

**LEASE AGREEMENT**

THIS IS A LEASE AGREEMENT (hereinafter "Lease"), made and entered into this 16<sup>th</sup> day of June, 2015, by and between:

**CITY OF FORT LAUDERDALE**, a municipal corporation of the State of Florida, 100 North Andrews Avenue, Fort Lauderdale, FL 33301 (hereinafter "LESSOR" or "CITY"),

and

**RIVERWALK FORT LAUDERDALE, INC.**, a Florida not-for-profit corporation, FEI/EIN No. 650112666, whose principal address is 305 South Andrews Avenue, Fort Lauderdale, FL 33301 (hereinafter "LESSEE").

WITNESSETH:

WHEREAS, pursuant to a Revocable License dated November 1, 2011, the "Shippey House", formerly located at 215 S.W. 7<sup>th</sup> Avenue, Fort Lauderdale, FL was moved by Friends of Shippey, Inc., a Florida not for profit corporation ("FOSH"), as owners of the personal property and structure of the Shippey House, to CITY-owned land located generally at 220 S.W. 3<sup>rd</sup> Street, Fort Lauderdale, FL and ultimately permanently affixed to a foundation at that location; and

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WHEREAS, Riverwalk Fort Lauderdale, Inc., a Florida not for profit corporation and an Internal Revenue Code Section 501 (c) (3) tax exempt corporation is desirous of restoring what is commonly known as the "Shippey House" and operating it as a facility to operate services that will activate the CITY'S Riverwalk Linear Park Area and Riverwalk District and generate funding for restoration, maintenance and preservation of the "Shippey House" as well as funding future uses and capital improvements for the CITY'S Riverwalk Linear Park Area; and

WHEREAS, it is acknowledged between the parties the Lease of the Leased Premises to LESSE is at a subsidized rate materially below the fair market value lease rate for similarly situated real property Leased Premises in recognition of the fact that the community will benefit from the restoration, maintenance and preservation of the structure of the Shippey House located with the Leased Premises and that rent and additional rent generated by the sublease by LESSEE of the Leased Premises and the structure of the Shippey House will provide the economic engine for the restoration, maintenance and preservation of the structure of the Shippey House, as well as funding of increased activities and capital improvements along the Riverwalk Linear Park and Riverwalk District, all of which serves a valid municipal purpose; and

WHEREAS, LESSEE is desirous of leasing the Property, described below, from the CITY for the purpose of locating the structure of the Shippey House on the Property for a term of thirty (30) years, with two (2) ten (10) year renewal terms for the purpose of restoring, preserving, maintaining and operating the structure of the Shippey House as a facility to provide services that will activate the CITY'S Riverwalk Linear Park; and

WHEREAS, it is the intent of LESSOR and LESSEE that the structure of the Shippey House will be treated as personalty that will sit upon the Leased Premises as opposed to treating the structure as having merged with the real property; and

WHEREAS, the structure of the Shippey House is located within the CITY'S H-1 Historic Preservation District, a zoning district which is intended to promote the cultural, economic, educational and general welfare of the CITY through the preservation and protection of historically worthy structures to encourage uses which will lead to their conservation and improvement in a manner appropriate to the preservation of the cultural and historic heritage of the CITY;

WHEREAS, the City Commission adopted Resolution No. 15-101 on May 5, 2015 pursuant to City of Fort Lauderdale Charter Section 8.13 declaring its intent to lease the Lease Premises for a term of thirty (30) years, together with two (2) ten (10) year Options to Renew to Fort Lauderdale Riverwalk, Inc., a Florida not for profit corporation qualified as an Internal Revenue Code 501 (c) (3) tax exempt corporation to subleased to persons who will use the Lease Premises for the purposes of engaging in activities designed to activate Riverwalk Linear Park owned by the City of Fort Lauderdale;

WHEREAS, in accordance with City Charter Section 8.13, a Public Hearing was held before the City Commission at the June 16, 2015 Regular Meeting of the City Commission for the purpose of permitting citizens and taxpayers the opportunity to review the proposed lease and object to the execution, form or conditions of the proposed lease and, if the City Commission, after receiving input from the citizens and taxpayers, is satisfied with the terms and conditions of the proposed lease, adopts a Resolution authorizing execution of the lease with Fort Lauderdale Riverwalk, Inc.;

WHEREAS, the City Commission of the City of Fort Lauderdale authorized execution of this Lease by adoption of Resolution No. 15-       at a Public Hearing at its Regular Meeting of

NOW THEREFORE, in consideration of the mutual covenants exchanged herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the LESSOR and LESSEE agree as follows:

## ARTICLE 1.

### LEASE OF LEASED PREMISES

**1.1. Lease.** On the terms and conditions set forth in this Lease, and in consideration of the LESSEE's periodic payment of rents and performance of all other obligations and terms of this Lease, as of the Effective Date (hereinafter defined) the LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR and LESSOR grants LESSEE a possessory interest in and to the Leased Premises described below for the Term of the Lease subject to the terms and conditions set forth in this Lease. Ownership of the structure of the Shippey House, as personalty, will remain with LESSEE throughout the Lease the Lease Term, provided, however, upon expiration of the Lease term or earlier termination, LESSEE shall convey for the sum of one and no/100 (\$1.00) dollar to LESSOR by Bill of Sale Absolute, with full warranties of title, the structure of the Shippey House.;

**1.2. Leased Premises.** The Leased Premises that LESSOR leases to LESSEE and LESSEE rents from LESSOR is described as follows:

Lot 7 and the South one-half (S 1/2) of Lot 6, Block "C", TOWN



1.3.4. LESSEE's satisfactory performance of all of the terms and conditions contained in this Lease.

1.3.5. Underground and overhead utilities facilities, including, but not limited to, water, wastewater, stormwater and electrical lines, telephone and telecommunications facilities lines and septic tank, if any.

1.4. **Quiet Enjoyment.** Except as otherwise expressly set forth herein, LESSOR represents and warrants that it has full right and authority to enter into this Lease and that LESSEE, while paying the Rent and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the term hereof without hindrance or molestation from Landlord subject to the terms and provisions of this Lease.

~~1.4.~~ **1.5 Contract Administrator.** The Contract Administrator for LESSOR under this Lease shall be the City's Director of Parks & Recreation, Phil Thornburg, or his or her successor. In the administration of this agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.

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**Comment [LRF1]:** The Lessee should designate a similar representative upon which the City can rely upon the representations made.

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1.6 Condition of the Structure of the Shippey House. The parties stipulate and agree that the structure of the Shippey House is located adjacent to Riverwalk Linear Park within a pristine area of the Historic Preservation District. The parties further stipulate and agree that the rents being paid under this Lease are at a material discount from the fair market rental value the Lease Premises might otherwise command. The subsidized rent is in partial recognition of the community's desire to ensure that the structure of the Shippey House is preserved and maintained in a manner that is in harmony with the surrounding structures and improvements adjacent to Riverwalk and within the immediate vicinity of the Leased Premises. LESSEE hereby covenants to so preserve and maintain the structure of the Shippey House through the term of this Lease.

## ARTICLE 2.

### TERM OF LEASE

2.1. **Term.** The Term of this Lease commences on the "Effective Date" and runs for a period of **thirty (30) years, with two (2) ten (10) year Options to Renew** thereafter, unless the parties terminate the Lease earlier.

2.2. **Effective Date.** ~~Upon satisfaction of the below enumerated conditions precedent, on or before July 1, 2015, the~~ The Effective Date of this Lease shall be the ~~July 2, 2015~~ first day the month following execution of this Lease by both parties.

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#### **2.2.1 Conditions Precedent to the Effective Date of this Lease.**

a. The Lease shall be fully executed by both LESSOR and LESSEE on or before July 1, 2015; and

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b. LESSOR shall secure a Phase I Environmental Site Assessment for the Leased Premises which such Assessment shall not include recommendations

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to proceed to a Phase II Environmental Site Assessment for the Leased Premises.

c. ~~Friends of Shippey, Inc., a Florida not for profit corporation ("FOSH")~~ FOSH shall convey ownership of the Shippey House to LESSEE on or before July 1, 2015 together with conveyance of all funds held by FOSH that were donated to FOSH for the purpose of completing exterior renovations to the structure of the Shippey House ;

d. The CITY's Historic Preservation Board shall issue on or before June 1, 2015 a Certification of Appropriateness ("COA") for exterior renovations to the Shippey House, such exterior renovations being listed on the attached **Schedule One** and all judicial challenges relating thereto shall be exhausted to the point where all judicial challenges have been concluded with finality on or before July 1, 2015; and

e. All scheduled fundraising for improvement to Shippey House, as set forth in **Schedule Two**, attached hereto, shall be completed on or before July 1, 2015 as evidenced either by (i) funds on deposit with LESSEE or (ii) legally enforceable pledged donations of cash or in-kind services from donors to LESSEE.

f. In the event any of the foregoing conditions precedent are not accomplished on or before July 1, 2015, then this Lease shall automatically be and become null and void and of no further force and effect on either LESSOR or LESSEE.

g. Upon stipulation by both LESSEE and LESSOR prior to July 1, 2015, the Effective Date and the dates upon which the foregoing conditions precedent shall be met may be extended for a period not to exceed sixty (60) days. For the purpose of this subparagraph, the City Manager shall have the authority to enter such stipulation upon terms that he finds acceptable.

**2.3. Renewal Option** Provided that the Lease is in full force and effect, and LESSEE has not in default of any of the terms, covenants, or conditions of the Lease, LESSEE shall have the option (the "**Extension Option**") to extend the terms of the Lease for **two (2) additional ten (10) year extension terms.** (the "**Extension Term**"), commencing on the day after the expiration date of the initial lease term in accordance with and subject to the terms, covenants, and conditions hereinafter set forth.

**2.3.1** LESSEE shall exercise the Extension Option by sending a written notice thereof (the "**Extension Notice**") to the LESSOR on or before the date that is two (2) months prior to the expiration date of the preceding Lease Year, time being of the essence. If LESSEE shall send the Extension Notice within the time and in the manner herein above provided, the term of the Lease shall be deemed extended for the Extension Term upon the terms, covenants, and conditions hereinafter contained in this Lease Agreement. If LESSEE shall fail to send the Extension Notice within the time and in the manner herein above provided, the Extension Option shall cease and terminate, and LESSEE shall have no further option to extend the term of this Lease.

**2.4. Recordation Memorandum of Lease.** A Memorandum of Lease, to be executed by both parties contemporaneous with the execution of this Lease, shall be recorded by LESSEE,

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**Comment [LRF2]:** (1) Is FOSH a party to the agreement? If not, perhaps this should be rewritten to indicate that LESSEE shall take ownership by July 1<sup>st</sup>. (2) If FOSH is not a party, do we need to worry about the transfer of funds if LESSEE has responsibility to finish the exterior renovations? If we do need to include, I would suggest actually indicating how much money is to be transferred.

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**Comment [LRF3]:** This is an event that will occur prior to the June 16<sup>th</sup> vote. Shouldn't we just reduce the action to a recital and no make it a condition precedent?

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**Comment [LRF4]:** I would prefer that it automatically renew except if either party provides 270 days written notice.

at LESSEE'S expense, in the Public Records of Broward County, Florida on or about the Effective Date of this Lease.

### ARTICLE 3.

#### RENT AND ADDITIONAL PAYMENTS

**3.1. Amount and Payment of Rent.** As rent for the Leased Premises, LESSEE shall pay to LESSOR the annual rent of One Dollar and (\$1.00) zero / 100 cents commencing with the Effective Date of this Lease and continuing each and every successive anniversary date thereafter through the balance of the Lease Term and Extension Options. Rent shall be payable to **City of Fort Lauderdale** and delivered to City of Fort Lauderdale, Finance Department, 100 North Andrews Avenue, Fort Lauderdale, FL ~~3330133311~~, Attn: Director of Parks & Recreation.

**3.2. Sales Tax.** To the extent required by law, LESSEE shall pay to **LESSOR** ~~Landlord~~ the equivalent of six percent (6%) of all amounts paid as Rent hereunder, which sum is to be paid to the State of Florida by the LESSOR in respect of sales or use taxes. Should such tax rate change under the Florida Sales Tax Statute or other applicable statutes, LESSEE shall pay LESSOR the amounts reflective of such changes. To the extent applicable, LESSEE shall pay LESSOR in conjunction with all sums due hereunder, any and all applicable sales, use or other similar tax and any interest or penalties assessed therein ("Sales Tax") simultaneously with such payment.

**3.3. Taxes, Fees, Special Assessments, etc.** Except as otherwise provided in this Lease, beginning on the Effective Date, all costs, expenses, sales or use taxes, or taxes of any nature or kind, special assessments, connection fees, and any other charges, fees or like impositions incurred or imposed against the Leased Premises, to the extent applicable, or any use thereof, including revenue derived therefrom, and any costs, expenses, fees, taxes or assessments in or upon the real property or improvements constructed thereon shall be made and paid by LESSEE in accordance with the provisions of this Lease, it being the intent of the parties that, except as may be specifically provided for herein, LESSEE is responsible for paying all the expenses and obligations that relate to the Leased Premises or any improvements thereon and that arise or become due during the Term of this Lease.

**3.4. Additional Rent Payments.** In addition to the annual rent due under Section 3.1 and sums due under Sections 3.2 and 3.3 hereof, all other payments that LESSEE is obligated to make under this lease shall be considered "**Additional Rent**" regardless of whether the payments are so designated. All additional payments are due and payable within thirty (30) days after rendition of a statement therefor.

**3.5. Utility or service charges.** LESSEE agrees to pay all charges for rent, utility service charges including, but not limited to gas, electricity, telephone, telecommunications or other illumination, heating, air conditioning, water & sewer, storm water utility fees, and other similar service charges attributed to the Leased Premises. If any of these charges remain unpaid after they become due, LESSOR may exercise its remedies as set forth in Article 11 of this Lease. LESSOR shall not be liable to LESSEE for damage or otherwise because of LESSEE's failure to arrange for or to obtain any utilities or services referenced above for the Leased

Premises that are supplied by parties other than the CITY. No such failure, interruption or curtailment may constitute a constructive or partial eviction.

**3.6. Lessee's Responsibilities regarding Governmental Charges or services giving rise to liens.** Subject to the provisions of Section 3.8 respecting LESSEE's right to challenge the validity of any tax, tax claim, assessment, fee or other governmental charge against the Leased Premises, the use thereof, improvements thereto or personalty located thereon, the LESSEE must pay all taxes and other governmental fees, charges or assessments that are related to the Leased Premises or personalty situated thereon or operations conducted thereon and that arise during the Lease Term. LESSEE shall pay all such taxes and other charges when due and before any fine, penalty, interest or other cost is added, becomes due, or is imposed by operation of law for nonpayment. These taxes and other charges include, but are not necessarily limited to the following:

- (a) All taxes, assessments, water, sewer, connection fees, garbage rates and charges, public utility charges, excise levies, licenses and permit fees;
- (b) All such charges whether they are general or special, ordinary or extraordinary, foreseen or unforeseen, imposed upon the Leased Premise or use thereof or improvements thereto or personalty situated thereon;
- (c) All such charges that are assessed, levied, confirmed or imposed upon the Leased Premises or use thereof or improvements thereto or personalty situated thereon;
- (d) All such charges that arise from, become payable from or with respect to, or become a lien on any of the following:
  1. All or any part of the Leased Premises or use thereof or improvements thereto or personalty situated thereon;
  2. All or part of the improvements on the Leased Premises or personalty situated thereon;
  3. Any appurtenance to the Leased Premises;
  4. The rent and income received by the LESSEE from any subtenant;
  5. Any use or occupation of the Leased Premises;
  6. Any document to which the LESSEE is a party and that creates or transfers an interest or estate in the Leased Premises;
  7. Sales or use tax arising from LESSEE's operations; or
  8. Any taxes or charges applicable to the rents paid under this Lease.

**3.7. Payments and Receipts.** LESSEE must deliver to LESSOR official receipts that show payment of all charges required under this Article. These receipts must be delivered to the place where the rental payments are to be made. The LESSEE shall pay every tax or other charge required to be made under this Article and shall deliver the receipts to LESSOR at least thirty (30) days before the charge or tax becomes delinquent under the law then governing payment of the tax or other charge, unless the tax or charge is challenged by LESSEE in accordance with Section 3.8 of this Lease.

**3.8. Lessee's Challenge of Tax.** LESSEE may contest the validity of any tax, tax claim, or charge or assessment, described herein without being in default for nonpayment of taxes under this Lease, provided LESSEE complies with terms and conditions of this Section. The LESSEE must give LESSOR written notice of LESSEE's intention to contest. LESSEE must also furnish LESSOR with a bond, acceptable to the LESSOR'S City Manager, with surety by a surety company qualified to do business in the State of Florida or cash paid into escrow and held by LESSOR. The bond or cash must be in an amount that is 1.5 times equal to the amount of the taxes, claim, charge or assessment being contested and must be conditions upon payment of the taxes, claim, charge or assessment once the validity has been determined. LESSEE must give the written notice accompanied by evidence of the bond or escrow to LESSOR not later than sixty (60) days before the contested taxes would otherwise become delinquent.

**3.9. LESSOR'S Remedy for LESSEE'S Nonpayment.** If LESSEE fails, refuses, or neglects to pay any taxes, fees, assessments or other governmental charges under this Article, unless challenged as provided in Section 3.8 of this Lease, the LESSOR may pay them. On the LESSOR's demand, the LESSEE must pay the LESSOR all amounts LESSOR has paid, plus expenses and attorney's fees reasonably incurred in connection with such payments, together with interest at the rate of twelve (12.0%) per cent per annum from the date LESSOR paid such outstanding taxes, fees, assessments or other governmental charges, up to but not exceeding the maximum rate of interest allowable under Florida law. On the day the LESSOR demands repayment or reimbursement from LESSEE, the LESSOR is entitled to collect or enforce these payments in the same manner as a payment of rent. The LESSOR's election to pay the taxes, fees, assessments or other governmental charges does not waive the LESSEE's default.

**3.10. Cost Recovery and Fees.**

**3.10.1. Annual Inspection Fees.** LESSEE shall pay to LESSOR for each year of the Lease Term, starting with the first anniversary date after the Effective Date hereof and continuing annually on the anniversary date thereof for the balance of the Lease Term, an annual inspection fee to be determined by the City Manager which such fee shall be based on the CITY's reasonable projected cost of periodically inspecting the Leased Premises for compliance with the terms and conditions set forth in this Lease over the then current fiscal year (October 1<sup>st</sup> through September 30<sup>th</sup>). The Annual Inspection Fees shall not exceed \$1,000.00 ~~\$500.00~~ annually as of the Effective Date hereof, as adjusted by the CPI escalator clause set forth in Section 9.3(b) hereof.

**3.10.2. Recovery of Additional Costs of Administration.** In addition to the annual inspection fees set forth above, LESSEE shall also be obligated to pay additional

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fees to the LESSOR amounting to the recovery of reasonable costs incurred by LESSOR in its propriety capacity as LESSOR, as opposed to its governmental regulatory capacity, in the administration, monitoring and enforcement of the Lease, including, but not limited to, staff time incurred in the examination of the plans and specifications for additions, modifications, renovations or demolition of leasehold improvements, inspections to determine if the construction is in accordance with the approved plans and specifications approved by the Office of the City Engineer, and reasonable cost of CITY attorneys' services associated with the preparation and administration of the Lease and any amendments thereto and including enforcement of the terms thereof.

**3.10.3. Rendition of Statement.** Upon the CITY providing a statement of fees and/or costs to LESSEE, LESSEE shall pay CITY within thirty (30) days the amounts owed in accordance with the Statement. The Statement shall provide sufficient line item detail as to the nature of the cost, services rendered, dates services rendered, time consumed and cost relating to each line item. For each month beyond thirty (30) days from rendition of the Statement to LESSEE for which the fee remains unpaid, simple interest of one percent (1%) per month shall be due the CITY, but no more than the lawful amount of interest under Florida law. If a dispute arises as to the fees owed CITY under the Statement, and such dispute is not resolved within ninety (90) days after the date of rendition of the Statement, LESSEE shall pay the undisputed amount and shall provide CITY with a bond or other security acceptable to the City Manager for the disputed amount pending a resolution of the dispute by negotiation or litigation. In addition to any other remedies available to CITY, CITY shall be entitled to recover from LESSEE all costs of collection, including reasonable attorneys' fees and court costs incurred at all tribunal and appellate levels, provided CITY ultimately prevails.

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#### ARTICLE 4.

#### USE OF PREMISES

##### 4.1. Permissible Uses.

(a) LESSEE shall use the Leased Premises and the structure of the Shippey House, consistent with the Historic Preservation District (H-1) zoning regulations as a facility to provide services that will activate the CITY's Riverwalk Linear Park on a daily basis and to provide an information, welcome and educational / cultural center to educate the general public as to the historic heritage of the H-1 District, the heritage of New River and its interaction with what today is known as the CITY'S Riverwalk Linear Park.

(b) The Leased Premises and the structure of Shippey House located thereon may be operated by a Subtenant of LESSEE consistent with the subletting provisions of Article 10 hereof.

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~~(c) LESSEE may use the Leased Premises to rent the dwelling units therein for residential use by subtenant to low to moderate income households as hereinafter defined and no other use. Except with respect to the suspension of possessory interest under force majeure under Section 12.21, in the event the Leased Premises cease being used for such purposes as stated herein, this Lease shall terminate.~~

**4.2. Compliance With Regulations of Public Bodies.** LESSEE covenants and agrees that it shall, at its own cost and expense, make such improvements on the Leased Premises and to the structure of Shippey House, perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the Leased Premises and the structure of Shippey House, in order to comply with the requirements relating to sanitation, fire hazard, zoning, setbacks, historic ~~preservation district designation~~ regulations, environmental requirements and other similar requirements designed to protect the public, worker and residential use environments. LESSEE shall not use the Leased Premises nor the structure of Shippey House, nor shall the Leased Premises nor the structure Shippey House located thereof suffer any such use during the Term of this Lease, which is in violation of any of the statutes, laws, ordinances, rules or regulations of the federal, state, county, municipal government or any other governmental authority having jurisdiction over the Leased Premises.

**4.3. Site Plan; Plans and Specifications.**

(a) In the event LESSEE desires or plans to undertake renovations to the Leased Premises, exclusive of Shippey House, it shall do so at its own cost and expense in order that the Leased Premises, exclusive of Shippey House, may continue to be used as set forth in Section 4.1 hereof. As a condition precedent to such renovations LESSEE shall submit to the City Engineer a Leasehold Site Plan, including ~~floor plans~~, building footprint and all elevations of the proposed renovations, including plans and specifications therefor, for approval by the City Engineer and recommendation to the City Commission. The approved site plan shall be retained on file in the Office of the City Engineer and the City Engineer shall provide notice to LESSEE of such approved site plan.

(b) In the event LESSEE desires or plans to undertake renovations, either exterior or interior, to the structure of Shippey House, after the Effective Date hereof, it shall do so at its own cost and expense in order that the Leased Premises and the structure of Shippey House may continue to be used as set forth in Section 4.1 hereof. As a condition precedent to such exterior renovations, LESSEE shall submit to the City Engineer a Leasehold Site Plan, including floor plans, building footprint and all elevations of the proposed renovations, including plans and specifications therefor, for approval by the City Engineer and recommendations to the City Commission. The approved site plan shall be retained on file in the Office of the City Engineer and the City Engineer shall provide notice to LESSEE of such approved site plan.

**4.4. Improvements.** LESSEE shall not construct any improvements upon the Leased Premises nor the structure of Shippey House that are not reflected on the approved Leasehold Site Plan without LESSOR's express written consent as set forth in Section 4.3 above. LESSEE shall not construct any improvements, nor perform any alteration, modification or demolition of improvements upon the Leased Premises nor the structure of the Shippey House without first (i) providing the City Engineer with a complete set of plans and specifications therefor and (ii) securing from the City Engineer written approval indicating that the proposed construction, alteration, modification or demolition is acceptable. As a condition of acceptance the City Engineer may impose reasonable conditions. The City Engineer shall not unreasonably withhold written approval of the plans and specifications for construction, alteration, modification or demolition of improvements. Any improvements constructed upon the Leased Premises shall be at the LESSEE's sole cost and expense. Upon expiration or termination of this Lease, any improvements constructed on the Leased Premises shall remain with the Leased Premises, unless the City Engineer directs that such improvements or portions thereof be demolished, in which case LESSEE shall demolish such improvements or portions thereof as directed by the City Engineer and shall do so at its own cost and expense.

**4.5. Alterations, Additions, Modifications or Demolitions.** LESSEE shall not make any alterations, additions, modifications or demolitions to the Leased Premises, nor to the structure of the Shippey House that are not in accordance with the process outlined in Section 4.3 or 4.4 above.

**4.6. Liability for Personal Property.** All personal property, including Shippey House, placed or moved onto the Leased Premises is at the sole risk of LESSEE or other owner of such personal property. LESSOR shall not be liable for any damage to such personal property, or for personal injuries to LESSEE or any of LESSEE's subtenants, agents, servants, employees, contractors, guests or invitees or to trespassers on the Leased Premises that arise from any person's tortious acts or omissions, regardless of the status of the person; provided, however, that if the damage or injury is caused by LESSOR's tortious acts or omissions, then, to the extent the damage or injury in question is caused by LESSOR's tortious acts or omissions, then LESSEE's liability to LESSOR hereunder shall be proportionately abated.

**4.7. Liability for Damages or Injuries.** LESSOR shall not be liable for any damage or injury incurred or sustained in, on or about the Leased Premises including the structure of Shippey House when such damage or injury results from the tortious acts or omissions of any person, including LESSEE's guests, invitees, servants, agents, employees or contractors or trespassers on the Leased Premises including the structure of Shippey House; provided, however, that if the damage or injury is caused by LESSOR's tortious acts or omissions, then, to the extent the damage or injury in question is caused by LESSOR's tortious acts or omissions, then LESSEE's liability to LESSOR hereunder shall be proportionately abated.

**4.8. ADA.** LESSEE shall have the continuing obligation of compliance with the Americans With Disabilities Act, as same may be amended from time to time, with respect to the Leased Premises

## ARTICLE 5

### HAZARDOUS SUBSTANCES

**5.1. Definitions.** For the purpose of administering this Article, the following terms shall have the meaning as set forth below:

(a) *Environmental Agency* means a governmental agency at any level of government having jurisdiction over Hazardous Substances and Hazardous Substances Laws and the term as used herein shall also include a court of competent jurisdiction when used as a forum for enforcement or interpretation of Hazardous Substances Laws.

(b) *Hazardous Substances* means any hazardous or toxic substances, materials or wastes, including, but not limited to those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table, 49 CFR 172.101 or by the Environmental Protection Agency as hazardous substances, 40 CFR Part 302, as now in effect or as same may be amended from time to time, or such substances, materials and wastes which are not or hereafter become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated byphenyls, (iv) radon, (v) any substance designated as a "hazardous substance" pursuant to Sec. 311 of the Clean Water Act, 33 U.S.C. Sec. 1251, et seq. or listed pursuant to Sec. 307 of the Clean Water Act, 33 U.S.C. Sec. 1317, (vi) defined as "hazardous waste" pursuant to Sec. 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et seq., (vii) defined as a "hazardous substance pursuant to Sec. 101 of the Comprehensive

Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et seq., or (viii) designated as a "hazardous substance" as defined in Chapter 403, Part IV, Florida Statutes, or (ix) any other similar federal, state or local regulations.

(c) *Hazardous Substances Laws* means all local, state and federal laws, ordinances, statutes, rules, regulation and orders as same may now exist or may from time to time be amended, relating to industrial hygiene, environmental protection and/or regulation, or the use, analysis, generation, manufacture, storage, disposal or transportation of Hazardous Substances.

**5.2. LESSOR'S Consent Required.** After the Effective Date no Hazardous Substances shall be brought upon or kept or used in or about the Leased Premises by any person whomsoever, unless LESSEE first obtains written consent from the LESSEE's City Engineer. Those substances used by LESSEE in the normal course of its business in accordance with that list set forth on file in the Office of the City Engineer made a part hereof may be brought upon or kept or used in, on or about the Leased Premises and the use thereof upon the Leased Premises is hereby approved by LESSOR.

**5.3. Compliance With Hazardous Substances Laws.** During the Lease Term, and with respect to Hazardous Substances brought onto the Leased Premises by any person whomsoever other than LESSOR, its agents, employees, contractors or licensees, LESSEE shall have the absolute responsibility to ensure that the Leased Premises are used at all times and all operations or activities conducted thereupon are in compliance with all Hazardous Substances Laws. With respect to Hazardous Substances brought on the Leased Premises during the Lease Term by any person whomsoever, other than LESSOR, its agents, employees, contractors or licensees, LESSEE shall be absolutely liable to LESSOR for any violation of Hazardous Substances Laws.

**5.4. Hazardous Substances Handling.**

(a) With respect to Hazardous Substances brought onto the Leased Premises during the Lease Term by any person whomsoever, other than LESSOR, its agents, servants, employees, contractors or licensees, LESSEE shall ensure that any and all activities conducted upon the Leased Premises by any person other than LESSOR, its agents, servants, employees, contractors or licensees be conducted only in compliance with all Hazardous Substances Laws and all conditions of any and all permits, licenses and other Environmental Agency approvals required for any such activity conducted upon the Leased Premises.

(b) LESSEE covenants that in any activities conducted upon the Leased Premises by any person whomsoever, other than LESSOR, its agents, servants, employees, contractors or licensees, that Hazardous Substances shall be handled, treated, dealt with and managed in conformity with all applicable Hazardous Substances Laws and prudent industry practices regarding management of such Hazardous Substances.

(c) Upon expiration or earlier termination of the term of the Lease, LESSEE shall cause all Hazardous Substances which are brought upon the Leased Premises subsequent to the Effective Date by any person whomsoever, other than LESSOR, its agents, servants, employees, contractors or licensees, to be removed from the Leased Premises and to be transported for use, storage or disposal in accordance and in compliance with all applicable Hazardous Substances Laws; provided, however, that LESSEE shall not take any remedial action in response to the presence of Hazardous Substances in or about the Leased Premises, nor enter any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Substances Laws in any way connected with the Leased Premises, without first notifying LESSOR of LESSEE's intention to do so and affording LESSOR reasonable

opportunity to appear, intervene, or otherwise appropriately assert and protect LESSOR's interest with respect thereto.

#### **5.5. Notices.**

(a) If at any time LESSEE shall become aware or have reasonable cause to believe that any Hazardous Substance has come to be located on or beneath the Leased Premises, Lessee shall immediately upon discovering such presence or suspected presence of the Hazardous Substance give written notice of that condition to LESSOR.

(b) In addition, LESSEE shall immediately notify LESSOR in writing of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Substances Law, (ii) any written claim made or threatened by any person against LESSEE, the Leased Premises or improvements located thereon relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Substances, and (iii) any reports made to any Environmental Agency arising out of or in connection with any Hazardous Substances in or removed from the Leased Premises or any improvements located thereon, including any complaints, notices, warnings or asserted violations in connection therewith.

(c) LESSEE shall also supply to LESSOR as promptly as possible, and, in any event, within five (5) days after LESSEE first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Leased Premises or improvements located thereon or LESSEE's use thereof.

#### **5.6. Environmental Liabilities.**

(a) LESSOR acknowledges that LESSEE shall not be responsible to or liable to LESSOR for any violation of Hazardous Substances Laws which occurred prior to the Effective Date of this Lease or for the presence of such Hazardous Substances found on, within or below the Leased Premises where the presence of such Hazardous Substances predate the Effective Date.

(b) Hazardous Substances not revealed prior to the Effective Date hereof, but subsequently discovered on, under or within the Leased Premises at levels that are in violation of the Hazardous Substances Laws shall be the absolute responsibility of the LESSEE, unless

(i) the LESSEE demonstrates by clear and convincing evidence that the presence of such Hazardous Substances on, under of within the Leased Premises predates the Environmental Baseline, or

(ii) LESSEE demonstrates by a preponderance of the evidence that the presence of such Hazardous Substances on, under or within the Leased Premises after the Effective Date hereof was caused by the acts or omissions of LESSOR, its agents, servants, employees, contractors or licensees, provided such acts or omissions of the LESSOR'S agents, servants, employees, contractors or licensees are with the scope and course of their duties.

(c) Prior to the Effective Date of the Lease a Phase I (and, if required Phase II) Environmental Site Assessment shall be performed as to the Leased Premises. The Environmental Site Assessment shall form the Environmental Baseline for this Lease.

#### **5.7. Hazardous Substances Indemnification.**

(a) LESSEE agrees to and shall indemnify, defend and hold LESSOR harmless of and from any and all claims, demands, fines, penalties, causes of action, liabilities, damages, losses, costs and expenses (including attorneys' fees and expert witness fees) that LESSOR may sustain (unless it be proven by a preponderance of the evidence that any of the foregoing was caused by LESSOR's negligence or willful misconduct or that of LESSOR's agents, servants, employees, contractors or licensees), occurring during the Lease Term and which resulted from Hazardous Substances brought upon the Leased Premises, during the Lease Term by any person whomsoever, other than LESSOR, its agents, servants, employees, contractors or licensees.

(b) The indemnification contained in this Section shall survive the termination of the Lease. This indemnification shall not extend to any claim, demand, fine, penalty, cause of action, liability, damage, loss, cost or expense related to the presence of Hazardous Substances that are documented in the Environmental Baseline.

(c) In addition, and not in limitation of the foregoing, LESSEE agrees to and shall indemnify, defend and hold LESSOR harmless from and against any and all claims, demands, suits, losses, damages, assessments, fines, penalties, costs or other expenses (including attorneys' fees expert witness fees and court costs) arising from or in any way related to, damage to the environment, costs of investigation charged by Environmental Agencies, personal injury, or damage to property, due to a release of Hazardous Substances on, under, above, or about the Leased Premises or in the surface or groundwater located on or under the Leased Premises, or gaseous emissions (excluding methane, radon and other naturally occurring gases) from the Leased Premises or any other condition existing on the Leased Premises resulting from Hazardous Substances where any of the foregoing occurred during the Lease Term as a result of Hazardous Substances brought onto the Leased Premises by any person whomsoever, other than LESSOR, its agents, servants, employees, contractors or licensees.

(d) LESSEE further agrees that its indemnification obligations shall included, but are not limited to, liability for damages resulting from the personal injury or death of any employee or volunteer of LESSEE, regardless of whether LESSEE has paid the employee under the Workers' Compensation Laws of the State of Florida, or other similar federal or state legislation for the protection of employees.

(e) The terms "property damage" as used in this Article includes, but is not limited to, damage to the property of the LESSEE, LESSOR and of any third parties caused by or resulting from LESSEE's breach of any of the covenants in this Article and shall include remedial activities performed by an Environmental Agency or by LESSEE pursuant to directives from an Environmental Agency.

(f) LESSEE shall further indemnify, defend and hold LESSOR harmless from and against any and all liability, including, but not limited to, all damages directly arising out of the use, generation, storage or disposal of Hazardous Substances in, on, under, above or about the Leased Premises during the Lease Term, including, without limitation, the cost of any required or necessary inspection required by law, audit, clean up required by law, or detoxification or remediation required by law and the preparation of any closure or other required plans, consent orders, license applications, or the like, whether such action is required by law or not, to the full extent that such action is attributable to the use, generation, storage or disposal of Hazardous Substances in, on, under, above or about the Leased Premises during the Lease Term, and all fines and penalties associated with any of the foregoing.

(g) LESSEE agrees that the foregoing obligations to indemnify, defend and hold LESSOR harmless extends to and includes all reasonable attorneys' fees, experts' fees and costs incurred in the defense of any of the foregoing claims or demands as well as indemnifying LESSOR for any and all reasonable attorneys' fees, experts' fees and costs incurred by LESSOR

in LESSOR's enforcement of the provisions of this Article respecting Hazardous Substances. The indemnification provided in this Lease shall survive the termination of this Lease, but shall end, with respect to any claim or cause of action, with the expiration of any applicable statute of limitation for such claim or cause of action.

(h) LESSEE's obligation to indemnify, defend and hold LESSOR harmless pursuant to this Article shall be with respect to claims, damages, fines, penalties, causes of action, liabilities, losses, costs and expenses, including attorneys' fees and experts' fees, which resulted from Hazardous Substances brought in, on, under, above or about the Leased Premises during the term of this Lease by any person whomsoever, other than LESSOR, its agents, servants, employees, contractors or licensees.

#### **5.8. Right Of Entry For LESSOR'S Tests.**

(a) At any time during the Lease Term LESSOR may, upon reasonable prior written notice to LESSEE (taking into account the potential disruption of the LESSEE's operation) enter upon the Leased Premises for the purpose of conducting environmental tests ("LESSOR'S Tests") to determine the presence and/or extent of contamination by Hazardous Substances in, on, under, above, within or about the Leased Premises. LESSOR shall not be entitled to conduct the LESSOR'S Tests unless:

(i) An Environmental Agency shall have issued an notice of violation with respect to the Hazardous Substances on, within, above, about or under the Leased Premises; or

(ii) LESSOR has probable cause to believe that LESSEE has violated Hazardous Substance Laws relating to the LESSEE's use of the Leased Premises.

Notwithstanding the limitations set forth in (i) and (ii) above, LESSOR may conduct LESSOR'S Tests no less often than every five (5) years without being subject to the limitations set forth in (i) and (ii) above.

(b) LESSOR'S Tests shall be at the sole cost and expense of LESSOR. The cost and expenses relating to the LESSOR'S Tests shall not be included in the scope of any indemnification set forth in this Article, unless the Tests reveals the presence of Hazardous Substances at levels that are in violation of the Hazardous Substances Laws and which were not revealed by LESSEE prior to the Effective Date hereof. No LESSOR'S Tests shall be conducted until LESSOR has provided to LESSEE the name of the testing contractor (which shall be fully licensed to conduct the LESSOR'S Tests).

#### **5.9. Environmental Procedure; Consent to Assignment.**

(a) Any provisions herein to the contrary notwithstanding, LESSEE, or its proposed assignee, whichever the case may be, shall, at its own cost and expense, furnish to LESSOR an updated Phase I & Phase II Environmental Assessment of the Leased Premises, performed by environmental experts reasonably found qualified by LESSOR, as a condition precedent to LESSOR's consent to an assignment of the leasehold interest or any part thereof. The foregoing is referred to hereinafter as the "Environmental Procedure."

(b) The Environmental Procedure shall include a qualitative and quantitative analysis of the presence of Hazardous Substances in, on, under, above, within or about the Leased Premises and which were not revealed by LESSEE prior to the Effective Date hereof.

(c) If the Environmental Procedure establishes the presence of Hazardous Substances at levels that are in violation of the Hazardous Substance Laws, then LESSOR may withhold consent to the assignment of the leasehold interest or any part thereof, until security is posed with LESSOR which is deemed by LESSOR to be reasonably adequate to cover 150% of the projected costs of any legally required clean-up, detoxification or remediation of the Leased Premises from the presence of Hazardous Substances in excess of the Environmental Baseline in, on, under, above, within or about the Leased Premises and any and all fines or penalties associated therewith.

#### **5.10. Periodic Environmental Procedure.**

(a) In addition to the requirements of this Article, LESSEE shall, if requested by LESSOR, periodically, as set forth herein, perform the Environmental Procedure for the benefit of LESSOR as follows:

(i) No sooner than the twenty-eighth (28<sup>th</sup>) anniversary date after the Effective Date, nor later than twenty-nine (29) years and six (6) months after the Effective Date; and

(ii) In the event an First Extension Option is timely exercised, then no sooner than the eighth (8<sup>th</sup>) year after the beginning of the First Extension Option Term, nor later than the nine (9) years, six (6) months after the beginning of the First Extension Option Term; and

(iii) In the event an Second Extension Option is timely exercised, then no sooner than the eighth (8<sup>th</sup>) year after the beginning of the Second Extension Option Term, nor later than the nine (9) years, six (6) months after the beginning of the Second Extension Option Term.

The foregoing shall be referred to as the “**Periodic Environmental Procedure(s)**”

(b) In each case, the Periodic Environmental Procedure(s) shall be completed, such that the updated Phase I Environmental Site Assessment, and, if recommended in the Phase I, then a Phase II Environmental Assessments, is/are delivered to the LESSOR no later than thirty (30) days subsequent to the date specified in (i) or (ii) above.

(c) At the time of each Periodic Environmental Procedure, LESSEE shall comply with the remediation, clean-up and security requirements as set forth in the Periodic Environmental Procedure.

(d) If the Periodic Environmental Procedure establishes the presence of Hazardous Substances in, on, under, above, within or about the Leased Premises that are at levels that are in violation of Hazardous Substance Laws and that were not identified in the Environmental Baseline, LESSEE shall post security with LESSOR which is deemed by LESSOR to be reasonably adequate to cover 150% of the projected costs of any legally required clean-up, detoxification or remediation of the Leased Premises from the presence of Hazardous Substances in excess of the Environmental Baseline in, on, under, above, within or about the Leased Premises and any and all fines or penalties associated therewith.

### **ARTICLE 6.**



## CONDITION OF PREMISES

### 6.1. LESSEE'S Acceptance and Maintenance of Leased Premises.

(a) **“AS IS” Condition.** LESSEE acknowledges that prior to the Effective Date hereof it has performed sufficient inspections of the Leased Premises and the structure of Shippey House in order to fully assess and make itself aware of the condition of the Leased Premises and the structure of Shippey House, and that LESSEE is leasing the Leased Premises upon which sits the structure of the Shippey House in an “AS IS” condition. Except as may be expressly set forth in or required by this Lease, LESSEE acknowledges that the LESSOR has made no other representations or warranties as to the condition or status of the Leased Premises nor as to the structure of the Shippey House Property and that LESSEE is not relying on any other representations or warranties of the LESSOR, any broker(s), or any agent of LESSOR in leasing the Leased Premises. Except as may be expressly set forth in or required by this Lease, LESSEE acknowledges that neither LESSOR nor any agent or employee of LESSOR has provided any other representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to:

(1) The nature, quality or condition of the Leased Premises, including, without limitation, the water, soil and geology;

(2) The suitability of the Leased Premises, including the structure of Shippey House, for any and all activities and uses which LESSEE may conduct thereon;

(3) The compliance of or by the Leased Premises, including the structure or use of Shippey House, or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body;

(4) The habitability, merchantability or fitness for a particular purpose of the Leased Premises, including the structure of the Shippey House; or

(5) Any other matter with respect to the Leased Premises or the structure of the Shippey House.

Without limiting the foregoing, LESSOR does not and has not made and specifically disclaims any other representation or warranty regarding the presence or absence of any Hazardous Substances, as herein defined, at, on, under or about the Leased Premises, including the structure of the Shippey House, or the compliance or non-compliance of the Leased Premises, including the structure of the Shippey House, with any laws, rules, regulations or orders regarding Hazardous Substances (collectively the “Hazardous Substance Laws”). For purposes of this Lease, the term “Hazardous Substances” shall have the meaning as set forth in Article 5 hereof. Hazardous Substances shall also include Radon Gas. LESSEE further acknowledges that neither LESSOR nor any agent of LESSOR has provided any representation or warranty with respect to the existence of asbestos or other Hazardous Substances on the Leased Premises, including Shippey House, other than as may be specifically set forth in this Leased Premises. Accordingly,

as between LESSOR and LESSEE under this Lease, the physical condition of the Leased Premises and compliance with all applicable laws, statutes, ordinances or regulations with respect to the physical condition of the Leased Premises shall be the sole responsibility and obligation of LESSEE.

(b) LESSEE shall maintain the Leased Premises, including the structure of the Shippey House, in a good state of repair and in a condition consistent with the Permissible Uses for the Leased Premises and Shippey House as set forth in Section 4.1 hereof. LESSEE shall not suffer or permit the commission of any waste or neglect of the grounds, landscaping, buildings, the fixtures and equipment that LESSEE brings, constructs or placed on the Leased Premises, including the structure of the Shippey House. LESSEE shall repair, replace and renovate the Leased Premises, including the structure of the Shippey House and all the improvements located thereon as often as is necessary to keep these items in a good state of repair.

**6.2. Damage To Leased Premises.** On LESSOR's demand, LESSEE shall pay for all damages to the Leased Premises as well as to the structure of the Shippey House that are incurred or sustained during the Lease Term, where such damages are not caused by LESSOR or any of its agents, servants, employees, contractors or licensees; provided, however, that if the damage or injury is caused by LESSOR's tortious acts or omissions, or if the tortious acts or omissions of LESSOR's agents, servants, employees, contractors or licensees acting within the scope and course of their duties, then, to the extent the damage or injury in question is caused thereby, then LESSEE's liability to LESSOR hereunder shall be proportionately abated. If LESSEE fails to repair any damage or destruction not caused by LESSOR or otherwise fails to maintain the Leased Premises and the structure of the Shippey House after fifteen (15) days advance notice from LESSOR, then LESSOR may peaceably enter upon the Leased Premises or upon the structure of the Shippey House during normal business hours and repair the damage or destruction or may conduct any maintenance that LESSOR deems necessary in its sole discretion, but LESSOR shall be under no obligation to do so. Under such circumstances, the cost of such repair or maintenance is considered additional rent.

**6.3. Condition At End Of Lease Term.** At the earlier of the expiration of the Lease Term or termination of this Lease, LESSEE shall quit the Leased Premises and surrender them to LESSOR. The Leased Premises must be in good order and condition at the time of surrender thereof. At the time of surrender all landscaping shall be in a healthy and vibrant condition. LESSEE shall remove all personal property that belongs to LESSEE, with the exception of the Shippey House, or any of LESSEE'S agents, servants, employees, independent contractors or subtenants and shall repair all damage to the Leased Premises caused by such removal. At the earlier of the expiration of the Lease Term or termination of the Lease, LESSEE shall convey title to the structure of the Shippey House to LESSOR by Bill of Sale Absolute with full warranties of title for the sum of one and no/100 (\$1.00) dollar.

**Comment [LRF5]:** How about, at the option of the City, either (1) remove or (2) sell to City for \$1.

## ARTICLE 7.

### LIENS

**7.1. Liens Against The Leased Premises.** LESSEE shall have no power or authority to incur any indebtedness giving a right to a lien of any kind or character upon the right, title or

interest of LESSOR in and to the [real property within the](#) Leased Premises, and no person shall ever be entitled to any lien, directly or indirectly derived through or under the LESSEE, or its agents, servants, employees, contractors or officers or on account of any act or omission of said LESSEE as to LESSOR's right, title or interest in and to the [real property within the](#) Leased Premises. All Persons contracting with the LESSEE, or furnishing materials, labor or services to said LESSEE, or to its agents or servants, as well as all persons shall be bound by this provision of the Lease Agreement. Should any such lien be filed [against the real property within the Leased Premises](#), LESSEE shall discharge the same within thirty (30) days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. LESSEE shall not be deemed to be the agent of LESSOR, so as to confer upon a laborer bestowing labor upon or within the [real property underlying the](#) Leased Premises or upon materialmen who furnish material incorporated in the construction and improvements upon the foregoing, a construction lien pursuant to Chapter 713, Florida Statutes or an equitable lien upon the LESSOR's right, title or interest in and to the Leased Premises. These provisions shall be deemed a notice under Section 713.10(1), Florida Statutes of the "non-liability" of the LESSOR.

## ARTICLE 8.

### ENTRY AND INSPECTION OF PREMISES

**8.1. LESSOR'S Inspection and Entry Rights.** LESSOR, or any agent thereof, shall be entitled to enter the Leased Premises [and the structure of the Shippey House](#) during any reasonable business hours for any of the following reasons:

(i) To examine the Leased Premises [or the structure of Shippey House](#);

(ii) To make all repairs, addition(s) or alteration(s) that LESSOR deems necessary for safety or preservation of the Leased Premises or improvements located thereon, [exclusive of Shippey House](#), after fifteen (15) days advance notice to LESSEE that the Leased Premises or any portion thereof is in need of maintenance or repair and LESSEE fails to take appropriate curative actions; or

(iii) To remove signs, fixtures, alterations or additions that do not conform to the terms of this Lease after fifteen (15) days advance notice to LESSEE that the Leased Premises [or Shippey House](#) or any portion thereof is not in compliance with the terms of the Lease and LESSEE fails to take appropriate curative actions;

Provided that nothing herein shall be construed in such a manner as to impose upon LESSOR the obligation to so enter the Leased Premises and perform any act referenced above.

**8.2. Liability For Entry.** LESSEE, nor any agent, servant, employee, independent contractor, licensee or subtenant claiming by, through or under LESSEE, or any invitees thereof shall have no claim or cause of action against LESSOR because of LESSOR's entry or other action taken under this Article, except to the extent that any such claim or cause of action is due to the intentional or grossly negligent conduct of LESSOR, its agents, servants, employees, contractors or licensees acting within the scope and course of their duties.

## ARTICLE 9.

### INSURANCE AND INDEMNIFICATION

### 9.1. Indemnity.

(a) LESSEE shall protect, defend, indemnify and hold harmless the LESSOR, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including attorney's fees or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of LESSEE under this Lease, conditions contained therein, the location, construction, repair, maintenance use or occupancy of the Leased Premises [and Shippey House](#) or improvements located thereon, or the breach or default by LESSEE of any covenant or provision of this Lease, hereinafter, "Claims"— except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the LESSOR, its officers, agents and employees acting within the scope and course of their duties.

(b) Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the Leased Premises, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity.

(c) LESSEE further agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the LESSOR, LESSEE shall assume and defend not only itself but also the CITY in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to LESSOR, provided that the LESSOR (exercisable by the LESSOR's Risk Manager) shall retain the right to select counsel of its own choosing.

**9.2. LESSOR'S Liability.** In no event shall LESSOR'S liability for any breach of this Lease exceed the amount of Rent then remaining unpaid for the then current term (exclusive of any renewal periods which have not then actually commenced). This provision is not intended to be a measure or agreed amount of LESSOR'S liability with respect to any particular breach and shall not be utilized by any court or otherwise for the purpose of determining any liability of LESSOR hereunder except only as a maximum amount not to be exceeded in any event. Furthermore, LESSEE shall look only to the LESSOR'S estate and interest in the Leased Premises (or to the proceeds thereof) for the satisfaction of LESSEE's remedies for the collection of any judgment (or other judicial process) requiring the payment of money by LESSOR in the event of any default by LESSOR under this Lease, and no other property or other assets of LESSOR shall be subject to levy, execution or other enforcement procedure for the satisfaction of LESSEE's remedies under or with respect to this Lease and neither LESSOR shall be liable for any deficiency. Nothing contained in this Paragraph shall be construed to permit LESSEE to offset against Rents due a successor LESSOR a judgment (or other judicial process) requiring the payment of money by reason of any default of a prior landlord, except as otherwise specifically set forth herein.

**Comment [LRF6]:** We should add language that nothing herein is a waiver of our sovereign immunity or limitations in 768.28.

**9.3. Insurance.** At all times during the term of this Lease Agreement, LESSEE, at its expense, shall keep or cause to be kept in effect the following insurance coverages:

- (a) A general liability insurance policy, in standard form, insuring LESSEE and LESSOR as an additional insured, against any and all liability for bodily injury or property damage arising out of or in connection with this Lease and the license granted herein with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) general aggregate and shall name the LESSOR as an additional insured. All such policies shall cover the activities under the Lease, including, but not limited to the possession, use, occupancy, maintenance, repair, and construction of additions, modifications, renovations or demolition of the Leased Premises or portions thereof. This policy shall not be affected by any other insurance carried by LESSOR.
- (b) The minimum limits of coverage under subsections (a), (d) and (e) may be adjusted by LESSOR, in LESSOR's sole discretion, every five (5) years, on the anniversary date of the Effective Date of this Lease, in accordance with the increase or decrease in the Consumer Price Index for "All Urban Consumers, U.S. All Items (1982 – 1984 = 100)" (hereinafter, CPI) published by the Bureau of Labor Statistics of the United States Department of Labor, or any comparable successor or substitute index designated by LESSOR. For the purposes of this subparagraph, the beginning CPI figures shall be the most recently published index figures in effect as of the Effective Date hereof. On the date(s) of adjustment, the adjusting figures shall be the most recently published figures in effect on the subject adjustment date(s).
- (c) Workers' Compensation Insurance to apply to all LESSEE's employees and employees of contractors retained by LESSEE conducting work upon the Leased Premises, said coverage to be in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) shall include Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) for each accident.
- (d) Business Automobile Liability for all vehicles owned or used by LESSEE and LESSEE's contractors that are involved in the operation of the Leased Premises [or Shippey House](#) with limits of Three Hundred Thousand Dollars (\$300,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- (e) Fire and All Risk Property coverage (including flood), with an endorsement for increased cost of compliance, on the structures, improvements and fixtures located upon the Leased Premises in an amount equate to not less than ninety percent (90%) of its full insurable value, and shall name the LESSOR as a Loss Payee on the policy. The deductible shall be no more than ten percent (10%) of the value of the structures and improvements located upon the Leased Premises.

**Comment [LRF7]:** We should be named an additional insured.

- (f) All of the policies of insurance provided for in this Lease:
- (i) shall be in the form and substance approved by the Department of Insurance of the State of Florida (“DOI”),
  - (ii) shall be issued only by companies licensed by DOI,
  - (iii) Certificates of Insurance pertaining to same shall be delivered to LESSOR, at least fourteen (14) days prior to the Effective of the License/Lease Term,
  - (iv) shall be with a carrier having an A Best’s Rating of not less than A, Class VII,
  - (v) shall bear endorsements showing the receipt by the respective companies of the premiums thereon or shall be accompanied by other evidence of payment of such premiums to the insurance companies, including evidence of current annual payment, if on any installment payment basis, and
  - (vi) shall provide that they may not be canceled by the insurer for thirty (30) days after service of notice of the proposed cancellation upon LESSOR and shall not be invalidated as to the interest of LESSOR by any act, omission or neglect of LESSEE.
- (g) In any case where the original policy of any such insurance shall be delivered to LESSEE, a duplicated original of such policy shall thereupon be delivered to LESSOR’s Risk Manager. All insurance policies shall be renewed by LESSEE, and certificates evidencing such renewals, bearing endorsements or accompanied by other evidence of the receipt by the respective insurance companies of the premiums thereon, shall be delivered to LESSOR’s Risk Manager, at least ~~twenty (20)~~thirty (30) days prior to their respective expiration dates.
- (h) LESSOR does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect LESSEE’s or Contractor’s interests or liabilities but are merely minimum requirements established by LESSOR’s Risk Management Division. LESSOR reserves the right to require any other reasonable insurance coverages that LESSOR deems necessary depending upon the risk of loss and exposure to liability.
- (i) Any and all net insurance proceeds received by or on account of LESSEE under the Lease shall be deposited with the primary deposit for the LESSOR, to be held in escrow for the benefit of the LESSEE and LESSOR, and said funds shall be used for the purpose of reconstruction or repair, as the case may be, of any of the

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structures, improvements or fixtures located within the Leased Premises so damaged or destroyed. Such reconstruction and repair work shall be done in strict conformity with all applicable building and zoning codes and regulations or standards promulgated by any governmental agency having subject matter jurisdiction. Should the costs of regulations or repair exceed the amount of funds available from the proceeds of such insurance policy, then, and in such event, such funds shall be used as far as the same will permit in paying the costs of reconstruction or repair.

**9.4 Waiver Of Subrogation.** Each of the LESSOR and LESSEE hereby releases the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any other perils insured in policies of insurance for any loss or damage to property caused by fault or negligence covering such property, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for which such party may be responsible, including any other licensees or occupants of the Leased Premises; provided however, that this release shall be applicable and in force and effect only to the extent that such release shall be lawful at the time and in any event only with respect to loss or damage occurring during such time as the releasor's policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releasor to coverage thereunder and then only to the extent of the insurance proceeds payable under such policies. Each of LESSOR and LESSEE agrees that it will request its insurance carriers to include in its policies such a clause or endorsement. If extra costs shall be charged therefore, each party shall advise the other thereof and of the amount of the extra cost and the other party, at its election, may pay the same, but shall not be obligated to do so.

## ARTICLE 10.

### ASSIGNMENTS AND SUBLETTING

#### 10.1. Assignment and Subletting.

(a) Unless expressly authorized otherwise, LESSEE may not assign neither this Lease nor any portion of its leasehold interest, nor sublet, license or grant any concession for the use of the Leased Premises or Shippey House to another person without obtaining LESSOR's prior written consent, which such prior written consent shall be given by LESSOR'S City Manager.

(b) Upon review and approval of the terms and conditions of a sub-lease of the Leased Premises by LESSOR'S City Manager, LESSEE is expressly authorized to sub-lease the Leased Premises to an entity for the purpose of operating the Leased Premises in accordance with the Permissible Uses set forth in Section 4.1 of this Lease and for no other purposes. As a condition to LESSOR's prior written consent to a sublease hereunder, the Sublessee shall agree in writing to comply with and be bound by all the terms, covenants, conditions, provisions and agreement under this Lease and LESSEE shall deliver to LESSOR promptly after execution, an executed copy of such Sublease and an agreement by Sublessee of compliance with the terms and conditions set forth in this Lease.

1. The ~~Subtenant~~Sublessee (“Initial ~~Subtenant~~Sublessee”) under the initial sub-lease of the Leased Premises after the Effective Date shall be obligated, at its own expense, to complete construction of interior renovations in accordance with **Schedule Three** attached hereto.

**Comment [RD8]:** What is the time-line required for such interior renovations? When must a CO be obtained?

2. Rent to the Initial ~~Subtenant~~Sublessee shall be at a comparable market rate to be approved by the LESSOR’S City Manager upon consultation with the LESSOR’S broker of record or comparable person with expertise in real property values; provided however, that the Initial Subtenant shall be entitled to a five (5) year period of rental abatement during which period Subtenant shall pay to LESSEE, as “additional rent” the sum of \$3,000.00 annually to an ~~ear-marked segregated account n Escrow Account~~ set up by LESSEE for the purpose of establishing a ~~Ceapital Rreserve Aaccount~~ for capital maintenance and improvements for Shippey House.

3. At the conclusion of the five (5) year rent abatement period for the Initial ~~Subtenant~~Sublessee, the rental rate to be paid by ~~Subtenant~~Sublessee shall be at a comparable market rate, as approved by the LESSOR’S City Manager in consultation with the LESSOR’S broker of record, ~~CBRE, Inc., a Delaware corporation~~ or comparable person with expertise in real property values.

a. The comparable market rate set at the conclusion of the five (5) year rent abatement period shall escalate by 2.0% on the anniversary dates for years numbered six (6) through (9).

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b. Every fifth anniversary thereafter, the rent shall be re-set in accordance with the comparable market rate as approved by the City Manager in accordance with the foregoing. During the intervening years thereafter the rent shall escalate by 2.0% on each of the next successive intervening anniversary dates

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4. As to the rents and additional rents paid by the Initial Sublessee or any successor Sublessee to LESSEE after the initial five (5) year rent abatement period, LESSEE hereby agrees that (i) one-half (1/2) of such rental income shall be deposited and allocated on LESSEE’S books as an ear-marked segregated account set up by LESSEE for the purpose of establishing a fund, expenditures from which shall be limited, except as hereinafter set forth, to the preservation, maintenance and capital improvements in support of the Shippey House; (ii) once the Capital Reserve Account attains a balance of \$50,000.00, funds may be disbursed from the Capital Reserve Account for either routine maintenance and repairs for the Shippey House or for funding increased activity levels for Riverwalk Linear Park and Riverwalk District or for capital improvements in support thereof; (iii) the \$50,000.00 fund balance referenced in (ii) above shall be adjusted annually in accordance with the percentage increase or decrease in the Consumer Price Index as referenced in Section 9.3 (b) hereof; (iv) 15% of the rental income received by LESSEE shall be deposited and allocated on LESSEE’S books as an ear-marked segregated account set up by LESSEE for funding the cost of administration of this Lease; and (v) 35% of the rental income received by LESSEE shall be deposited and allocated on LESSEE’S



books as an ear-marked segregated account set up by LESSEE for funding the cost of increased activities along Riverwalk Linear Park or Riverwalk District or for making capital contributions in support thereof.

(c) LESSEE shall, by written notice, advise LESSOR of its desire from and after a stated date (which shall not be less than thirty (30) nor more than ninety (90) days after the date of LESSEE's notice) to assign its interest under this Lease ~~or any portion thereof~~ for any part of the term hereof. LESSEE shall supply LESSOR with such information, financial statements, verifications and related materials as LESSOR may request or desire to evaluate the written request to so assign; and in such event LESSOR shall have the right, to be exercised by giving written notice to LESSEE within thirty (30) days after receipt of LESSEE's notice and all of the aforesaid materials, to either refuse to consent to the proposed assignment. Said notice by LESSEE shall state the name and address of the proposed assignee.

(de) As a condition to LESSOR's prior written consent as provided for herein, the assignee shall agree in writing to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease, and LESSEE shall deliver to LESSOR promptly after execution, an executed copy of such ~~sublease or~~ assignment and an agreement of said compliance by each sublease or assignee.

**10.2. Continued Liability of LESSEE.** LESSOR's consent to any sale, assignment, encumbrance, subletting, occupation, lien or other transfer shall not release LESSEE from any of LESSEE's obligations hereunder or be deemed to be a consent to any subsequent occurrence. Any sale, assignment, encumbrance, subletting, occupation, lien or other transfer of this Lease that does not comply with the provisions of Article shall be void.

## ARTICLE 11.

### LESSOR'S REMEDIES

**11.1. Remedies for Nonpayment of Rent or Additional Rent.** LESSOR has the same remedies for LESSEE's failure to pay rent as LESSEE's failure to pay additional rent.

**11.2. Accord and Satisfaction.** If LESSEE pays or LESSOR receives an amount that is less than the amount stipulated to be paid under any Lease provision, that payment is considered to be made only on account of an earlier payment of that stipulated amount. No endorsement or statement on any check or letter may be deemed an accord and satisfaction. LESSOR may accept any check or payment without prejudice to LESSOR's right to recover the balance due or to pursue any other available remedy.

**11.3. Abandonment Of Leased Premises Or Delinquency In Rent.** If LESSEE abandons or vacates the Leased Premises before the end of the Lease Term, or if LESSEE is in arrears in rent or additional rent payments, LESSOR may cancel this Lease, subject to the notice and opportunity to cure provisions set forth in Section 11.4. On cancellation, LESSOR shall be entitled to peaceably enter the Leased Premises as LESSEE's agent to regain or relet the Leased Premises. LESSOR shall incur no liability for such entry. As LESSEE's agent, LESSOR may relet the Leased Premises with or without any improvements, fixtures or personal property that

may be upon it, and the reletting may be made at such price, in such terms and for such duration as LESSOR determines and for which LESSOR receives rent. LESSOR shall apply any rent received from reletting to the payment of the rent due under this Lease. If, after deducting the expenses of reletting the Leased Premises, LESSOR does not realize the full rental provided under this Lease, LESSEE shall pay any deficiency. If LESSOR realizes more than the full rental, LESSOR shall pay the excess to LESSEE on LESSEE's demand, after deduction of the expenses of reletting. Notwithstanding the foregoing, LESSOR is not obligated to relet the Leased Premises and LESSOR may, if it so elects, merely regain possession of the Leased Premises.

#### **11.4. Dispossession on Default; Notice and Opportunity to Cure.**

(a) If LESSEE defaults in the performance of any covenant or condition of this Lease, LESSOR may give LESSEE written notice of that default. If LESSEE fails to cure a default in payment of rent or additional rent within twenty (20) days after notice is given, LESSOR may terminate this LEASE. For defaults other than nonpayment of rent or additional rent, LESSEE shall cure such default within twenty (20) days after notice is given or within such greater period of time as specified in the notice; provided, however, if a greater period of time is not specified in the notice, then the period for curing such default shall be twenty (20) days. Upon expiration of the Lease term or earlier termination thereof, LESSEE shall convey to LESSOR, for one and no/100 (\$1.00) dollar title to the personal property Shippey House by Bill of Sale Absolute with full warranties of title.

**Comment [LRF9]:** See comment above regarding Lessor option to have Lessee remove or sell.

(b) If the default (other than for nonpayment of rent or additional rent) is of such a nature that it cannot be completed cured within time specified, LESSOR may terminate this Lease only if LESSEE fails to proceed with reasonable diligence and in good faith to cure the default. Thereafter, termination of this Lease may occur only after LESSOR gives not less than ten (10) days' advance notice to LESSEE. On the date specified in the notice, the term of this Lease will end, and, LESSEE shall quit and surrender the Leased Premises to LESSOR, except that LESSEE will remain liable as provided under this Lease.

(c) On termination of the Lease, LESSOR may peaceably re-enter the Leased Premises without notice to dispossess LESSEE, any legal representative of LESSEE, or any other occupant of the Leased Premises or structure of the Shippey House. LESSOR may retain possession through summary proceedings or otherwise and LESSOR shall then hold the Leased Premises as if this Lease had not been made.

**11.5. Damages On Default.** If LESSOR retakes possession under Section 11.4, LESSOR shall have the following rights:

(a) LESSOR shall be entitled to rent and additional rent that is due and unpaid, and those payments will become due immediately, and will be paid up to the time of the re-entry, dispossession or expiration, plus any expenses (including, but not limited to attorneys' fees, brokerage fees, advertising, administrative time, labor, etc.) that LESSOR incurs in returning the Leased Premises to good order and/or preparing it for re-rental, if LESSOR elects to re-rent, plus interest on rent and additional rent when due at the rate of twelve (12.0%) percent per annum.

(b) LESSOR shall be entitled, but is not obligated, to re-let all or any part of the Leased Premises in LESSOR's name or otherwise, for any duration, on any terms, including but not limited to any provisions for concessions or free rent, or for any amount of rent that is higher than that in this Lease.

(c) LESSOR's election to not re-let all or any part of the Leased Premises shall not release or affect LESSEE's liability for damages. Any suit that LESSOR brings to collect the amount of the deficiency for any rental period will not prejudice in any way LESSOR's rights to collect the deficiency for any subsequent rental period by a similar proceeding. In putting the Leased Premises in good order or in preparing it for re-rental, LESSOR may alter, repair, replace, landscape or decorate any part of the Leased Premises in any way that LESSOR considers advisable and necessary to re-let the Leased Premises. LESSOR's alteration, repair, replacement, landscape or decoration will not release LESSEE from liability under this Lease.

(d) LESSOR is not liable in any way for failure to re-let the Leased Premises, or if the Leased Premises are re-let, for failure to collect the rent under the re-letting. LESSEE will not receive any excess of the net rents collected from re-letting over the sums payable by LESSEE to LESSOR under this Section.

**11.6. Insolvency or Bankruptcy.** Subject to the provisions hereof respecting severability, should LESSEE at any time during the Lease Term suffer or permit the appointment of a receiver to take possession of all or substantially all of the assets of LESSEE, or an assignment of LESSEE for the benefit of creditors, or any action taken or suffered by LESSEE under any insolvency, bankruptcy, or reorganization act, shall at LESSOR's option, constitute a breach and default of this Lease by LESSEE and LESSEE agrees to provide adequate protection and adequate assurance of future performance to the LESSOR which will include, but not be limited to the following:

(a) All monetary and non-monetary defaults existing prior to the breach or default referenced above shall be cured within the time specified above that shall include all costs and attorneys' fees expended by LESSOR to the date of curing the default.

(b) All obligations of the LESSEE must be performed in accordance with the terms of this Lease.

If at any time during the pendency of the bankruptcy proceeding the LESSEE or its successor in interest fails to perform any of the monetary or non-monetary obligations under the terms of this Lease, or fails to cure any pre-filing default, or fails to make additional security deposit required under the Lease for the adequate assurance of future performance clause above, the LESSEE HEREBY STIPULATES AND AGREES TO WAIVE ITS RIGHTS TO NOTICE AND HEARING AND TO ALLOW THE LESSOR TOTAL RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 TO ENFORCE ITS RIGHTS UNDER THIS LEASE AND UNDER STATE LAW INCLUDING BUT NOT LIMITED TO ISSUANCE AND ENFORCEMENT OF A JUDGMENT OF EVICTION, WRIT OF ASSISTANCE AND WRIT OF POSSESSION.

**11.7. Condemnation.** LESSEE waives any claim of loss or damage, and any right or claim to any part of an award that results from the exercise of eminent domain power of any governmental body, regardless of whether the loss or damage arise because of condemnation of all or part of the Leased Premises or the structure of the Shippey House. If any eminent domain power that is exercised interferes with LESSEE's use of the Lease Premises, the rentals under this Lease will be proportionately abated. If a partial taking or condemnation renders the Leased Premises unsuitable for LESSEE's purposes under this Lease, the Lease Term will cease as of the date the condemning authority requires possession. If an eminent domain power is exercised, LESSEE has not claim against LESSOR for the value of an unexpired term of this Lease.

**11.8 Holding Over.** LESSEE will, at the termination of this Lease by lapse of time or otherwise, yield up immediate possession to LESSOR. If LESSEE retains possession of the Leased Premises or any part thereof after such termination, then LESSOR may at its option, serve written notice upon LESSEE that such holding over constitutes any one of: (i) renewal of this Lease for one year, and from year to year thereafter, (ii) creation of a month to month tenancy, upon the terms and conditions set forth in this Lease, or (iii) creation of a tenancy at sufferance, in any case upon the terms and conditions set forth in this Lease; provided, however, that the rent shall, in addition to all other sums which are to be paid by LESSEE hereunder, whether or not as additional rent, be equal to double the rent being paid to LESSOR under this Lease immediately prior to such termination. If no such notice is served, then a tenancy at sufferance shall be deemed to be created at the rent in the preceding sentence. LESSEE shall also pay to LESSOR all damages sustained by LESSOR resulting from a retention of possession by LESSEE, including the loss of any proposed subsequent LESSEE for any portion of the Leased Premises. The provisions of this Section shall not constitute a waiver by LESSOR of any right of re-entry as herein set forth; nor shall receipt of any rent or any other act in apparent affirmance of the tenancy operate as a waiver of the right to terminate this Lease for a breach of any of the terms, covenants or obligations herein on LESSEE's part to be performed.

**11.9. Cumulative Remedies.** LESSOR's remedies contained in the Lease are in addition to the right of a Landlord under Florida Statutes governing non-residential Landlord-Tenant relationships and to all other remedies available to a Landlord at law or in equity.

## ARTICLE 12.

### MISCELLANEOUS

**12.1. Requirement for Notice.** LESSEE shall give LESSOR prompt written notice of any accidents on, in, over, within, under and above the Lease Area in which damage to property or injury to a person occurs.

#### 12.2. Notices.

(a) Except as provided in subparagraph (c) below, whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to any matter set forth in this Lease, each such notice, demand, request or other communication shall be in

writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by mailing the same by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below, or at such other address or addresses and to such other person or firm as LESSOR may from time to time designate by notice as herein provided.

(b) All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder forty-eight (48) hours after the time that the same shall be deposited in the United States mail, postage prepaid, in the manner aforesaid, provided, however, that for any distance in excess of five hundred (500) miles, air mail service or Federal Express or similar carrier shall be utilized, if available.

AS TO LESSOR: City Manager  
City of Fort Lauderdale  
100 N. Andrews Avenue  
Fort Lauderdale, FL 33301

With copy to: Director of Parks & Recreation  
City of Fort Lauderdale  
100 N. Andrews Avenue  
Fort Lauderdale, FL 33301

With copy to: City Attorney  
City of Fort Lauderdale  
100 N. Andrews Avenue  
Fort Lauderdale, FL 33301

AS TO LESSEE: Fort Lauderdale Riverwalk, Inc.  
[305 South Andrews Avenue, Suite 140](#)  
[Fort Lauderdale, FL 33301](#)  
[Attn: Genia Duncan Ellis, President](#)

With copy to: Courtney Crush, Esq.  
[Crush Law, P.A.](#)  
[333 North New River Drive East](#)  
[Fort Lauderdale, FL 33301](#)

**12.3. Time Is Of The Essence.** Time is of the essence as to the performance of all terms and conditions under this Lease.

**12.4. LESSOR'S Cumulative Rights.** LESSOR's rights under the Lease are cumulative, and, LESSOR'S failure to promptly exercise any rights given under this Lease shall not operate of forfeit any of these rights.

**12.5. Modifications, Releases and Discharges.** No modification, release, discharge or waiver of any provision of this Lease will be of any effect unless it is in writing and signed by the LESSOR and LESSEE.

**12.6. Time.** In computing any period of time expressed in day(s) in this Lease, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

**12.7. Captions.** The captions, headings and title of this Lease are solely for convenience of reference and are not to affect its interpretation.

**12.8. Survival.** All obligations of LESSEE hereunder not fully performed as of the expiration or earlier termination of the Term of this lease shall survive the expiration or earlier termination of the Term hereof.

**12.9. Landlord Delays; Causes beyond Control of Landlord.** Whenever a period of time is herein prescribed for action to be taken by Landlord, Landlord shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to causes of any kind whatsoever which are beyond the control of Landlord.

**12.10. Assignment, Pledge, Security Interest.** LESSEE shall not voluntarily, involuntarily or by operation of law, assign, sell, pledge, grant a security interest, or in any manner transfer its leasehold interest herein or any interest therein or grant any right under the Lease without the prior written consent of LESSOR, which such consent may be granted or withheld in LESSOR's absolute discretion.

**12.11. Interpretation of Lease; Severability.** This Lease shall be construed in accordance with the laws of the State of Florida. If any provision hereof, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Lease, or the application of the remainder of the provisions, shall not be affected. Rather, this Lease is to be enforced to the extent permitted by law. Each covenant, term, condition, obligation or other provision of the Lease is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Lease, unless otherwise expressly provided. All terms and words used in this Lease, regardless of the number or gender in which they are used, are deemed to include any other number and other gender as the context requires.

**12.12. Successors.** This Lease shall be binding on and inure to the benefit of the parties, their successors and assigns.

**12.13. No Waiver of Sovereign Immunity.** Nothing contained in this Lease is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

**12.14. No Third Party Beneficiaries.** Except as may be expressly set forth to the contrary herein, the parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Lease. None of the parties intend to directly or substantially benefit a third party by this Lease. The parties agree that there are no third party beneficiaries to this Lease and that no third party shall be entitled to assert a claim against any of the parties based on this Lease. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

**12.15. Non-Discrimination.** LESSEE shall not discriminate against any Person in the performance of duties, responsibilities and obligations under this Lease because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

**12.16. Records.** Each party shall maintain its own respective records and documents associated with this Lease in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Florida Statutes, as same may be amended from time to time and any resultant award of attorney's fees of non-compliance with that law.

**12.17. Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

**12.18. Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advise and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Lease Agreement has been their joint effort.

**12.19. Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Lease and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Lease shall not be deemed a waiver of such provision or modification of this Lease. A waiver of any breach of a provision of this Lease shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Lease.

**12.20. Governing Law.** This Lease shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Lease and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial

Circuit of Broward County, Florida. To that end, LESSEE expressly waives whatever other privilege to venue it may otherwise have.

**12.21. Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Lease if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of LESSEE be deemed Force Majeure.

**12.22. 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.

**12.23. Audit Right and Retention of Records.**

(a) LESSOR shall have the right to audit the books, records, and accounts of LESSEE and LESSEE'S Sublessees that are related to the obligations required to be performed under this Section 10.1, Assignment and Subletting of this Lease as to the accounting of the receipt and disbursement of rents and additional rents from the sublease of the Leased Premises and the structure of the Shippey House to sublessees. LESSEE shall keep and LESSEE shall cause obligate LESSEE'S Sublessees to keep, such books, records, and account as may be necessary in order to record complete and correct entries related obligations arising under this Lease as set forth above. All books, records and accounts of LESSEE and LESSEE'S Sublessees as to the obligations set forth above shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon requires to do so, LESSEE or LESSEE'S Sublessees, as applicable shall make same available to LESSOR at no cost to LESSOR in written form.

(b) LESSEE and LESSEE'S Sublessees shall preserve and make available, at reasonable times for examination and audit by LESSOR in the City of Fort Lauderdale, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to the LESSEE'S or LESSEE'S Sublessee's obligations as set forth above in subparagraph (a) hereof arising under this Lease for the required retention period of the Florida Public Records Law, Chapter 119, Florida Statutes, as it may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after expiration or earlier termination of this Lease. If any audit has been initiated and audit findings have not be resolved at the end of the retention period or three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Law is determined by LESSOR to be applicable to LESSEE and LESSEE'S Sublessees records LESSEE and LESSEE'S Sublessees shall comply with all requirement thereof; however, LESSEE and LESSEE'S Sublessees shall violate no confidentiality or non-disclosure requirement of either federal or state law.



(c) LESSEE shall, by written contract, require LESSEE'S Sublessees to agree to the requirements and obligation of this Section.

(d) LESSEE shall maintain during the term of this Lease all books of account, reports and records relating to the obligations set forth in subparagraph (a) hereof in accordance with generally accepted accounting practices and standards.

**12.24. Estoppel Certificate.** LESSEE agrees to furnish from time to time when requested by LESSOR, the holder of any deed of trust or mortgage or the LESSOR under any ground lease covering all or any part of the Leased Premises or the improvements therein or any interest of LESSOR therein, a certificate signed by LESSEE confirming and containing such factual certifications and representations as may be reasonably requested by LESSOR, the holder of any deed of trust or mortgage or the LESSOR under any ground lease covering all or any part of the Leased Premises or the improvements herein or any interest of Landlord therein, including without limitation:

- (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications);
- (b) that there have been no defaults thereunder by LESSOR or LESSEE (or if there have been defaults, setting forth the nature thereof),
- (c) the date to which the rent and other charges have been paid, if any, and
- (d) the amount of the security deposit, if any.

LESSEE shall, within ten (10) days following receipt of said proposed certificate from LESSOR, return a fully executed copy of said certificate to LESSOR and LESSEE'S failure to deliver such statement within such time shall be a default under this Lease. In the event LESSEE shall fail to return a fully executed copy of such certificate to LESSOR within the foregoing ten (10) day period, then LESSEE shall be deemed to have approved and confirmed all of the terms, certifications and representations contained in the certificate sent to LESSEE by LESSOR and LESSOR, any holder of a mortgage, any LESSOR under a ground lease and any purchaser of the Leased Premises may rely upon the accuracy of such certificate. Similarly, upon request from LESSEE, LESSOR shall provide LESSEE with an estoppel certificate on the same terms and conditions as set forth above.

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IN WITNESS OF THE FOREGOING, THE PARTIES HAVE SET THEIR HANDS AND SEALS

**AS TO LESSOR:**

WITNESSES

CITY OF FORT LAUDERDALE

\_\_\_\_\_  
SIGNATURE

BY: \_\_\_\_\_  
John P. "Jack" Seiler, Mayor

\_\_\_\_\_  
PRINT NAME

BY: \_\_\_\_\_  
Lee R. Feldman, City Manager

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

(CORPORATE SEAL)

ATTEST:

BY: \_\_\_\_\_  
Jonda Joseph, City Clerk

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Robert B Dunkel, Assistant  
City Attorney

STATE OF FLORIDA    )  
                                  ) SS  
COUNTY OF BROWARD )

The foregoing instrument was acknowledged before me this \_\_\_ day of June, 2015 by **John P. "Jack" Seiler**, Mayor of the City of Fort Lauderdale, a Florida municipal corporation. He is personally known to me or produced \_\_\_\_\_ as identification.

(SEAL)

NOTARY PUBLIC

\_\_\_\_\_  
PRINTED NAME

My Commission expires:

\_\_\_\_\_

| STATE OF FLORIDA     )  
                                  ) SS  
COUNTY OF BROWARD    )

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The foregoing instrument was acknowledged before me this \_\_\_ day of June, 2015 by **Lee R. Feldman**, City Manager of the City of Fort Lauderdale, a Florida municipal corporation. He is personally known to me or produced \_\_\_\_\_ as identification.

NOTARY PUBLIC

(SEAL)

\_\_\_\_\_  
PRINTED NAME

My Commission expires:

\_\_\_\_\_

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DRAFT

SIGNATURE BLOCKS FOR LESSEE

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DRAFT

## SCHEDULE ONE

- Exterior renovation, porch reconstruction, installation of ADA ramp
- Replace existing windows with new impact-rated aluminum windows
- Replace existing doors with new matching impact doors
- Install new wood fence and gate
- Reconfigure site to accommodate new parking using concrete unit pavers
- Exterior siding
- Landscape
- Exterior painting
- Plaque on House

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