaning set forth in Section 20.1(a).~~

~~–“Nonqualified Nonrecourse Financing” shall have the meaning set forth in Section 49(a)(1)(D) of the Code.~~

–“Phasing of Development” shall have the meaning set forth in Section 7 of the Preliminary Development Agreement First Addendum executed between the parties and dated May 13, 2010.

–“Person” means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits; and, unless

the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter and vice versa.

“Possession Date” shall have the meaning set forth in Section 3.1.

“Premises” shall have the meaning set forth in the Recitals.

~~“RCRA” shall have the meaning set forth in Section 28.1(b).~~

~~“Release” shall have the meaning set forth in Section 28.1(e).~~

“Rent” shall have the meaning set forth in Section 4.2.

~~“Replacement Reserve” shall have the meaning set forth in Section 8.2(e).~~

~~“Response” shall have the meaning set forth in Section 28.1(f).~~

~~“Start Date” shall have the meaning set forth in Article 167.~~

“Substantial Casualty” shall have the meaning set forth in Article 167.

“Substantial Completion” shall mean the point at which the Tenant obtains a Certificate of Occupancy for those improvements, or any portion thereof, to be completed by the Tenant pursuant to Exhibit “C”.

“Tenant” shall have the meaning set forth in the heading to this Lease.

~~“Tenant’s Share of Impositions” shall have the meaning set forth in Section 5.1.~~

“Term” shall have the meaning set forth in Section 3.1.

“TSCA” shall have the meaning set forth in Section 278.1(b).

ARTICLE 2

GRANT OF LEASE

Section 2.1 Lease

Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, subject to and with the benefit of the terms, covenants, conditions and provisions set forth herein, the Premises.

ARTICLE 3

TERM; POSSESSION

Section 3.1 Term

The term of this Lease (hereinafter referred to as the “**Term**”) shall commence on the ~~date~~ date of the closing of a loan or other source of financing, which produces funds sufficient to pay for one-hundred per cent (100%) of the projected cost of designing, permitting, and constructing Phase I of the Project hereof, provided such shall be no later than May 20, 2011 except as agreed to by the parties, (hereinafter, as the same may be adjusted as hereinafter provided, referred to as the “**Commencement Date**”) and end on the later of (i) December 31, 2060 or (ii) the 50th anniversary of the Possession Date as defined below (hereinafter, as the same may be adjusted as hereinafter provided, referred to as the “**Expiration Date**”), unless sooner terminated as provided herein. Tenant shall be entitled to possession of ~~each Phase/Parcel of the Premises upon~~ within 30 days of the commencement date, the closing of a loan or other source of financing, which produces funds sufficient to pay for one hundred per cent (100%) of the projected cost of designing, permitting, and constructing each Phase/Parcel of the Project. Upon request of the other, Landlord and Tenant each agrees to provide written confirmation of the date constituting the Possession Dates.

Section 3.2 Lease Year Defined

As used in this Lease, the term “**Lease Year**” shall mean (i) if the Commencement Date is the first day of a calendar month, the twelve (12) month period commencing on the Commencement Date or (ii) if the Commencement Date is not the first day of a calendar month, the period commencing on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month of the Term, and, in either case, each succeeding twelve (12) month period thereafter which falls in whole or in part during the Term.

ARTICLE 4

BASE RENT

Section 4.1 Base Rent

As consideration for this Lease, Tenant covenants and agrees, commencing on the ~~Commencement Date~~ month following the date of Substantial Completion, to pay to Landlord an annual base rent (hereinafter referred to as “Base Rent”) to Landlord for each Phase/Parcel of the Premises in possession of the Tenant per calendar year, in the amounts set forth below, payable in twelve (12) equal monthly installments (hereinafter referred to as “Monthly Base Rent”) (pro rated for any month that is not a full month) payable on the first day of each month. “Base Rent” shall be defined as that amount of annual income resulting from the calculation of the value of the Premises, as determined by the real estate tax records of Putnam County, as of the “**Commencement Date**”, times the 10 year average of the Florida Municipal Trust 1-3 Year High Quality Bond Fund as of such date. ~~as of the Commencement Date”.~~

÷

Lease Year Ending	Annual Amount
December 31, 2010 (partial year)	\$ _____
December 31, 2011	\$ _____
December 31, 2012	\$ _____
December 31, 2013	\$ _____
December 31, 2014	\$ _____
December 31, 2015	\$ _____

Thereafter through and until
the Expiration Date

\$ _____ +
1.5%, compounding annually

Section 4.2 Manner of Payment

Base Rent, and ~~Tenant's Share of Impositions (as hereinafter defined)~~ and all other amounts becoming due from Tenant to Landlord hereunder (hereinafter collectively referred to as "**Rent**") shall be paid in lawful money of the United States to Landlord at the office of Landlord, or as otherwise designated from time to time by written notice from Landlord to Tenant. Payment of the Base Rent for the year in which the Possession Date ~~for each Phase /Parcel~~ occurs shall begin on the first day of the month following the month ~~Phase I each Phase/Parcel is open for business~~ of the date of Substantial Completion and shall be prorated among the remaining months in that year based on the number of months it is payable.

Section 4.3 Net Lease

This Lease is what is commonly called a "net lease," it being understood that Landlord shall receive the Base Rent set forth in Section 4.2 hereof free and clear, after the Possession Date ~~of each Phase/Parcel~~ Phase I, of any and all other ~~impositions (as defined in Section 5.2 below)~~, taxes, assessments, liens, charges or expenses of any nature whatsoever in connection with the ownership, maintenance, repair and operation of ~~each Phase/Parcel~~ of the Premises, except as otherwise provided herein. From and after the Possession Date of ~~each Phase/Parcel~~ Phase I, Tenant shall be solely responsible for and shall pay all insurance premiums, operating charges, maintenance charges, construction costs, rental under equipment or similar leases, and any other charges, costs and expenses which arise or may be contemplated under any provisions of this Lease during the portion of the Term following the Possession Date of ~~each Phase/Parcel~~ Phase I. All of such charges, costs and expenses when due shall constitute additional rent ("**Additional Rent**"), even though not necessarily payable to Landlord, and upon the failure of Tenant to pay any of such costs, charges or expenses, Landlord shall have the same

rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay Base Rent. Base Rent, Additional Rent and all other sums payable hereunder by Tenant shall be paid ~~(except as otherwise provided for in Section 9 of the Preliminary Agreement between the parties dated August 27, 2009)~~ without notice or demand and without setoff, counterclaim, abatement, suspension, deduction or defense. Nothing herein contained shall obligate Tenant for the payment of any expenses payable by Landlord pursuant to Section 7.4 herein below or any income or franchise taxes payable by Landlord under applicable law.

Section 4.4 No Termination

(a) Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall Tenant have any right to terminate this Lease, nor shall Tenant be entitled to any abatement or reduction of Rent hereunder ~~except as contained in Section 9 of the Preliminary Agreement between the parties dated August 27, 2009~~ nor shall the obligations of Tenant hereunder be affected, by reason of any default on the part of Landlord under this Lease, or under any other agreement to which Landlord and Tenant may be parties. It is the intention of the parties hereto that the obligations of Tenant hereunder shall be separate and independent covenants and agreements, that the Rent, and all other sums payable by Tenant hereunder shall continue to be payable in all events and that the obligations of Tenant hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease. Nothing herein shall preclude Tenant from pursuing or realizing upon its other remedies at law or in equity by reason of any default hereunder by Landlord.

(b) Tenant agrees that it will remain obligated under this Lease in accordance with its terms, and that it will not take any action to terminate, rescind or avoid this Lease, notwithstanding (i) the Bankruptcy of Landlord or any assignee of Landlord, and (ii) any action with respect to the Lease which may be taken by any trustee or receiver of Landlord or of any assignee of Landlord in any such proceeding or by any court in any such proceeding; provided that this Lease is not effectively disaffirmed in such proceedings and Tenant receives reasonable assurance thereof within a reasonable period of time following the commencement of such proceedings.

(c) Tenant waives all rights which may now or hereafter be conferred by law (except by a final and binding judicial determination by a court of competent jurisdiction) (i) to quit, terminate or surrender this Lease or the Premises or any part thereof, or (ii) to any abatement, suspension, deferment or reduction of Rent, Additional Rent or any other sums payable under this Lease, except as otherwise expressly provided herein.

Section 4.5 Reserved

ARTICLE 5

USE OF PREMISES

Tenant shall use and occupy each ~~Phase/Parcel of the Premises~~ Phase I for purposes of residential apartments, retail, offices and restaurants and ~~a hotel, operation of a hotel,~~ together with ancillary facilities ~~including one or more restaurants, meeting rooms and similar facilities,~~ as commercial rental property, and for incidental uses thereto and for no other use or purpose. Tenant covenants and agrees to use and occupy the Premises in conformity with all federal, state and municipal statutes, laws, rules, ordinances, regulations and orders. Tenant shall not use any materials that are hazardous or toxic, nor shall Tenant create any offensive or toxic emissions or effluents to emanate from the Premises, except to the extent reasonable or appropriate in connection with the lawful use of the Premises in the ordinary course of Tenant's business, and Tenant shall comply with all legal requirements in connection with such use. At all times during the Term, Tenant shall cause all of the Premises to remain in compliance with all legal requirements and, to the extent that Tenant should fail to do so beyond any applicable grace or cure period permitted by the appropriate authority, Landlord shall have the right to take all actions required or necessary to bring the Premises into compliance with all legal requirements, and all sums paid by Landlord, including, without limitation, any legal fees and disbursements, incurred by Landlord as a result of Tenant's failure shall constitute Additional Rent.

ARTICLE 6

UTILITIES AND SERVICES;
OPERATING EXPENSES; FINANCING DOCUMENTS

Section 6.1 Utilities and Services

Tenant shall purchase all utility services for the Premises, including, but not limited to, fuel, water, sewerage and electricity, from the utility or municipality providing such service, and shall pay for such services when such payments are due. Except in the case of willful actions or omissions of Landlord causing interruption of utility services, Landlord will not be liable to Tenant for any interruption in the provision of utility services to the Premises, nor will any interruption be construed as an eviction of Tenant or entitle Tenant to abatement of Rent.

Section 6.2 Regulations Regarding Utilities and Services

(a) Tenant agrees to cooperate fully, at all times, with Landlord in abiding by all reasonable regulations and requirements which Landlord may prescribe for the proper functioning and protection of all utilities and services reasonably necessary for the operation of the Premises. Throughout the Term of this Lease, Landlord and its contractors shall have reasonable access after reasonable advance notice and in such manner as will minimize interference with the use and occupancy of the Premises to any and all mechanical installations, and Tenant agrees that there shall be no construction of

partitions or other obstructions which might unreasonably interfere with access to or the moving of servicing equipment to or from the enclosures containing said installations. Tenant further agrees that neither Tenant nor its employees, agents, licensees, invitees or contractors shall at any time tamper with, adjust or otherwise in any manner affect Landlord's mechanical installations.

(b) Nothing contained herein shall be deemed to impose any duty or obligation on Landlord to maintain or repair such mechanical installations. Tenant shall be solely responsible for and shall maintain all such mechanical installations and shall repair and replace such items at Tenant's sole cost and expense.

Section 6.3 Operating Expenses

Without limitation of any other provision herein and except as otherwise herein specified, from and after the Possession Date, Tenant shall pay all expenses of operation of the Premises including, without limitation, all utility charges, insurance premiums, operating charges, maintenance and repair charges, construction costs, costs for replacements and other charges, and all other charges, whether or not contemplated under this Lease.

ARTICLE 7

CONDITION AND CARE OF PREMISES

Section 7.1 Possession.

(a) The 100 Block Parking Lot comprising a portion of Phase I Parcel A of the Premises is a parking lot to be provided by Landlord. The nature and scope of such parking lot work is more specifically described on **Exhibit B** attached hereto. The aforesaid work is sometimes herein referred to as the "**Landlord's Work.**" At the election of the Landlord, the Landlord agrees may either (i) to cause such work to be substantially completed in a good and workmanlike manner conforming to all applicable law and those plans included herein as Exhibit "C", on or prior to May 15, July 30, 2011 in a lien-free manner (Landlord being entitled, however, to contest such liens in any manner customary in the State of Florida), or (ii) make available to the Tenant funds in amount not less than One Hundred Sixty Thousand (\$160,000.00) Dollars for the construction of said parking lot during Tenant's improvements. Other than as herein provided, Tenant acknowledges that no promises have been made by Landlord to alter, remodel, improve, repair, decorate or clean the Premises or any part thereof. Tenant grants to Landlord, Landlord's construction managers, contractors, subcontractors, materialmen and other parties the right to enter the Premises and the other portions of the Premises as necessary to complete the Landlord's Work. Tenant shall be named as an additional insured on all insurance policies provided by such construction managers, contractors, subcontractors and other parties, which name Landlord as an additional insured.

Section 7.2 Tenant Obligations

(a) At its sole cost and expense throughout the Term following the Possession Date, Tenant shall (i) take good care of the Premises; (ii) keep the same in good order and condition; and (iii) make and perform or cause to be performed all maintenance thereof and all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, of every nature, kind and description, including, without limitation, any maintenance required under the Financing Documents. When used in this Section, the term "repairs" shall include all necessary replacements, renewals, alterations, additions and betterments including the interior demolition of the Premises to allow for reconfiguration of the interior and exterior of the Premises for retail, apartment and commercial leasing. All repairs made by Tenant shall be at least equal in quality and cost to the original improvements and shall be made or caused to be made by Tenant in accordance with all laws, ordinances and regulations whether heretofore or hereafter enacted. The necessity for or adequacy of maintenance and repairs shall be measured by the standards that are appropriate for improvements of similar construction and class, provided that Tenant shall in any event make all repairs reasonably necessary to avoid any structural damage or other damage or injury to the Improvements.

(b) Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in, about or to the Premises or any improvements hereafter erected thereon. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises hereafter erected thereon.

(c) Tenant shall not do or suffer any waste or damage, disfigurement or injury to the Premises except for the reconfigurations cited in (a) above, or to the fixtures or equipment therein, or permit or suffer any overloading of the floors or other use of the improvements that would place an undue stress on the same or any portion thereof beyond that for which the same was designed unless required to meet the City of Palatka and the State of Florida construction codes for the uses intended by Tenant.

Section 7.3 Compliance With Rules and Regulations; Compliance with Covenants.

Tenant shall at its sole cost and expense:

(a) Comply with (i) all federal, state, county, municipal and other governmental and quasigovernmental statutes, laws, rules, orders, regulations and ordinances affecting the Premises or any part thereof, or the use thereof, including compliance with the requirements of the City of Palatka and the State of Florida (and any federal law to the extent applicable) relating to the operation of the Premises as residential apartments, retail, offices and restaurants ~~and a hotel, operation of a hotel,~~ together with ancillary facilities ~~including one or more restaurants, meeting rooms and similar facilities,~~ whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same, and (ii) all rules, orders and regulations of the

National Board of Fire Underwriters or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions, which apply to the Premises; provided, however, that Tenant shall not be obligated to comply or cause the Premises to comply with any of the foregoing unless Tenant's use of the Premises shall cause a violation of clauses (i) or (ii) above. Tenant shall comply with the requirements of all policies of public liability, fire and other insurance_which at any time may be in force with respect to the Premises.

(b) Comply with the requirements (the "**Covenants**") of the Financing Documents_, the Hotel Management Agreement, and the Hotel Franchise Agreement, in each case to the extent applicable to Tenant. In the event of its failure to do so (without limitation of any other rights or remedies of Landlord hereunder), Landlord may, if such failure continues beyond the applicable grace period thereunder, pay such amounts or perform such obligations as are necessary in order to comply therewith. The amounts reasonably expended by Landlord on account thereof shall constitute Additional Rent.

Section 7.4 Existing Equipment

Tenant acknowledges that Tenant is accepting possession of the Premises inclusive of any and all equipment, personal property, furniture, fixtures, equipment and other moveable items (collectively, the "**Existing Equipment**") currently located therein or located therein as of the Possession Date. Landlord makes no representations or warranties, whatsoever, as to the condition of the Existing Equipment, or as to Landlord's title or interest with respect thereto.

ARTICLE 8

RETURN OF PREMISES

Section 8.1 Surrender of Possession

At the termination of this Lease by lapse of time or otherwise or upon termination of Tenant's right of possession without termination of this Lease, Tenant shall surrender possession of the Premises to Landlord and deliver all keys to the Premises to Landlord and make known to Landlord the combination of all locks of vaults then remaining in the Premises, and shall, subject to Sections 8.2 through 8.4, return the Premises and all equipment and fixtures of Landlord therein to Landlord in as good condition as when Tenant originally took possession, ordinary wear, loss or damage by fire or other insured casualty, and damage resulting from the act of Landlord or its employees and agents excepted.

Section 8.2 Installations and Additions

All installations, additions, partitions, hardware, light fixtures, nontrade fixtures and improvements, temporary or permanent, except FF&E, trade fixtures, movable furniture and equipment owned by Tenant and its sub-tenants, in or upon the Premises, whether placed there by Tenant or Landlord, shall be Landlord's property and shall remain upon the Premises at the termination of this Lease, all without compensation, allowance or credit to Tenant; provided, however, that if prior to such termination or within ten (10) days thereafter Landlord so directs by notice, Tenant, at Tenant's sole cost and expense, shall promptly remove such of the

installations, additions, partitions, hardware, light fixtures, nontrade fixtures and improvements placed in the Premises by Tenant as are designated in such notice and repair any damage to the Premises caused by such removal, failing which Landlord may remove the same and repair the Premises, and Tenant shall pay the reasonable cost thereof to Landlord on demand. Tenant may request, prior to making the installations, additions or other improvements provided hereinabove that Landlord determine whether Tenant shall be obligated to remove such installations, additions or other improvements (in which case Landlord shall make such determination in a reasonable manner within five (5) days following such request); provided, however, that Landlord shall not be precluded from exercising its right to require such removal, notwithstanding a prior manifestation of contrary intent, if the condition of such installations, additions or other improvements has deteriorated and constituting in Landlord's determination, unreasonable wear and tear.

Section 8.3 Trade Fixtures and Personal Property

Tenant shall also remove Tenant's and sub-tenant's furniture, machinery, safes, trade fixtures and other items of movable personal property of every kind and description belonging to Tenant and sub-tenants from the Premises and repair any damage to the Premises caused thereby, such removal and restoration to be performed prior to the end of the Term (whether by lapse of time or by earlier termination of this Lease) or Tenant's right of possession, whichever might be earlier. If Tenant fails to remove such items, Landlord may do so and thereupon the provisions of Section 19.6 shall apply, and Tenant shall pay to Landlord the reasonable cost of removal and of restoring the Premises within ten (10) days of demand.

Section 8.4 Survival

All obligations of Tenant under this Article ~~8~~9 shall survive the expiration of the Term or sooner termination of this Lease.

ARTICLE 9

HOLDING OVER

Tenant shall pay Landlord for each day Tenant retains possession of the Premises or any part thereof after termination of this Lease, or of Tenant's right to possession of the Premises, by lapse of time or otherwise, an amount which is 101% of the amount of Rent for a day based on the annual rate of Base Rent set forth in Section 4.1 last payable for the period in which such possession occurs, calculated as though such period were within the Term, and, to the extent enforceable by law, Tenant shall also pay all damages, consequential as well as direct, sustained by Landlord by reason of such retention. Nothing contained in this Section shall be construed or operate as a waiver of Landlord's right of reentry or any other right or remedy of Landlord. Any such holding over shall be a tenancy at sufferance.

ARTICLE 10

COMPLIANCE BY TENANT

Tenant agrees, for itself, its employees, agents, contractors, subtenants, invitees and licensees, (i) to observe and not to interfere with the rights reserved to Landlord contained in this Lease, and (ii) to comply with all terms and conditions set forth in any recorded easements, covenants, conditions or restrictions pertaining to the Premises at the present time or, if Tenant has consented thereto, thereafter. Any violation of the foregoing agreements may be enjoined; but, whether or not so enjoined, Tenant acknowledges and agrees that it shall be and remain liable for all damages, loss, costs and expenses resulting therefrom.

ARTICLE 11

RIGHTS RESERVED TO LANDLORD

Landlord reserves the following rights, exercisable after reasonable advance notice and in such manner as will minimize interference with the use and occupancy of the Premises:

- (a) to change the name or street address of the Premises (but only if requested to do so by the U.S. postal service ~~or the local municipality~~ or any other governmental authority);
- (b) to retain at all times, and to use in appropriate instances after failing to reach Tenant or his designated Property Manager, pass keys to the Premises;
- (c) to exhibit the Premises at reasonable hours upon 48 hours notice to Tenant or his designated Property Manager;
- (d) to enter the Premises at reasonable hours for inspection upon 48 hours notice to Tenant or his designated Property Manager; and
- (e) to enter the Premises in the event of an emergency (without advance notice) and take all steps deemed reasonably necessary by it to respond to such emergency.

ARTICLE 12

MAINTENANCE

Subject to any limitation set forth in Section 8.2 hereof, Tenant shall keep and maintain the entire exterior and interior of the Premises, specifically including, without limitation, the roof, structural components of the Premises, the lighting systems, and the Building Systems Equipment in good condition and repair. Tenant specifically agrees to cause the requirements under the Financing Documents, ~~the Hotel Franchise Agreement, and the Hotel Management Agreement~~, with respect to the maintenance of the physical condition of the Premises that are the obligation of Tenant thereunder to be complied with at all times, at its sole cost and expense. Tenant shall keep the Premises from falling temporarily out of repair or deteriorating. Tenant

shall further keep and maintain the improvements at any time situated upon the Premises and all sidewalks and areas adjacent thereto, and all landscaped areas adjacent thereto, safe secure, clean and sanitary (including, without limitation planting and replacing flowers and landscaping, and necessary interior painting and carpet cleaning), and in full compliance with all health, safety and police regulations in force.

ARTICLE 13

ALTERATIONS

Section 13.1 Limitation

Tenant shall not, without the prior written consent of Landlord, which shall not be unreasonably withheld, delayed or conditioned, make any alterations, additions or improvements to the Premises, other than such alterations, additions, or improvements to the Premises ~~which are cosmetic in nature or which shall cost less than \$10,000.00 funded by loan proceeds or other sources of financing shown on Exhibit "C" hereto.~~ Any alterations, additions or improvements which are consented to by Landlord shall continue to be subject to the remaining terms and conditions set forth in this Article.

Section 13.2 Procedures for Alterations, Additions or Improvements

If Landlord consents to such alterations, additions or improvements, before commencement of the work or delivery of any materials onto the Premises, Tenant shall furnish to Landlord for approval plans and specifications, names and addresses of contractors, copies of contracts, necessary permits and licenses, and instruments of indemnification against any and all claims, costs, expenses, damages and liabilities which may arise in connection with such work, all in such form, substance and amount as may be reasonably satisfactory to Landlord. In addition, for any work which shall cost, in the aggregate, in excess of \$100,000.00, prior to commencement of any such work or delivery of any materials into the Premises, Tenant shall provide Landlord with appropriate evidence of Tenant's ability to pay for such work and materials in full and, if requested by Landlord, ~~shall deposit with Landlord at such time such security for the payment of said work and materials as Landlord may require~~ provide evidence of payment and performance bonds naming the Landlord as an additional insured. All alterations, additions and improvements shall be installed in a good, workmanlike manner, and only new, high-grade materials shall be used. All such work shall be done only by contractors or mechanics reasonably acceptable to Landlord. Tenant further agrees to hold Landlord harmless from any and all liabilities of every kind and description which may arise out of or be connected in any way with said alterations, additions or improvements. Before commencing any work in connection with such alterations, additions or improvements, Tenant shall furnish Landlord with certificates of insurance from all contractors performing labor or furnishing materials insuring Landlord against any and all liabilities which may arise out of or be connected in any way with said alterations, additions or improvements. Tenant shall permit Landlord to supervise construction operations at Landlord's sole cost in connection with the foregoing work if Landlord requests to do so. Tenant shall pay the cost of all such alterations, additions and improvements and also the cost of decorating the Premises occasioned by such alterations, additions and improvements, including the cost of labor and materials, contractors' profit,

overhead and general conditions. Upon completing any alterations, additions or improvements, Tenant shall furnish Landlord with contractors' affidavits, in form required by law, and full and final waivers of lien and receipted bills covering all labor and materials expended and used. All alterations, additions and improvements shall comply with all insurance requirements and with all city and county ordinances and regulations and with the requirements of all state and federal statutes and regulations.

ARTICLE 14

ASSIGNMENT AND SUBLETTING

Section 14.1 Assignment and Subletting

~~Except as otherwise herein provided~~ Tenant shall expressly have the right to sublet the premises, in whole or in part, provided however, Tenant shall not, without the prior written consent of Landlord in each instance, (i) assign, transfer, mortgage, pledge, hypothecate or encumber, or subject to or permit to exist upon or be subjected to any lien or charge, this Lease or any interest under it; (ii) allow to exist or occur any transfer of or lien upon this Lease or Tenant's interest herein by operation of law; ~~(iii) sublet the Premises or any part thereof; or (iiiiv) permit the use or occupancy of the Premises or any part thereof for any purpose not provided for under Article 56 of this Lease or by anyone other than Tenant and Tenant's employees and permitted subtenants.~~ In no event shall this Lease be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Lease or any rights or privileges hereunder be an asset of Tenant under any bankruptcy, insolvency or reorganization proceedings. Notwithstanding the foregoing Landlord hereby consents to the occupancy of the Premises by residential apartments, retail, offices restaurants ~~and a hotel, operation of a hotel,~~ together with ancillary facilities including one or more restaurants, meeting rooms and similar facilities and by hotel guests of hotel rooms and facilities and the subleasing by Tenant of the subleasing of commercial space to various tenants selected by Tenant, provided that any such sublease is expressly subject and subordinate to this Lease and complies with all applicable requirements, including any consent provisions, of the Financing Documents.

Section 14.2 Tenant To Remain Obligated

Consent by Landlord to any assignment, ~~subletting,~~ use, occupancy or transfer shall not operate to relieve Tenant from any covenant or obligation hereunder except to the extent, if any, expressly provided for in such consent, or be deemed to be a consent to or relieve Tenant from obtaining Landlord's consent to any subsequent assignment, transfer, lien, charge, ~~subletting,~~ use or occupancy. Tenant shall pay all of Landlord's costs, charges and expenses, including attorneys' fees, reasonably incurred in connection with any assignment, transfer, lien, charge, ~~subletting,~~ use or occupancy made or requested by Tenant. Tenant agrees that all advertising by Tenant or on Tenant's behalf with respect to the assignment of this Lease ~~or subletting of space~~ must be approved in writing by Landlord prior to publication.

Section 14.3 Landlord's Consent

Landlord will not unreasonably withhold or delay its consent to Tenant's assignment of this Lease ~~or subletting the space leased hereunder~~ wherever such consent is required hereunder. Landlord shall not be deemed to have unreasonably withheld its consent to a ~~sublease of all or part of the Premises or an assignment of this Lease~~ if its consent is withheld because: (i) Tenant is then in Default beyond any applicable grace period hereunder or an event has occurred which, but for the giving of notice or passage of time or both, would constitute a Default by Tenant; (ii) any notice of termination of this Lease or termination of Tenant's possession shall have been given under Article 19 hereof; (iii) the portion of the Premises which Tenant proposes to sublease, including the means of ingress to and egress from and the proposed use thereof, or the remaining portion of the Premises will violate any city, state or federal law, ordinance or regulation, including, without limitation, any applicable building code or zoning ordinances; (iv) the proposed use of the Premises by the subtenant or assignee does not conform with the uses permitted by this Lease; (v) in the reasonable judgment of Landlord, the proposed subtenant or assignee is of a character or is engaged in a business which would be deleterious to the reputation of the Premises, or the subtenant or assignee is not sufficiently financially responsible to perform its obligations under the proposed sublease or assignment; provided, however, that the foregoing are merely examples of reasons for which Landlord may withhold its consent and shall not be deemed to be exclusive of any permitted reasons for reasonably withholding consent, whether similar to or dissimilar from the foregoing examples. Any consent by Landlord to a proposed assignment or sublease shall in any event be subject to the terms of Section 14.1 and Section 14.2 above.

Section 14.4 Assignee To Assume Obligations

If Tenant shall assign this Lease as permitted herein, the assignee shall expressly assume all of the obligations of Tenant hereunder in a written instrument reasonably satisfactory to Landlord and furnished to Landlord not later than fifteen (15) days prior to the effective date of the assignment. If Tenant shall sublease the Premises as permitted herein, Tenant shall obtain and furnish to Landlord, not later than fifteen (15) days prior to the effective date of such sublease and in form satisfactory to Landlord, the written agreement of such subtenant stating that the subtenant will attorn to Landlord, at Landlord's option and written request, in the event this Lease terminates before the expiration of the sublease.

Section 14.5 Change of Ownership or Control of Tenant.

Notwithstanding anything to the contrary in this Article 15, if Tenant is a corporation, partnership or limited liability company, and if during the Term of this Lease, Tenant contemplates that the ownership of the shares of stock, partnership interests or membership interests in Tenant shall be changing, and such change does not amount to more than fifty (50%) of the ownership interest, such proposed change shall not constitute a proposed assignment of this Lease or otherwise be governed by the terms of this Article ~~14~~¹⁴. Notwithstanding the foregoing, Tenant shall advise Landlord of any such changes.

ARTICLE 15

WAIVER OF CERTAIN CLAIMS; INDEMNITY BY TENANT

Section 15.1 Waiver of Certain Claims; Release by Tenant

To the extent not expressly prohibited by law, Tenant releases Landlord and its members, and their agents, servants and employees, from and waives all claims for damages to person or property sustained by Tenant, or by any other person claiming by or through Tenant, resulting directly or indirectly from fire or other casualty, or any existing or future condition, defect, matter or thing in or about the Premises, or from any equipment or appurtenance therein, or from any accident in or about the Premises, or from any act or neglect of any other person, including Landlord's agents and employees and contractors; provided, however, that the foregoing release shall not operate in the event of the gross negligence or willful misconduct of Landlord's agents, employees or contractors. This Section 15.1 shall apply especially, but not exclusively, to damage caused by water, snow, frost, steam, excessive heat or cold, sewerage, gas, odors or noise, or the bursting or leaking of pipes or plumbing fixtures, broken glass, sprinkling or air conditioning devices or equipment, or flooding of basements, and shall apply without distinction as to the person whose act or neglect was responsible for the damage and whether the damage was due to any of the acts specifically enumerated above or from any other thing or circumstance, whether of a like nature or of a wholly different nature.

Section 15.2 Damage Caused by Tenant's Neglect

If any damage to the Premises, or any equipment or appurtenance thereon, results from any act or neglect of Tenant, its employees, agents, contractors, licensees or invitees, Tenant shall be liable therefor, and Landlord may at its option following expiration of the applicable grace period repair such damage, and Tenant shall reimburse Landlord for all reasonable costs of repairing such damage in excess of amounts, if any, paid to Landlord under insurance covering such damage within ten (10) days of demand by Landlord.

Section 15.3 Tenant Responsible for Personal Property

All personal property on the Premises belonging to Tenant shall be there at the risk of Tenant, and Landlord shall not be liable for damage thereto or theft or misappropriation thereof.

Section 15.4 Indemnification

To the extent not expressly prohibited by law, Tenant agrees to hold Landlord and its members, and their agents, servants and employees, harmless and to indemnify each of them against Adverse Consequences arising from injuries to all persons and damage to or theft or misappropriation or loss of property occurring in or about the Premises arising from Tenant's occupancy of the Premises or the conduct of its business or from any activity, work or thing done, permitted or suffered by Tenant in or about the Premises or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or due to any other act or omission of Tenant, its agents, contractors, invitees, licensees or employees, but only to the extent of Landlord's liability, if any, in excess of amounts, if any, paid to Landlord under insurance covering such

claims or liabilities, whether such insurance is carried by the Landlord or by the Tenant naming the Landlord as an additional insured therein. Nothing within this section shall be deemed to require the City to secure or maintain insurance coverage protecting against claims for injuries to persons or damage to property occurring at the Premises as a condition of Tenant's obligation to hold harmless and indemnify as is provided herein. Tenant's obligation to indemnify Landlord hereunder shall include the duty to defend against any claims creating such Adverse Consequences and to pay any judgments, settlements, costs, fees and expenses, including attorneys' fees, reasonably incurred in connection therewith. For such purpose, Tenant shall be entitled to the use of an attorney designated by it or its insurer.

ARTICLE 16

DAMAGE OR DESTRUCTION BY CASUALTY

If the Premises shall be damaged by fire or other casualty and if such damage does not render all or a substantial portion of the Premises untenable, then Tenant shall proceed to repair and restore the same with reasonable promptness, subject to reasonable delays for insurance adjustments and delays caused by matters beyond Tenant's reasonable control. If any such damage renders all or a substantial portion of the Premises untenable (a "**Substantial Casualty**"), Tenant shall, with reasonable promptness after the occurrence of such damage, estimate the length of time that will be required to substantially complete the repair and restoration of such damage and shall by notice advise Landlord of such estimate. If it is so estimated that the amount of time required to substantially complete the repair and restoration of a Substantial Casualty will exceed three hundred sixty (360) days from the latter of (i) the date of such notice or (ii) the date of collection of the insurance proceeds (the "**Start Date**"), then either Landlord or Tenant shall have the right to terminate this Lease as of the date of such damage upon giving notice to the other at any time within twenty (20) days after Tenant gives Landlord the notice containing said estimate (it being understood that Landlord may, if it elects to do so, also give such notice of termination together with the notice containing said estimate). Provided however, Tenant shall be obligated to demolish or remove any damaged portion of the Premises which continued existence would render the Premises unsafe or unusable. Unless this Lease is terminated as provided in the preceding sentence, Tenant shall proceed with reasonable promptness to repair and restore the Premises, subject to reasonable delays for insurance adjustments and delays caused by matters beyond Tenant's reasonable control, and also subject to applicable zoning laws and building codes. Tenant shall have no liability to Landlord, and Landlord shall not be entitled to terminate this Lease (except as hereinafter provided) if such repairs and restoration are not in fact completed within the time period estimated by Tenant, as aforesaid. If the Premises are not repaired or restored within the time period estimated by Tenant (as the same may be extended for a period not to exceed one hundred fifty percent (150%) of the time period estimated by Tenant, to the extent that additional time is required on account of Tenant's inability to timely perform as more specifically provided in Section 30.11 below) after the Start Date, then either party may terminate this Lease, effective as of the date of such fire or other casualty, by written notice to the other party not later than thirty (30) days after the expiration of said period, but prior to substantial completion of repair or restoration. Notwithstanding anything to the contrary herein set forth, (a) Tenant shall have no duty pursuant to this Article 16 to expend for any repair or restoration amounts in excess of insurance proceeds paid to Tenant and available for repair or restoration (without limiting Landlord's right to

terminate this Lease as aforesaid); (b) Landlord shall not have the right to terminate this Lease pursuant to this Article 17 if the damage or destruction was caused by the act or neglect of Landlord or its subtenants, agents, contractors, or employees; and (c) if any such damage rendering all or a substantial portion of the Premises untenable shall occur during the last two (2) years of the Term, either party shall have the option to terminate this Lease by giving written notice to the other within sixty (60) days after the date such damage occurred, and, if such option is so exercised, this Lease shall terminate as of the date of such notice.

ARTICLE 17

EMINENT DOMAIN

If the Premises, or a substantial part thereof, shall be taken or condemned by any competent authority for any public or quasi public use or purpose or transferred in lieu of condemnation, subject to the provisions of the Financing Documents and the rights of lenders set forth therein, the following shall apply. The Term of this Lease shall end upon and not before the earlier of (i) the date when the possession of the part so taken shall be required for such use or purpose or (ii) the effective date of the taking, and (except as otherwise herein provided) without apportionment of the award to or for the benefit of Tenant. In the event of the foregoing, Rent at the then current rate shall be apportioned as of the date of the termination. A “substantial part” of the Premises shall be deemed taken or condemned if, as Tenant may reasonably determine, such part taken shall materially interfere with the economic utilization of the Premises, taken as a whole. No money or other consideration shall be payable by Landlord to Tenant for the right of termination, and Tenant shall have no right to share in the condemnation award, whether for a total or partial taking, other than any award on account of compensation for the unamortized value of the Tenant’s leasehold improvements and on account of Tenant’s interest hereunder in light of the below-market rental, if any, payable hereunder. In the event that the Term of this Lease shall not be terminated as aforesaid in the event of a taking or condemnation, Landlord shall utilize the net proceeds from condemnation for the purpose of restoring the Premises to an economic whole within such a period of time as shall be reasonably necessary under the circumstances.

ARTICLE 18

DEFAULT

Section 18.1 Events of Default

The occurrence of any one or more of the following matters constitutes a default (“**Default**”) under this Lease:

- (a) failure by Tenant to pay, within ten (60) days after notice of failure to pay on the due date from Landlord to Tenant, Base Rent or any Additional Rent or other moneys required to be paid by Tenant under this Lease or failure of Landlord to make any payment required of it hereunder within ten (10) days after notice of failure to pay;

(b) failure by either party to cure within a reasonable time after receipt of notice from the other any hazardous condition which such party has created in violation of law or of this Lease;

(c) failure by either party to observe or perform any other covenant, agreement, condition or provision of this Lease, if such failure shall continue for thirty (30) days after notice thereof from the other party, or such longer period as is necessary for the failing party, acting diligently, to cure, if such failure cannot reasonably be corrected within said thirty (30) day period;

(d) the levy upon under writ of execution or the attachment by legal process of the Leasehold Interest of Tenant, or the filing or creation of a lien in respect of such Leasehold Interest, which lien shall not be released or discharged within one-hundred and twenty (120) days from the date of such filing;

(e) Tenant abandons the Premises whether or not Tenant thereafter continues to pay the Rent due under this Lease; or

(f) An Event of Bankruptcy occurs as to either party.

Section 18.2 Rights and Remedies of Landlord upon Tenant Default

If a Default by Tenant occurs, Landlord shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative and shall not operate to exclude or deprive Landlord of any other right or remedy allowed it by this Lease or by law or in equity:

(a) Landlord may terminate this Lease by giving to Tenant notice of Landlord's election to do so, in which event the Term of this Lease shall end, and all right, title and interest of Tenant hereunder shall expire on the date stated in such notice;

(b) Landlord may terminate the right of Tenant to possession of the Premises without terminating this Lease by giving notice to Tenant that Tenant's right of possession shall end on the date stated in such notice, whereupon the right of Tenant to possession of the Premises or any part thereof shall cease on the date stated in such notice;

(c) Landlord may enforce the provisions of this Lease and may enforce and protect the rights of Landlord hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of all moneys due or to become due from Tenant under any of the provisions of this Lease;

(d) Landlord may proceed against the Collateral under the security interest granted to it under Section 18.8 and take any and all actions permitted to a secured party under the laws of Florida, including the Uniform Commercial Code as in effect in the State; and

(e) Landlord may cure Tenant's Default without any liability to Tenant for any loss or damage that may result to it or its business by reason thereof (except in the case of Landlord's gross negligence or willful misconduct), and Tenant shall pay to Landlord immediately upon demand as Rent hereunder the cost of curing such Default.

Section 18.3 Right To Reenter

If Landlord exercises either of the remedies provided for in subparagraphs (a) and (b) of Section 18.2, Tenant shall surrender possession and vacate the Premises and immediately deliver possession thereof to Landlord, and Landlord may reenter and take complete and peaceful possession of the Premises, pursuant to applicable legal proceedings, full and complete license so to do being hereby granted to Landlord, and Landlord may remove all occupants and property therefrom, without relinquishing Landlord's right to Rent or any other right given to Landlord hereunder or by operation of law.

Section 18.4 Current Damages

If Landlord terminates the right of Tenant to possession of the Premises without terminating this Lease if permitted by applicable law, Landlord shall have the right to immediate recovery of all amounts then due hereunder. Such termination of possession shall not release Tenant, in whole or in part, from Tenant's obligation to pay the Rent hereunder for the full Term, and Landlord shall have the right, from time to time, to recover from Tenant, and Tenant shall remain liable for, all Rent and any other sums accruing as they become due under this Lease during the period from the date of such notice of termination of possession to the stated end of the Term. In any such case Landlord may relet the Premises or any part thereof for the account of Tenant for such rent, for such time (which may be for a term extending beyond the Term of this Lease) and upon such terms as Landlord shall reasonably determine and collect the rents from such reletting. Landlord shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant relative to such reletting. Also, in any such case, Landlord may make repairs, alterations and additions in or to the Premises and redecorate the same to the extent reasonably deemed by Landlord necessary or desirable and, in connection therewith, change the locks to the Premises, and Tenant shall upon demand pay the reasonable cost of all the foregoing together with Landlord's reasonable expenses of reletting. The rents from any such reletting shall be applied first to the payment of the reasonable expenses of reentry, redecoration, repair and alterations and the reasonable expenses of reletting, and second to the payment of Rent herein provided to be paid by Tenant. Any excess or residue shall operate only as an offsetting credit against the amount of Rent due and owing as the same thereafter becomes due and payable hereunder, and the use of such offsetting credit to reduce the amount of Rent due Landlord, if any, shall not be deemed to give Tenant any right, title or interest in or to such excess or residue, and any such excess or residue shall belong to Landlord solely, and in no event shall Tenant be entitled to a credit on its indebtedness to Landlord in excess of the aggregate sum (including Base Rent) which would have been paid by Tenant for the period for which the credit to Tenant is being determined, had no Default occurred. No such reentry or repossession, repairs, alterations and additions, or reletting shall be construed as an eviction or ouster of Tenant or as an election on Landlord's part to terminate this Lease, unless a written notice of such intention shall be given to Tenant, or shall operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, and Landlord may, at any time and

from time to time, sue and recover judgment for any deficiencies from time to time remaining after the application from time to time of the proceeds of any such reletting.

Section 18.5 Final Damages

If this Lease is terminated by Landlord as provided for by subparagraph (a) of Section 18.2, Landlord shall be entitled to recover from Tenant all Rent accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by Tenant or for which Tenant is liable or in respect of which Tenant has agreed to indemnify Landlord under any of the provisions of this Lease, which may be then owing and unpaid, and all costs and expenses, including court costs and attorneys' fees, reasonably incurred by Landlord in the enforcement of its rights and remedies hereunder, and, in addition, Landlord shall be entitled to recover as damages for loss of the bargain and not as a penalty: (i) the aggregate sum which at the time of such termination represents the excess, if any, of the present value of the aggregate rents which would have been payable after the termination date had this Lease not been terminated, including, without limitation, Base Rent at the annual rate or respective annual rates for the remainder of the Term provided for in Article 4 of this Lease or elsewhere herein, over the then present value of the then aggregate fair rental value of the Premises for the balance of the Term, such present value to be computed in each case on the basis of a per annum discount rate equal to the default rate of interest on the termination date (as described in Section 30.8 below) from the respective dates upon which such rentals would have been payable hereunder had this Lease not been terminated; and (ii) to the extent permitted by law, any damages in addition thereto, including reasonable attorneys' fees and court costs, which Landlord shall have sustained by reason of the breach of any of the covenants of this Lease other than for the payment of Rent.

Section 18.6 Removal of Personal Property

All property of Tenant removed from the Premises by Landlord pursuant to any provisions of this Lease or of law may be handled, removed or stored by Landlord at the cost and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay Landlord for all expenses reasonably incurred by Landlord in such removal and storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control. All such property not removed from the Premises by the Tenant on or before the end of the Term, however terminated (i.e. whether by lapse of time or otherwise), or on or before the earlier termination of Tenant's right of possession of the Premises, shall, at Landlord's option, be conclusively deemed to have been conveyed by Tenant to Landlord as by bill of sale without further payment or credit by Landlord to Tenant.

Section 18.7 Attorneys' Fees

Tenant shall pay all of Landlord's costs, charges and expenses, including court costs and reasonable attorneys' fees, reasonably incurred in enforcing Tenant's obligations under this Lease, reasonably incurred by Landlord in any action brought by Tenant in which Landlord is the prevailing party, or reasonably incurred by Landlord in any litigation, negotiation or transaction in which Tenant causes Landlord, without Landlord's fault, to become involved or concerned. Landlord shall pay all of Tenant's costs, charges and expenses, including court costs and

attorneys' fees reasonably incurred by Tenant in connection with the enforcement of Landlord's obligations under this Lease, reasonably incurred by Tenant in any action brought by Landlord in which Tenant is the prevailing party, or reasonably incurred by Tenant in any litigation, negotiation or transaction in which Landlord causes Tenant, without Tenant's fault, to become involved or concerned.

Section 18.8 Grant of Security Interest by Tenant

(a) To secure its obligations under this Lease, Tenant hereby grants to Landlord a security interest, subordinate to the interest of any Mortgage provided for in Article 19 below, in all of Tenant's right, title and interest in, to and under the following-described property (the "Collateral"):

(i) Tenant's ~~Replacement~~ replacement ~~Reserves~~ reserves, if any;

~~(ii) Tenant's right, title and interest in and under the Hotel Management Agreement, the Hotel Franchise Agreement, and any other contracts to the extent they may be pledged or assigned;~~

~~(iii)~~ (ii) Tenant's revenues, incomes, proceeds, profits and other sums or benefits paid or payable to Tenant in connection with Tenant's operation of residential apartments, retail, offices, restaurants ~~and a hotel in the Premises~~ or Tenant's subleasing of the Premises; and

~~(iv)~~ (iii) All proceeds, including insurance or condemnation proceeds, that arise out of the sale, liquidation, or other transfer of, or damage to, condemnation of, or destruction of, or sale, use or enforcement of the above-described Collateral, or any proceeds thereof, including cash proceeds.

(b) Tenant shall execute and deliver to Landlord within twenty (20) days after Landlord's request, in form and substance satisfactory to Landlord, such financing statements as Landlord may consider reasonably necessary to create, protect and preserve Landlord's security interest herein granted, and Landlord may cause such statements to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

(c) The security interest granted pursuant to this Section 18.8 is a collateral security interest only, and Tenant shall have full use of and control over the Collateral prior to the occurrence of, and following the cure of, any Default by Tenant hereunder.

(d) If requested to do so by Landlord, Tenant shall enter into a separate security agreement with Landlord to provide in greater detail the details of the security interest in the Collateral.

Section 18.9 Rights and Remedies of Tenant Upon Landlord Default

In addition to any remedies expressly set forth in this Lease, upon any Default by Landlord hereunder, Tenant shall have the right to terminate this Lease as well as all rights and

remedies allowed it by law or in equity, ~~anytime after the fifth anniversary of the Possession Date.~~

ARTICLE 19

SUBORDINATION

Section 19.1 Subordination

(a) Tenant may ~~have previously and may hereafter~~ from time to time execute and deliver one or more mortgages or deed of trust in Tenant's leasehold interest (hereinafter referred to as a "Mortgage") against in the Premises or any interest therein (Provided however in no event will Landlord agree to pledge title or ownership in the Premises as collateral for such Mortgage). If requested by the mortgagee under any Mortgage, Landlord will enter into a subordination, nondisturbance and attornment agreement with the mortgagee, and Landlord will promptly execute and deliver such agreement or agreements as may be reasonably required by such mortgagee under any Mortgage in connection therewith. A subordination, non-disturbance, and attornment agreement (SNDA) in the instance of this Lease would address the priority of the rights of landlord and lenders. It would deal with how and when the rights of the landlord will be subordinate to the rights of lenders or, sometimes at lender's option, senior to the rights of lenders. The non-disturbance portion assures ~~landlord~~ the lender that their rights to their premises will be preserved ("nondisturbed") on specified conditions within their control, even if the tenant defaults on its loan this Lease and the lender forecloses on the leasehold interest.

(b) In addition, upon request by any such mortgagee, Tenant may grant a security ~~interest~~ to such mortgagee in Tenant's interest in the Collateral ~~in which Tenant has a security interest pursuant to Section 18.8 as security for Tenant's obligations under loan documents. In no event will Landlord agree to pledge title or ownership of the Phase I real estate as collateral for tenant's financing of construction or operations of the Phase I development.~~ In such case, in the event of any foreclosure under any such security interest, Tenant (and no subsequent Tenant hereunder) shall be obligated to pay to Landlord any damages suffered by Landlord as a result of such foreclosure including, without limitation, the fair market value of all Collateral lost by Landlord in such transaction.

Section 19.2 Liability of Holder of Mortgage; Attornment

It is further agreed that (i) if any Mortgage shall be foreclosed, (A) the holder of the Mortgage, ground lessor (or their respective grantees) or purchaser at any foreclosure sale (or grantee in a deed in lieu of foreclosure), as the case may be, shall not be (x) liable for any act or omission of any prior landlord (including Landlord), (y) subject to any offsets or counterclaims which Tenant may have against a prior landlord (including Landlord), or (z) bound by any prepayment of Rent that Tenant may have made in excess of the amounts then due for the next succeeding month; (B) the liability of the mortgagee hereunder or the purchaser at such foreclosure sale or the liability of a subsequent owner designated as Landlord under this Lease

shall exist only so long as such mortgagee, purchaser or owner is the owner of the Premises, and such liability shall not continue or survive with respect to claims accruing after further transfer of ownership; and (C) upon request of the mortgagee, if the Mortgage shall be foreclosed, Tenant will attorn, as Tenant under this Lease, to the purchaser at any foreclosure sale under any Mortgage, and Tenant will execute such instruments as may be necessary or appropriate to evidence such attornment; and (ii) this Lease may not be modified or amended so as to reduce the Rent or shorten the Term provided hereunder or increase Landlord's obligations or decrease Tenant's obligations or so as to adversely affect in any other respect to any material extent the rights of Landlord and obligations of Tenant, nor shall this Lease be cancelled or surrendered, without the prior written consent, in each instance, of the mortgagee under any Mortgage.

Section 19.3 Short Form Lease or Notice of Lease

Should any prospective mortgagee require execution of a short form or memorandum or notice of lease for recording (containing the names of the parties, a description of the Premises and the Term of this Lease and any other information required by law to provide record notice) or a certification from Tenant concerning this Lease in such form as may be reasonably required by a prospective mortgagee, Landlord agrees to promptly execute such short form of lease or certificate and deliver the same to Tenant within ten (10) days following the request therefore, whereupon Landlord shall join in the execution of such short form lease and arrange for the recordation thereof. In addition, at the request of Landlord or Tenant, the parties shall execute a short form of lease or notice of lease for recording containing the names of the parties, a description of the Premises, the Term of this Lease and any other information required by law to provide record notice.

Section 19.4 Tenant Protections

With respect to any Mortgage to which Landlord's interest under this Lease shall be subordinate, Tenant shall use cause the mortgagee thereunder and its successors and assigns to agree to recognize and not disturb the interest of Landlord in the event of a default by Tenant under said Mortgage. Notwithstanding the foregoing, Tenant shall cause any notice of default under such Mortgage for the financing related thereto to be promptly given to Landlord and Tenant shall cause Landlord to have a right to cure any default by Tenant under said Mortgage.

ARTICLE 20

MORTGAGEE PROTECTION

Landlord agrees to give any holder of any Mortgage (as defined in Section 20.1 hereof) against the Premises, or any interest therein, by registered or certified mail, a copy of any notice or claim of Default served upon Tenant by Landlord, provided that prior to such notice Landlord has been notified in writing (by way of service on Landlord of a copy of an assignment of Tenant's interests in leases, or otherwise) of the address of such Mortgage holder. Landlord further agrees that if Tenant shall have failed to cure such Default within sixty (60) days after such notice to tenant (or if such Default cannot be cured or corrected within that time, then such additional time as may be necessary if Tenant has commenced within such sixty (60) days and is diligently pursuing the remedies or steps necessary to cure or correct such Default), then the

holder of the Mortgage shall have an additional thirty (30) days within which to cure or correct such Default (or if such Default cannot be cured or corrected within that time, then such additional time as may be necessary if such holder of the Mortgage has commenced within such thirty (30) days and is diligently pursuing the remedies or steps necessary to cure or correct such Default, including the time necessary to obtain possession if possession is necessary to cure or correct such Default).

ARTICLE 21

ESTOPPEL CERTIFICATE

Tenant agrees that, from time to time upon not less than ten (10) days' prior request by Landlord or the holder of any Mortgage or any ground lessor, Tenant (or any permitted assignee, subtenant, licensee, concessionaire or other occupant of the Premises claiming by, through or under Tenant) will deliver to Landlord, or to the holder of any Mortgage or any ground lessor, a statement in writing signed by Tenant certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and identifying the modifications); (ii) the date upon which Tenant began paying Rent and the dates to which the Rent and other charges have been paid; (iii) that Landlord is not in Default under any provision of this Lease, or, if in Default, the nature thereof in detail; (iv) that (if applicable) the Premises have been completed in accordance with the terms hereof and Tenant is in occupancy and paying Rent on a current basis with no rental offsets or claims; (v) that there has been no prepayment of Rent other than that provided for in this Lease; (vi) that there are no actions, whether voluntary or otherwise, pending against Tenant under the bankruptcy laws of the United States or any state thereof; and (vii) such other matters as may be required by Landlord, the holder of the Mortgage or any ground lessor. Landlord shall provide a statement of like tenor if and as requested by Tenant.

ARTICLE 22

SUBROGATION AND INSURANCE

Section 22.1 Waiver of Subrogation

Landlord and Tenant agree to have all Causes of Loss-Special Form, Building and Personal Property Insurance (or any other property damage insurance which may be carried by either of them endorsed with a clause (if commercially available) providing that any release from liability of, or waiver of claim for, recovery from the other party entered into in writing by the insured thereunder prior to any loss or damage shall not affect the validity of said policy or the right of the insured to recover thereunder and providing further that the insurer waives all rights of subrogation which such insurer might have against the other party. Without limiting any release or waiver of liability or recovery set forth elsewhere in this Lease, and notwithstanding anything in this Lease which may appear to be to the contrary, each of the parties hereto releases and waives all claims for recovery from the other party for any loss or damage to any of its property insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance policies. Notwithstanding the foregoing or anything contained in this Lease to the contrary, any release or any waiver of claims shall not be operative, nor shall

the foregoing endorsements be required, in any case where the effect of such release or waiver is to invalidate insurance coverage or invalidate the right of the insured to recover thereunder or to increase the cost thereof (provided that in the case of increased cost the other party shall have the right, within ten (10) days following written notice, to pay such increased cost keeping such release or waiver in full force and effect).

Section 22.2 Tenant's Insurance

(a) From and after the Possession Date, Tenant shall procure and maintain or cause to be procured and maintained policies of insurance, including, without limitation, liability, casualty and rental interruption insurance for the Premises, at its sole cost and expense, during the entire Term hereof with terms and coverages and companies reasonably satisfactory to Landlord and with such increases in limits as Landlord may from time to time reasonably request, ~~including all insurance required under any Financing Documents and/or under the Hotel Management Agreement, or the Hotel Franchise Agreement.~~ Alternatively, Landlord may cause such policies to be procured and maintained, and Tenant shall reimburse Landlord for the cost thereof, upon demand. If Landlord provides policies of insurance, such policies shall be all risk coverage exclusive of footings and foundation.

(b) All policies of insurance required hereunder which insure against loss or damage to the Premises shall provide that the proceeds thereof (or so much of such proceeds as pertain to loss or damage to the Premises) shall be payable to Landlord, and if Landlord so requests, shall also be payable to any contract purchaser of the Premises and any holder of a Mortgage, as the interest of such purchaser or holder of a Mortgage appears pursuant to a standard additional insured or mortgagee clause. Tenant shall not, on Tenant's own initiative or pursuant to request or requirement of any third party, take out separate insurance concurrent in form or contributing in the event of loss with that required hereunder, unless Landlord is included therein as an additional insured with loss payable as in this Section provided Tenant shall immediately notify Landlord whenever any such separate insurance is taken out and shall deliver to Landlord duplicate originals thereof or original certificates evidencing the same with true copies of such insurance policies attached. All such policies of insurance shall provide that any loss shall be payable to Landlord notwithstanding any act or omission of Tenant which might otherwise result in a forfeiture or reduction of such insurance.

Section 22.3 Certificates of Insurance

Prior to the Possession Date of each ~~Phase/Parcel~~ Phase I (unless Landlord has elected to procure the policies of insurance as provided above) or at any time upon request from Landlord, Tenant shall furnish to Landlord policies or certificates evidencing such coverage, which policies or certificates shall state that such insurance coverage may not be reduced, cancelled or not renewed without at least thirty (30) days' prior written notice to Landlord and Tenant (unless such cancellation is due to nonpayment of premium, and, in that case, only ten (10) days' prior written notice shall be sufficient).

ARTICLE 23

NONWAIVER

No waiver of any condition expressed in this Lease shall be implied by any failure of either party to enforce any remedy on account of the violation of such condition whether or not such violation be continued or repeated subsequently, and no express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated. Without limiting Landlord's rights under Article 10, it is agreed that no receipt of monies by Landlord from Tenant after the termination in any way of the Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given to Tenant prior to the receipt of such monies. It is also agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any monies due, and the payment of said monies shall not waive or affect said notice, suit or judgment.

ARTICLE 24

AUTHORITY OF TENANT

Tenant is a limited liability company/LP and Tenant represents and warrants that all of the Persons who are managers or managing members in such limited liability company have executed this Lease on behalf of Tenant, or that this Lease has been executed and delivered pursuant to and in conformity with a valid and effective authorization therefor by all of the managers or managing members of such company and is and constitutes the valid and binding agreement of the company enforceable in accordance with its terms.

ARTICLE 25

REAL ESTATE BROKERS

Each party represents that it has not dealt with any broker in connection with this Lease, and agrees to indemnify and hold the other harmless from all Adverse Consequences arising from any claims or demands of any broker or brokers or finders for any commission alleged to be due such broker or brokers or finders in connection with its having introduced such party to the Premises or dealing with such party in the negotiation of this Lease.

ARTICLE 26

NOTICES

All notices and demands or requests required or desired to be given by either party to the other with respect to this Lease or the Premises shall be in writing and shall be sent by overnight courier service, prepaid, or sent by United States registered or certified mail, return receipt requested, postage prepaid, and addressed as herein provided. Notices to or demands upon Tenant shall be addressed to the following:

If to CDP or its assignee:

Community Development Partners, Inc.
120 North McDonough Street
Jonesboro, GA 30236
Attn: Kirby A. Glaze, President

And

Community Development Partners
1904 San Marco Boulevard
Jacksonville, FL 32207
Attn: Andrew M Ham, Vice-President

With a copy to (which shall not constitute notice):

Glaze & Glaze
120 North McDonough Street
Jonesboro, GA 30236
Attn: George Glaze, Esq.

If to the City:

City of Palatka
201 N. 2nd Street
Palatka, FL 32177
Attention: Mr. Elwin C. Boynton Jr.

With a copy to (which shall not constitute notice):

Donald E. Holmes
Donald E. Holmes, P.A.
Attorney at Law
222 N. 3rd Street
Palatka, FL 32177
Attn: Don E. Holmes, Esq.

Notices and demands shall be deemed given and served (i) upon receipt of or refusal to accept any such notice or demand, or (ii) one (1) business day after the deposit of any such notice or demand with an overnight courier service. Either party may change its address for receipt of notices by giving notice of such change to the other party in accordance herewith. Notices and demands from Landlord to Tenant may be signed by Landlord, its manager(s) or managing member(s), or the duly authorized agent of any of them.

ARTICLE 27

HAZARDOUS SUBSTANCES

Section 27.1 Defined Terms.

As used in this Article 27

,the following terms shall have the meanings set forth below:

(a) **“Claim”** shall mean and include any demand, cause of action, proceeding or suit (i) for damages (actual or punitive), losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement, (ii) for the costs of site investigations, feasibility studies, information requests, health or risk assessments or Response actions, and (iii) for enforcing insurance, contribution or indemnification agreements.

(b) **“Environmental Laws”** shall mean and include all existing and future federal, state and local statutes, ordinances, regulations and rules relating to environmental quality, health, safety, contamination and cleanup, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq., and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act (“**FIFRA**”), 7 U.S.C. Section 136 et seq.; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 et seq.; the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq.; the Noise Control Act, 42 U.S.C. Section 4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Resource Conservation and Recovery Act (“**RCRA**”), 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right to Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act (“**TSCA**”), 15 U.S.C. Section 2601 et seq.; the Atomic Energy Act, 42 U.S.C. Section 2011 et seq., and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 et seq.; and state superlien and environmental cleanup statutes, with implementing regulations and guidelines. Environmental Laws shall also include all existing and future state, regional, county, municipal and other local laws, regulations and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials.

(c) **“Hazardous Materials”** shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, byproduct or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos containing materials, PCBs and other substances regulated under the TSCA; source material, special nuclear material, byproduct material

and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. § 1910.1200 *et seq.*; and industrial process and pollution control wastes, whether or not hazardous within the meaning of RCRA, together with any and all other hazardous or toxic materials regulated from time to time under any other Environmental Laws.

(d) “**Manage**” means to generate, manufacture, process, treat, store, use, reuse, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Materials.

(e) “**Release**” or “**Released**” shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment, as “**environment**” is defined in CERCLA.

(f) “**Response**” or “**Respond**” shall mean action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.

Section 27.2 Tenant’s Obligations with Respect to Environmental Matters

During the Term of this Lease: (i) Tenant shall at its own cost comply with all Environmental Laws; (ii) Tenant shall not conduct or authorize the Management of any Hazardous Materials on the Premises, including installation of any underground storage tanks, without prior written disclosure to and approval by Landlord, provided, however, that the use by Tenant of cleaning products and other materials used in the ordinary course of the operation of the Premises shall be deemed disclosed to and approved by Landlord, as long as such use is not in violation of any Environmental Laws; (iii) Tenant shall not take or permit any action that would subject the Premises to permit requirements under RCRA or any other Environmental Laws for storage, treatment or disposal of Hazardous Materials; (iv) Tenant shall not dispose or permit the disposal of Hazardous Materials in dumpsters (if any) provided by Landlord for Tenant use; (v) Tenant shall not discharge or permit the discharge of Hazardous Materials into drains or sewers; (vi) Tenant shall not cause or allow the Release of any Hazardous Materials on, to or from the Premises; and (vii) Tenant shall at its own cost arrange for the lawful transportation and offsite disposal of all Hazardous Materials that is generated by the operation of the Premises

Section 27.3 Copies of Notices

During the term of this Lease, Tenant shall promptly provide Landlord with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Maryland Environmental Protection Agency or other federal, state or local agency or authority, or any

other entity or individual, concerning (i) any Release of a Hazardous Material on, to or from the Premises; (ii) the imposition of any lien on the Premises; or (iii) any alleged violation of or responsibility under Environmental Laws. Landlord and Landlord's agents, contractors, beneficiaries and employees (and the agents, contractors, employees or representatives of any such parties) shall have the right subject to the other applicable provisions of this Lease to enter the Premises and conduct appropriate inspections or tests in order to determine Tenant's compliance with Environmental Laws.

Section 27.4 Tests and Reports

Upon written request by Landlord, Tenant shall provide Landlord with the results of appropriate reports and tests, with transportation and disposal contracts for Hazardous Materials, with any permits issued under Environmental Laws, and with any other applicable documents to demonstrate that Tenant complies with all Environmental Laws relating to the Premises, and if such reports, tests or other items reveal any failure of the Premises to so comply with all Environmental Laws, then, in addition to other rights and remedies of Landlord hereunder, Tenant shall reimburse Landlord, upon demand, for the reasonable cost of such reports, tests and other investigations.

Section 27.5 Access and Inspection

Landlord and its agents and representatives shall have access to the Premises and to the books and records of Tenant (and any occupant of the Premises claiming by, through or under Tenant) relating to Hazardous Materials for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind and quantity of all products, materials and substances brought onto the Premises or made or produced thereon. Landlord and its agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the Premises, including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Premises by Tenant or an occupant claiming by, through or under Tenant or otherwise present on the Premises. And, further, notwithstanding any provision of this Lease or applicable statutes or judicial decisions to the contrary, with respect to any assignment, subletting, grant of license, concession or any other permission to use the Premises by any Person other than Tenant, Landlord shall have the right to withhold Landlord's consent thereto if, the assignee, subtenant, licensee, concessionaire or such other Person is not capable of performing or is not sufficiently qualified to perform in accordance with the requirements of this Article. Any assignment, sublease, license or other permission to use the Premises from which Landlord withholds its consent as provided in this Section 28.5 shall be voidable at the Landlord's sole option.

Section 27.6 Tenant's Obligation To Respond

If Tenant's Management of Hazardous Materials at the Premises (i) gives rise to liability or to a Claim under any Environmental Law, (ii) causes a significant public health effect, or (iii) creates a nuisance, Tenant shall promptly take all appropriate action in Response.

Section 27.7 Landlord's Obligations with respect to Environmental Matters

~~As part of Landlord's Work~~Except such Hazardous Materials encompassed in those structures to be rehabilitated or renovated by Tenant pursuant to Exhibit "C", Landlord shall cause the Premises to be in compliance with all Environmental Laws prior to the Possession Date and, without limitation of the foregoing, shall cause removal of all Hazardous Materials on or about the Premises to the extent required by law and shall cause all remediation work with respect to existing violation of Environmental Laws to be performed in accordance with the recommendations contained in the Environmental Reports. Should Landlord fail or refuse to perform hereunder, Tenant shall be entitled to terminate the Lease immediately with no further obligations thereunder.

Section 27.8 Indemnification

(a) Tenant shall indemnify, defend and hold harmless Landlord, its partners or members, its beneficiaries, its lenders, any managing agents and leasing agents of the Premises, and their respective beneficiaries, agents, partners, officers, directors and employees, from all Claims (other than those arising from a breach by Landlord of its obligation under Section ~~28~~27.7) arising from or attributable to: (i) the presence of Hazardous Materials in or on the Premises or the subsurface thereof or the violation of any Environmental Laws (including, without limiting the generality thereof, any cost, claim, liability or defense expended in remediation required by a governmental authority or by reason of the release, escape, seepage, leakage, discharge or migration of any Hazardous Material on or from the Premises or violation of any Environmental Laws), or (ii) any breach by Tenant of any of its warranties, representations or covenants in this Article. Tenant's obligations hereunder shall survive the termination or expiration of this Lease.

(b) Landlord shall indemnify, defend and hold harmless Tenant, its partners or members, its beneficiaries, its lenders, any managing agents and leasing agents of the Premises, and their respective beneficiaries, agents, partners, officers, directors and employers, from all claims arising from or attributable to any breach by Landlord of any of its representations, warranties or covenants in Section 28.7. Landlord's obligations hereunder shall survive the termination or expiration of this Lease.

ARTICLE 28

TITLE AND COVENANT AGAINST LIENS

Landlord's title in and to the Premises is and always shall be paramount to the title of Tenant, and nothing in this Lease contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord in and to the Premises. Tenant covenants and agrees not to suffer or permit any lien of mechanics or materialmen to be placed upon or against the Premises or against Tenant's Leasehold Interest in the Premises and, in case of any such lien attaching, to immediately pay and remove same. Tenant has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Tenant, operation of law or otherwise, to attach to or be placed upon the Premises and any and all liens

and encumbrances created by Tenant shall attach only to Tenant's Leasehold Interest in the Premises. If any such liens so attach and Tenant fails to pay and remove or bond over same within ten (10) days after notice thereof, Landlord, at its election, may pay and satisfy the same, and in such event the sums so paid by Landlord shall accrue with interest from the date of payment at the rate set forth in Section 30.8 hereof for amounts owed to Landlord by Tenant. Such sums shall be deemed to be additional rent due and payable by Tenant at once without notice or demand. Nothing contained in this Article ~~29-28~~ shall obligate Tenant to pay and remove any lien of mechanics or materialmen imposed because of the action or inaction of Landlord.

ARTICLE 29

MISCELLANEOUS

Section 29.1 Successors and Assigns

Each provision of this Lease shall extend to and shall bind and inure to the benefit not only of Landlord and Tenant, but also their respective heirs, legal representatives, successors and assigns, but this provision shall not operate to permit any transfer, assignment, mortgage, encumbrance, lien, charge or subletting contrary to the provisions of this Lease.

Section 29.2 Modifications in Writing

No modification, waiver or amendment of this Lease or of any of its conditions or provisions shall be binding upon either party unless in writing signed by such party.

Section 29.3 No Option; Irrevocable Offer

Submission of this instrument for examination shall not constitute a reservation of or option for the Premises or in any manner bind Landlord, and no lease or obligation of Landlord shall arise until this instrument is signed and delivered by Landlord and Tenant.

Section 29.4 Definition of Tenant

The word "**Tenant**" whenever used herein shall be construed to mean Tenants or any one or more of them in all cases where there is more than one Tenant; and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other organizations, partnerships or other Entities, or individuals, shall in all cases be assumed as though in each case fully expressed herein. In all cases where there is more than one Tenant, the liability of each shall be joint and several.

Section 29.5 Definition of Landlord

The term "**Landlord**" as used in this Lease means only the owner or owners at the time being of the Premises so that in the event of any assignment, conveyance or sale, once or successively, of said Premises, or any assignment of this Lease by Landlord, said Landlord making such sale, conveyance or assignment shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder accruing after such sale, conveyance or

assignment, and Tenant agrees to look solely to such purchaser, grantee or assignee with respect thereto. This Lease shall not be affected by any such assignment, conveyance or sale, and Tenant agrees to attorn to the purchaser, grantee or assignee.

Section 29.6 Headings

The headings of Articles and Sections are for convenience only and do not limit, expand or construe the contents of the Sections.

Section 29.7 Time of Essence

Time is of the essence of this Lease and of all provisions hereof.

Section 29.8 Default Rate of Interest

All amounts (including, without limitation, Rent and Additional Rent) owed by Tenant to Landlord pursuant to any provision of this Lease and not paid within ten (10) days from the date when due shall bear interest from the date due until paid at the annual rate of one percent (1%) in excess of the Designated Prime Rate, unless a lesser rate shall then be the maximum rate permissible by law with respect thereto, in which event said lesser rate shall be charged.

Section 29.9 Severability

The invalidity of any provision of this Lease shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Lease.

Section 29.10 Entire Agreement

All understandings and agreements, oral or written, heretofore made between the parties hereto are merged in this Lease, which alone fully and completely expresses the agreements between Landlord (and its beneficiary, if any, and their agents) and Tenant with respect to the Premise herein.

Section 29.11 Force Majeure

If either party fails to timely perform any of the terms, covenants and conditions of this Lease on its part to be performed (other than relating to the payment of money) and such failure is due in whole or in part to any strike, lockout, labor trouble, civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, casualties, acts of God, acts caused directly or indirectly by the other party (or the other party's agents, employees, contractors, licensees or invitees) or any other cause (other than financial inability to perform) beyond the reasonable control of such party, then such party shall not be deemed in default under this Lease as a result of such failure and any time for performance by such party provided for herein shall be extended by the period of delay resulting from such cause.

Section 29.12 Signs

Tenant may erect signs on the exterior or interior of the Premises, provided that such sign or signs (i) do not cause any structural damage or other damage to the Premises; (ii) do not violate applicable governmental laws, ordinances, rules or regulations; (iii) do not violate any covenants, conditions or restrictions affecting the Premises; and (iv) are compatible with the architecture of the Premises.

Section 29.13 Waiver of Trial by Jury

It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall, and they hereby do, waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use of or occupancy of the Premises or any claim of injury or damage and any emergency statutory or any other statutory remedy.

Section 29.14 Relationship of Parties

Nothing contained in this lease shall be deemed or construed by the parties to this Lease, or by any third party, to create the relationship of principal and agent, partnership, joint venture, lender and borrower, or any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computing Rent hereunder nor any other provisions contained in this Lease nor any acts of the parties to this Lease shall be deemed to create any relationship between Landlord and Tenant, other than the leasehold relationship contemplated hereby.

Section 29.15 No Merger

The parties agree that absent the express written consent of Landlord and Tenant, the fee estate and the leasehold estate created by this Lease shall not merge during the Term, regardless whether the same persons or entities are the owners of both estates.

ARTICLE 30

EXCULPATORY PROVISIONS

Section 30.1 Landlord

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that in case of Default hereunder by Landlord (or Default through, under or by any of its agents or representatives), Tenant shall look solely to the interests of Landlord in the Premises or the proceeds of the sale, assignment or subletting thereof and any other assets of Landlord and that none of Landlord's members or managers shall have any personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained. Nothing herein contained shall preclude injunctive or other equitable relief.

Section 30.2 Tenant

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that in case of Default hereunder by Tenant (or Default through, under or by any of its agents or representatives), Landlord shall look solely to the Leasehold Interest of Tenant in the Premises or the proceeds of the sale thereof and any other assets of Tenant and that none of Tenant's members or managers shall have any personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained. Nothing herein contained shall preclude injunctive or other equitable relief.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have caused this Master Lease Agreement to be executed as of the date first written above.

LANDLORD:

City of Palatka, a Florida Municipal Corporation

By:
Its:

By: _____
Hitesh Patel
Its: Manager

Attest;

And

By: _____
City Clerk

Approved as to legal form and sufficiency:

By: _____
City Attorney

TENANT:

Community Development Partners, Inc, a
Georgia Corporation

By: _____
Kirby A Glaze
Its: President

And CDP Palatka, LP

By: _____
Community Development Partners, Inc.
Its: General Partner

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

See Attached

EXHIBIT B
LANDLORD'S WORK

See Attached.

EXHIBIT C
IMPROVEMENTS TO PREMISES

See attached

Below please find [REDACTED] regarding certain terms of the proposed lease between the City of Palatka and Community Development Partners, Inc., (CDP) which is to be considered on December 9, 2010. As always, it is assumed that the entire lease has been reviewed by the individual commissioners and relevant staff. The matters mentioned below are not intended as a substitute for the a reading of the lease and are not intended as a complete summary of the lease.

1. Section. 3.1 (term of lease). The lease is for a duration of fifty years. The “termination date” (assuming the lease is not terminated “for cause”) is December 31, 2060, or the 50th anniversary of the Possession Date (whichever is later). The lease commences on the date of closing of a loan or other source of financing which produces funds sufficient to pay 100% of the cost of design, permitting, and construction of Phase I of the project (“Commencement Date”) The “possession date” is within 30 days of the Commencement Date.

It is not readily apparent whether there is a deadline for closing of the “loan or other financing” which is to produce the funds for development. In other words, “closing” of the loan/financing defines the commencement date; the commencement date defines the possession date; the possession date marks the beginning of the 50 year term; but what establishes the deadline for loan closing? (See revision to 3.10)

2. Section 4.1 (base rent). **Does the value of the premises as used for calculating the “base rent” include the value of the improvements? (Value as of commencement date see 4.1 for “existing improvements)”**
3. Section 4.3 (net lease). **References Section 5.2. There is no Section 5.2 included within the document. (See revision to 4.3)**
4. Section 7.1 ((possession). States that the City will provide a parking lot within the “100 BLOCK” with the description to be provided in Exhibit B to be entitled “Landlord’s Work”. **The “Preliminary Development Agreement” (“PDA”) adopted by the City on August 27, 2009, provides at paragraph 9.a. ii. That the City would make available to the developer funds in an amount of not less than \$160,000 to be applied to the cost of constructing a parking lot. The developer would provide at its expense the design and engineering necessary to construct the parking lot. There appears to be a conflict between the PDA and the lease in this regard. (See revision to 7.1)**
5. Section 13.1(limitation). States that “Tenant shall not, without prior written consent of Landlord , ... make any alterations, additions, or improvements to the Premises, *other than such alterations, additions, or improvements to the Premises which are funded by loan proceeds or other sources of financing*”. **(emphasis added). As written and literally interpreted, the present wording would allow the tenant to make any alteration, addition, or improvement to the premises without the consent of landlord so long as the work was funded by loan proceeds or other sources of financing. This doesn’t appear to be logical. (See revision to 13.1)**

6. Section 13.2 (procedures for alterations, additions, or improvements). **Is the procedure which is set forth intended to apply to the initial construction as well as subsequent alterations, additions, or improvements?. If so, is the tenant actually willing to deposit with the city "security for payment of the work" as the wording of the section provides. If not, what is the city's protection against the filing and possible foreclosure of mechanic's liens which could result from the construction? (See revision to 13.2)**
7. Section 14.1. (Assignment and sub-letting). **Clarify and confirm that the City is NOT given the right to approve individual tenants to whom CDP leases or rents space. (See revision to 14.1)**
8. Section 14.3 (Landlord's Consent). **Emphasize that the City's right to object to CDP's assignment of the Phase I and Phase II lease is limited. The City does not have unbridled discretion to object to an assignment by CDP. (CDP has noted comment)**
9. Section 14.5. (Change of Ownership or Control of Tenant). **Emphasize that if the current shareholders of CDP were to sell all of their stock in the corporation to one or more purchasers, the transfer of stock would not be considered an assignment of the lease – meaning that the city would not have the standing to object. (See revision 14.5)**
10. Section 15.4. (Indemnification). This section provides that CDP will indemnify the city for "Adverse Consequences" arising from injuries to person and damages to property occurring at the property. However, it limits CDP's obligation to indemnify the city to damages which are in excess of insurance which covers the city. **Should clarify whether the city is required to carry insurance as a condition of availing itself of the indemnification clause. If not, then we should add a sentence to read essentially as follows: " Nothing within this section shall be deemed to require the City to secure or maintain insurance coverage protecting against claims for injuries to persons or damage to property occurring at the Premises as a condition of Tenant's obligation to hold harmless and indemnify as is provided herein." (See revision to 15.4)**
11. Article 16 (Damage or Destruction by Casualty). Provides that in the event of the destruction of the premises, the tenant may not (under certain circumstances) be obligated to repair or rebuild the improvements but may instead simply terminate the lease. **Should clarify that in the event the tenant elects to terminate the lease rather than rebuild or repair, the tenant has the obligation of removing all debris and leaving the premises clear of same. (See revision to Article 16)**
12. Section 18.8. (Grant of Security Interest to Tenant). "Tenant Replacement Reserves" is not defined. **I do not believe that the lease requires the Tenant to maintain a "tenant replacement reserve – let alone does it establish a minimum amount of same. Will the tenant assign to the city a security interest in its sub-leases? (Already have it by virtue of being landlord. All collateral subordinate. Granting it does....) Will the security interest of the City in the "Collateral" be subordinate to the security interest of the lender or equity partners? (Yes)**
13. Section 19.1 (Subordination). Requires the city, if requested by a Mortgagee, to enter into a subordination, non-disturbance, and attornment agreement. **Section 19.1 does not specify what interest the City would be expected to subordinate to a mortgagee. (We believe it does. We inserted language we believed addressed the issue. If we need to discuss on call with Kirby let us know)**

- 14.** Section 22.1 (Waiver of subordination). **Emphasize that City will be required to consult with its insurer to determine if it can modify or place coverage pertaining to the Premises which “waives” the City’s right to seek contribution or reimbursement from the tenant for damages which the city might incur as the result of “Adverse Consequences” at the Premises. This concept is called a “subordination waiver”. If it is possible to secure this coverage but at an additional expense, then the city is not obligated to secure same but is obligated to notify the tenant in order that the tenant can decide if it is willing to pay the increased cost of the insurance with the “subordination waiver” provision included. (No comment)**
- 15.** Section 27.7. (Landlord’s obligations with respect to Environmental Matters). Requires Landlord to “cause removal of all Hazardous Materials on or about the Premises...and cause all remediation work...to be performed.. . The definition of Hazardous Materials as used in this section is found in Section 27.1(c). The definition includes asbestos (by name) and other types of substances by reference to various pollution laws. **It is my recollection that the old buildings in the “100 block” may contain asbestos and certain other identified contaminants. Would this require the city to perform contamination remediation at the Premises before CDP takes possession or at any time whatsoever? (See revision to 27.7)**
- 16.** Section 27.8 (Indemnification) References Section 28.7. **(Should refer to 27.7, see revision)**
- 17.** *Article 28 (Title and Covenant Against Liens)*. It should be noted that, despite the language of Article 28, Florida Law would allow for the attachment of a lien in favor of a contractor, sub-contractor, or materialmen, who provides labor or materials used in the construction of improvements to the premises. (Mechanic’s Lien). I honestly don’t know if it is possible to provide that contactors, subcontractors , and materialmen would be required to waive their rights under the mechanic’s lien law as a condition of working on the project. I will research this issue and attempt to provide an answer. (We can’t keep something from happening from operation of law....)

Supplement to Memo re: CDP/PALATKA lease.

1. When does the tenant's rental obligation begin to accrue and when is the tenant obligated to begin paying same? Section 4.1 states that the tenant agrees to pay an annual base rent "commencing on the "Commencement Date"... . (As noted earlier, the "commencement date" is the date when tenant has secured 100% financing for the project) . Section 4.2 states that payment of the base rent shall begin on the first day of the month following the month Phase I is open for business and shall be prorated among the remaining months in that year based on the number of months it is payable. Section 4.3 states that tenant shall be solely responsible for insurance premiums, ... (and similar expenses) following the possession date of Phase I. (As noted earlier, the "possession date" is to occur within 30 days of the "commencement date"),). **Is the cited language intended to mean that base rent will begin to accrue during the month after the commencement date but will not be payable until the month after Phase I is open for business, and that the rent that accrued between the commencement date and the date when phase I is open for business will be pro-rated and paid during the remaining months of the year in which the business opens? (Does the tenant actually begin paying insurance premiums and other similar charges on the possession date. Do these "similar charges" include ad valorem taxes? (See revisions to Article 1, Definitions, for a definition of substantial completion meaning "open for business" and related revisions to 4.1 and 4.2)**
2. When will ad valorem taxes be assessed? The property is currently exempt from payment of ad valorem taxes. This will change at some point when the property is deemed to have been leased by the City to another entity for purposes of generation of revenue? **What date will the Tax Collector consider as triggering the elimination of the tax exemption of the property,- the date when the lease is signed; the commencement date; the possession date; the date when payment of base rent begins? Will the tenant pay the taxes regardless of when the tax collector finds that the tax exemption has been eliminated? (Noted that Don is asking Tax Collector's attorney for an opinion)**
3. Section 4.4 refers to "Section 9" of the Preliminary Agreement ... dated August 27, 2009. There is no "Section 9" within the cited agreement. There is a paragraph 9 but it doesn't appear to be relevant to the issue addressed with Section 4.4. (See revision to 4.4 and related revision to 4.3 since method of paying Base Rent has been established in this Lease in 4.1.)