

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT ("Lease Agreement"), entered into on December 24 2003, between the CITY OF FORT LAUDERDALE, a municipal corporation existing under the laws of the State of Florida, referred to as "Lessor", and NEW RIVER TRADING POST DEVELOPMENT, LLC., a Florida limited liability company, referred to as the "Lessee".

RECITALS

WHEREAS, Lessor is the fee simple owner of the "Leased Property" (as hereinafter defined) and as more particularly described on **Exhibit A** attached to this Lease Agreement; and

WHEREAS, Lessor desires to lease to Lessee the Leased Property for redevelopment by Lessee subject to the terms and conditions set forth in this Lease Agreement.

NOW THEREFORE, in consideration of the sum of Ten and No/100 (\$10.00) Dollars, the mutual promises and covenants set forth below and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. RECITALS. The foregoing recitals are true, correct and incorporated into this Lease Agreement.

2. DEFINITIONS. Capitalized terms used in this Lease Agreement that are not otherwise defined in this Lease Agreement shall have the meanings ascribed to such terms set forth below. Capitalized terms used in this Lease Agreement that are not defined in the following definitions shall have the meanings where first defined in this Lease Agreement.

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

"Affiliate", "Affiliated" or "Affiliated Person" means, when used with reference to a specific Person: (i) any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person; (ii) any Person that is an officer of, partner in, member of, or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified Person is an officer, partner, member, or trustee, or with respect to which the specified Person serves in a similar capacity; (iii) any Person that, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in the specified Person, or of which the specified Person is directly or indirectly the owner of 10% or more of any class or equity securities or other form of ownership, or in which the specified Person has a substantial beneficial interest (10% or more); or (iv) a relative or spouse of the specified Person. As used in this definition, the term "relative" shall include all relationships specified in §732.103, Florida Statutes (2003) (intestate succession) as they pertain to the Person or Person's spouse, instead of decedent (e.g. the term includes brother-in-law or father-in-law). The definition also includes any Person, who if there

was a relationship between an Affiliate as defined above and that Person it would constitute a violation of § 112.313 (3) (Doing Business With One's Agency) or §112.313(7) (Conflicting Employment or Contractual Relationship).

"Applicable Law" means with respect to any Person, all provisions of constitutions, statutes, rules, regulations and orders of governmental bodies or regulatory agencies applicable to such Person or the Project, and all orders and decrees of all courts and arbitrators in proceedings or actions to which the Person is a party or by which it or its properties are bound.

"Approved Development Plan" means the development plan and description of the Project approved in final by the City Commission in accordance with City Code, as such Approved Development Plan may be amended from time to time between the Lease Effective Date and the Project Completion Date in accordance with City Code.

"Authorized Representative" means the Person or Persons designated and appointed from time to time as such by any party, including Lessor, any Association, the Construction Lender, any Contractor, and Lessee, respectively, and that Person or Persons' successors or assigns.

"Base Rent" means the amount of rent due to the City over each annual period from the Rental Commencement Date as adjusted as further described herein and as shown on the Rent and Payment Schedule affixed as **Exhibit B**, and payable at the beginning of each month during the applicable annual period in equal installments of one-twelfth (1/12th) of the total annual rent. Florida sales tax or any other future governmental tax or fee on lease revenues are payable in addition to Base Rent.

"Bond" means a statutory payment and performance bond conforming to Chapter 255, Chapter 713, Florida Statutes, or both, as applicable, underwritten by a Surety acceptable to the Lessor and the Construction Lender in an amount equal to one hundred percent (100%) of the cost of Project including all site work and vertical construction, guaranteeing the Construction Lender and the Lessor the completion of the Project including all site work and vertical construction of all of the Project as well as full payment of all suppliers, materialmen, laborers and subcontractors employed to provide services to complete the Project. Certain components of the construction may be deleted from the bonding requirement with the consent of the Lessor.

"Building" means the building or the area within a completely enclosed roof and wall structure to be constructed in accordance with the Building Code on the Leased Property by Lessee constituting a portion of the Project in accordance with the Project Description as may be amended from time to time in accordance with the procedures set forth in Section 9 of this Lease Agreement. On the Lease Effective Date, the Building will include three distinct areas referred to as the New River Trading Post Space, Riverwalk Theater Studio Space, and the Museum Space.

"Building and Improvements" means the Building, all structures and other Improvements contemplated by the Project Description and required by the Approved Development Plan for the Project, and constructed in accordance with the City Codes.

"Building Code" or "Building Codes" means the Florida Building Code (2001 Edition) as same may be amended from time to time, and other regulations and codes governing the construction of buildings and improvements within the City, including any successor to the Florida Building Code.

"Building Official" means that Person or those Persons authorized under the Building Code to issue on behalf of the City a Building Permit, Certificate of Occupancy, or Certificate of Completion, temporary, partial or final.

"Building Permit" means for all or each part of the Project to be constructed upon the Leased Property, any permit, exclusive of an Engineering Permit, but including foundation only permits, issued by the Building Official pursuant to the Building Code.

"Certificate of Completion" means the certificate of completion issued by a Building Official pursuant to the Building Code.

"Certificate of Occupancy" means the final, temporary or partial certificate of occupancy issued by a Building Official pursuant to the Building Code.

"City" means the City of Fort Lauderdale, a municipal corporation created under the laws of the State of Florida.

"City Code" or "Code" means the Code of Ordinances of the City as may be amended from time to time. City Code includes the ULDR. The term also includes the Building Code which the City administers and enforces.

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

"City Engineer" means the person designated by the City as its chief administrative officer in charge of the City's Engineering Division and the issuance of Engineering Permits.

"City Manager" means the Chief Executive Officer of the City or his/her designee. The term shall at all times include, without limitation, Deputy City Manager(s) and Assistant City Manager(s), and that person formally designated to act for or in the absence of the City Manager.

"Commitment" means the enforceable, irrevocable commitment to make the Construction Loan by the Construction Lender upon satisfaction of all reasonable contingencies or conditions customary in the industry, accepted and countersigned by Lessee for construction of the Project, as amended, modified or restated, excluding, however, any document relating to the personal finances of any Person serving as a guarantor under any Construction Financing Documents.

"Construction Commencement Date" means the earlier of: (i) date for commencement of construction of the Project as provided in the Project Schedule; or (ii) the date on which Lessee commences or causes a Contractor to commence construction of the Project, excluding Construction Mobilization,

whichever occurs first. As provided in this Lease Agreement commencement of construction cannot commence prior to the Loan Closing Date described in Exhibit C of this Lease Agreement.

"Construction Completion Date" means the date on which construction of all or any portion of the Project is Substantially Complete in accordance with the terms of this Lease Agreement.

"Construction Costs" means all costs associated with the development and construction of the Project including Related Soft Costs as set forth in the Project Budget as approved by the Construction Lender and as modified and approved from time to time by the Construction Lender.

"Construction Financing" means the funds provided by the Construction Lender under the Construction Loan for the commercially reasonable hard and soft construction and development costs related solely to developing the Project, including the design, professional consulting, construction and equipping costs to be made on or around the Leased Property in connection with the Project, which may be secured by a leasehold mortgage, security interest, pledge, lien or other encumbrances and includes all modifications, renewals, extensions and replacements thereof and future advances thereunder against Lessee's leasehold interest in the Leased Property. It may also include funds available to the Lessee through internal funds of the Lessee or funds raised through sales of stock, partnership units, or other equity participation in the Lessee that are utilized for Construction Financing.

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

"Construction Lender" means any Person who is duly authorized under the laws of the State of Florida to provide the Construction Loan and not an Affiliate of the Lessee.

"Construction Loan" means funds in the principal amount evidenced in the Commitment made by Construction Lender in favor of Lessee for the construction of the Project, which may be secured by a leasehold mortgage on the Leased Property and other Construction Financing Documents.

"Construction Mobilization" means the period prior to the Construction Commencement Date where the Contractor may occupy the Leased Property or portions thereof for the purpose of installing and setting up one or more construction trailers, or to store materials and supplies on the Leased Property or portions thereof, but not otherwise be engaged in actual construction activities including site preparation and demolition.

"Construction Representative" means the Authorized Representative of a Contractor.

"Contractor" means one or more Persons constituting a general contractor or major subcontractor properly licensed by the State of Florida, or other appropriate jurisdiction to the extent required by Applicable Law, authorized to perform construction contractor services in the State of Florida, registered

with the City as required by Applicable Law, and bonded and insured to the extent required by Applicable Law.

"County" means Broward County, Florida, a political subdivision of the State of Florida.

"Department" means the City's construction services department or such department or such department which has responsibility for the administration of the planning and zoning requirements of the City and the issuance of development permits, as designated by the City Manager.

"Deposit" means funds of Lessee in an amount of \$5,106.85 which represents the original bid deposit of \$5,000.00; plus accrued interest to June 17, 2003 of \$106.85, deposited with Lessor and accruing interest as provided in accordance with the RFP. After June 17, 2003, the Deposit will accrue interest at a rate determined by the Lessor's City Treasurer.

"Development Permit" means a Development Permit as defined in Section 47-35 of the ULDR.

"Equity Investment" means the funds for the Project contributed by Lessee, its partners, their Affiliates or their investors.

"Engineering Permit" means a permit issued by the City Engineer or his Authorized Representative authorizing a Contractor to perform work in the City public-right-of-way or on Public Property owned or controlled by the City.

"Exhibit" means each of those agreements, appendices, diagrams, drawings, forms of instruments, instructions, schedules, sketches, specifications and other documents attached to this Lease Agreement or any other document contemplated by this Lease Agreement and designated as such.

"Final Project Completion Certificate" means the instrument executed by the Lessor and Lessee in accordance with Section 9 of this Lease Agreement certifying that all obligations of Lessee under this Lease Agreement as to the construction of the Project have been satisfactorily completed.

"Improvements" mean all improvements, except the Building, to the Leased Property or as required outside of the Leased Property as shown on the Approved Development Plan for the Project, and include, but are not limited to, site utilities, sidewalks, pavement, parking, lighting, irrigation and landscaping and other site furnishings and amenities.

"Lease Agreement" means this Lease Agreement between Lessor and Lessee, including all attached Exhibits, as amended, modified or restated from time to time.

"Lease Commencement Date" means the Loan Closing Date on Construction Financing secured for the Project by Lessee in accordance with this Lease Agreement.

"Lease Effective Date" means the date set forth on the first page of this Lease Agreement inserted manually by a duly authorized official of the City after the City has approved this Lease Agreement and all parties have executed

it, which date shall be the date the last act is taken in fully executing the Lease Agreement by all parties.

"Leased Property" means the Property owned by Lessor and leased to Lessee under this Lease Agreements more particularly described on **Exhibit A** included in this Lease Agreement.

"Loan Closing Date" means the date the Lessee closes its Construction Loan, which date shall be no later than the date provided in **Exhibit C**, subject to Loan Closing Unavoidable Delay and any granted extensions.

"Loan Closing Unavoidable Delay" means those causes, conditions or events or any combination thereof that are beyond the reasonable control of the Lessee or its proposed Construction Lender which constitute an excuse from closing the Construction Loan by the Loan Closing Date, which shall apply to any date, time period or deadline relative to closing the Construction Loan unless the text in this Lease Agreement expressly provides that it does not apply to such date, time period or deadline, including, but not limited to: acts of God; acts of a public enemy, riot, insurrection, war, or act of terrorism; or archaeological excavations required by law; bankruptcy of Lessee's proposed Construction Lender; material adverse business or financial event that causes lenders either not to issue construction loan commitments or consummate such commitments for mixed-use projects like the Project; strikes, boycotts or labor disturbances; delays due to proceedings under Chapters 73 and 74, Florida Statutes or repairs or restorations in connection with any of the foregoing; or delays from the actions or inactions of the City (excluding delays caused by the City when acting in its regulatory capacity unless it acts arbitrarily or capriciously) with respect to its obligations under the Lease Agreement; or delays from the actions or inactions of any other governmental authority, which substantially frustrates on a commercially reasonable basis the performances by Lessee to comply with the Loan Closing Date.

"Major Alteration" means any exterior or interior addition, alteration, change or improvement to be performed after the Project Completion Date that would significantly effect the architectural style, structural integrity, or both, of all or part of a Building located on the Leased Property.

"Museum Space" means the space to be used for museum purposes as described in the Project Description as modified by the Approved Development Plan.

"New River Trading Post Space" means that space to be used for retail and office uses as described in the Project Description as modified by the Approved Development Plan.

"Non-Affiliated Person" means a Person who is not an Affiliate of another specified Person.

"Permanent Financing" means financing obtained by Lessee after completion of construction that pays off in whole or in part the Construction Financing which may be secured by a leasehold mortgage on the Leased Property.

"Permanent Financing Lender" means any Person who is duly authorized under the laws of the State of Florida to provide the Permanent Financing Loan and not an Affiliate of the Lessee.

"Permanent Financing Documents" mean any agreement, note, leasehold mortgage or other instrument evidencing and securing the Permanent Financing, as amended, modified, renewed, extended, replaced or restated from time to time.

"Permit" means any Building Permit, Engineering Permit, zoning permit, special approval or consent governing land use and zoning, or a development order to allow the construction of the Project, or any part thereof, to commence, continue or be completed.

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

"Plans and Specifications" mean the plans, specifications, details and working drawings or construction documents and used by Lessee and the General Contractor to obtain Building Permits and Engineering Permits for the Project, as such plans, specifications, details and working drawings are amended, modified, or restated from time to time.

"Preliminary Development Plan(s)" mean the development plan and description of the Project prepared in accordance with the application requirements of the Department and the ULDR for a Development Permit as is revised from time to time to reflect comment and requirements of the City prior to and in conjunction with final approval by proper City officials. The term as used herein does not mean the Approved Development Plan.

"Project" means the combination of the mixed-use components of retail, office, work/live (residential) and museum uses and supportive permitted accessory uses and related improvements to be developed on the Leased Property as modified from time to time in accordance with the provisions of this Lease Agreement (or portions thereof as the context may require) including site demolition and clearance, site preparation, utility and infrastructure construction and installation, landscaping, streetscaping and any necessary internal roadway construction, and any other development and use obligations of Lessee as shown in the Project Description and Approved Development Plan.

"Project Budget" means the budget for the Project setting forth the estimated and anticipated cost of the Building and Improvements, as amended, modified or restated from time to time, attached hereto as **Exhibit E**.

"Project Completion Date" the date on which Lessor signs and delivers the Final Project Completion Certificate.

"Project Description" means the description of the Project on the Effective Date of this Lease, attached hereto as **Exhibit D**, which describes the

approximate dimensions of the Building and basic components of the Building and Improvements by which the Lessor and Lessee shall rely in planning and submitting an application for a Development Permit in accordance with the ULDR, and which will be replaced and superseded by a revised description in equal or superior detail which will summarize the Approved Development Plan.

"Project Drawings" mean those specific architectural, engineering and other drawings, which are part of the Plans and Specifications for the Project and submitted as the Final Drawings upon which Building Permits or other Permits are issued.

"Project Financing" means the sum of the Construction Loan and Equity Investment in an amount necessary to construct the Building and Improvements constituting the Project.

"Project Lender" means the Construction Lender or Permanent Financing Lender or both.

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

"Project Schedule" means the schedule for the development of the Project as provided in **Exhibit C** attached hereto and incorporated herein.

"Proposal" means the Proposal for Redevelopment of the former New River U.S. Post Office Site, dated September 6, 2002, submitted by Lessee to Lessor in response to the RFP.

"Related Soft Costs" means, in conjunction with Construction Financing, soft costs related to the Project or Construction Financing, other than construction soft costs, such as Lessee's attorneys' fees, Construction Lender's attorneys' fees, closing costs, project overhead, etc.

"Rental Commencement Date" means the earlier of: (i) the first day of the month of the 48th or 54th month (depending on dwelling unit availability under the Project Schedule attached hereto as **Exhibit E**) from the Lease Effective Date, or (ii) the first day of the month on the elapse of six (6) months from the date that the Building receives a Certificate of Occupancy or Completion allowing the Lessee to authorize the commencement of tenant build-out improvements whether done by Lessee or its tenants.

"Rent and Payment Schedule" means the schedule for rental payments by Lessee to Lessor attached hereto as **Exhibit B**.

"RFP" means the Request for Proposal for the Lease and Development of the former New River U.S. Post Office Property issued by Lessor on July 8, 2002.

"Right to Contest" means the procedure set forth in Section 11.8.2 of this Lease Agreement for challenging any lien, payment, charge, or compliance with any law, rule, regulation or other legal requirement as described therein.

"Riverwalk Studio Space" means those live/work units as described in the Project Description as modified by the Approved Development Plan.

"Surety" means any entity or Person licensed by and having an office in and authorized to do business in the State of Florida that is authorized to issue a Bond with at least an "A Best's Policy Holder's" rating and a Class VII Best's Financial Size Category.

"Unavoidable Delay" means the following events constituting excuse from timely performance by a party from any of its obligations under this Lease Agreement or any other document contemplated by this Lease Agreement: acts of God, acts of a public enemy, riot, insurrection, war, act of terrorism, pestilence, archaeological excavations required by law, unavailability of materials after timely ordering of same, epidemics, quarantine, restrictions, freight embargoes, fire, lightning, hurricanes, earthquakes, tornadoes, floods, extremely abnormal and excessively inclement weather (as indicated by the records of the local weather bureau for a ten (10) year period preceding the Lease Commencement Date), exercise of the power of condemnation as to a portion of the Leased Property bearing a material relationship to the improvements to be constructed, strikes or labor disturbances, any of which shall be beyond the reasonable control of the party performing the obligation, adverse economic conditions in general for which performance may be delayed, delays due to proceedings under Chapters 73 and 74, Florida Statutes, restoration in connection with any of the foregoing or any other cause beyond the reasonable control of the party performing the obligation in question, including, without limitation, such causes as may arise from the act of the other party to this Agreement or acts of or failure to act by any governmental authority (except that acts of Lessor shall not constitute an Unavoidable Delay with respect to performance by Lessor), which such event(s) or condition(s) or any combination(s) thereof substantially frustrate on a commercially reasonable basis the performance contemplated by this Lease Agreement.

"ULDR" means the Unified Land Development Regulations of the City, as amended, renumbered, or restated from time to time. The ULDR is contained within and forms a part of the City Code.

3. LEASE. Lessor leases to Lessee, and Lessee accepts from Lessor, the Leased Property upon and subject to the terms of this Lease Agreement.

4. PERMITTED USE AND OCCUPANCY. Lessee shall use the Leased Property to construct and operate a mixed use project to consist of one Building having retail, office, work/live and museum components subject to modifications as provided in this Lease Agreement. A portion of the Leased Property may be used as a restaurant as provided in this Agreement. Upon issuance of the Final Completion Certificate, the Leased Property and the Building and Improvements erected thereon shall be used as provided in this Lease Agreement.

4.1. Museum Space. The Museum Space shall be constructed and used as a maritime museum for the benefit of the public to promote public and professional knowledge and appreciation of the City's marine heritage through exhibition and display of antique marine vessels and marine art as further provided in the Project Description and Approved Development Plan. In the event the maritime museum discontinues operation, the Lessee may propose a new museum that the City Commission may in its sole discretion approve. Otherwise,

Lessee may convert the space to any other use permitted by the ULDR subject to the use restrictions provided in this Lease Agreement.

4.2. Riverwalk Studio Space. The Riverwalk Studio Space shall consist of work/live units and each unit shall consist of and be used for ground level retail with residential living quarters on the second level as provided in the Project Description and Approved Development Plan. These units shall be designed and permitted for single tenant occupancy, and shall not, throughout the term of this Lease Agreement be subdivided or used for multiple tenant occupancy, or for exclusive residential use except as otherwise provided in Section 11.10 hereof.

4.3. New River Trading Post Space. The New River Trading Post Space shall have ground level retail and second story retail, office, restaurant or any combination of such uses as provided in the Project Description and Approved Development Plan except those uses which are expressly prohibited by the terms of the Lease Agreement.

4.4. Restrictions On Use Of Leased Premises. Lessee understands and agrees that its use of the Leased Property is expressly subject to all applicable zoning and building restrictions applicable to the Leased Property in effect at the time of the Lease Commencement Date. Lessee agrees that the Leased Property shall only be permitted to have a bar as part of a restaurant which contains a full food service kitchen and provides for customer table and seating area within the enclosed structure in excess of the bar service and counter seating area. Lessee shall comply in all particulars with all pertinent rules, regulations, laws and ordinances duly and legally promulgated by any governmental authority. In addition, Lessee agrees that the Leased Property shall not be used for those non-permitted uses as provided in Section 47-12 of the ULDR and for: (i) "Adult Uses" as such term is defined in Section 47-1 8.2 of the ULDR; (ii) tattoo parlors; or (iii) massage parlors (other than as an ancillary use to a health club or beauty salon or beauty spa). The Project shall not contain any obnoxious use or cause unreasonable disturbances to surrounding neighbors.

5. REPRESENTATIONS AND WARRANTIES.

5.1. Lessor. Lessor represents that it is a duly constituted municipal corporation existing under the laws of the State of Florida. There are no actions, suits or proceedings pending or threatened against Lessor or which affect Lessor or its officials of which Lessor is aware in any Court or before or by any Federal, State, County or municipal department, commission, board, bureau, agency or other governmental body which would have any material effect on Lessor's ability to observe or perform its obligations under this Lease Agreement.

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

5.3. Authority. All steps, acts and conditions required by the Statutory Charter of Lessor and of the governing documents of Lessor to be done

as a condition precedent to the execution of this Lease Agreement have been done, and Lessor has full authority to enter into this Lease Agreement.

5.4. Title. Lessor owns fee simple title to the Leased Property. Lessee shall have the right and obligation to review title prior to the Loan Closing Date and advise City if any title exceptions exist that would provide any party other than Lessee the right of entry, ownership, possession, removal or use, on all or any part of the Leased Property for any purpose whatsoever or if any liens or encumbrances exist which cloud title or otherwise prevents development of the Project or makes development of the Project more costly as a result of the cloud or lien on title. If such title exceptions exist, Lessor shall be obligated to obtain, at its cost and expense, the release of such rights within a reasonable period of time after the Lease Effective Date, but in any event no later than the Loan Closing Date. Lessor has the right, in its sole discretion, to determine whether the cost to release a right or to remove an encumbrance is excessive and if so, Lessor reserves the right to not seek to obtain such release. In the event title exceptions exist at the time of Loan Closing, Lessee shall have the right to continue the Lease as is with such title exceptions or to cancel the Lease as provided in Section 7.2 as an event of Early Termination; however if the lien or cloud on title prevents the Project being developed as described in the Approved Development Plan, it shall be within Lessor's discretion to determine whether Lessee may proceed with the Lease based on a modified Approved Development Plan.

5.5. "As Is" Property Condition. Lessor is leasing the Leased Property in its physically as is" condition and makes no representations as to its suitability for the uses or purposes provided by this Lease Agreement. Lessee acknowledges that it has made, or has had an opportunity to make, a thorough and complete inspection of the Leased Property and is fully advised of its extent and condition. Except as otherwise specifically provided in this Lease Agreement, Lessee fully accepts the Leased Property in its present physical state and condition.

5.6. Proper Officials of Lessee. The individuals executing this Lease Agreement and related documents on behalf of Lessee are duly authorized to take such action, which action shall be, and is, binding on Lessee.

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

5.8. Lessee's Ability. Lessee represents that it is a Florida limited liability company authorized to transact business within the State of Florida and that it has the ability to undertake the obligations of this Lease Agreement. There are no actions, suits or proceedings pending or threatened against or affecting Lessee or its principals which Lessee is aware of in any Court or before or by any Federal, State, County or municipal department, commission, board, bureau, agency or other governmental body which would have any material effect on Lessee's ability to perform its obligations pursuant to this Lease Agreement. Entering into this Lease Agreement is a valid, binding and permissible activity within the power and authority of Lessee and does not

violate any charter, bylaws, policies, partnership agreement or other governing documents of Lessee or constitute a default by Lessee of any agreement or contract to which it is a party.

5.9. Compliance. Lessee shall comply with all laws, ordinances, regulations and orders of Federal, State, County and Municipal authorities pertaining to the Leased Property, and the construction and operation of the Project or both. Lessee covenants and agrees that there will be no discrimination as to race, color, creed or national origin in the construction and operation of the Project.

6. POSSESSION.

6.1. The parties acknowledge that delivery of possession of the Leased Premises to Lessee shall occur upon the Lease Commencement Date. Until the Lease Commencement Date, Lessor may continue to occupy and use the existing building and operate the existing municipal parking lot on the Leased Property. On the Lease Commencement Date, the Lessor shall cease all parking operations and deliver the Leased Property to Lessee. Provided Lessor delivers Lessee possession of the Leased Property by the Lease Commencement Date, Lessor may enter upon the Leased Property for a period of up to, but not to exceed fifteen (15) days for the purpose of dismantling and removing parking meters and equipment and other improvements and personal property located thereon and owned by the City. Until the Lease Commencement Date, Lessor shall be solely responsible for all obligations and liabilities associated with the Leased Property arising in connection with its use of the Leased Property and the City parking lot, including, without limitation, the mowing and maintenance of the general grounds and pavement on the Leased Property, in accord with normal operations and scheduling of the City, the other ongoing maintenance and repairs, and all tax and insurance obligations thereto arising in connection with the ongoing use of the Leased Property for municipal public and parking purposes if any.

6.2. Prior to the Lease Commencement Date of the Lease, Lessor grants Lessee the right to enter upon the Leased Property for the purposes of study and surveying the Leased Property. Lessee shall request permission from the City's Authorized Representative prior to entering the Leased Property for these purposes. This license shall terminate at the time of Lease Commencement Date or upon termination of this Agreement, whichever occurs first. Lessee shall indemnify and save Lessor harmless from any claims associated with its use of the Leased Property and shall have insurance as provided herein to cover any claims arising as a result of its use of the Leased Property.

6.3. In the event Lessee discovers any hazardous materials and the removal of same would increase the cost of Lessee's work, delay Lessee's opening for business or otherwise adversely affect Lessee, then Lessee shall have the right to terminate this Lease Agreement by delivering written notice to Lessor. Notwithstanding anything herein to the contrary, nothing in this Lease Agreement shall be construed to obligate Lessee or Lessor to remediate any hazardous materials located in the Leased Premises unless the acts of Lessee or Lessor or their employees cause the presence of such hazardous materials.

7. TERM.

7.1. Term. The term of this Lease Agreement shall commence on the Lease Commencement Date and shall continue from that date for a period of fifty (50) years plus the additional period allowed for the construction of the Project which is defined as the period of time between the Lease Effective Date and the Rental Commencement Date.

7.2. Early Termination. If Early Termination events fail to occur on or before the dates provided in the Project Schedule as identified on **Exhibit C**, subject to Unavoidable Delay and any extension granted by the City, in its sole and absolute discretion, thereafter, either party shall have the right to terminate this Lease Agreement and the leasehold estate created thereby, by providing the other with written notice of such termination, unless the parties mutually agree to the extent permitted by law to waive or postpone the condition precedent before such notice is provided. Upon such termination of Lease, the deposit shall be returned to Lessee if the Early Termination is not due to acts of Lessee, and the parties shall be released from all further obligations provided herein. Otherwise Lessor shall retain the deposit and the parties shall be released from all further obligations provided herein.

8. RENT. Rent shall commence on the Rental Commencement Date. All rental payments throughout the term of this Lease Agreement shall be paid in advance in equal monthly installments on the first day of each month to which applicable and in accordance with the Rent and Payment Schedule attached as **Exhibit B**. Florida sales tax or any other governmental taxes and fees on lease revenue as may apply and shall be paid by Lessee in addition to Base Rent. Rent shall be made payable in person, by delivery, or U.S. mail to the address of Lessor's City Treasurer unless otherwise notified in writing by Lessor.

8.1. Adjustments. The parties acknowledge that the Rent and Payment Schedule has been developed in accordance with the following principles and assumptions:

8.1.1. The Base Rent for the first year of the Rental Commencement Date is for the Riverwalk Studio Space and New River Trading Post Space and does not include the Museum Space. The Museum Space, while it is planned to operate or is operating through a non-profit organization and shall be or is a legal subtenant of Lessee as a museum, will not be obligated to pay ground rent by Lessee until the commencement of year six after the Rental Commencement Date.

8.1.2. The Base Rent shall be subject to an annual increase of two and one-half percent (2.5%), with the first adjustment to become effective on of the first anniversary of the Rental Commencement Date, with further adjustments to occur annually thereafter until the expiration date of this Lease Agreement.

8.1.3. Commencing on year six (or the sixty-first (61st) month) following the Rental Commencement Date, the annual rent for that period shall be based on the amount resulting from increasing the annual Base Rent for year five by the two and one-half percent (2.5%) annual adjustment described in Section 8.1.2 above plus increasing that amount by an additional \$10,000. This additional adjustment of \$10,000 is the amount

of Base Rent associated with the Museum Space, and shall thereafter continue to be paid subject to the annual two and one-half percent (2.5%) adjustment commencing on the first day in year seven and continuing until the expiration of this Lease Agreement.

8.1.4. For the purpose of allocating Base Rent associated to the spaces, the following formula shall apply:

(i) For the Riverwalk Studio Space and the New River Trading Post Space, the gross building area for the Riverwalk Studio and the New River Trading Post shall be divided into the initial \$50,000 Base Rent in Year One of the Rental Commencement Date to determine the price per building area square footage of allocated Base Rent to either the Riverwalk Theater Studio, the New River Trading Post, or both;

(ii) When the Base Rent commences for the Museum Space, the gross building area for the Museum Space shall be divided into the initial \$10,000 Base Rent in Year Six of the Rental Commencement Date to determine the price per building area square footage of allocated Base Rent to Museum Space.

8.2. Deposit. Lessor acknowledges receipt of a Deposit in the amount of \$5,106.85 plus accrued interest at a rate established by Lessor, which upon execution of this Lease Agreement shall be held by Lessor as security for Lessee's timely performance of the construction obligations after the Lease Commencement Date. In the event of a default in such performance, Lessor shall retain the Deposit plus accrued interest as and for liquidated damages. In the event that Lessee fulfills its construction obligations in accordance with this Lease Agreement, Deposits plus any accrued interest shall become a credit against the monthly rent payment next due and any subsequent monthly rent until fully credited.

8.3. Grace Period. All delinquent sums that are payable to Lessor under this Lease Agreement shall bear interest at a rate equal to the periodic composite of current annual interest rates on five (5) year United States Government agency issues in effect as of the date of delinquency, but not less than twelve percent (12%) per annum and not greater than eighteen percent (18%) per annum. Interest shall be calculated from the date the delinquent sum is due, less a five day grace period, to the date of payment.

8.4. Change in Use.

8.4.1 In the event that Lessee's not-for-profit organization's tenant discontinues operations as a maritime museum of the Museum Area at the Leased Property, Lessee shall notify Lessor in writing of such occurrence and the actual or anticipated date of discontinuation of the museum use. Lessee may request Lessor to allow a substitution for another permitted museum use to be operated by a not-for-profit organization which approval shall not be unreasonably withheld by Lessor upon determining that the substitute use shall further promote the intent and purpose of the area, and the allocated Base Rent for that substitute museum use shall continue in accordance with the Rent and Payment Schedule. If Lessee subleases the space to other than a not-for-profit entity as permitted in accordance with this Lease Agreement, then the

proportional share of Base Rent associated with the Museum Space shall be paid commencing on the then current square footage rate allocated to the Riverwalk Studio Space and the New River Trading Post Space as provided in Section 8.

8.4.2. The remainder of the Leased Property may be changed to another use permitted by the ULDR without the consent of Lessee, subject to the restrictions provided in this Lease Agreement.

9. PROJECT APPROVALS, FINANCING AND CONSTRUCTION. The Project shall be planned, permitted, financed and constructed as provided below.

9.1. Project Schedule and Progress Monitoring. From the Lease Effective Date, the Project shall be undertaken and completed in accordance with the Project Schedule, subject to modification due to Unavoidable Delay or extensions in time granted by the City Commission of Lessor. If certain specifically identified events on the Project Schedule do not occur on the date provided in the Project Schedule, it will be the basis for termination of this Lease Agreement in accordance with Section 7.2 except as otherwise permitted by this Lease or except as due to Unavoidable Delay or such other remedies as provided in Section 13 for defaults occurring after Loan Closing Date.

Performance under this Lease Agreement shall be supervised by the City Manager or his designee ("Authorized Representative"), who also will administer this Lease Agreement. The Lessor's Authorized Representative shall act as liaison with Lessee's Authorized Representative to review Lessee performance, administer any disputes between the parties, and cause the collection of rental payments or other forms of compensation to Lessor.

Lessor reserves the right to require periodic progress reports until completion of the Project and the issuance of the Final Project Completion Certificate.

9.2. Lessee Responsibility for Project Development, Completion and Operation. The Lessee shall be obligated and responsible for arranging, managing, overseeing, coordinating, and administering the development of the Project subject to the terms and conditions of this Lease Agreement subject to modifications as permitted herein. The Lessee is obligated as a condition of this Lease Agreement, to finance, construct, equip, and operate the Building and Improvements shown on the Approved Development Plan subject to modification, together with all ancillary and related improvements as described in the Approved Development Plan and consistent with the development of the Project. Lessee shall also provide at its sole cost and expense all necessary utility installations up to the boundary lines of the Leased Property. The Building and Improvements shall be constructed in accordance with the Approved Development Plan subject to modification and City Codes.

9.3. Approval of Preliminary Development Plan by Lessor.

9.3.1. The parties acknowledge that as of the Lease Effective Date, the conceptual site plan and elevations shown in the Proposal are being modified to: (i) maintain vehicle circulation around the entire site, (ii) make refinements to the site and proposed building footprints, and (iii) eliminate illustrated off-site features and amenities not intended to be provided by Lessee.

9.3.2. Upon the Lease Effective Date, the Lessee shall prepare preliminary development plan(s) in sufficient detail to make application in accordance with the ULDR for review by the City's Development Review Committee (DRC). The Preliminary Development Plan reflecting the comments of the DRC shall be submitted no later than as provided in the Project Schedule to the City Commission as Lessor for its consent that the Preliminary Development Plan reflects the Project as described in the Project Description. The scope of review and basis for approval of the Preliminary Development Plan by the City shall be whether the Plan shows that: (i) the footprint of the originally proposed Building and uses within the Building have not been increased or decreased by ten (10%) of the approximate gross area provided on the Project Description, (ii) the height of the Building as defined by the ULDR has not increased over the maximum height provided in the Project Description, (iii) the uses as proposed are generally consistent with the Proposal, (iv) the exterior design and elevations of the Building shown in the Preliminary Development Plan are generally consistent with the original Proposal (v) the Project Budget has not decreased materially more than in proportion to any necessary reduction in building gross area.

9.3.3. The approval of proposed modification(s) of or revision(s) to the Project Description and Preliminary Development Plan by Lessor as provided for in this Section shall not in any way affect or limit the rights, responsibilities, obligations, authority or powers of Lessor or any other appropriate governmental official, agency or entity having jurisdiction over the Project, or any part thereof, from acting in its governmental and regulatory capacity, including acting under zoning and building codes and any other applicable laws, codes, ordinances and regulations. Notwithstanding anything contained to the contrary in this Lease Agreement, proposed modification(s) or revision(s) to the Project Description or Preliminary Development Plan may be approved by the Lessor's Authorized Representative without further review or approval of Lessor if zoning approval of the modification, revision or request is authorized to be given by the City department responsible for such zoning approval pursuant to the ULDR; provided however, the City's Authorized Representative may not approve, in any event, an increase in the height, length or density of a Building or a change in use. Any denial by the Authorized Representative under this Section may be appealed by Lessee to City Commission of Lessor.

9.4. Lessee's Obligation to Secure Development Permits and Permits. The Lessee shall be responsible, at its sole cost and expense, to secure all necessary local, County, State and Federal permits for the construction of the Project. Lessor will join in all development permit applications as fee simple owner of the Leased Property to the extent Lessor finds such requests to be consistent with this Lease Agreement.

9.4.1. It is anticipated that Lessee will be seeking:

- (i) a rezoning of the Leased Property to City's RAC-AS (Arts and Science) zoning district; and
- (ii) development plan approval pursuant to the ULDR.

If items (i) or (ii) of Section 9.4.1 above are not approved in accordance with the Project Schedule then this Lease Agreement shall be subject

to Early Termination as provided in Section 7.2 of this Lease Agreement.

In the event the City Commission exercises its right to request review of the development plan after Planning and Zoning Board review and action as provided in the ULDR, Lessee shall be entitled to an extension of time as Unavoidable Delay for the period of time from the date the City Commission requests the review and the date the City Commission make a final determination on the Approved Development Plan.

9.4.2. Lessee shall prepare and submit to the appropriate governmental authorities, including Lessor, and diligently prosecute the applications for each and every Building Permit and all necessary Permits, and shall bear all costs of preparing such applications, applying for and obtaining such permits, including payment of any and all applicable application, inspection, regulatory and impact fees or charges except as otherwise provided in this Lease Agreement. In order to expedite review and approval of plans for issuance of Building Permits for the Project, Lessee agrees to utilize Lessor's Specialty Permit Review Program.

Lessor's duties, obligations or responsibilities under this Lease Agreement, specifically including but not limited to this Section, shall not affect Lessor's right, duty, obligation, authority and power to act in its governmental or regulatory capacity in accordance with applicable laws, ordinances, codes or other building or project regulation.

9.5. Project Budget. The total cost of the Building and Improvements to be constructed by Lessee inclusive of Construction Costs and Related Soft Costs on the Leased Property shall not be less than the amount included in **Exhibit E**; provided, that so long as there has been no material diminishment in the scope of work based on the Approved Development Plan, then the Authorized Representative of Lessor may approve, in writing, an amount less than provided in **Exhibit E**. Lessee shall certify in writing to Lessor the total cost of the Project inclusive of Construction Costs and Related Soft Costs, and shall include in such certification a breakdown of expenditures, which Lessor shall acknowledge and accept in conjunction with issuance of a Final Project Completion Certificate.

9.6. Project Financing.

9.6.1. Lessee must obtain Project Financing to complete the construction of the Project in accordance with the Project Budget, as may be modified as provided in this Lease Agreement. Lessee will submit documents to Lessor for review and approval at least fifteen (15) days in advance of the scheduled Loan Closing Date. The Lessor's scope of review of the Project Financing Documents shall be solely for the purpose of determining that they conform to the terms of this Lease Agreement relating to the provisions of the Surety, the Bond, the right of Lessor to cure defaults under the Construction Financing documents and the Notice requirements to Lessor.

9.6.2. At least ten (10) days prior to Loan Closing Date Lessee shall deliver to Lessor certificates of insurance naming the Lessor as additional insured as provided in Section 14 of this Lease Agreement. The Lessor's scope of review of the certificates of insurance shall be solely for the purpose of determining compliance with the applicable provisions of Section 14 of this

Lease Agreement. The Lessor agrees to diligently proceed with and complete its review of the certificates as soon as reasonably possible and advise the Lessee in writing of the Lessor's specific objections thereto within ten (10) days after receipt. If the Lessor does not respond with the time period provided, the Lessor shall be deemed to have approved the certificates.

9.6.3. Contemporaneously with Loan Closing Date, Lessee shall cause the Bond to be posted as required by law. The Bond shall remain in full force and effect from the date of its issuance through the construction of the Project and shall expire upon the issuance of a Project Completion Certificate for the Project. A copy of the Bond shall be sent to the Lessor for review and approval at least thirty (30) days before the Loan Closing Date or issuance of the first Building Permit, whichever is earlier. The Lessor's scope of review of the Bond shall be solely for the purpose of determining that the Bond conforms to the terms of this Lease Agreement relating to the Bond. The Lessor agrees to diligently proceed with and complete its review of the Bond as soon as reasonably as possible and advise the Lessee in writing of the Lessor's specific objections thereto within ten (10) days after receipt. If the Lessor does not respond within the time period provided, the Lessor shall be deemed to have approved the Bond.

9.6.4. The Bond shall be available as a construction completion and payment guarantee in accordance with the construction contract between the Lessee and Contractors. The Lessor's interest as multiple obligee under the Bond shall be subordinate to the Construction Lender only if Construction Lender agrees to undertake or to cause Surety to undertake completion of the Project as provided in Section 9.6.5. below and Construction Lender is an obligee under the Bond.

9.6.5. Lessee agrees to require that the Construction Financing Documents include a provision which compels its Construction Lender either to undertake or to compel the Surety to undertake completion of the Project should a material default of Lessee occur under the Construction Loan beyond any applicable grace or cure period that results in the Construction Lender, through foreclosure or otherwise, taking over the Project pursuant to the terms of the Construction Financing Documents.

9.6.6. Should the Construction Lender fail to undertake or to compel the Surety to undertake completion of the Project, as provided in subsection 9.6.5. above four (4) months after a material default of Lessee has occurred under the Construction Loan beyond any applicable grace or cure period and is continuing, the Lessor shall have the right to call the Bond and cause completion of the construction of the Project by or through the Surety under the terms of the Bond.

9.6.7. In the event a Loan Closing does not occur within the time provided in the Project Schedule, then provisions of Early Termination as provided in Section 7.2 shall apply.

9.6.8. If Project Financing is approved for the Project as provided in this Lease Agreement, then in accordance with and as provided in Section 10, the Lessee may mortgage, pledge, grant a security interest in or assign as security for the Project Financing, its leasehold interest in the Leased Property, as the Lessee in its discretion shall determine.

9.7. Conditions Precedent to Loan Closing Date. The Lessee shall promptly, after receipt of a written commitment from any Project Lender, furnish the Lessor with a copy of the Loan Commitment, the name and address of that Project Lender and disclose the terms of such financing to the Authorized Representative of Lessor (excluding documents relating to the personal finances of any Person serving as a guarantor). All of the following matters are required to be fulfilled on or before the Loan Closing Date. It is understood that other entities may need to act in order for these conditions precedent to be satisfied. However, it is understood and agreed that, subject to Unavoidable Delay with regard to each condition, if these conditions are not satisfied on or before the Loan Closing Date, the Lease Agreement shall terminate unless the matter is waived. If not prevented by law, or otherwise modified in writing jointly by the Lessee and by the Lessor, as to any or all of the following items; the Lessee shall have obtained the following:

9.7.1. The Approved Development Plan:

9.7.2. The issuance of all Building Permits, including Engineering Permits for any work required outside of the Leased Property, necessary to commence simultaneous construction of the entire Project, or confirmation that upon payment of fee, such Permits will be issued.

9.7.3. The issuance of the Bond for the Project in accordance with the terms hereof, whether or not required by the Construction Lender for the Project. The Developer agrees to bear expense of the premium for securing the Bond;

9.7.4. The issuance of insurance coverage in accordance with Section 14 hereof; and

9.7.5. A commitment for Construction Financing for the Project, in accordance with the provisions of the Lease Agreement.

9.7.6. Closing of the Construction Financing Loan based on the Loan Commitment provided to Lessor.

10. LEASEHOLD MORTGAGES.

10.1. Lessee, including Lessee's successors and/or assigns shall have the right to mortgage their respective interest of Lessee's interest under this Lease Agreement to a Federal or State Savings & Loan Association, Bank or Trust Company, Insurance Company, Pension Fund or Trust or any other Non-Affiliated Person, without obtaining the prior consent of Lessor, subject, however, to the other terms and conditions of this Lease Agreement, to the extent applicable. For purposes of this Section 10, references to Lessee shall also include Lessee's successors and/or assigns.

10.2. If Lessee shall mortgage its leasehold interest and if the holder of the mortgage or pledge shall forward to Lessor a duplicate original of the leasehold mortgage in form proper for recording, or a copy of the mortgage certified as a true copy by the Office of Official Records of the County, together with a written notice setting forth the name and address of the leasehold mortgagee, then, until the time that the leasehold mortgage shall be satisfied of record, the following provisions of this Section 10 shall apply.

10.2.1. When giving notice to Lessee with respect to any default under the provisions of this Lease Agreement, Lessor will also serve a copy of such notice upon the leasehold mortgagee. No such notice to Lessee shall be deemed to have been given unless a copy of such notice has been mailed to such leasehold mortgagee, which notice must specify the nature of each such default.

10.2.2. In case Lessee shall default under any of the provisions of this Lease Agreement, the leasehold mortgagee shall have the right to cure such default whether the same consists of the failure to perform any matter or thing which Lessee is required to do or perform and Lessor shall accept such performance on the part of the leasehold mortgagee as though the same had been done or performed by Lessee. The leasehold mortgagee, upon the date of mailing by Lessor of the notice referred to in subsection 10.2.1 shall have, in addition to any period of grace extended to Lessee under the terms and conditions of this Lease Agreement for a non-monetary default, a period of one hundred twenty (120) days within which to cure any nonmonetary default or cause the same to be cured or to commence to cure such default with diligence and continuity; provided, however, that as to any default of Lessee for failure to pay rent, or failure to pay any amount otherwise required under the terms of this Lease Agreement (e.g., including, but not limited to, taxes or assessments), the leasehold mortgagee shall have sixty (60) days from the date the notice of default was mailed to the leasehold mortgagee within which to cure such default.

10.2.3. In case Lessee shall default under any of the provisions of this Lease Agreement, the leasehold mortgagee shall have the right to cure such default whether the same consists of the failure to pay rent or the failure to perform any other matter or thing which Lessee is required to do or perform and Lessor shall accept such performance on the part of the leasehold mortgagee as though the same had been done or performed by Lessee.

10.2.4. In the case of any default by Lessee, Lessor will take no action to effect a termination of the term of this Lease Agreement after the service of a notice provided for in Section 10.2.1 above by reason of any such default, without first giving to the leasehold mortgagee a reasonable time, from the mailing of the default notice by Lessor to Lessee, with a copy to such leasehold mortgagee, within which either: (i) to obtain possession of the Leased Property (including possession by a receiver) and cure such non-monetary default in the case of a default which is susceptible of being cured when the leasehold mortgagee has obtained possession; or (ii) to institute foreclosure proceedings and complete such foreclosure or otherwise acquire Lessee's interest under this Lease Agreement with diligence and continuity and thereafter to commence and diligently proceed to cure such default; provided, however, that the leasehold mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default shall be timely cured, and provided further, that nothing in this Section 10 shall preclude Lessor from exercising any rights or remedies under this Lease Agreement with respect to any other default by Lessee during any period of forbearance.

10.2.5. In the event of the termination of this Lease Agreement or of any succeeding lease made pursuant to the provisions of this Section 10 prior to its stated expiration date, Lessor will enter into a new lease of the Leased Property with the leasehold mortgagee or, at the request of such leasehold

mortgagee, to a corporation formed by or on behalf of such leasehold mortgagee or by or on behalf of the holder of the note secured by the leasehold mortgage held by such leasehold mortgagee, for the remainder of the term, effective on the date of such termination, at the rent and additional rent and upon the covenants, agreements, terms, provisions and limitations contained in this Lease Agreement, provided that such leasehold mortgagee makes written request and executes, acknowledges and delivers to Lessor such new lease within thirty (30) days from the date of such termination and such written request and such new lease is accompanied by payment to Lessor of all amounts then due to Lessor, including reasonable counsel fees, court costs and disbursements incurred by Lessor in connection with any such default and termination as well as in connection with the execution and delivery of such new lease, less the net income collected by Lessor subsequent to the date of termination of this Lease Agreement and prior to the execution and delivery of the new lease, any excess of such net income over the aforesaid sums and expenses to be applied in payment of the rent thereafter becoming due under such new lease. Any new lease referred to in this Section 10 shall not require any execution, acknowledgment or delivery by Lessor in order to become effective as against Lessor and Lessor shall be deemed to have executed, acknowledged and delivered any such new lease immediately upon receipt by Lessor of such new lease accompanied by: (i) payment to Lessor of all amounts then due to Lessor of which the leasehold mortgagee shall theretofore have received written notice; and (ii) an agreement by the leasehold mortgagee to pay all other amounts then due to Lessor of which the leasehold mortgagee shall not theretofore have received written notice. In addition, immediately upon receipt by Lessor of such new lease, as provided in this Section 10, Lessor shall be deemed to have executed, acknowledged and delivered to the leasehold mortgagee an assignment of all subleases covering the Leased Property which theretofore may have been assigned and transferred to Lessor and all subleases under which subtenants shall be required to attorn to Lessor pursuant to the terms and conditions of such subleases or this Lease Agreement. Such assignment by Lessor shall be deemed to be without recourse as against Lessor. Within ten (10) days after a written request therefore by the leasehold mortgagee, such assignment or assignments shall be reduced to a writing in recordable form and executed, acknowledged and delivered by the Lessor to the leasehold mortgagee.

10.2.6. The leasehold mortgagee of all or any portion of the Leased Property may become the legal owner and holder of this Lease Agreement for such Leased Property by foreclosure of its mortgage or as a result of the assignment of this Lease Agreement in lieu of foreclosure, whereupon such leasehold mortgagee shall immediately become and remain liable under this Lease Agreement as provided in this Section 10, except that such leasehold mortgagee may assign this Lease Agreement without Lessor's consent to any institutional assignee at any time whether prior or subsequent to issuance of the Final Project Completion Certificate.

10.2.7. In the event that a leasehold mortgagee shall become the owner or holder of Lessee's interest by foreclosure of its mortgage or by assignment of this Lease Agreement in lieu of foreclosure or otherwise, the term "Lessee", as used in this Lease Agreement, means only the owner or holder of Lessee's interest for the time being so that, in the event of a sale, assignment or other disposition of Lessee's interest in this Lease Agreement by the leasehold mortgagee, the leasehold mortgagee shall be entirely freed and relieved of all covenants and obligations of Lessee under this Lease Agreement and it shall be

deemed and construed, without further agreement between Lessor and the leasehold mortgagee or between Lessor, the leasehold mortgagee and the leasehold mortgagee's purchaser or assignee at any such sale or upon assignment of Lessee's interest, that the purchaser or assignee of Lessee's interest has assumed and agreed to carry out any and all covenants and obligations of Lessee.

10.2.8. The provisions of this Section are cumulative of any other provision of this Lease Agreement that restrict remedies of Lessor, including without limitation, the provision of this Lease Agreement which preclude Lessor from terminating the Lease Agreement or exercising any right of re-entry or repossession of the Leased Premises.

10.3. Within ten (10) days after written request by Lessee or by Lessee's leasehold mortgagee, or in the event that upon any sale, assignment or mortgaging of Lessee's interest in this Lease Agreement by Lessee or Lessee's leasehold mortgagee, an offset statement shall be required from Lessor, Lessor agrees to deliver in recordable form a certificate to any proposed leasehold mortgagee, purchaser, assignee or to Lessee, certifying (if such be the case): (i) the amount of rental and additional rental due under this Lease Agreement, if any, and the date to which rentals have been paid; (ii) that this Lease Agreement is in full force and effect; (iii) that Lessor has no knowledge of any default under this Lease Agreement, or if any default exists, specifying the nature of the default; and (iv) that there are no defenses or offsets which are known and may be asserted by Lessor against the Lessee in respect of obligations pursuant to this Lease Agreement.

10.4. So long as Lessee's interest in this Lease Agreement shall be mortgaged to a leasehold mortgagee, the parties agree for the benefit of such leasehold mortgagee, that they shall not surrender or accept a surrender of this Lease Agreement or any part of it, nor shall they cancel, abridge or otherwise modify this Lease Agreement without the prior written consent of such leasehold mortgagee in each instance.

10.5. Reference in this Lease Agreement to acquisition of Lessee's interests in this Lease Agreement by the leasehold mortgagee shall be deemed to refer, where circumstances require, to acquisition of Lessee's interest in this Lease Agreement by any purchaser at a sale on foreclosure of the leasehold mortgage and provisions applicable to the leasehold mortgagee in such instance or instances shall also be applicable to any such purchaser.

10.6. So long as Lessee's interest in this Lease Agreement shall be mortgaged to a leasehold mortgagee, the parties agree for the benefit of such leasehold mortgagee that Lessor shall not sell, grant or convey to Lessee all or any portion of the Lessor's fee simple title to the Leased Property without the prior written consent of such leasehold mortgagee. In the event of any such sale, grant or conveyance by the Lessor to Lessee, the Lessor and Lessee agree that no such sale, grant or conveyance shall create a merger of this Lease Agreement into a fee simple title to the Leased Property. This subsection shall not be construed to prevent a sale, grant or conveyance of Lessor's fee simple title by the Lessor to any person, firm or corporation other than Lessee, its successors, legal representatives and assigns.

10.7. Reference in this Lease Agreement to a leasehold mortgagee shall be deemed to refer where circumstances require, to any assignee of a leasehold mortgagee; provided that such assignee shall forward to Lessor a duplicate original of the assignment of the leasehold mortgage in form proper for recording, or a copy of such assignment, certified as a true copy by the Office of Official Records of the County, together with a written notice setting forth the name and address of the assignee.

10.8. Any leasehold mortgage shall be specifically subject and subordinate to Lessor's rights under this Lease Agreement. The sentence immediately preceding shall not be deemed or construed (by implication or otherwise) to impose or establish upon Lessee's interest in this Lease Agreement or upon the lien of any leasehold mortgage the superiority of any lien or encumbrance, including, without limitation, the lien of any fee mortgage, judgment or tax created directly or indirectly by, through or against Lessor or Lessor's interest in this Lease Agreement. Despite any provision which is or may appear to be to the contrary in this Lease Agreement, under no circumstances whatsoever shall the fee simple title interest of Lessor in the Leased Property, or any portion of them, be subordinated.

10.9. A leasehold mortgagee (or its designee or nominee) may become the legal owner and holder of the interest of Lessee under this Lease Agreement, including, without limitation, ownership of the Building and Improvements erected on or to be erected on the Leased Property, by foreclosure or other enforcement proceedings, or by obtaining an assignment of this Lease Agreement in lieu of foreclosure or through settlement of or arising out of any pending or threatened foreclosure proceeding, without Lessor's consent, subject always to the applicable terms and provisions of this Lease Agreement.

10.10. The provisions of this Section 10 in favor of the leasehold mortgagee shall inure to the benefit of the leasehold mortgagee and its successors, assigns and designees, and also any other purchaser or transferee of this Lease Agreement pursuant to any foreclosure or bankruptcy proceedings, or assignment in lieu thereof.

10.11. Notwithstanding any contrary provision of this Lease, the leasehold mortgagee shall not be liable or responsible in any respect for any of Lessee's obligations under this Lease Agreement unless and until the leasehold mortgagee becomes the owner and holder of this Lease Agreement through foreclosure or bankruptcy proceedings, or assignment in lieu thereof.

10.12. Lessor agrees to amend this Lease Agreement to include such changes as may be reasonably required by Lessee's leasehold mortgagee(s), from time to time; provided, such changes do not materially impair Lessor's rights under this Lease Agreement, or materially increase Lessor's obligations under this Lease Agreement.

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

11.1. Compliance with Regulations of Public Bodies. Lessee, or Lessee's successors and/or assigns, at its or their own cost, shall keep and maintain the Building and Improvements on the Leased Property owned by Lessee in compliance with all governmental laws and requirements applicable to such

Building and Improvements. Lessee, or Lessee's successors and/or assigns, shall have the right, at its or their own cost, to contest by appropriate legal proceedings, diligently conducted, the validity or applicability of complying with such laws or requirements. Lessor, on written request, shall sign any appropriate papers, or join in any such contest or empower Lessee to act in the name of Lessor as may be necessary or proper to permit Lessee to contest such laws or requirements.

11.2. Indemnification Against Claims. Lessee shall indemnify, defend and save harmless Lessor from and against any and all claims, suits, actions, damages and causes of action arising during the term of this Lease Agreement, for any bodily injury, loss of life or damage to property sustained in or about the Leased Property, or to or about the Building and Improvements placed on them, or their appurtenances, or upon adjacent sidewalks or streets, and from and against all costs, counsel fees, expenses, liabilities, judgments and decrees incurred in or arising out of any such claim, the investigation of them, or the defense of any action or proceeding brought on them, and from and against any orders, judgments and decrees which may be entered in them except if arising due to Lessor's negligence or willful misconduct. Lessee shall also specifically defend with counsel selected by Lessee any action or proceeding brought against Lessor as the result of any claim for bodily injury, loss of life or damage to property, at no cost or expense to Lessee, Lessor or both except if arising due to Lessor's negligence or willful misconduct.

11.3. No Liens Created. Each party covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the other party in and to the Leased Property covered by this Lease Agreement, and that no person shall ever be entitled to any lien, directly or indirectly, derived through or under the other party, or its agents or servants, or on account of any act or omission of the other party, except for any lien reserved upon Lessee's (or Lessee's successors and/or assigns) leasehold interests in the Leased Property by leasehold mortgagees. All persons contracting with Lessee, or furnishing materials or labor to Lessee, or to its agents or servants, as well as all persons whomsoever, shall be bound by this provision of this Lease Agreement. Lessee shall not be deemed to be the agent of Lessor as to confer upon a laborer bestowing labor upon the Leased Property, or upon a materialman who furnishes material incorporated in the construction of improvements upon the Leased Property, a lien upon Lessor's estate under the provisions of Chapter 713, Florida Statutes, 1991, and subsequent revisions of that law. A Memorandum of Lease to be recorded in the Public Records of Broward County by Lessee shall contain the appropriate clause under Chapter 713 of the Florida Statutes notifying third parties that they may not impose a lien on Lessor's interest in the Leased Property for labor, services or materials furnished to, or at the request of Lessee and any such liens are hereby prohibited. If, notwithstanding said notice, any third party files a mechanic's lien purportedly against the Lessor's estate for or on account of labor, services or materials provided to or at the request of Lessee, Lessee shall dispose of the claim and ensuing litigation as Lessee deems appropriate at Lessee's expense, provided that if such party commences a foreclosure action with respect to such lien, Lessee shall transfer the lien to security as provided by Florida law or otherwise bond or cause the same to be discharged of record within thirty (30) days thereafter to prevent the foreclosure of Lessor's estate.

11.4. Insolvency of Lessee. Should Lessee, at any time during the term of this Lease Agreement, suffer or permit to be filed against it a composition or arrangement proceeding under state law which is not vacated within ninety (90) days, or make any assignment for the benefit of its creditors, or should a receiver be appointed for the Lessee's property because of Lessee's insolvency and the appointment not vacated within ninety (90) days thereafter, or should Lessee's leasehold interest be levied on and the lien not discharged within ninety (90) days after levy has been made, and should such failure in any manner jeopardize material rights of Lessor, then, and in such event, and upon the happening of any of these events, Lessor shall have the right to pursue the remedies set forth in Section 12 hereof. Subject to applicable provisions of the Bankruptcy Code, should Lessee, at any time during the term of this Lease Agreement suffer or permit an involuntary or voluntary petition in bankruptcy to be filed against it which is not vacated within ninety (90) days thereafter, or institute a composition or an arrangement proceeding under Chapters 7, 11, or 13 of the Bankruptcy Code, as they may be amended from time to time, Lessor shall have the right to pursue the remedies set forth in Section 12 hereof.

11.5. Independent Contractor. Lessee is an independent contractor under this Lease Agreement. Personal services provided by Lessee shall be by employees of Lessee and subject to supervision by Lessee, and not as officers, employees, or agents of Lessor. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Lease Agreement shall be those of Lessee.

11.6. Operating Costs.

11.6.1 Lessee agrees promptly to pay when due all operating, maintenance and service charges and costs, including telephone, gas, electricity, water, utility connections, and all other expenses incurred in the use and operation of the Leased Property.

11.6.2 Lessee agrees to obtain at its expense all permits and licenses which may be required by any governmental unit. Upon the Lessor's written request, at reasonable intervals, the Lessee shall promptly furnish to the Lessor evidence satisfactory to the Lessor showing Lessee's compliance with its obligations under this section.

11.7. Litigation Venue. The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in the County and that all litigation between them in the federal courts shall take place in the Southern District in and for the State of Florida.

11.8. Taxes.

11.8.1. During the term of this Lease Agreement, Lessee agrees to pay when due all real property taxes and special assessments of whatsoever kind levied and assessed against the Leased Property (any special assessments levied by Lessor or by any agency of Lessor upon the Leased Property must be uniform in application to the general geographical area) and the Building and Improvements built and placed on the Leased Property by Lessee, except against the Public Improvements. Lessee further agrees to pay when due all sales and use taxes, and any and all other taxes or assessments imposed upon and being

the liability of Lessee and arising out of this Lease Agreement, including any sales taxes due on rental payments. On or before March 31 of each Lease year of the term of this Lease Agreement, Lessee agrees to deliver to Lessor tax receipts showing the payment by Lessee of all taxes and special assessments.

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

11.9. Repairs and Maintenance.

11.9.1. Upkeep. Lessee agrees, at its expense, to keep and maintain the Leased Property, including the Building and Improvements, furnishings, fixtures and personal property in a good state of repair and condition, normal wear and tear or damage by the elements excepted (subject to the provisions of Sections 14 and 15 hereof).

11.9.2. Repairs. Lessee agrees, at its expense, to make repairs to the Building and Improvements situated upon the Leased Property, including electrical, plumbing, sewer and sewer connections which solely serve the Leased Property, structural and all other repairs that may be required to be made.

11.9.3. Enforcement. If Lessee or any successor or assign of Lessee, shall fail to comply with the provisions of this Section 11.9, Lessor shall have the right to compel such Lessee, or any successor or assign of Lessee, to enforce such repair and maintenance obligations.

11.10. Major Alteration. After the Final Project Completion Certificate Date, Lessee may, with the prior written consent of Lessor's Authorized Representative, which consent will not be unreasonably delayed, withheld, or conditioned, make any Major Alteration to all or any part of the Building and Improvements located on the Leased Property in accordance with City Codes. If the Major Alteration is not approved by the Lessor's Authorized Representative, Lessee may seek such approval from the governing body of Lessor.

Notwithstanding the above, only the governing body of Lessee may approve at its sole discretion a request from Lessee to convert the Building or any of the spaces to an exclusive residential use or to increase work/live units in excess of the number of units originally shown on the Approved Development Plan, or to request an alteration that increases the height or footprint of the

Building in excess of the Approved Development Plan or significantly changes the architectural style of the exterior of the building.

The approval of any Major Alteration by Lessor as provided for in this Section shall not in any affect or limit the rights, responsibilities, obligations, authority or powers of Lessor or any other appropriate governmental official, agency or entity having jurisdiction over the Project, or any part thereof, from acting in its governmental and regulatory capacity, including acting under zoning and building codes and any other applicable laws, codes, ordinances and regulations.

11.11. Surrender. Lessee at its expense agrees to deliver the Leased Property to the Lessor upon the termination of this Lease Agreement in their then existing state of repair and condition at the time of surrender.

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

11.13. Signs. All signs, whether vertical or horizontal, or any advertising erected, maintained or displayed at or on the Leased Property or upon any Improvements shall comply with all applicable governmental laws, rules, regulations and ordinances.

11.14. Receipts. Lessee shall, upon written demand by Lessor, obtain and deliver to Lessor receipts, satisfactions and discharges showing the payment of any obligation required of Lessee by Lessor pursuant to the terms of this Lease Agreement.

11.15. Recording of Lease. After the Lease Commencement Date, Lessee will record at its own expense a Memorandum of Lease in the Public Records of the County, and thereafter, Lessee shall have the right to record at its own expense this entire Lease Agreement and all amendments thereto in the Public Records of County.

11.16. Inspection of Leased Property. Except as to work/live units, Lessor or its agents shall have the right to enter the Leased Property and the Building and Improvements constructed thereon at all reasonable hours upon prior written notice for the purpose of inspecting them, or for any other purposes not inconsistent with the terms of this Lease Agreement, consistent with reasonable security measures of the tenants of the Lessee and upon suitable prior arrangements with them, which approval shall not be unreasonably refused by any occupant.

12. OWNERSHIP AT TERMINATION.

12.1. The Building and Improvements and fixtures of every kind erected, placed or affixed on the Leased Property shall remain the property of Lessee and/or its successors and/or assigns until the end of the term or earlier termination of this Lease Agreement for any reason (except casualty or condemnation as provided in Sections 15 and 16 hereof at which time they shall be and become the property of Lessor. A fixture is defined as an article which was a chattel, but which, by being physically annexed or affixed to the realty

by Lessee and incapable of being removed without structural or functional damage to the realty, becomes a part and parcel of it. Non-fixture personalty owned by Lessee at the expiration of the term of the Lease or earlier termination of this Lease Agreement, for any reason, shall continue to be owned by Lessee, and at the time of such expiration or earlier termination, Lessee at its option may remove all such personalty.

12.2. Any property installed or attached to the Leased Property by any of Lessee's subtenants, whether or not attached to the freehold, shall be and remain such subtenants' property and may be removed by the subtenants upon the termination of subleases, provided that such subtenants repair, restore and save Lessor harmless from all damage to the Leased Property including the Building and Improvements located thereon and owned or controlled by such subtenants, caused by such removal.

12.3. Upon the expiration or sooner termination of this Lease Agreement, all of Lessee's right, title and interest in and to the Building and Improvements shall automatically pass to, vest in and belong to Lessor without further action on the part of either party and without cost or charge to Lessor free and clear of any and all claims of Lessee, except Lessee shall have the right to remove its trade fixtures. At Lessor's request, Lessee shall execute any documents necessary or convenient for the purpose of further evidencing the conveyance of title of the Building and Improvements.

12.4 Lessee shall own and have the right to take the depreciation deductions under the tax laws for the Building and Improvements heretofore or hereafter erected on the Leased Property. Title to the Building and Improvements, equipment in or appurtenant thereto and all changes, additions and alterations therein and all renewals and replacements thereof, when made, erected, constructed, installed or placed upon the Leased Property, shall be and remain in Lessee until the expiration of the term of this Lease Agreement, unless sooner terminated as herein provided. Upon the expiration or sooner termination of this Lease Agreement, all of Lessee's right, title and interest in and to the Building and Improvements shall automatically pass to, vest in and belong to Lessor without further action on the part of either party and without cost or charge to Lessor free and clear of any and all claims of Lessee, except Lessee shall have the right to remove the vault, safe deposit boxes and all security systems. At Lessor's request, Lessee shall execute any documents necessary or convenient for the purpose of further evidencing the conveyance of title of the Building and Improvements. During the term of this Lease Agreement, Lessee alone shall be entitled to claim depreciation on the Building and Improvements, equipment in or appurtenant thereto and all changes, additions and alterations therein, and all renewals and replacements thereof, for all taxation purposes.

13. DEFAULT; REMEDIES.

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

13.2. Default in Rent; Grace Period.

Lessee shall have a grace period of five (5) days within which to pay any and all sums of rent due. If any sums of money required to be paid by Lessee to Lessor shall remain unpaid for a period of five (5) days after receipt of written notice of non-payment from Lessor, then Lessor shall have the following options and privileges:

- (1) Partial accelerations. The Lessor may declare one years' rental as presently due and payable. Such declaration shall not be construed as a splitting of a cause of action, nor shall it alter or affect the obligations of the Lessee to pay rent under the terms of this Lease Agreement for the period unaffected by the declaration.
- (2) Termination. The Lessor may, after notice, terminate the Lease Agreement in which case the provisions of Paragraph 13.4.1 shall apply.
- (3) In addition to partial acceleration as outlined above, the Lessor may exercise any or all other options available to it as provided herein which options may be exercised concurrently or separately with the exercise of the above option.

13.3 Default in Other Provisions; Grace Period. If Lessee shall default in the performance of any other term of this Lease Agreement (except the payment of rent), then the Lessor shall send to Lessee a written notice of default, specifying the nature of the default, and Lessee shall, within sixty (60) days after the date of the notice, cure and remedy the default, and this Lease Agreement shall then continue as before.

If Lessee shall fail to timely cure and remedy such default, then subject to the provisions of Section 10 hereof, Lessor shall have the right to declare, by written notice to Lessee, that the Lease Agreement is in default, and to use all remedies available to Lessor under this Lease Agreement.

If default shall be made in any covenant, agreement, condition or undertaking contained in this Lease Agreement to be kept, observed and performed by Lessee, other than the payment of rent, which default cannot with due diligence be cured within a period of sixty (60) days, and if written notice of the default shall have been given to Lessee, and if Lessee, prior to the expiration of sixty (60) days from and after the giving of such notice commences to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default and does so cure such default, then Lessor shall not have the right to exercise any remedies available to Lessor under this Lease Agreement.

Notwithstanding anything contained to the contrary herein, Lessor agrees that in the event (and only in the event) Lessee defaults in the performance of this Lease Agreement whether by non-payment of rent or by other default (and not cured pursuant to the provisions of Sections 10, 13.2 or 13.3 hereof as applicable), resulting in the termination of this Lease Agreement and the eviction of Lessee, its successors and assigns, Lessor will not disturb the occupancy of Lessee's subtenants, provided the subtenants attorn to Lessor as "Lessor" under all the terms, provisions and conditions of their subleases and further provided that the subtenants are not then in default upon any of the

terms, provisions and conditions of their subleases, and providing such subleases are subject to the terms, provisions and conditions of this Lease Agreement. Lessor agrees to execute commercially reasonable non-disturbance agreements in favor of Lessee's subtenants upon Lessee's written request.

13.4. Remedy for Lessee Default Prior to Construction Financing. In the event there shall be a default under this Lease Agreement and such default shall continue after the expiration of any applicable grace period and shall occur prior to the closing of the Construction Financing, Lessor shall have the following rights and remedies:

13.4.1. Re-Entry and Repossession. Lessor, by notice in writing transmitted to Lessee, as provided in the section entitled "NOTICES", may at its option declare Lessee's interest under this Lease Agreement ended and without further force and effect. In such event, Lessor is then authorized to re-enter and repossess the Leased Property and the Building and Improvements and personal property on them without breaching the peace, and Lessee does in such event waive any demand for possession of the Leased Property, and agrees to surrender and deliver up the Leased Property peaceably to Lessor. In the event of such action, Lessee shall have no claim whatsoever against Lessor by reason of the Building and Improvements made upon the Leased Property, rents paid, or from any other cause whatsoever. Lessee covenants that no surrender or abandonment of the Leased Property or of the remainder of the term shall be valid unless accepted by the Lessor in writing. Notwithstanding anything contained to the contrary herein, Lessor shall be under no duty to relet the Leased Property in the event of an abandonment or surrender or attempted surrender or attempted abandonment of the Leased Property by Lessee. Upon Lessee's abandonment or surrender or attempted abandonment or attempted surrender of the Leased Property, Lessor shall have the right to retake possession of the Leased Property or any part of them, and such retaking of possession shall not constitute an acceptance of Lessee's abandonment or surrender

13.4.2. Damages. Lessor shall have a right to retain the Deposit as agreed upon liquidated damages, and Lessee shall have no further liability to the City under this Lease Agreement for rent or additional rent or compensatory, liquidated, consequential, incidental, actual, exemplary or punitive damages.

13.5. Remedy for Lessee Default After Construction Financing. In the event there shall be a material default by Lessee under this Lease Agreement and such default shall continue after the expiration of any applicable grace period and shall occur after the closing of the Construction Financing, then subject to the provisions of Sections 10 and 13.3 hereof, Lessor shall have the right to the remedies provided in 13.4.1 (subject to the rights of subtenants as provided in Section 13.3 above) as well as all legal and equitable remedies, it being intended that the remedies are cumulative, but no consequential, incidental or punitive damages. Lessor must use commercially reasonable efforts to mitigate its damages.

13.6. Subtenants. Lessor agrees that in the enforcement of Lessor's rights under this Lease Agreement, Lessor will not disturb the occupancy of Lessee's subtenants including any rental tenants, or other occupants of the Leased Property, provided such parties attorn to Lessor as Lessor under all the

terms, provisions and conditions of their subleases, and/or other occupancy documents and further provided that such occupancy documents are subject to the terms, provisions and conditions of this Lease Agreement.

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

13.8. Remedies for Lessee. In the event there shall be a material default under this Lease Agreement by Lessor and such default shall continue after any applicable grace period, Lessee shall have the right to all legal and equitable remedies under Applicable Law.

14. INSURANCE. The parties agree to the following provisions pertaining to insurance.

14.1. Fire And Extended Coverage. Lessee, at its expense, shall provide full fire and extended "All Risk" property insurance coverage on the Building and Improvements constructed on the Leased Property and owned by Lessee, in an amount up to one hundred percent (100%), but not less than eighty percent (80%), of the replacement value of such Building and Improvements.

14.2. Liability Insurance. On or before the Lease Commencement Date, Lessee shall, at its expense, provide, pay for, and continuously maintain, commercial general liability insurance for the benefit of Lessor and Lessee, with policy limits of not less than Two Million Dollars (\$2,000,000) combined single limit for any one occurrence, either as primary coverage or as a combination of primary and excess or umbrella liability coverage, which coverage shall include property damage, personal injuries and death, and shall name Lessor as an additional named insured. Lessor shall have the right to review the amount of commercial general liability insurance provided by Lessee at ten (10) year intervals following the Lease Commencement Date. If at the time of such review, Lessor determines that the City typically requires lessees of City-owned property comparable in type of use, size and function of the Project to provide insurance coverage in an amount in excess of Two Million Dollars (\$2,000,000) combined single limits, then the amount of insurance required herein of Lessee may be increased to the amount generally required to be provided by lessees of City-owned property comparable in type of use, size and function as the Project, and Lessee agrees to provide such additional coverage in accordance with the terms, conditions and other provisions of this Lease Agreement.

14.3. Insurance Qualifications. The insurance provided for herein shall be written by a company that has a current rating by A.M. Best & Company of no less than Level A, Class X in Best's Key Rating Guide (latest edition), is authorized to do business in the State of Florida and countersigned by an agent authorized to do business in the State of Florida.

14.4. Primary Coverage. All insurance referred to in this Lease Agreement shall apply as primary coverage and shall not be affected by any insurance that Lessor may carry in its own name.

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

14.6. Precautions. In order to reduce the hazards and risks of interruption of business occasioned by windstorm and other acts of God, Lessee agrees that it will, at its expense, take all reasonable precautions to protect the Leased Property from damage or destruction. Notwithstanding anything to the contrary contained in this Lease Agreement, Lessee shall not be obligated to obtain terrorism insurance.

15. CASUALTY.

15.1. Casualty After the Lease Effective Date. If a casualty loss affecting all or any part of the Leased Property, including the Building and Improvements located thereon should occur between the Lease Effective Date and the Loan Closing Date, the Lessor shall promptly notify the Lessee about the loss ("Notice of Loss"). The Notice of Loss shall include, among other things, the date on which the loss occurred and the determination of the Lessor, in its sole discretion, whether the Lessor will repair or restore all or that portion of the building and improvements affected by the loss. If Lessor decides to repair or restore the existing Building and Improvements, the proposed construction schedule and budget for implementing the repair or restoration shall also be included in the Notice of Loss, and the Lessor shall proceed diligently to repair or restore such affected part in accordance with the proposed construction schedule and budget. If the Lessor determines, in its sole discretion, not to repair or restore the existing building and improvements, the Lessor shall clear all or that part of the Leased Property affected by the loss of any debris and secure the existing building or other improvements to the extent required by City Codes, including the fencing, where appropriate, of the Leased Property and the posting of no trespassing notices around the outer perimeter of that part of the Leased Property affected by the loss.

15.2. Casualty Between the Lease Commencement Date and the Construction Completion Date. If a casualty loss affecting all or that part of the Building and Improvements located on the Leased Property should occur prior to the date of issuance of a Certificate of Completion for all or that part of the Building and Improvements that have been the subject of the casualty, Lessee shall promptly notify Lessor in writing about the loss ("Notice of Loss"). The Notice of Loss shall include the date on which the loss occurred and the determination of Lessee, in its reasonable opinion, as to whether the repair or restoration

of the Building and Improvements affected by the loss is feasible. If repair or restoration is feasible, the proposed construction schedule and budget for implementing such repair or restoration shall also be included in the Notice of Loss.

15.2.1. In determining whether repair or restoration is feasible, Lessee shall consider, among other factors: (i) the cost of repairing or restoring the Building and Improvements affected by the loss; (ii) the amount of damage or destruction involved and the insurance proceeds available to pay for the repair or restoration of the Building and Improvements affected by the loss to the condition that existed immediately prior to the casualty ("Proceeds") less the reasonable expenses incurred in collecting and disbursing such Proceeds in accordance with the proposed construction schedule and budget; and (iii) the effects of the loss on the feasibility of completing the Project on time, on budget and in a commercially reasonable manner.

15.2.2. If Lessee determines in its reasonable opinion that repair or restoration is feasible, the Proceeds shall be used, collected and disbursed to pay for the repair or restoration in accordance with the newly proposed construction schedule and budget for implementing such repair or restoration. If any Proceeds remain after paying for the repair or restoration, they shall be disbursed to Lessee. The repair or restoration shall be deemed feasible if the Proceeds are sufficient to rebuild the damaged improvements and otherwise restore the Leased Property to its condition prior to such casualty.

15.2.3. If Lessee determines in its reasonable opinion that repair or restoration of the Building and Improvements affected by the loss is not feasible and, as a result of the loss and such determination, the Project cannot be fully constructed, Lessee will not be obligated to make such repair or restoration or continue with the development of the Project. In that event, the Lessor and Lessee may agree to a different project to be constructed on the Leased Property subject to such terms and conditions as the parties may agree or if no agreement is reached, the Proceeds shall be used to clear the Leased Property of the Building and Improvements, unless otherwise advised by the Lessor, and the cleared lands shall be surrendered to Lessor. Upon such surrender, this Lease Agreement shall terminate and neither party shall have any further obligations. Proceeds remaining after paying for the cost of clearing the Building and Improvements from the Leased Property shall be then used to pay any additional costs incurred by Lessee as a result of such loss and severance. Thereafter, any remaining Proceeds shall be disbursed to Lessor to recover for damages suffered as a result of the demolition of the building and improvements located on the property as of the Lease Effective Date.

15.2.4. In the event of a casualty as provided in Section 15 herein, such event shall be considered an Unavoidable Delay under this Lease Agreement. Lessee will not be obligated to make any repair or restoration that is feasible, unless and until Lessee's time for performance has been extended from the date of the casualty to a period of time sufficient to repair or restore such loss and complete the balance of the Project.

15.3. Casualty After Construction Completion Date. If a casualty loss affecting all or part of the Buildings and Improvements located on the Leased Property should occur after the Construction Completion Date for all or that part of the Buildings and Improvements affected by such loss, Lessee, or its

successors and/or assigns, shall promptly notify Lessor in writing about the loss, and without regard to the extent or availability of any insurance proceeds, the Developer shall diligently commence and complete the reconstruction or repair of any loss or damage caused by fire or other casualty in substantial conformance with the Approved Development Plan. If conditions exist at the time of the casualty that support the development of a different Project than that shown on the Approved Development Plan, Developer may amend the Approved Development Plan and propose such changes to this Agreement as are reasonable given current conditions and such amendments may be implemented subject to City Commission approval.

15.3.1. If a casualty occurs in the last five (5) years of the Lease Term, Lessee has the option to either rebuild as provided in this Lease Agreement or clear the Leased Property, pay the proceeds of the insurance to Lessor and terminate the Lease and deliver possession of the Leased Premises to Lessor.

16. CONDEMNATION. In the event of a taking affecting all or any part of the Leased Property, including any Building or Improvement located thereon, the Lessor shall promptly notify the Lessee of the taking ("Notice of Taking"). The Notice of Taking shall identify that part of the Leased Property that is the subject of the taking and include the date on which the taking is scheduled to occur. In such event, the parties shall be governed by the following provisions as applicable at the date of the Notice of Taking.

16.1. Condemnation Involving a Full Taking. If the taking affects all of the Leased Property or so much of the Leased Property so as to render the Leased Property unfit for purposes of developing the Project in accordance with this Lease Agreement, the liability and obligation of each party under this Lease Agreement shall terminate on a date mutually agreed-upon by the parties, which shall not be later than the date on which the taking occurs. Upon such occurrence, the Lessee shall be entitled to make any claim against the condemnor that the Lessee may be entitled to because of any loss or damage of any kind whatsoever incurred by Lessee in (i) pre-development activities associated with securing Permits and financing for the Project, the loss of all or any part of the Building and Improvements erected upon the Leased Property by the Lessee, but not including off-site public improvements constructed for the benefit of Lessor, and (iii) the early termination of this Lease Agreement. Lessee shall be entitled to the entire condemnation award as to its own claim as described herein.

16.2. Condemnation Involving a Partial Taking. If the Lessor and the Lessee reasonably determine that the taking affects only part of the Leased Property so that the part of the Leased Property not so taken is sufficient for the purposes of developing or restoring the Project in accordance with this Lease Agreement, this Lease Agreement shall continue in full force and effect, and the Lessee shall be entitled to make claim against the condemnor that the Lessee may be entitled to because of any loss or damage of any kind whatsoever, including, without limitation: (i) the loss of all or any part of the Building and Improvements erected upon the Leased Property by the Lessee its successors and assigns; and (ii) the loss of the then unexpired portion of the fixed term of this Lease Agreement. Lessee shall be entitled to the entire condemnation award as to its claim. The Lessee shall use the proceeds received by the Lessee pursuant to this Section 16.2 for purposes of restoring those portions of the

Building and Improvements upon the remainder of the Leased Property and impacted by the condemnation to as near their former condition as circumstances will permit pertaining to the partially taken Building and Improvement owned by Lessee, its successors and assigns. If conditions exist at the time of the casualty that support the development of a different Project than that shown on the Approved Development Plan, Developer may amend the Approved Development Plan and propose such changes to this Agreement as are reasonable given current conditions and such amendments may be implemented subject to City Commission approval.

16.2.1. In the event of a partial taking between the Lease Effective Date and the Construction Completion Date, any delay in the Project caused by the condemnation proceedings and the reconfiguration or restructuring of the Project shall be an Unavoidable Delay.

16.2.2. In the event of a partial taking after the Construction Completion Date, the Lessee shall diligently pursue the reconfiguration or restructuring of the Project, and shall cause the repair or reconstruction of the portion of the Building and Improvements to remain on the remainder of the Lease Property in a prompt manner and in accordance with applicable law and City Codes or the Lessor and Lessee may mutually agree to modify the Approved Development Plan and rebuild a revised Project.

16.2.3. In the event of a partial taking after the Rental Commencement Date, the rent payable shall be reduced by that proportion which the square footage of the land so taken bears to the original square footage of the entire Leased Property, and the Rent and Payment Schedule may be amended by the City's Authorized Representative and an amended Exhibit B affixed hereto, with the adjustment in payments, including any proration in the first effected month, to be based on the date of the order of taking.

16.2.4 If a taking occurs in the last five (5) years of the Lease Term, Lessee has the option to either rebuild as provided in this Lease Agreement or clear the Leased Property, pay the proceeds of the condemnation award to Lessor and terminate the Lease and deliver possession of the Leased Premises to Lessor.

17. RESTRICTIONS ON ASSIGNMENT AND TRANSFER.

17.1. Representations By Lessee. Lessee represents and agrees that its lease of the Leased Property, and its other undertakings pursuant to this Lease Agreement, are, and will be used, for the purpose of development of the Lease Property as set forth in this Lease Agreement and not for speculation in land holding. Lessee further recognizes the importance of the development of the Leased Property to the general welfare of the community, and other public commitments that have been made available by law and through the assistance of the Lessor for the purpose of making such development possible. It is further acknowledged by Lessee that a transfer of its interest in the Leased Property or any part thereof, except as otherwise expressly permitted herein is a Transfer or disposition of the Leased Property then owned by Lessee (as defined below). Lessee further acknowledges that the qualifications and identity of Lessee, the members and managers of Lessee and their business experience, reputation, financial capacity to carry out the obligation and responsibilities in connection with the Project is of particular concern to the Lessor because

it is by such experience, financial capacity, qualifications, reputation, past performance and identity, now in effect, that the Lessor is entering into this Lease Agreement with Lessee for the benefit of the community and the Project and, in so doing, is further willing to accept and rely on the obligations of Lessee for the faithful performance of all undertakings and covenants described in this Lease Agreement.

17.2. Restriction on Transfer of Ownership of Lessee Prior to Issuance of Final Completion Certificate. Lessee represents and agrees for itself and any successor in interest hereunder that it shall not cause a transfer of the controlling ownership of the Lessee described in Section 17.5 prior to issuance of a Final Project Completion Certificate for the Project without the prior written approval of the Lessor, which approval shall be in recordable form and shall not be unreasonably withheld, delayed or conditioned. The three individuals identified in Section 17.5 may transfer their interests among themselves at any time during the term of this Lease Agreement. A change in the ownership or control of Lessee resulting from death or incapacity shall not constitute a transfer or an event of default under this Lease Agreement.

17.3. Notification to Lessor as to Ownership Changes. The Lessee agrees that prior to the Lease Commencement Date, Lessee shall furnish Lessor with a complete statement, under oath, setting forth all of the members and managers of the Lessee, their membership interests, and the officers and directors of the managers, and a certification that there has not been any transfer in violation of the provisions of this Section 17. Such a statement shall be furnished to Lessor no sooner than ten (10) days prior to the Lease Commencement Date and annually thereafter on the anniversary of the Rent Commencement Date.

17.4. Restrictions on Assignment of Leased Property and the Lease Agreement. Lessee represents and agrees for itself and its successors and assigns (except as so authorized by the provisions of this Lease Agreement) that it will not, during the term of this Lease Agreement transfer the Leased Property, or suffer to be made or created, any total or partial assignment, conveyance, or master lease, or any trust or power, sale, transfer, or encumbrance other than the Construction Loan (or Permanent Financing) in any other mode or form or with respect to this Lease Agreement or the Leased Property, without first obtaining the prior written approval of the Lessor, which such approval shall be evidenced by an amendment to this Lease Agreement executed in recordable form. Such consent will not be required for any subtenancy in which less than fifty-one percent (51%) of usable floor area of the Buildings in total will be subleased by any one subtenant. Any such consent to an assignment, sublease, transfer, conveyance or pledge by the Lessor shall be subject to all of the terms and provisions of this Lease Agreement, and shall release the Lessee from all of its obligations under this Lease Agreement, subject to satisfaction of conditions 17.4.1 through 17.4.4 below. The obtaining of any consent shall not affect the rentals payable to Lessor. Lessor agrees that consent will not be unreasonably withheld, delayed or conditioned. The Lessor shall be entitled to require, except as may otherwise be provided in this Lease Agreement, as conditions to granting any such prior approval that:

17.4.1. Any proposed successor Lessee or proposed successor Lessee therein shall have the business experience and reputation, development track

record and sufficient financial capacity to carry out the obligations under this Lease Agreement, as determined, in the reasonable discretion of the Lessor.

17.4.2. Any proposed successor Lessee, by instrument in writing satisfactory to the Lessor, in its reasonable discretion, and in recordable form, shall, for itself and its successors and assigns expressly assume all of the obligations of the transferor Lessee under this Lease Agreement and shall agree to abide by and be subject to all of the terms, conditions, obligations, reservations and restrictions ("terms and conditions") to which the transferor Lessee is subject.

17.4.3. There shall be submitted to the Lessor for review all instruments and other legal documents reasonably necessary to review compliance with Section 17.4. There shall be no "transfer fee" charged by the Lessor relative to a transfer hereunder, except as otherwise provided in subsection 17.4.4.

17.4.4. Lessee shall pay Lessor the reasonable costs incurred by Lessor in conjunction with Lessor's review of any assignment hereunder, including instruments and other legal documents.

17.5. Ownership or Control of Lessee.

17.5.1. Upon the Lease Effective Date, Lessee represents and warrants that New River Trading Post Development, LLC., through one or more Affiliates, owns and controls one hundred percent (100%) of the Lessee with the principals of Lessee being as follows, otherwise known as the managers and members who own one hundred percent (100%) of the assets and who possess one hundred percent (100%) control of the New River Trading Post Development, LLC, with proportional shares as follows:

37.5% Allan Hooper, Manager/Member
37.5% Tim Petrillo, Manager/Member
25% Kelly Drum, Manager/Member

Lessee represents and warrants that through the Project Completion Date, New River Trading Post Development, LLC., shall maintain one hundred percent (100%) of the beneficial ownership and control of the Lessee and each of the three principles stated above will own and control one hundred percent (100%) of the Lessee, although the three principles may convey ownership interests among themselves as long as all three remain the owners and in control until the Project Completion Date, unless otherwise approved by Lessor. A change in the ownership or control of Lessee or the principals resulting from death or incapacity shall not constitute a transfer or an event of default under this Lease Agreement.

17.5.2. Lessee shall not substitute any Manager/Member (i.e., Allan Hooper, Tim Petrillo and Kelly Drum) before the Project Completion Date without the prior approval of Lessor. Lessor agrees not to unreasonably withhold, delay or condition its approval to any substitute, provided the qualifications of the substitute are at least equal to or better than those of the team member being substituted.

17.5.3. Lessor recognizes that Lessee, or Lessee's successors and/or assigns, might not operate on their own certain elements of the Buildings and Improvements constructed on the Leased Property. Accordingly, Lessee shall without the consent or joinder of Lessor be entitled to enter into such licenses, concessions, agreements, occupancy or use agreements, management agreements, employment and other similar agreements and arrangements with third parties for the purpose of implementing any use, operation or activity permitted under this Agreement so long as its in accordance with Section 17.4 of this Lease Agreement.

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

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

19.1. By certified mail, return receipt requested, to the following addresses:

Lessor: City Manager
CITY OF FORT LAUDERDALE
100 North Andrews Avenue
Fort Lauderdale, FL 33301

Lessee: NEW RIVER TRADING POST DEVELOPMENT LLC. *AK*
c/o Alan Hooper
~~202 SW 2nd Street, Suite e~~ 425 N. ANDREWS AVE. #2
Fort Lauderdale, FL 33301

Copy to: Robert B. Lochrie III, Esq.
Ruden, McClosky, Smith, Schuster & Russell, P.A.
200 East Broward Boulevard, Suite 1500
Fort Lauderdale, FL 33301

or to such other addresses as the parties may by writing designate to the other party. The notice may also be served by personal delivery to Lessor or Lessee, or to the agent of Lessee in charge of the Leased Property.

19.2. The notice to any leasehold mortgagee, as provided in Section 10 will only be provided if such mortgagee has complied with the provisions of such Section.

20. ESTOPPEL CERTIFICATES. Lessor agrees that, at any time and from time to time during the Term of this Lease, within twenty (20) days after request by Lessee, Lessor will execute, acknowledge and deliver to any prospective purchaser, assignee, tenant, mortgagee or other person designated by Lessee, a certificate stating: (a) that this Lease Agreement is unmodified and in force and effect (or if there have been modifications, that this Lease Agreement is in force and effect as modified, and identifying the modification agreements); (b) confirming that the rent has been paid in full; © whether or

not there is any existing default by either party hereto, and, if there is any such default, specifying the nature and extent thereof; (d) whether or not there are any setoffs, defenses, or counterclaims against enforcement of the obligations to be performed hereunder; and (e) any other information relating to this Lease Agreement reasonably requested by Lessee.

21. SPECIFIC COMPLIANCE WITH ENVIRONMENTAL LAWS. Lessee agrees to conduct its business operations in compliance with all Applicable Laws, including laws and regulations designed for the protection of the environment.

22. SEVERABILITY. If any section, subsection, sentence, clause, provision, or part of this Lease Agreement shall be held invalid for any reason, the remainder of this Lease Agreement shall not be affected.

23. SUBROGATION. Lessor shall have the option, after sixty (60) days' prior written notice to Lessee and without waiving or impairing any of Lessor's rights, to pay any sum or perform any act required of Lessee under this Lease Agreement, and the amount of any such payment and the value of any such performance, together with interest on them, shall be secured by this Lease Agreement, and shall be promptly due and payable to Lessor as additional rent.

24. RIGHT TO CONTEST. Lessor or Lessee each respectively may, at its sole discretion and expense, after prior written notice to the other parties hereto, contest by appropriate action or proceeding conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any lien, any payment of any taxes, assessments, impact fees or other public charges of a similar nature that may from time to time be levied upon or assessed by any appropriate governmental authority against Lessee, the Project (or any part thereof) or the Leased Property any other payment specifically identified in this Agreement, or compliance with any law, rule, regulation or other such legal requirement. Such proceeding shall suspend or toll the time frames required under this Lease Agreement for the execution or enforcement of such charge, payment or requirement. The party seeking the benefit of this Section shall have furnished to the other parties such security, if any, as may be required in such proceeding or as may be reasonably requested by the others, to protect the Project and the Leased Property and any part thereof, and any interest of such parties hereunder.

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

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

27. RADON GAS. Florida Statutes require that the following notification be given for real estate transactions of this type: "RADON GAS: Radon is a

naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."

28. NO BROKER. Lessor and Lessee hereby represent and warrant, each to the other, that they have not dealt with, any broker, finder or any other person, firm, corporation or other legal entity so as to create any legal right or claim of any kind or nature for a commission or similar fee or compensation with respect to or arising out of this Lease Agreement. To the extent permitted by law, specifically including Section 768.28, Florida Statutes, Lessor and Lessee hereby indemnify, to the extent provided by law, each other against, and agree to defend and hold each other harmless from, any liability or claim (and all expenses, including, without limitation, reasonable attorneys' fees, incurred in defending any such claim or in enforcing this indemnity) for a real estate brokerage commission or similar fee or compensation arising out of or in any way connected with any claimed dealings with the indemnitor and/or this Lease Agreement. The provisions of this section shall survive the expiration or sooner termination of this Lease Agreement.

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

30. DELAYS. In the event either party hereto is delayed in the performance of any act required hereunder by reason of an Unavoidable Delay, performance of such act shall be excused for the period of the Unavoidable Delay and the period for the performance of such act shall be extended for a period equivalent to the period of the Unavoidable Delay and all dates, time periods, deadlines as contained in the Project Development Schedule shall be extended by the time period caused by the delay.

31. TECHNICAL AMENDMENTS; SURVEY CORRECTIONS. In the event that due to minor inaccuracies contained herein or any Exhibit attached hereto or any other agreement contemplated hereby, or due to changes resulting from technical matters arising during the term of this Lease Agreement, the parties agree that amendments to this Lease Agreement required due to such inaccuracies, unforeseen events or circumstances which do not change the substance of this Agreement may be made and incorporated herein. The Authorized Representatives of Lessor and Lessee is authorized to approve such technical amendments on behalf of Lessor and Lessee, and is authorized to execute any required instruments, to make and incorporate such amendment to this Lease Agreement or

any Exhibit attached hereto or any other agreement contemplated hereby.

32. ADJACENT CITY BULKHEAD; PROPOSED DOCK. The parties acknowledge that Lessee suggested that Lessor participate in the funding of certain aspects of the Proposal through the permitting and construction of a dock to be installed adjacent to the bulkhead running parallel to the south line of the Leased Property and separated by the City's Riverwalk Linear Park. The purpose of the proposed dock is to serve as a fully equipped mooring facility of approximately 100 linear feet in length to exhibit historic or education vessels of the maritime museum as well as potentially to accommodate other day dockage needs of the New River area. Upon the Lease Effective Date, the City shall use best efforts to secure permits for the proposed dock and construct the proposed dock if permitted, subject to and in the sole discretion of the City of the availability of funds and the reasonableness of the costs, including but not limited to any conditions of the permits adversely affecting Lessor's municipal marina operation along the New River. In the event that the proposed dock is permitted and construction at the location adjacent to the Leased Property, as long as the Museum Space is being used exclusively for a museum purpose, the non-profit museum organization as tenant of the Museum Building, may use an the accessory dock adjacent to the Leased Property for display of historic attractions and educational vessels, subject to entering into then applicable docking permits with the City.

33. FINAL REPOSITORY. The parties mutually represent and warrant to each other that this Lease Agreement, consisting of Sections 1 through 33, inclusive, constitutes the final repository of the parties on its subject matter and may not be changed, modified, discharged or extended except by written instrument duly executed by the parties. The parties agree that no previous representations or warranties shall be binding upon either party nor has the execution of this Lease Agreement been induced on the part of any party except as expressed in writing in this Lease Agreement.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

WITNESSES:

Sharon R. Miller

Arnda Owens

CITY OF FORT LAUDERDALE

By [Signature]
Mayor

By [Signature]
City Manager

Ashley

(CORPORATE SEAL)

ATTEST:

[Signature]
City Clerk

LIST OF EXHIBITS

EXHIBIT	A	LEGAL DESCRIPTION OF LEASED PROPERTY
EXHIBIT	B	RENT AND PAYMENT SCHEDULE
EXHIBIT	C	PROJECT SCHEDULE
EXHIBIT	D	PROJECT DESCRIPTION
EXHIBIT	E	PROJECT BUDGET

**NEW RIVER TRADING POST DEVELOPMENT LLC
LEGAL DESCRIPTION**

The property is located at 330 S.W. 2nd Street and is legally described as:

“All of Parcel “A” of “The Barefoot Mailman”, according to the Plat thereof, recorded in P.B. 152, P. 32, of the Public Records of Broward County, Florida.”

**NEW RIVER TRADING POST DEVELOPMENT LLC
RENT AND PAYMENT SCHEDULE**

BEGINNING MONTH	ANNUAL ADJUSTMENT	MONTHLY PAYMENT	YEAR	ANNUAL PAYMENT
1		4,166.67	1	50,000.00
13	1.025	4,270.83	2	51,250.00
25	1.025	4,377.60	3	52,531.25
37	1.025	4,487.04	4	53,844.53
49	1.025	4,599.22	5	55,190.64
61	1.025	5,547.53	6	66,570.41
73	1.025	5,686.22	7	68,234.67
85	1.025	5,828.38	8	69,940.54
97	1.025	5,974.09	9	71,689.05
109	1.025	6,123.44	10	73,481.28
121	1.025	6,276.53	11	75,318.31
133	1.025	6,433.44	12	77,201.27
145	1.025	6,594.27	13	79,131.30
157	1.025	6,759.13	14	81,109.58
169	1.025	6,928.11	15	83,137.32
181	1.025	7,101.31	16	85,215.75
193	1.025	7,278.85	17	87,346.15
205	1.025	7,460.82	18	89,529.80
217	1.025	7,647.34	19	91,768.05
229	1.025	7,838.52	20	94,062.25
241	1.025	8,034.48	21	96,413.80
253	1.025	8,235.35	22	98,824.15
265	1.025	8,441.23	23	101,294.75
277	1.025	8,652.26	24	103,827.12
289	1.025	8,868.57	25	106,422.80
301	1.025	9,090.28	26	109,083.37
313	1.025	9,317.54	27	111,810.45
325	1.025	9,550.48	28	114,605.71
337	1.025	9,789.24	29	117,470.86
349	1.025	10,033.97	30	120,407.63
361	1.025	10,284.82	31	123,417.82
373	1.025	10,541.94	32	126,503.27
385	1.025	10,805.49	33	129,665.85
397	1.025	11,075.62	34	132,907.49
409	1.025	11,352.52	35	136,230.18
421	1.025	11,636.33	36	139,635.94
433	1.025	11,927.24	37	143,126.83
445	1.025	12,225.42	38	146,705.00
457	1.025	12,531.05	39	150,372.63
469	1.025	12,844.33	40	154,131.95
481	1.025	13,165.44	41	157,985.24
493	1.025	13,494.57	42	161,934.87
505	1.025	13,831.94	43	165,983.25
517	1.025	14,177.74	44	170,132.83
529	1.025	14,532.18	45	174,386.15
541	1.025	14,895.48	46	178,745.80
553	1.025	15,267.87	47	183,214.45
565	1.025	15,649.57	48	187,794.81
577	1.025	16,040.81	49	192,489.68
589	1.025	16,441.83	50	197,301.92
			Total	<u>\$ 5,689,378.75</u>

1. The schedule assumes an additional \$10,000 added to rent at the beginning of the 6th year and commencing with the 61st month from the Rent Commencement Date.
2. All now and future tax, including Florida sales tax, is in addition to payments shown on the Rent and Payment Schedule.

**NEW RIVER TRADING POST DEVELOPMENT LLC
PROJECT DEVELOPMENT SCHEDULE**

Depending on the availability to the site of residential dwelling units that can be allocated to the Project in accordance with either Alternative A or Alternative B, the Project, including final plan approval, permitting, financing and construction, shall be governed by the following schedule, with timeframes commencing from the Lease Effective Date:

ITEM	NEW RIVER TRADING POST DEVELOPMENT LLC PERFORMANCE MEASURES AND ACTIVITY	MONTHS FROM LEASE EFFECTIVE DATE	
		ALT A	ALT B
1	Submission of Application and Preliminary Development Plan for Pre-Application Review By the Development Review Committee (DRC).	4 Months	4 Months
2	Submission of Preliminary Development Plan Reflecting DRC Pre-Application Comments for Consent of the City Commission as Lessee.	5 Months	5 Months
3	<i>Submission of Application and Preliminary Development Plan for Formal Review and Comment by the Development Review Committee (DRC).</i>	6 Months	12 Months
4	<i>Submission of Application for Site Re-zoning.</i>	6 Months	12 Months
5	Submission of Application for Development Plan Approval by the Planning and Zoning Board.	8 Months	14 Months
6	Approvals Obtained for Site Rezoning and the Approved Development Plan.	12 Months	18 Months
7	Prepare Detailed Plans and Specifications and Construction Documents, and Secure Permits.	21 Months	27 Months
8	<i>Undertake all Activities Necessary to Complete Project Financing and Close on the Construction Loan.</i>	21 Months	27 Months
9	Take Possession of Leased Property and Complete Construction Mobilization.	22 Months	28 Months
10	Commence Project Construction.	23 Months	29 Months
11	Complete Project Construction.	41 Months	47 Months
12	Complete Tenant Build-out Construction	47 Months	53 Months
13	Rental Commencement Date.	48 Months	54 Months

1. Alternative A provides the schedule based on the availability within the zoning district of 10 residential dwelling units as of the Lease Effective Date. Alternative B provides additional time in the event that an additional allocation of units providing up to the originally proposed 10 residential dwelling units needs to be made available.

2. Highlighted Items 3, 4 and 8 of the italicized performance measures above are events of Early Termination as provided by Section 7.2 of the Lease Agreement. All performance measures are subject to extension due to Unavoidable Delay, or by formal approval of the City Commission.

NEW RIVER TRADING POST DEVELOPMENT LLC PROJECT DESCRIPTION

PROJECT SUMMARY: A mixed use development totaling approximately 37,400 gross square feet of enclosed building area, and generally described below:

Developers Responsibilities:

New River Trading Post: Approximately 15,000 gross s.f., with approximately 7,800 net leaseable s.f. street level area and 7,000 net leaseable s.f. second floor area of retail, restaurant and office use. This portion of the building will front along S.W. 4th Avenue with dimensions estimated at 125' in length and 60' in width with maximum height as defined by the ULDR not to exceed 25'.

Riverwalk Theater Studios: Approximately 16,800 gross s.f., with approximately 15,000 net leaseable s.f. providing an estimated 10 work/live studios units with first floor retail space and second floor living space for the exclusive use of the unit tenant. This portion of the building will front along S.W. 2nd Street with dimensions estimated at 285' in length and 60' in width with maximum height as defined by the ULDR not to exceed 25'.

Fort Lauderdale Maritime Museum: Approximately 5,600 gross s.f. This portion of the building will front the south side of the Leased Property, facing the New River/Riverwalk, with dimensions estimated at 135' in length and 42' in width and maximum height as defined by the ULDR and subject to re-zoning approval as a condition precedent estimated not to exceed 30'.

On-site Parking: While the site is within a parking exempt area, the project anticipates the construction of approximately 24 to 34 parking spaces or more for the use of the tenants.

On-site Landscaping and Site Amenities: Landscaping and other site amenities as required by City Code and Riverwalk Design Guidelines.

Off-site Improvements: In addition to those required by City Code or as a condition of approval of the Approved Development Plan, the Project will include hardscape and landscape improvements to the adjacent portions of the New River/Riverwalk fronting the south property line of the Leased Property.

Project Budget: Total project development costs, including all hard and soft costs, are estimated at \$5,189,998. Included in the Project Budget is the value of the improvements for the Maritime Museum which are estimated at \$777,112.

City Responsibilities: City to cease municipal parking operations on the Leased Property, including the off-site metered parking in the easement area adjacent to the south property line of the Leased Property, and fully vacate the premises and surrender possession of the Leased Property as provided in the Lease Agreement.

**NEW RIVER TRADING POST DEVELOPMENT LLC
PROJECT BUDGET**

DEVELOPER IMPROVEMENT COSTS	COSTS/ SQ FT	COST
ARCHITECTUAL/ENGINEERING		
Architectual/Engineering Drawings	4.11	153,714
Architectual Design	1.37	51,238
Reproduction Costs	0.13	4,862
TOTAL ARCHITECTUAL	5.61	\$ 209,814
SOFT COSTS		
Taxes During Construction/Sell-out		
Environmental Survey	0.24	8,976
Liability Insurance	0.23	8,602
Legal	1.37	51,238
Due Diligence/Administration	8.22	307,428
Land Use Consulting	2.06	77,044
Accounting	0.24	8,976
Building/Development Permits	0.82	30,668
Surveys	0.51	19,074
Soil Tests	0.36	13,464
Debt Service	6.52	243,848
Financing Fees/Closing Costs	1.25	46,750
Site Inspections	0.21	7,854
Appraisal	0.15	5,610
TOTAL SOFT COSTS	22.19	\$ 829,906
CONSTRUCTION COSTS		
Site/Utility/Sidewalk/Landscape Work	6.17	230,758
Dmolition/Asphalt/Asbestos Removal	2.06	77,044
Building Construction	102.74	3,842,476
TOTAL CONSTRUCTION COSTS	110.96	\$ 4,149,904
TOTAL PROJECT COSTS	138.77	\$ 5,189,998

NOTES:

1 Enclosed Building Area Assumptions (Gross Sq. FT.):

Maritime Museum	5,600	g.s.f.
Riverwalk Theater Studios	16,800	g.s.f.
New River Trading Post	15,000	g.s.f.
Total Enclosed Building Area	<u>37,400</u>	g.s.f.

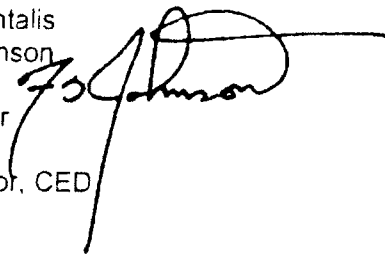
2 Estimated Cost of Maritime Museum at \$138.77/Sq. Ft. = \$ 777,112

PH-2

MEMORANDUM NO. 03-881

DATE: June 13, 2003

TO: Mayor Jim Naugle
 Vice-Mayor Carlton B. Moore
 Commissioner Christine Teel
 Commissioner Dean J. Trantalis
 Commissioner Cindi Hutchinson

FROM: F. T. Johnson, City Manager 

VIA: Faye Outlaw, Interim Director, CED

BY: Chuck Adams, Manager
 Redevelopment Services and Marine Facilities

SUBJECT: June 17, 2003 Agenda – Lease Agreement – New River Trading Post Development LLC

Authorization is requested to enter into a long-term lease agreement with New River Trading Post Development LLC (the "Lessee") for the lease and development of the former New River U.S. Post Office Site. The members of the Lessee are Alan Hooper, Tim Petrillo, and Kelly Drum. The site is located at 330 S.W. 2nd Street.

Section 8.09 of the City Charter provides for the lease of City property "... for a period of time not more than fifty years, plus such length of time, not to exceed five (5) years, determined by the city commission to be reasonably necessary to complete construction of the improvements proposed...." The term of the proposed lease is for fifty (50) years plus approximately two years to complete construction and tenant build-out from the effective date of the lease. Ground rent to the City commences no later than at the beginning of the month after the two year construction allowance

Provided as supporting exhibits are:

- Exhibit 1:** Originally Proposed Concept Plan
- Exhibit 2:** Revised Project Description
- Exhibit 3:** Project Development Schedule
- Exhibit 4:** Rent and Payment Schedule
- Exhibit 5:** General Terms and Conditions

In accordance with Section 8.9(d), which provides that the proposed lease be posted and distributed to the Commission at least three (3) days prior to consideration, attached is a copy of the proposed lease (**Exhibit 6**).

BACKGROUND

On July 8, 2002, a Request for Proposals (RFP No. 322-8718) was issued for the lease and development of the former New River U.S. Post Office site. This was done after the City Commission considered over the previous year various concepts submitted from six (6) for-profit and not-for-profit organizations. In response to the RFP, two proposals were submitted by the September 6, 2002 deadline -- one from Abreu LLC, and the other from New River Trading Post Development LLC. Both proposals required a rezoning of the site from Historic District (H-1) to Arts and Science District (**AS**) in order to accommodate proposed building lengths in excess of the 100' building length limitation without separation that is currently imposed by the H-1 zoning district. Both proposers also requested a portion of the proposed building to exceed the current H-1 height restriction of 25'. In the case of the New River Trading Post, 30' is requested for the portion of the building that will house the Maritime Museum. On October 1, 2002, presentations were heard from representatives of both proposers at which time the City Commission selected New River Trading Post Development LLC for negotiations of the lease to develop the site.

REVISED PROJECT DESCRIPTION

The project encompasses the demolition and removal of the existing building and improvements and the construction of an irregularly shaped building of approximately 37,400 gross s.f. The project will provide a mixture of uses including:

1. One or a combination of retail, restaurant and office uses in the New River Trading Post component fronting SW 2nd Avenue;
2. Street level retail and second floor residential work/live units in the Riverwalk Theater Studios component fronting SW 4th Avenue; and,
3. The Maritime Museum in the component fronting the New River/Riverwalk.

The Lease Agreement restricts the Lessee from operating a stand-alone bar or any uses catering to adult entertainment. It also restricts the Lessee from converting the building to exclusive residential use, or significantly altering the building after completion, including increasing the building footprint or height, without the prior approval of the City Commission and at its sole discretion.

The Original Concept Plan (**Exhibit 1**) for the site was reviewed by City development services and engineering staff in order to determine whether there are any significant issues presented by the proposed plan in addition to the necessity to rezone the site to allow proposed building lengths under one enclosed structure and the additional building height for the museum component. This review determined that the originally proposed circulation plan was not practical due to, among other issues, the prohibitive cost of relocating FPL power poles and overhead lines located in the alley on the east property line of the site, and the area needed for the proposed cul-de-sac at the end of the alley to provide access for life-safety equipment. The Original Concept Plan will be modified by the Lessee and brought back to the City Commission for approval prior to the plan being formally submitted for approvals by the City's Development Review Committee (DRC) and the Planning and Zoning Board. The modified plan is anticipated to continue to provide for the widening of the alley for two way traffic and access to the proposed parking lot as originally proposed. However, vehicular traffic circulation will continue in the easement area located adjacent to the south side of the site as it presently intersects with

the alley on the east property line and SW 4th Avenue on the west property line. As originally proposed, the City will remove the approximately 10 metered and handicapped parking spaces in this easement area adjacent to the south property line of the site, and the Lessee will make decorative hardscape and landscape improvements in this area that are compatible with Riverwalk Design Guidelines. The adjustment to the originally proposed conceptual site plan to maintain vehicular traffic circulation also requires refinements to that portion of the building dedicated to the Maritime Museum, which changes from approximately 6,800 s.f. to 5,600 s.f. so as to no longer encroach outside the south property line of the leased property.

These modifications are reflected on the revised Project Description (**Exhibit 2**). In addition, the original proposal requested the City to consider funding, permitting and constructing a new dock estimated by the Lessee to cost \$150,000, and to be installed adjacent to the seawall running parallel to the south property line of the Leased Property. This new dockage would be available for use by the Maritime Museum for occasional exhibition purposes. Earlier this year, the City Commission authorized City staff to explore the possibility of permitting and constructing one new dockage facility for New River day dockage purposes. The Lease Agreement provides that the City will use "best efforts" to permit this area for exhibition and day dockage use, but actual construction will be at the sole discretion of the City and based on fund availability. Currently, City staff is proceeding to the first phase of permitting, which we are able to do with in-house resources and at minimal cost. After submission of that application and receipt of regulatory agency comments, we will update the City Commission on the estimated cost of proceeding with permitting and construction of the proposed dock.

PROJECT DEVELOPMENT SCHEDULE

The Project Schedule is provided as **Exhibit 3**. From the effective date of the lease, we estimate that it will take between 21 to 27 months to secure development and building permits for the project, and to secure and close on construction financing for the project. We also estimate an additional 26 months (or between 48 to 54 months from the lease effective date) to remove public parking facilities and complete construction of the project, including an allowance for tenant build-out.

Since acceptance of the original proposal, the limited number of residential dwelling units that can be allocated to new projects within the Downtown Regional Activity Center possess a potential unforeseen impact on the time line for this project. Currently, approximately 13 uncommitted units remain available for this area, but cannot be committed to the project until plans are prepared in sufficient detail to submit an application for review by the City's Development Review Committee (DRC). The Project Schedules provides for Alternative A and B time lines. Alternative A provides for the Lessee to proceed with the assumption that a sufficient number of residential units will be available at the time of application for a development permit. Should those units be committed prior to the Lessee being able to submit the application to DRC, then under Alternative B an additional 2 months is allowed by the Project Schedule in anticipation that the Lessee would have to apply for units that may be made available under the new allocation later this calendar year. The Lease Agreement and Lease Agreement provides for the early termination of the lease if the Lessee does not apply for a development permit or the rezoning of the site within 6 to 12 months (depending on the availability of dwelling units) from the effective date of the lease. The lease terminates if dwelling units are not available or made available to the project within the time provided in the

Project Schedule, or if the development permit or rezoning of the site is not approved. The lease also terminates if the Lessee fails to complete the permitting process, secure financing and close on the construction loan within 21 to 27 months (depending on the availability of dwelling units) from the effective date of the lease. All performance measures are subject to extension due to unavoidable delays, or formal approval of an extension request by the City Commission.

RENT AND PAYMENT SCHEDULE

The Rent and Payment Schedule is provided as **Exhibit 4**. Consistent with the original proposal, after year 1 of the lease, ground rent will continuously increase 2.5% on each anniversary date. The initial base rent payable over the first year in equal monthly installments is \$50,000. Allocated rent attributable to the Maritime Museum will not commence until year 6 of the lease at which time the adjusted rent will increase an additional \$10,000. In the event that the Maritime Museum discontinues operation at the site, the Lessee may request City Commission approval of a substitute non-profit museum use under the same rent structure. Alternatively, the Lessee may lease the space to another tenant for uses permitted under zoning and the Lease Agreement, without the prior consent of the City, but rent payable to the City will be further adjusted to be equal to the same allocated amount that the other uses are paying on a building area per square foot basis in the two other portions of the building.

GENERAL TERMS AND CONDITIONS

For your additional information, provided as **Exhibit 5** is an outline of the General Terms and Conditions contained in the Lease Agreement.

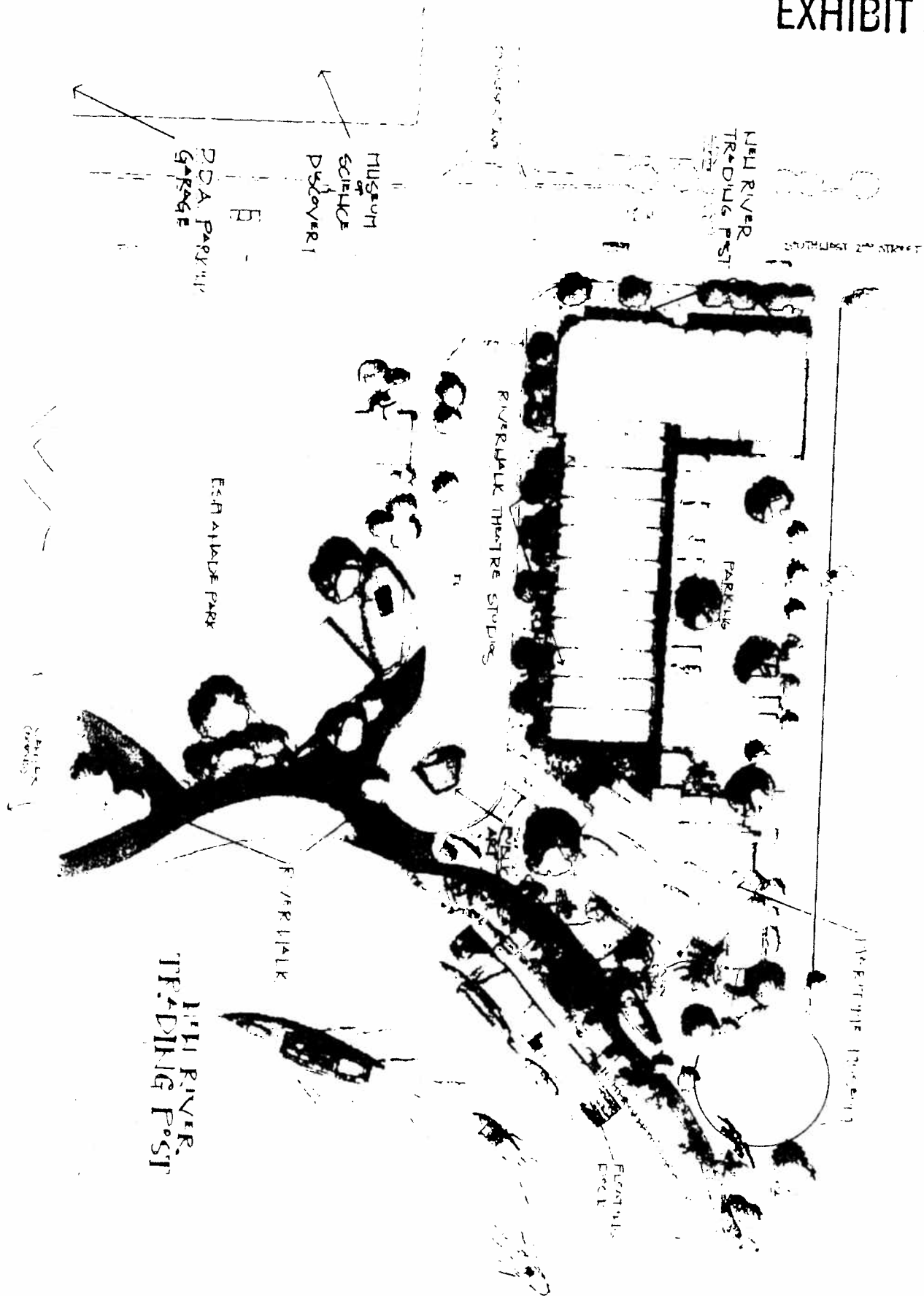
RECOMMENDATION

Section 8.9(d) of the City Charter provides for the Commission to hear from all members of the public regarding the proposed lease, and, if satisfied with the terms and conditions of the lease, authorize the execution of the lease by resolution.

We recommend the appropriate city officials be authorized to execute the lease after incorporating any amendment made at the June 17, 2003 Commission meeting and changes to form made by the City Attorney.

FTJ/FO/CA
Attachments

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**NEW RIVER TRADING POST DEVELOPMENT LLC
REVISED PROJECT DESCRIPTION**

PROJECT SUMMARY: A mixed use development totaling approximately 37,400 gross square feet of enclosed building area, and generally described below:

Developers Responsibilities:

New River Trading Post: Approximately 15,000 gross s.f., with approximately 7,800 net leaseable s.f. street level area and 7,000 net leaseable s.f. second floor area of retail, restaurant and office use. This portion of the building will front along S.W. 4th Avenue with dimensions estimated at 125' in length and 60' in width with maximum height as defined by the ULDR not to exceed 25'.

Riverwalk Theater Studios: Approximately 16,800 gross s.f., with approximately 15,000 net leaseable s.f. providing an estimated 10 work/live studios units with first floor retail space and second floor living space for the exclusive use of the unit tenant. This portion of the building will front along S.W. 2nd Street with dimensions estimated at 285' in length and 60' in width with maximum height as defined by the ULDR not to exceed 25'.

Fort Lauderdale Maritime Museum: Approximately 5,600 gross s.f. This portion of the building will front the south side of the Leased Property, facing the New River/Riverwalk, with dimensions estimated at 135' in length and 42' in width and maximum height as defined by the ULDR and subject to re-zoning approval as a condition precedent estimated not to exceed 30'.

On-site Parking: While the site is within a parking exempt area, the project anticipates the construction of approximately 24 to 34 parking spaces or more for the use of the tenants.

On-site Landscaping and Site Amenities: Landscaping and other site amenities as required by City Code and Riverwalk Design Guidelines.

Off-site Improvements: In addition to those required by City Code or as a condition of approval of the Approved Development Plan, the Project will include hardscape and landscape improvements to the adjacent portions of the New River/Riverwalk fronting the south property line of the Leased Property.

Project Budget: Total project development costs, including all hard and soft costs, are estimated at \$5,189,998. Included in the Project Budget is the value of the improvements for the Maritime Museum which are estimated at \$777,112.

City Responsibilities: City to cease municipal parking operations on the Leased Property, including the off-site metered parking in the easement area adjacent to the south property line of the Leased Property, and fully vacate the premises and surrender possession of the Leased Property as provided in the Lease Agreement.

EXHIBIT 2

**NEW RIVER TRADING POST DEVELOPMENT LLC
PROJECT DEVELOPMENT SCHEDULE**

Depending on the availability to the site of residential dwelling units that can be allocated to the Project in accordance with either Alternative A or Alternative B, the Project, including final plan approval, permitting, financing and construction, shall be governed by the following schedule, with timeframes commencing from the Lease Effective Date:

ITEM	NEW RIVER TRADING POST DEVELOPMENT LLC PERFORMANCE MEASURES AND ACTIVITY	MONTHS FROM LEASE EFFECTIVE DATE	
		ALT A	ALT B
1	Submission of Application and Preliminary Development Plan for Pre-Application Review By the Development Review Committee (DRC).	4 Months	4 Months
2	Submission of Preliminary Development Plan Reflecting DRC Pre-Application Comments for Consent of the City Commission as Lessee.	5 Months	5 Months
3	<i>Submission of Application and Preliminary Development Plan for Formal Review and Comment by the Development Review Committee (DRC).</i>	6 Months	12 Months
4	<i>Submission of Application for Site Re-zoning.</i>	6 Months	12 Months
5	Submission of Application for Development Plan Approval by the Planning and Zoning Board.	8 Months	14 Months
6	Approvals Obtained for Site Rezoning and the Approved Development Plan.	12 Months	18 Months
7	Prepare Detailed Plans and Specifications and Construction Documents, and Secure Permits.	21 Months	27 Months
8	<i>Undertake all Activities Necessary to Complete Project Financing and Close on the Construction Loan.</i>	21 Months	27 Months
9	Take Possession of Leased Property and Complete Construction Mobilization.	22 Months	28 Months
10	Commence Project Construction.	23 Months	29 Months
11	Complete Project Construction.	41 Months	47 Months
12	Complete Tenant Build-out Construction	47 Months	53 Months
13	Rental Commencement Date.	48 Months	54 Months

1. Alternative A provides the schedule based on the availability within the zoning district of 10 residential dwelling units as of the Lease Effective Date. Alternative B provides additional time in the event that an additional allocation of units providing up to the originally proposed 10 residential dwelling units needs to be made available.

2. Highlighted Items 3, 4 and 8 of the italicized performance measures above are events of Early Termination as provided by Section 7.2 of the Lease Agreement. All performance measures are subject to extension due to Unavoidable Delay, or by formal approval of the City Commission.

NEW RIVER TRADING POST DEVELOPMENT LLC
RENT AND PAYMENT SCHEDULE

BEGINNING MONTH	ANNUAL ADJUSTMENT	MONTHLY PAYMENT	YEAR	ANNUAL PAYMENT
1		4,166.67	1	50,000.00
13	1.025	4,270.83	2	51,250.00
25	1.025	4,377.60	3	52,531.25
37	1.025	4,487.04	4	53,844.53
49	1.025	4,598.22	5	55,190.64
61	1.025	5,547.53	6	66,570.41
73	1.025	5,686.22	7	68,234.67
85	1.025	5,828.38	8	69,940.54
97	1.025	5,974.09	9	71,689.05
109	1.025	6,123.44	10	73,481.28
121	1.025	6,276.53	11	75,318.31
133	1.025	6,433.44	12	77,201.27
145	1.025	6,594.27	13	79,131.30
157	1.025	6,759.13	14	81,109.58
169	1.025	6,928.11	15	83,137.32
181	1.025	7,101.31	16	85,215.75
193	1.025	7,278.85	17	87,346.15
205	1.025	7,460.82	18	89,529.80
217	1.025	7,647.34	19	91,768.05
229	1.025	7,838.52	20	94,062.25
241	1.025	8,034.48	21	96,413.80
253	1.025	8,235.35	22	98,824.15
265	1.025	8,441.23	23	101,294.75
277	1.025	8,652.26	24	103,827.12
289	1.025	8,868.57	25	106,422.80
301	1.025	9,090.28	26	109,083.37
313	1.025	9,317.54	27	111,810.45
325	1.025	9,550.48	28	114,605.71
337	1.025	9,789.24	29	117,470.86
349	1.025	10,033.97	30	120,407.63
361	1.025	10,284.82	31	123,417.82
373	1.025	10,541.94	32	126,503.27
385	1.025	10,805.49	33	129,665.85
397	1.025	11,075.62	34	132,907.49
409	1.025	11,352.52	35	136,230.18
421	1.025	11,636.33	36	139,635.94
433	1.025	11,927.24	37	143,126.83
445	1.025	12,225.42	38	146,705.00
457	1.025	12,531.05	39	150,372.63
469	1.025	12,844.33	40	154,131.95
481	1.025	13,165.44	41	157,985.24
493	1.025	13,494.57	42	161,934.87
505	1.025	13,831.94	43	165,983.25
517	1.025	14,177.74	44	170,132.83
529	1.025	14,532.18	45	174,386.15
541	1.025	14,895.48	46	178,745.80
553	1.025	15,267.87	47	183,214.45
565	1.025	15,649.57	48	187,794.81
577	1.025	16,040.81	49	192,489.68
589	1.025	16,441.83	50	197,301.92
Total				<u>\$ 5,689,378.75</u>

1. The schedule assumes an additional \$10,000 added to rent at the beginning of the 6th year and commencing with the 61st month from the Rent Commencement Date.
2. All now and future tax, including Florida sales tax, is in addition to payments shown on the Rent and Payment Schedule.

**NEW RIVER TRADING POST DEVELOPMENT LLC
LEASE AGREEMENT SUMMARY
GENERAL TERMS AND CONDITIONS**

1. LEASED PROPERTY:

The property is located at 330 S.W. 2nd Street and is legally described as: "All of Parcel "A" of "The Barefoot Mailman", according to the Plat thereof, recorded in P.B. 152, P. 32, of the Public Records of Broward County, Florida."

2. LESSEE:

The Lessee is New River Trading Post Development LLC, a for profit, new created entity. The principles of Lessee are: Alan Hooper, Tim Petrillo, and Kelly Drum.

3. PERMITTED AND RESTRICTED USES; MAJOR ALTERATIONS:

The Lease Agreement restricts the Lessee from operating a stand alone bar or any uses catering to adult entertainment. Restaurant uses serving alcohol must be equipped with a full food service kitchen. The Lease Agreement also restricts the Lessee from converting the building to exclusive residential use. Lessee may change to any other permitted use without the consent of Lessor except as otherwise provided in the Lease Agreement. Major alterations, including changes that affect the integrity of the structure after completion of the Project are permitted with the prior consent of the City's authorized representative. However, only the City Commission may grant at its sole discretion an alteration that significantly changes the architectural style to the exterior of the building, or that increases the building footprint or height or that expands residential use in excess of the Approved Development Plan. In the event that the maritime museum discontinues operation at the Leased Property, the Lessee may request the City Commission's consent to a substitute museum use, which consent shall not be unreasonably withheld if the museum is determined complimentary to the area.

4. TERM; LEASE EFFECTIVE AND LEASE COMMENCEMENT DATES:

The term of the lease is fifty (50) years from the lease commencement date plus two (2) years to complete construction of the project, including a six month allowance for tenant build-out. The lease is effective on the date inserted by the City Clerk after being signed by both parties. The lease commencement date is the same day that the Lessee closes on the construction loan necessary for project financing. At the expiration of the term, the ownership of the buildings and improvements, excluding the personnel property and moveable fixtures of the tenants, becomes the property of the City.

5. BUILDINGS AND IMPROVEMENTS; MAINTENANCE AND UPKEEP:

The Buildings and Improvements shall be planned, permitted, financed and constructed in accordance with the **Revised Project Description** as amended and superceded by the Approved Development Plan. Prior to submission of an

application for a Development Permit to the City's Development Review Committee (DRC), the City Commission will review Lessee's preliminary development plan, approval not to be unreasonably withheld provided there are no significant deviations from the Revised Project Description. After completion of the Project, the Lessee is responsible for all maintenance and upkeep to the Building and Improvements within the Leased Property, including the payment of all utilities.

6. **CITY RESPONSIBILITIES:**

- A. **Removal of Public Parking.** On the closing of the construction loan for the project financing, the City shall cease public parking operations on the Leased Property and the easement area adjacent to the south property line of the leased property. The City shall have fifteen (15) days to remove its meters, signage and other equipment.
- B. **Use "Best Efforts to Permit and Construct New Dockage.** The City shall use its best efforts, and subject to availability of funding as determined by the City Commission, to permit and construct a new dock to be installed adjacent to the seawall running parallel to the south property line of the leased property. This new dockage, if constructed, will be made available under separate permit with the City, for use by the Maritime Museum for occasional exhibition purposes.

7. **PROJECT SCHEDULE; EARLY TERMINATION:**

The project shall be developed and completed in accordance with the **Project Schedule**. The lease provides for the early termination if the Lessee does not apply for a Development Permit or the Rezoning of the site within 6 to 12 months (depending on the availability of dwelling units) from the effective date of the lease. The lease terminates if dwelling units are not available or made available to the project within the time provided in the **Project Schedule**, or if the rezoning of the site or development permit s not approved. The lease also terminates if the Lessee fails to complete the permitting process, secure financing and close on the construction loan within 21 to 27 months (depending on the availability of dwelling units) from the effective date of the lease. All performance measures are subject to extension due to unavoidable delays, or formal approval of the City Commission.

8. **RENT AND ADJUSTMENTS; RENTAL COMMENCEMENT DATE:**

Ground rent shall be payable to the City in accordance with the **Rent and Payment Schedule**. Florida sales tax is paid in addition to the base rent, and the Lessee is responsible to pay all property taxes when due. The Rental Commencement Date is the earlier of: (i) the first day of the month of the 48th or 54th month (depending on dwelling unit availability under the **Project Schedule**) from the Lease Effective Date, or (ii) the first day of the month on the elapse of six months from the date that the building is substantially complete so that Lessee or its tenants may have commenced tenant build-out.

Commencing at the beginning of the fifty (50) year term (not the construction allowance period), Year 1 annual ground lease payments (actually payable in equal monthly installments) starts at \$50,000. Commencing in Year 2 annual base rent shall be subject to a 2.5% adjustment made annually throughout the remainder of the term. Commencing in Year 6, an additional \$10,000 will be added to the adjusted base payment from rent that will be derived from the maritime museum space. In the event that the maritime museum discontinues operation at the site, the Lessee may request City Commission approval of a substitute non-profit museum use under the same rent structure approved for the maritime museum. If the maritime museum use discontinues operations at the Leased Property and is replaced by an otherwise permitted use, rent for that area shall be adjusted to the same amount paid on a building area square foot basis for the other retail, restaurant, office and work/live components of the building.

9. RESTRICTIONS ON TRANSFER; ASSIGNMENT AND SUBLETTING:

With the exception of being allowed to mortgage its leasehold interest in favor of a construction or permanent financing lender, the Lessee is restricted from any transfer in the ownership or control of Lessee until the construction of the project is completed, unless otherwise approved by the City Commission.

With the exception of being allowed to mortgage its leasehold interest in favor of a construction or permanent financing lender, the Lessee is restricted from any assignment of the lease, unless otherwise approved by the City Commission which shall not be unreasonably withheld on a finding that the assignee shall have the business experience and reputation and sufficient financial capacity to carryout the obligations under the Lease Agreement.

The Lessee may enter into letters of intent to sublet the Leased Property or binding leases with tenants provided that actual possession is not granted until the Building and Improvements have received a certificate of occupancy or are sufficiently complete to allow a tenant of Lessee to lawfully take possession of the sublet portion of the Leased Property for the purpose of commencing tenant improvements, occupancy or both. Thereafter, Lessee may enter into subleases with any person, except those prohibited under the Lease Agreement, without the consent of the City, or as otherwise provided in the Lease Agreement unless Lessee wishes to sublease more than 51% of the ground floor area to one tenant in which case the sublease must be approved by Lessor.

10. INDEMNIFICATION AND INSURANCE; CASUALTY AND CONDEMNATION:

The Lessee indemnifies and holds the City harmless from and against any and all claims arising in connection with the use of the premises by lessee. The Lessee is required to maintain comprehensive general liability insurance with minimum combined single limits for each occurrence of \$2,000,000. The insurance limitations are subject to review and escalation by the City at ten (10) year intervals.

The Lessee is also required to maintain full fire and extended all risk property insurance coverage on the Building and Improvements in an amount equal to or in excess of eighty percent (80%), of the replacement value of such Building and

Improvements. In the event of casualty, the Lessee is responsible for and has the right to restore the Building and Improvements. The parties may mutually agree to alter or not restore the Building and Improvements. In the event Lessor and Lessee agree not to restore the Building, Lessee shall clear the property and the lease terminates. In the event, of a full taking of the Building and Improvements by a governmental authority, the Lessee is entitled to the proceeds resulting from claims of damages to its leasehold interest. In the event, of a partial taking of the Building and Improvements, the Lessee is responsible and has the right to restore the Building and Improvements unless the parties mutually agree otherwise. In the event the parties agree not to rebuild the Building and Improvements, Lessee shall clear the property and the lease terminates. The Lessee may decide not to restore the Building and Improvements during the final five (5) years of the term, subject to the assignment to the Lessor of the insurance proceeds or condemnation award.

DOCUMENT ROUTING FORM

NAME OF DOCUMENT: LEASE AGREEMENT WITH NEW RIVER TRADING POST DEVELOPMENT LLC
EXPIRATION DATE, IF APPLICABLE:

ORIGINATING DEPT. Redevelopment Services

ORIGINATOR: Chuck Adams

RESPONSIBLE ATTY.: Harry A. Stewart _____
Robert B. Dunckel _____
Cindy Bortman _____
Ebony Calloway _____

Sharon Miller XX
Victoria Minard _____
Paul G. Bangel _____

Approved as to Content

Approved as to Funds Available

By: [Signature]
Dept. Head

By: _____
Director of Finance

Amount Required by Contract/Agreement
\$ _____

Date _____

Funding Source: _____

Approved as to Content

Dept./Div. _____

By: _____
Asst. City Manager

Index/Sub-object _____

Project # _____

Date 12-22-03

DEPARTMENT HEAD, ASSISTANT CITY MANAGER AND FINANCE APPROVALS MUST BE OBTAINED BEFORE A DOCUMENT IS ROUTED FOR SIGNATURE.

APPROVED AT COMMISSION MEETING OF June 17, 2003 ITEM PH-2
RESOLUTION # 03-106 NO RESOLUTION _____

NO COMMISSION APPROVAL REQUIRED. [] - Box checked if applicable.

ROUTE AND SIGN AS INDICATED BELOW IN SEQUENCE SHOWN.

1. City Attorney (as to form)
2. City Manager. City Manager must sign in presence of one witness, if witnesses are required.
3. Mayor's signature. Mayor must sign in presence of one witness, if witnesses are required.
4. To City Clerk for signature and City seal.
5. City Clerk retains one original of document and routing slip in City records unless otherwise indicated.

DIRECTIONS TO CLERK:

DATE FIRST PAGE WITH LAST DATE SIGNED.

SEND THREE SIGNED ORIGINAL(s) TO: CHUCK ADAMS FOR TRANSMITTAL

SEND 1 COMPLETE COPY OF SIGNED DOCUMENT TO CITY ATTORNEY'S OFFICE WITH THIS ROUTING SLIP ATTACHED.

December 18, 2003

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