

Economic Development Agreement

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Exhibits:

- Exhibit A - Description of the Project Parcel
- Exhibit B - Improvements
- Exhibit C - JSEB Reporting Form
- Exhibit D - Annual Survey

ECONOMIC DEVELOPMENT AGREEMENT

This **ECONOMIC DEVELOPMENT AGREEMENT** (this “Agreement”) is made this ___ day of _____, 2024 (the “Effective Date”), between the **CITY OF JACKSONVILLE**, a municipal corporation and a political subdivision of the State of Florida (the “City”) and **FOC QOF, LLC**, a Delaware limited liability company (the “Company”).

Article 1. PRELIMINARY STATEMENTS

1.1 The Project.

The Company or its Affiliate owns seven parcels of real property located within the City of Jacksonville as more particularly described on Exhibit A attached hereto, inclusive of two buildings and land located generally at 2320 N. Liberty Street, 2336 N. Liberty Street, and 2335 Market Street (the “Phase One Project Parcel”), and land and buildings located generally at 2402 Market Street and 2303 Market Street, 2401 Hubbard Street, and the parcel located on the southwest corner of Market Street and 15th Street East (the “Phase Two Project Parcel”) (collectively, the “Project Parcel”). The Company intends to renovate the buildings and land located on each of the Phase One Project Parcel and Phase Two Project Parcel in two phases and, once developed, is expected to include restaurant improvements, artists’ studios, co-working spaces, offices, retail and event space (collectively as defined below, the “Improvements”). The Improvements described on Exhibit B attached hereto and the obligations of the Company under this Agreement are collectively referred to herein as the “Project.” The proposed Project includes the renovation of land and 4 buildings located on the Project Parcel and the purchase and installation of tangible personal property, furniture and fixtures to the interior of the buildings. The Phase One Improvements are expected to represent an estimated total Capital Investment of \$14,149,820, and the Phase Two Improvements are expected to represent an estimated total Capital Investment of \$23,791,680, for a total estimated Capital Investment of \$37,941,500 by or on behalf of the Company and its Affiliates.

1.2 Authority.

The City Council has authorized execution of this Agreement pursuant to City Resolution 2024-___-A (the “Resolution”).

1.3 City Determination.

The City has determined that the Project is consistent with the goals of the City in that the Project will, among other things:

- (a) Generate significant new ad valorem taxes, including significant new tax revenues for the public school system;
- (b) Create induced and indirect job effects which will have a positive impact on local small businesses; and
- (c) Promote and encourage private Capital Investment of \$37,941,500.

1.4 **Jacksonville Small and Emerging Business Program.**

As more fully described in City Ordinance 2004-602-E, the City has determined that it is important to the economic health of the community that whenever a company receives incentives from the City, that company provides contracting opportunities to the maximum extent possible to small and emerging businesses in Duval County as described in Section 7.1.

1.5 **Coordination by City.**

The City hereby designates the Economic Development Officer of the OED or his or her designee to be the Project Coordinator who will, on behalf of the City, coordinate with the Company and administer this Agreement according to the terms and conditions contained herein and in the Exhibit(s) attached hereto and made a part hereof. It shall be the responsibility of the Company to coordinate all project related activities and all matters under this Agreement with the designated Project Coordinator, unless otherwise stated herein. Notwithstanding the foregoing or any other statements herein to the contrary, the OED is an office of the City and has no separate liability under this Agreement.

1.6 **Maximum Indebtedness.**

The maximum indebtedness of the City for all fees, reimbursable items or other cost pursuant to this Agreement shall not exceed the sum of FIVE MILLION FIVE HUNDRED THOUSAND AND NO/100 (\$5,500,000.00).

1.7 **Availability of Funds.**

The City's obligations under this Agreement are contingent upon availability of lawfully appropriated funds for the Project and this Agreement.

**Article 2.
DEFINITIONS**

As used in this Agreement, the following terms shall have the meaning set opposite each:

2.1 **Affiliate.**

A person or entity, directly or indirectly, controlling, controlled by or under common control with the Company.

2.2 **Base Year.**

The base year for purposes of this Agreement shall be the 2024 tax year.

2.3 **Bunker Building Improvements.**

Those certain renovations and improvements to be made to the land and existing building located at 2402 Market Street, 2401 Hubbard Street, and the parcel located on the southwest corner of Market Street and 15th Street East, as further set forth on **Exhibit B** attached hereto.

2.4 **Capital Investment.**

Money invested by a company to purchase items that may normally be capitalized by a company in the normal conduct of its business.

2.5 **City Council.**

The body politic, as the same shall be from time to time constituted, charged with the duty of governing the City.

2.6 **Commencement of Construction.**

The terms "Commence" or "Commenced" or "Commencing" Construction as used herein when referencing the Improvements or any portion thereof means the date when Company (i) has completed all pre-construction engineering and design; obtained all necessary licenses, permits and governmental approvals to commence construction of the Improvements; engaged the general (i.e., prime) contractor and ordered such equipment and supplies as the general contractor reasonably deems necessary so that physical construction of the Improvements or any phase thereof may begin and proceed to completion without foreseeable interruption; and (ii) has submitted to the City evidence of construction financing or other financial resources obtained by Company sufficient to complete the construction of the Improvements or any phase thereof; and (iii) has "broken ground" and begun physical, material construction (e.g., site preparation work or such other evidence of commencement of construction as may be approved by the City in its reasonable discretion) of the Improvements or any phase thereof on an ongoing basis without any Impermissible Delays (defined herein).

2.7 **Impermissible Delays.**

The term "Impermissible Delay" means failure of Company to proceed with reasonable diligence with the construction of the applicable Improvements within the timeframe for Substantial Completion contemplated in this Agreement, or after commencement of the applicable Improvements, abandonment of or cessation of work on any portion of the Improvements at any time prior to the Substantial Completion of such improvements for a period of more than thirty (30) consecutive calendar days, except in cases of a Force Majeure Event. Notwithstanding the foregoing, any delay or cessation of any of the Improvements as to which Company has been unable to secure the necessary permits and approvals after diligent efforts shall not be an Impermissible Delay, as long as Company continues its diligent efforts to obtain such permits and approvals.

2.8 **Improvements.**

All of the improvements that are incorporated into the Project, as further detailed in **Exhibit B** hereof, comprised of both the Phase One Improvements and the Phase Two Improvements.

2.9 **OED.**

The Office of Economic Development and any successor to its duties and authority.

2.10 **Phase One Improvements.**

Those certain renovations and other improvements to the land and buildings located at 2320 N. Liberty Street, 2336 N. Liberty Street, and 2335 Market Street, as further described on **Exhibit B** attached hereto.

2.11 Phase Two Improvements.

Those certain renovations and other improvements to the two buildings located at 2402 Market Street and 2303 Market Street, comprised of both the Bunker Building Improvements and the Phoenix Building Improvements, as further described on **Exhibit B** attached hereto.

2.12 Phoenix Building Improvements.

Those certain renovations and improvements to be made to the existing building located at 2303 Market Street as further set forth on **Exhibit B** attached hereto.

2.13 Phase One JSEB Rental Space Commitment

Upon Substantial Completion of the Phase One Improvements Company shall enter into a Lease Agreement with the City of Jacksonville for a minimum of 150 square feet of finished interior space at 2320 N. Liberty Street, at a rate of \$1.00 per year, for a term not less than three (3) years. This space shall be utilized by city entities to support small business growth and development within the Project and surrounding area. Conference rooms will also be made available to Jacksonville Small and Emerging businesses (JSEBs) and city staff upon request on an as-needed basis for additional small business support services.

2.14 Substantial Completion.

“Substantially Completed”, “Substantial Completion” or “Completion” means that all permits have been finalized, a certificate of substantial completion has been issued by the contractor and verified by the architect of record, a certificate of occupancy (or temporary certificate of occupancy) has been issued and the Improvements are available for use in accordance with their intended purpose; subject to commercially reasonable punch list items and similar items.

Other capitalized terms not defined in this Article shall have the meanings assigned to them elsewhere in this Agreement.

**Article 3.
APPROVALS; PERFORMANCE SCHEDULES**

3.1 Performance Schedule.

The Company and the City have jointly established the following dates for the performance of each party’s respective obligations under this Agreement (herein called the “Performance Schedule”):

(a) Commencement of Construction of the Phase One Improvements shall be no later than June 30, 2024.

(b) Commencement of Construction of the Phase Two Improvements shall be no later than January 1, 2025.

(c) Substantial Completion of the Phase One Improvements shall be no later than June 30, 2025.

(d) Substantial Completion of the Phase Two Improvements shall be no later than June 30, 2027.

The City and the Company have approved this Performance Schedule. By the execution hereof, and subject to the terms of this Agreement, the Company hereby agrees to undertake and complete the development of the Project in accordance with this Agreement and the Performance Schedule, and to comply with all of the Company's obligations set forth herein. The Economic Development Officer of the OED shall have the authority to extend the Performance Schedule by up to one (1) year, for good cause shown by the Company. Such request shall be made by the Company in writing to OED and shall be granted at the discretion of Economic Development Officer of the OED.

3.2 Approval of Agreement.

By the execution hereof, the parties certify as follows:

(a) Company represents, warrants and certifies that:

(i) the Company or its Affiliate owns or has leased the Project Parcel;

(ii) the execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents creating the particular Company entity;

(iii) this Agreement does not violate any of the terms or conditions of such governing documents and the Agreement is binding upon the Company and enforceable against it in accordance with its terms;

(iv) the person or persons executing this Agreement on behalf of the Company are duly authorized and fully empowered to execute the same for and on behalf of the Company;

(v) the Company and each Affiliate fulfilling any obligations under this Agreement is duly authorized to transact business in the State of Florida and has received all necessary permits and authorizations required by appropriate governmental agencies as a condition to doing business in the State of Florida;

(vi) the Company, each Affiliate fulfilling any obligations under this Agreement, and their respective business operations, are each in material compliance with all federal, state and local laws; and

(vii) the Company is not owned or controlled by the government of a foreign country of concern as defined in Section 288.007, Florida Statutes, and the Company is not an entity that is a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern, or a subsidiary of such entity.

(b) The City certifies that the execution and delivery hereof is binding upon the City to the extent provided herein and enforceable against it in accordance with its terms.

Article 4.
REV GRANT

4.1 Recapture Enhanced Value Program; Amount.

The City shall make a Recapture Enhanced Value grant (“REV Grant”) to the Company, in a total amount not to exceed \$1,500,000, payable in annual installments beginning in the first year following the Completion of the Improvements at the Project Parcel and its inclusion on the City tax rolls at full assessed value (the “Initial Year”) and ending 15 years thereafter, but not later than 2041 (the “Final Year”), payable in fiscal year 2042, all as more fully described below in this Article 4.

4.2 Payments of REV Grant.

The REV Grant shall be paid by the City to the Company by check or electronic transfer, in annual installments determined in accordance with Section 4.3 due and payable on or before May 15 of each calendar year, commencing May 15 of the Initial Year and ending May 15 of the Final Year, or when the maximum amount of the REV Grant shall have been paid to the Company, whichever occurs first. The City shall have no liability for any REV Grant in excess of the amount stated in Section 4.1 or after payment of the final installment due May 15 of the Final Year, and, except as expressly provided in this Agreement, the REV Grant payments as determined pursuant to Section 4.3 shall not be subject to reduction or repayment.

4.3 Determination of Annual Installments of REV Grant.

The amount of each annual installment of the REV Grant shall be the sum which is equal to 50% of the “Annual Project Revenues” (as defined and determined in this Section 4.3) received by the City during the twelve (12) month period ended April 1 preceding the due date of such annual installment. For the purposes of this Agreement, “Annual Project Revenues” means the amount of all municipal and county ad valorem taxes, exclusive of any amount from any debt service millage or Business Improvement District (“BID”) millage, actually paid by any taxpayer for that tax year (net of any discount pursuant to Section 197.162, Florida Statutes, or any successor provision, actually taken by the taxpayer) during such period with respect to all real property and tangible personal property comprising the Project, less the amount of all municipal and county ad valorem taxes that would have been levied or imposed on the Project using the assessed value for the Base Year, which for the purpose of this Agreement shall be \$3,698,589 (figure is subject to change based on the final certified values) exclusive of any debt service millage or BID millage. The foregoing references to ad valorem taxes shall be deemed to include any other municipal or county taxes, or other municipal or county fees or charges in the nature of or in lieu of taxes, that may hereafter be levied or imposed on the Company with respect to real property and tangible personal property comprising the Project, in lieu of or in substitution for the aforesaid taxes and which are levied or imposed for general municipal or county purposes or shall be available for the City’s general fund, but not including stormwater or garbage fees or assessments.

By April 1 of each calendar year, commencing April 1 of the Initial Year and ending April 1 of the Final Year, Company shall give written notice to the City of the amount of county ad valorem taxes paid during the preceding twelve (12) month period ending April 1, quantified by real property and

tangible personal property amounts. If, by April 1 of any year, the Company has failed to give notice of taxes paid during the preceding twelve (12) month period, the Company shall not be eligible for a REV Grant payment for that year. Provided, however, that if the Company provides timely notice in future years, the Company shall be eligible for a REV Grant payment based on the Annual Projected Revenues in such future year's notice.

Except as provided below, within thirty (30) days of receipt of said notice, the City shall provide Company with a calculation as to the annual REV Grant. If the Company does not give written notice to the City of its objection to the City's calculation within thirty (30) days after its receipt thereof, the City's calculation shall be considered acceptable. Except as provided below, the City shall make payment of the REV Grant by the later of May 15th of each calendar year or thirty (30) days after City's receipt of notification by the Company that it is in agreement with the City's annual calculation. In the event of a disagreement as to the calculation, the City shall make payment of the amount not in dispute and the parties shall negotiate in good faith any disputed amount.

The foregoing dates for the City to provide the REV Grant calculation and make the REV Grant payment shall be extended if on either of such dates the Company has a pending proceeding before the City Value Adjustment Board, Circuit Court, or otherwise that could change the amount of the Annual Project Revenues that Company was obligated to pay for that tax year and upon which the REV Grant payment would be based. In that event, the date that the City is required to provide the REV Grant calculation to Company shall be extended until 30 days after the date that Company notifies the City that any such proceeding has been finally resolved (including any appeals) and any adjustment to the Annual Project Revenues for that tax year has been made and paid. Such notice shall include (i) a copy of any final order or final judgment or other evidence of the resolution of such proceeding that sets forth any change to the assessed value of the Property upon which the Annual Project Revenues are based for that tax year, and (ii) the amount of the adjusted Annual Project Revenues paid by the Company.

4.4 **Non-Foreign Entity Affidavit.** Notwithstanding anything in this Agreement to the contrary, as a condition precedent to the City's obligations under this Agreement including any obligation to pay any portion of the REV Grant to the Grantee, the Grantee shall have provided to the City an executed and notarized non-foreign entity affidavit in form and substance satisfactory to the City and substantially in the form attached as **Exhibit E** hereto.

4.5 **Further disclaimer.**

The REV Grant shall not be deemed to constitute a debt, liability, or obligation of the City or of the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City or of the State of Florida or any political subdivision thereof, but shall be payable solely from the funds provided therefor in this Article 4. The City shall not be obligated to pay the REV Grant or any installment thereof except from the non-ad valorem revenues or other legally available funds provided for that purpose, and neither the faith and credit nor the taxing power of the City or of the State of Florida or any political subdivision thereof is pledged to the payment of the REV Grant or any installment thereof. The Company, or any person, firm or entity claiming by, through or under the Company, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power of the City or of the State of Florida or any political subdivision thereof for the payment of the REV Grant or any installment of either.

Article 5.
PHASE ONE COMPLETION GRANT

5.1 Phase One Completion Grant; Amount.

The Company shall be eligible for a Phase One Completion Grant (“Phase One Completion Grant”) in the maximum amount of \$2,000,000 payable upon Substantial Completion of the Phase One Improvements in accordance with the terms of this Agreement. The City’s obligation to disburse the Phase One Completion Grant is subject to the terms and conditions of this Agreement and satisfaction of the Phase One Completion Grant Disbursement Conditions (defined below).

5.2 Disbursement of Phase One Completion Grant.

The City’s obligation to make the disbursement of the Phase One Completion Grant is conditioned in part upon satisfaction of each of the following conditions precedent (collectively, the “Phase One Completion Grant Disbursement Conditions”):

(a) The Phase One Improvements shall have been Substantially Completed in accordance the terms and conditions of this Agreement, including the Performance Schedule, as verified by a final inspection report satisfactory to the City, certifying that the Phase One Improvements have been Substantially Completed in a good and workmanlike manner in accordance with this Agreement and are in satisfactory condition. The Company shall furnish to the City a certificate of occupancy and certificate of substantial completion issued by the general contractor and verified by the architect of record establishing that the Phase One Improvements have been Substantially Completed and are not subject to any material violations or uncorrected conditions noted or filed in any City department.

(b) All property taxes on the Phase One Parcel must be current (i.e., any property taxes then due and payable shall have been paid).

(c) No Event of Default with respect to Company’s obligations under this Agreement shall have occurred and be continuing (provided, however, that, upon the occurrence of an event which, with the giving of notice or the passage of time, or both, would constitute a Company Event of Default with respect to Company’s obligations under this Agreement, the City may withhold any portion of the Phase One Completion Grant immediately upon such occurrence and throughout any notice or cure period until such default is cured, and following the cure of such default shall disburse such withheld portion).

(d) The Company shall have submitted to the City a contractor's final affidavit and full and complete releases of liens from the general contractor, and each applicable subcontractor and supplier, or other proof satisfactory to the City, confirming that final payment has been made for all materials supplied and labor furnished in connection with the construction of the Phase One Improvements, or that, in the event of a dispute in any amount owed, such amount has been properly bonded off pursuant to Florida law so that it will not become a lien on the Phase One Parcel.

(e) The Company shall have submitted to the City a written application for the disbursement of the Phase One Completion Grant pursuant to a disbursement request in the form attached hereto as **Exhibit F** (the “Disbursement Request”). The Disbursement Request shall only be made after Substantial Completion of the Phase One Improvements and the satisfaction of all other conditions to the disbursement of the Phase One Completion Grant. The Disbursement Request shall be accompanied by the following

supporting data: (i) invoices, waivers of mechanic's and materialmen's liens obtained for payments made by Company on account of direct costs for the Phase One Improvements as of the date of the Disbursement Request, and (ii) AIA Forms G702 and G703 certified by the general contractor and architect of record for the completed Phase One Improvements. The Disbursement Request shall constitute a representation by Company that the Phase One Improvements are Substantially Completed in accordance with the Plans and Specifications; that the work and materials for which payment is requested have been physically incorporated into the Phase One Improvements; that the value is as stated; that the Phase One Improvements and materials conform with all applicable rules and regulations of the public authorities having jurisdiction; that such Disbursement Request is consistent with the then current Budget; and that no Company Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute a Company Event of Default has occurred and is continuing.

(f) Company shall take all action necessary to have any mechanic's and materialmen's liens, judgment liens or other liens or encumbrances filed against the Phase One Parcel (other than any consensual mortgage) released or transferred to bond within ten days of the date Company receives notice of the filing of such liens or encumbrances. If any such lien or encumbrance is filed, the City shall not be required to make any disbursement of the Phase One Completion Grant funds until such lien or encumbrance is bonded over or removed and the City receives a copy of the recorded release. The City shall not be obligated to disburse any of the Phase One Completion Grant funds to Company if, in the reasonable opinion of the City, any such disbursement or the Phase One Improvements or Phase One Parcel would be subject to a mechanic's or materialmen's lien or any other lien or encumbrance other than inchoate construction liens. Company shall be fully and solely responsible for compliance in all respects whatsoever with the applicable mechanic's and materialmen's lien laws.

(g) Company shall have provided to the City the duly executed the non-foreign entity affidavit attached hereto as **Exhibit E**.

(h) The Company shall have provided to the City, in form and substance reasonably satisfactory to the City, any such other document, instrument, information, agreement or certificate the City may reasonably require related to the construction or completion of the Phase One Improvements and any component thereof.

5.3 **No Warranty by City.**

Nothing contained in this Agreement or any other document attached hereto or contemplated hereby shall constitute or create any duty on or warranty by City regarding: (a) the accuracy or reasonableness of the Project budgets; (b) the feasibility or quality of the construction documents for the Project; (c) the proper application by the Company of the Phase One Completion Grant funds; (d) the quality or condition of the work; or (e) the competence or qualifications of any third party furnishing services, labor or materials in connection with the construction of the Project. Company acknowledges that it has not relied and will not rely upon any experience, awareness or expertise of the City or any City inspector, regarding the aforesaid matters.

5.4 **Further Disclaimer.**

The Phase One Completion Grant shall not be deemed to constitute a debt, liability, or obligation of the City or of the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City or of

the State of Florida or any political subdivision thereof, but shall be payable solely from the funds provided therefor in this **Article 5**. The City shall not be obligated to pay the Phase One Completion Grant or any installment thereof except from the non-ad valorem revenues or other legally available funds provided for that purpose, and neither the faith and credit nor the taxing power of the City or of the State of Florida or any political subdivision thereof is pledged to the payment of the Phase One Completion Grant or any installment thereof. The Company, and any person, firm or entity claiming by, through or under the Company, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power of the City or of the State of Florida or any political subdivision thereof for the payment of the Phase One Completion Grant or any installment thereof.

Article 6.
PHASE TWO COMPLETION GRANT

6.1 Phase Two Completion Grant; Amount.

The Company shall be eligible for a for a Phase Two Completion Grant (“Phase Two Completion Grant”) in the maximum, aggregate amount of \$2,000,000, payable in two tranches of \$1,000,000 upon Substantial Completion of each of the Bunker Building Improvements and the Phoenix Building Improvements in accordance with the terms of this Agreement. The City’s obligation to disburse the Phase Two Completion Grant is subject to the terms and conditions of this Agreement and satisfaction of the Phase Two Completion Grant Disbursement Conditions (defined below).

6.2 Disbursement of Phase Two Completion Grant.

The City’s obligation to make each disbursement of the Phase Two Completion Grant is conditioned in part upon satisfaction of each of the following conditions precedent (collectively, the “Phase Two Completion Grant Disbursement Conditions”):

(a) The Bunker Building Improvements or the Phoenix Building Improvements, as applicable, shall have been Substantially Completed in accordance the terms and conditions of this Agreement, including the Performance Schedule, as verified by a final inspection report satisfactory to the City, certifying that the such improvements has been Substantially Completed in a good and workmanlike manner in accordance with this Agreement and are in satisfactory condition. The Company shall furnish to the City a certificate of occupancy and certificate of substantial completion issued by the general contractor and verified by the architect of record establishing that the Bunker Building Improvements or the Phoenix Building Improvements, as applicable, have been Substantially Completed and are not subject to any material violations or uncorrected conditions noted or filed in any City department.

(b) All property taxes on the Phase Two Parcel must be current (i.e., any property taxes then due and payable shall have been paid).

(c) No Event of Default with respect to Company’s obligations under this Agreement shall have occurred and be continuing (provided, however, that, upon the occurrence of an event which, with the giving of notice or the passage of time, or both, would constitute a Company Event of Default with respect to Company’s obligations under this Agreement, the City may withhold any portion of the Phase Two Completion Grant immediately upon such occurrence and throughout any notice or cure period until such default is cured, and following the cure of such default shall disburse such withheld portion).

(d) The Company shall have submitted to the City a contractor's final affidavit and full and complete releases of liens from the general contractor, and each applicable subcontractor and supplier, or other proof satisfactory to the City, confirming that final payment has been made for all materials supplied and labor furnished in connection with the construction of the Bunker Building Improvements or the Phoenix Building Improvements, as applicable, or that, in the event of a dispute in any amount owed, such amount has been properly bonded off pursuant to Florida law so that it will not become a lien on the Phase Two Parcel.

(e) The Company shall have submitted to the City a written application for the disbursement of the applicable portion of the Phase Two Completion Grant pursuant to a disbursement request in the form attached hereto as **Exhibit F** (the "Disbursement Request"). The Disbursement Request shall only be made after Substantial Completion of the Bunker Building Improvements or the Phoenix Building Improvements, as applicable, and the satisfaction of all other conditions to the disbursement of the Phase Two Completion Grant. The Disbursement Request shall be accompanied by the following supporting data: (i) invoices, waivers of mechanic's and materialmen's liens obtained for payments made by Company on account of Direct Costs for the Bunker Building Improvements or the Phoenix Building Improvements, as applicable, as of the date of the Disbursement Request, and (ii) AIA Forms G702 and G703 certified by the general contractor and architect of record for the completed Bunker Building Improvements or the Phoenix Building Improvements, as applicable. The Disbursement Request shall constitute a representation by Company that the Bunker Building Improvements or the Phoenix Building Improvements, as applicable, are Substantially Completed in accordance with the Plans and Specifications; that the work and materials for which payment is requested have been physically incorporated into the Phase Two Improvements; that the value is as stated; that the Bunker Building Improvements or the Phoenix Building Improvements, as applicable, and materials conform with all applicable rules and regulations of the public authorities having jurisdiction; that such Disbursement Request is consistent with the then current Budget; and that no Company Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute a Company Event of Default has occurred and is continuing.

(f) Company shall take all action necessary to have any mechanic's and materialmen's liens, judgment liens or other liens or encumbrances filed against the Phase Two Parcel (other than any consensual mortgage) released or transferred to bond within ten days of the date Company receives notice of the filing of such liens or encumbrances. If any such lien or encumbrance is filed, the City shall not be required to make any disbursement of the Phase Two Completion Grant funds until such lien or encumbrance is bonded over or removed and the City receives a copy of the recorded release. The City shall not be obligated to disburse any of the Phase Two Completion Grant funds to Company if, in the reasonable opinion of the City, any such disbursement or the Phase Two Improvements or Phase Two Parcel would be subject to a mechanic's or materialmen's lien or any other lien or encumbrance other than inchoate construction liens. Company shall be fully and solely responsible for compliance in all respects whatsoever with the applicable mechanic's and materialmen's lien laws.

(g) The Company shall have provided to the City, in form and substance reasonably satisfactory to the City, any such other document, instrument, information, agreement or certificate the City may reasonably require related to the construction or completion of the Phase Two Improvements and any component thereof.

6.3 No Warranty by City.

Nothing contained in this Agreement or any other document attached hereto or contemplated hereby shall constitute or create any duty on or warranty by City regarding: (a) the accuracy or reasonableness of the Project budgets; (b) the feasibility or quality of the construction documents for the Project; (c) the proper application by the Company of the Phase Two Completion Grant funds; (d) the quality or condition of the work; or (e) the competence or qualifications of any third party furnishing services, labor or materials in connection with the construction of the Project. Company acknowledges that it has not relied and will not rely upon any experience, awareness or expertise of the City or any City inspector, regarding the aforesaid matters.

6.4 Further Disclaimer.

The Phase Two Completion Grant shall not be deemed to constitute a debt, liability, or obligation of the City or of the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City or of the State of Florida or any political subdivision thereof, but shall be payable solely from the funds provided therefor in this **Article 6**. The City shall not be obligated to pay the Phase Two Completion Grant or any installment thereof except from the non-ad valorem revenues or other legally available funds provided for that purpose, and neither the faith and credit nor the taxing power of the City or of the State of Florida or any political subdivision thereof is pledged to the payment of the Phase Two Completion Grant or any installment thereof. The Company, and any person, firm or entity claiming by, through or under the Company, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power of the City or of the State of Florida or any political subdivision thereof for the payment of the Phase Two Completion Grant or any installment thereof.

**Article 7.
THE DEVELOPMENT**

7.1 Scope of Development.

(a) The Company shall construct and install, or cause to be constructed and installed, the Improvements and tangible personal property in accordance with the terms and conditions of this Agreement.

(b) The Company shall construct and install all Improvements and tangible personal property in accordance with all applicable building and permitting codes.

7.2 Cost of Development.

Except as otherwise set forth in this Agreement, the Company shall pay at its sole cost and expense the cost of the Improvements, including, without limitation, all costs associated with construction and renovation of the Project Parcel and purchase of tangible personal property at no cost to the City.

7.3 Approval by Other Governmental Agencies.

All of the parties' respective rights and obligations under this Agreement are subject to and conditioned upon approval of the Project and all Project Documents by such other governmental agencies, whether state, local or federal, as have jurisdiction and may be required or entitled to approve them.

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Notwithstanding any provision of this Agreement to the contrary, the City does not guarantee approval of this Agreement or any aspect of the Project by any government authorities and agencies that are independent of the City.

7.4 Authority of OED to Monitor Compliance.

During all periods of purchase and installation of the Improvements and tangible personal property (machinery and equipment), the Economic Development Officer of the OED and the City's Director of Planning and Development shall have the authority to monitor compliance by the Company with the provisions of this Agreement and the Project Documents. Insofar as practicable, the OED shall coordinate such monitoring and supervising activity with those undertaken by the City so as to minimize duplicate activity. To that end, during the period of installation and with prior notice to the Company, representatives of the City shall have the right of access to the Project Parcel and to every structure on the Project Parcel during normal business hours.

7.5 Timing of Completion.

The purchase and installation of all Improvements and tangible personal property (machinery and equipment), shall be completed in accordance with the terms of the Performance Schedule.

7.6 Construction and Operation Management.

Except as otherwise expressly provided herein, the Company shall have discretion and control, free from interference, interruption or disturbance, in all matters relating to the management, development, redevelopment, construction and operation of the Project, provided that the same shall, in any event, conform to and comply with the terms and conditions of this Agreement, and all applicable state and local laws, ordinances and regulations (including without limitation, applicable zoning, subdivision, building and fire codes). The Company's discretion, control and authority with respect thereto shall include, without limitation, the following matters:

- (a) the construction and design of the Project, subject to the express terms and conditions of this Agreement;
- (b) the selection, approval, hiring and discharge of engineers, architects, contractors, subcontractors, professionals and other third parties (collectively the "Vendors") on such terms and conditions as the Company deems appropriate; provided however, that to the extent that the City furnishes to the Company the names and identities of Jacksonville-based Vendors, including without limitation Jacksonville-based minority Vendors, and to the extent that Company has the need to enter into contracts with Vendors outside of persons employed by Company or companies affiliated with or controlled by Company or its principals, then Company agrees to include all such Jacksonville-based Vendors in the process established by Company for obtaining bids for any of the Improvements;
- (c) the negotiation and execution of contracts, agreements, easements and other documents with third parties, in form and substance satisfactory to Company; and
- (d) the preparation of such budgets, cost estimates, financial projections, statements, information, and reports as the Company deems appropriate.

Article 8.
JSEB PROGRAM

8.1 Jacksonville Small and Emerging Businesses (JSEB) Program.

The Company, in further recognition of and consideration for the public funds provided to assist the Company pursuant to this Agreement, hereby acknowledges the importance of affording to small and emerging vendors and contractors the full and reasonable opportunity to provide materials and services. Therefore, the Company hereby agrees as follows:

(a) The Company shall obtain from the City's Procurement Division the list of certified Jacksonville Small and Emerging Businesses ("JSEB"), and shall exercise good faith, in accordance with Municipal Ordinance Code Sections 126.608 et seq., to enter into contracts with City certified JSEBs to provide materials or services in an aggregate amount of not less than \$800,000, which amount represents 20% of the City's maximum contribution to the Phase One and Phase Two Completion Grants associated with the Project with respect to the development activities or operations of the Project over the term of this Agreement.

(b) The Company shall submit a JSEB report regarding the Company's actual use of City certified JSEBs upon Completion of Construction. The form of the report to be used for the purposes of this section is attached hereto as Exhibit C (the "JSEB REPORTING FORM").

Article 9.
REPORTING; SITE VISITS

9.1 Reporting.

On an annual basis, and prior to March 1 each year this Agreement is in effect, the Company shall submit reports to the OED regarding all activities affecting the implementation of this Agreement, including a narrative summary of progress on the Project. Samples of the general forms of these reports are attached hereto as Exhibit D (the "Annual Survey"); however the City reserves the right to request specific data that may vary from the forms attached. Company shall also submit to the City its notice of ad valorem taxes paid as set forth in Section 4.3 hereof.

The Company's obligation to submit such reports shall continue until the Company has complied with all of the terms of this Agreement concerning the Project, the associated employment, and the REV Grant.

Within thirty (30) days following the request of the City, the Company shall provide the City with additional information requested by the City.

9.2 Site Visits.

For so long as City has any payment obligations to Company pursuant to this Agreement, Company shall permit representatives from the City's OED and other designated City personnel, to monitor compliance by Company with the provisions of this Agreement. With prior notice to Company, representatives of City shall have the right to tour the Project and access Company's records and employees related to the Project and this Agreement, during normal business hours, provided, however, that Company shall have the right to have a representative of Company present during any such inspection.

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Article 10.
DEFAULTS AND REMEDIES

10.1 General.

A default shall consist of the breach of any covenant, agreement, representation, provision, or warranty contained in (i) this Agreement (including, but not limited to, any failure to meet the reporting requirements described herein), (ii) the documents executed in connection with the Agreement and any other agreement between the City and the Company related to the Project, or (iii) any document provided to the City relating to the Project (collectively, the “Documents”). A default shall also exist if any event occurs or information becomes known which, in the reasonable judgment of the City, makes untrue, incorrect or misleading in any material respect any statement or information contained in any of the documents described in clauses (i) – (iii) above or causes such document to contain an untrue, incorrect or misleading statement of material fact or to omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

If any such default or breach occurs under this Agreement, the City may refuse to pay any portion of the REV Grant and additionally, may at any time or from time to time proceed to protect and enforce all rights available to the City under this Agreement by suit in equity, action at law or by any other appropriate proceeding whether for specific performance of any covenant or agreement contained in this Agreement, or damages, or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations, including, but not limited to, terminating this Agreement. The City shall not act upon a default until it has given the Company written notice of the default and fifteen (15) business days within which to cure the default; provided, however, that the City may withhold any portion of the REV Grant immediately upon the occurrence of a default and throughout any notice or cure period. However, if any default cannot reasonably be cured within the initial fifteen (15) business days, Company shall have a total of forty-five (45) days in which to cure such default, so long as Company has commenced and is diligently proceeding to cure such default within the initial fifteen (15) day period. Notwithstanding the foregoing, Company shall immediately and automatically be in default, and the City shall not be required to give Company any notice or opportunity to cure such default (and thus the City shall immediately be entitled to act upon such default), upon the occurrence of any of the following:

(a) The entry of a decree or order by a court having jurisdiction in the premises adjudging the Company or any guarantor (“Guarantor”) of Company’s obligations hereunder or under the Documents, a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or Guarantor under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, custodian, assignee, or sequestrator (or other similar official) of the Company or Guarantor or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days; and

(b) The institution by Company or Guarantor of proceedings to be adjudicated as bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the United States Bankruptcy Code or any other similar applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, custodian, assignee, trustee or sequestrator (or other similar official) of the Company or Guarantor or of any substantial part of its property, or the

making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due.

10.2 **Specific Defaults.**

Additionally, for any of the specific events of default described in this Section 10.2 below, the parties agree that the City's damages recoverable from the Company shall include, but not be limited to, the following:

(a) In the event reporting requirements are not met in the time period specified in Article 9 of this Agreement, the City will be entitled to withhold all disbursements of the REV Grant for any year during which any reporting requirements are not met.

(b) If the Company fails to demonstrate Capital Investment of at least \$37,941,500 of private funding in the Improvements, as determined by the OED in its reasonable discretion, as of the Substantial Completion deadline for the Phase Two Improvements in accordance with the Performance Schedule, the REV Grant will be proportionately reduced. For example, a ten percent (10%) Capital Investment shortfall would result in a 10% reduction in the maximum REV Grant. In the event the Company fails to demonstrate Capital Investment of at least \$30,353,200 of private funding in the Project as of the Substantial Completion deadline for the Phase Two Improvements in accordance with Performance Schedule, the REV Grant will be terminated and the Company will repay the City the entire amount of the REV Grant, if any.

(c) If the Company fails to demonstrate Capital Investment of at least \$14,000,000 of private funding in the Phase One Improvements, as determined by the OED in its reasonable discretion, as of the Substantial Completion deadline for the Phase One Improvements in accordance with the Performance Schedule, the Phase One Completion Grant will be proportionately reduced. For example, a ten percent (10%) Capital Investment shortfall would result in a 10% reduction in the maximum Phase One Completion Grant.

(d) If the Company fails to demonstrate Capital Investment of at least \$23,000,000 of private funding in the Phase Two Improvements, as determined by the OED in its reasonable discretion, as of the Substantial Completion deadline for the Phase Two Improvements in accordance with the Performance Schedule the Phase Two Completion Grant will be proportionately reduced. For example, a ten percent (10%) Capital Investment shortfall would result in a 10% reduction in the maximum Phase Two Completion Grant. In the event of a proportionate reduction of greater than fifty percent (50%), the Company will repay the City any amount previously paid to the Company for the Phase Two Completion Grant that is in excess of the calculated proportionate reduction.

Article 11.

ANTI-SPECULATION AND ASSIGNMENT PROVISIONS

11.1 **Purpose.**

The Company represents and agrees that its undertakings pursuant to this Agreement are for the purpose of developing the Project Parcel pursuant to this Agreement, and not for speculation in land holding. The Company further recognizes, in view of the importance of the development of the Project Parcel to the general health and welfare of the City and that the qualifications, financial strength and

identity of the principal shareholders and executive officers of the Company are of particular concern to the City.

11.2 Assignment; Limitation on Conveyance. /

The Company agrees that, until the substantial completion of the Project, without the prior written consent of the City, (i) neither the Company nor its Affiliate shall assign, transfer or convey the Project or any portion thereof, (ii) neither the Company nor its Affiliate shall assign, transfer or convey the Project Parcel, or any portion thereof, or any lease thereof, (iii) the Company shall not assign, transfer or convey this Agreement or any provision hereof, and (iv) no controlling interest in the Company or any Affiliate owning or leasing any portion of the Project Parcel shall be assigned, transferred or conveyed. If any such prohibited assignment, transfer or conveyance is made without the express written consent of the City, the obligation of the City to pay any further amounts of the REV Grant under this Agreement shall immediately terminate. Notwithstanding the foregoing, assignments, transfers or conveyances of the Project or any portion thereof shall be permitted between and among the Company and its Affiliates without the prior written consent of the City, provided that, within ten (10) days of such assignment, transfer or conveyance, the Company provides written notice to the City of the same along with a copy of all relevant documentation.

**Article 12.
GENERAL PROVISIONS**

12.1 Non-liability of City Officials.

No member, official or employee of the City shall be personally liable to the Company or to any Person with whom the Company shall have entered into any contract, or to any other Person, in the event of any default or breach by the City, or for any amount which may become due to the Company or any other Person under the terms of this Agreement.

12.2 Force Majeure.

No party to this Agreement shall be deemed in default hereunder where such a default is based on a delay in performance as a result of war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualty, acts of God, acts of public enemy, epidemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, severe weather and other acts or failures beyond the control or without the control of any party that can be shown to directly affect such performance (collectively, a "Force Majeure Event"); provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay and shall be proximately caused by such Force Majeure Event, and in no event shall any of the foregoing excuse any financial liability of a party.

In the event of any delay or nonperformance resulting from such causes, the party affected shall notify the other in writing within seven (7) calendar days of the Force Majeure Event. Such written notice shall describe the nature, cause, date of commencement, and the anticipated impact of such delay or

nonperformance, shall indicate the extent, if any, to which it is anticipated that any delivery or completion dates will be thereby affected, and shall describe the actions taken to minimize the impact thereof.

12.3 **Offset.**

City shall have the right to offset any amount owed by Company under or in connection with this Agreement against any payments owed by City under this Agreement. Such offsets shall be in addition to any other rights or remedies available under this Agreement and applicable law.

12.4 **Notices.**

All notices to be given hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or delivered by an air courier service utilizing return receipts to the parties at the following addresses (or to such other or further addresses as the parties may designate by like notice similarly sent) and such notices shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail if sent by registered or certified mail, or the date actually received if sent by personal delivery or air courier service, except that notice of a change in address shall be effective only upon receipt.

(a) the City:

Economic Development Officer
Office of Economic Development
117 West Duval Street, Suite 275
Jacksonville, Florida 32202

With a copy to:

City of Jacksonville
Office of the General Counsel
City Hall-St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

(b) The Company:

FOC QOF, LLC

Attn: _____

12.5 **Time.**

Time is of the essence in the performance by any party of its obligations hereunder.

12.6 Entire Agreement.

This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

12.7 Amendment.

This Agreement may be amended by the parties hereto only upon the execution of a written amendment or modification signed by the parties. Notwithstanding the foregoing, the Economic Development Officer of the OED is authorized on behalf of the City to approve, in his or her sole discretion, any “technical” changes to this Agreement. Such “technical” changes include without limitation non-material modifications to legal descriptions and surveys, ingress and egress, easements and rights of way, performance schedules (provided that no performance schedule may be extended for more than one year without Council approval), and design standards, as long as such modifications do not involve any increased financial obligation or liability to the City.

12.8 Waivers.

Except as otherwise provided herein, all waivers, amendments or modifications of this Agreement must be in writing and signed by all parties. Any failures or delays by any party in insisting upon strict performance of the provisions hereof or asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any other party.

12.9 Indemnification.

Company shall indemnify, hold harmless and defend the City from and against, without limitation, any loss, claim, suit, action, damage, injury, liability, fine, penalty, cost, and expense of whatsoever kind or nature (including without limitation court, investigation and defense costs and reasonable expert and attorneys’ fees and costs) related to any suits and actions of any kind brought against the City or other damages or losses incurred or sustained, or claimed to have been incurred or sustained, by any person or persons arising out of or in connection with: (i) any breach of any representation or warranty of Company contained or provided in connection with this Agreement; (ii) any breach or violation of any covenant or other obligation or duty of Company under this Agreement or under applicable law; (iii) any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of Company or those under its control that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to Company’s performance under this Agreement or relating to the Project, except to the extent caused by the sole negligence of the City. Nothing contained in this paragraph shall be construed as a waiver, expansion or alteration of the City’s sovereign immunity beyond the limitations stated in Section 768.28, Florida Statutes.

This indemnification shall survive the expiration or termination (for any reason) of this Agreement and remain in full force and effect. The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to this Agreement

or otherwise. The term “City” as used in this Section 12.9 shall include all City’s members, officers, officials, employees and agents.

12.10 Severability.

The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect any other provisions of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

12.11 Compliance with State and Other Laws.

In the performance of this Agreement, the Company must comply with any and all applicable federal, state and local laws, rules and regulations, as the same exist and may be amended from time to time. Such laws, rules and regulations include, but are not limited to, Chapter 119, Florida Statutes (the Public Records Act) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

12.12 Non-Discrimination Provisions.

In conformity with the requirements of Section 126.404, *Ordinance Code*, the Company represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employment relations, throughout the term of this Agreement. The Company agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Human Rights Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Chapter 126, Part 4 of the *Ordinance Code*, *provided however*, that the Company shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written. The Company agrees that, if any of its obligations to be provided pursuant to this Agreement are to be performed by a subcontractor, the provisions of this Section 11.12 shall be incorporated into and become a part of the subcontract.

12.13 Contingent Fees Prohibited.

In conformity with Section 126.306, *Ordinance Code*, the Company warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Company, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Company, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of these provisions, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

12.14 **Ethics.**

The Company represents that it has reviewed the provisions of the Jacksonville Ethics Code, as codified in Chapter 602, *Ordinance Code*, and the provisions of the Jacksonville Purchasing Code, as codified in Chapter 126, *Ordinance Code*.

12.15 **Conflict of Interest.**

The parties will follow the provisions of Section 126.110, *Ordinance Code* with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with the City, to the extent the parties are aware of the same.

12.16 **Public Entity Crimes Notice.**

In conformity with the requirements of Section 126.104, *Ordinance Code* and Section 287.133, Florida Statutes, the Parties agree as follows:

The parties are aware and understand that a person or affiliate who has been placed on the State of Florida Convicted Vendor List, following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity, in excess of \$35,000.00, for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

12.17 **Survival.**

Any obligations and duties that by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and remain in effect. Without limiting the foregoing, all obligations for the payment of fees or other sums accruing up to the expiration or termination of this Agreement and all provisions relating to the City's right to conduct an audit shall survive the expiration or termination of this Agreement.

12.18 **Incorporation by Reference.**

All exhibits and other attachments to this Agreement that are referenced in this Agreement are by this reference made a part hereof and are incorporated herein.

12.19 **Order of Precedence.**

In the event of any conflict between or among the provisions of this Agreement and those of any exhibit attached hereto or of any amendment, the priority, in decreasing order of precedence shall be: 1) any fully executed amendment; 2) provisions in this Agreement; and 3) exhibits to this Agreement.

12.20 **Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

12.21 **Independent Contractor.**

In the performance of this Agreement, the Company will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or association of the City. The Company and its employees or agents shall be solely responsible for the means, method, technique, sequences and procedures utilized by the Company in the performance of this Agreement.

12.22 **Retention of Records/Audit**

The Company agrees:

(a) To establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by the City under this Agreement.

(b) To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of six (6) years after completion of the date of final payment by the City under this Agreement, including auditable records pertaining to jobs filled by third-party employers. If an audit has been initiated and audit findings have not been resolved at the end of six (6) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement, at no additional cost to the City.

(c) Upon demand, at no additional cost to the City, to facilitate the duplication and transfer of any records or documents in its possession or control which pertain to the Agreement and the Project (collectively, "Project Records") during the required retention period.

(d) To assure that these Project Records shall be subject at all reasonable times, upon reasonable notice, to inspection, review, copying, or audit by personnel duly authorized by the City, including but not limited to the City Council auditors. All such inspections are to be performed so as not to unreasonably disrupt or interfere with the normal business operations of the Company.

(e) To ensure that all related party transactions with respect to the Project are disclosed to the City.

(f) To include the aforementioned audit, inspections, investigations and record keeping requirements in all subcontracts and assignments of this Agreement.

(g) Upon reasonable notice, to permit persons duly authorized by the City, including but not limited to the City Council auditors, to inspect and copy any Project Records, facilities, goods and services of the Company which are relevant to this Agreement, and to interview any employees and subcontractor employees of the Company to assure the City of the satisfactory performance of the terms and conditions of this Agreement; provided, that such inspections and interviews shall be performed so as to not unreasonably disrupt or interfere with the normal business operations of the Company and the Company shall have the right to have a representative present during any such inspections and interviews. Following such review, the City will deliver to the Company a written report of its findings and request for development by the Company of a corrective action plan where appropriate. The Company hereby agrees to timely correct all deficiencies identified in the corrective action plan.

(h) If the result of any audit by the City establishes that the number of New Jobs or amount of private capital investment has been overstated by five percent (5%) or more, the entire expense of the audit shall be borne by the Company.

(i) Additional monies due as a result of any audit or annual reconciliation shall be paid within thirty (30) days of date of the City's invoice.

(j) Should the annual reconciliation or any audit reveal that the Company has overstated the number of New Jobs or amount of private Capital Investment, and the Company does not make restitution within thirty (30) days from the date of receipt of written notice from the City, then, in addition to any other remedies available to the City, the City may terminate this Agreement, solely at its option, by written notice to the Company.

12.23 Non-merger.

None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Project Parcel.

12.24 Exemption of City.

Neither this Agreement nor the obligations imposed upon the City hereunder shall be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provisions requiring the City to levy ad valorem taxes nor a lien upon any properties of the City. Payment or disbursement by the City of any loan or grant amount hereunder is subject to the availability of lawfully appropriated funds. If funds are not available pursuant to a lawful appropriation thereof by the City Council, this Agreement shall be void and the City shall have no further obligations hereunder.

12.25 Parties to Agreement; Successors and Assigns.

This is an agreement solely between the City and Company. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any person not a party hereto. This Agreement shall be binding upon Company and Company's successors and assigns, and shall inure to the benefit of the City and its successors and assigns. However, except as permitted under Section 10.2 above, Company shall not assign, transfer or encumber its rights or obligations hereunder or under any document executed in connection herewith, without the prior written consent of the City, which consent may be withheld in the sole discretion of the City.

12.26 Venue; Applicable Law.

The rights, obligations and remedies of the parties specified under this Agreement shall be interpreted and governed in all respects by the laws of the State of Florida. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Duval County, Florida, or in the Federal District Court for the Middle District of Florida, Jacksonville Division. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement. Each party shall be responsible for the payment of its own attorneys' fees and costs incurred in connection with the enforcement of the terms of this Agreement.

12.27 Civil Rights.

The Company agrees to comply with all of the terms and requirements of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1968, as amended, and the antidiscrimination provisions of Chapter 126, Part 4, of the City Ordinance Code, and further agrees that in its operation under this Agreement it will not discriminate against anyone on the basis of race, color, age, disability, sex or national origin.

12.28 Further Assurances.

Company will, on request of the City,

(a) promptly correct any defect, error or omission herein or in any document executed in connection herewith (collectively the "Project Documents");

(b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Project Documents and to identify and subject to the liens of the Project Documents any property intended to be covered thereby, including any renewals, additions, substitutions replacements, or appurtenances to the subject property;

(c) execute, acknowledge, deliver, procure, file or record any documents or instruments deemed necessary, desirable or proper by the City to protect the liens or the security interest under the Project Documents against the rights or interests of third persons; and

(d) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Project Documents and this Agreement.

12.29 Exhibits.

In the event of a conflict between any provisions of this Agreement and any exhibit attached to or referenced in this Agreement, the provisions of this Agreement shall govern.

12.30 Construction.

All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Company further acknowledges that it has had ample time to review this Agreement and related documents with counsel of its choice. Any doubtful or ambiguous provisions contained herein shall not be construed against the party who drafted the Agreement. Captions and headings in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

12.31 Further Authorizations.

The parties acknowledge and agree that the Mayor of the City, or his designee, and the City's Corporation Secretary, or their respective designees, are hereby authorized to execute any and all other contracts and documents and otherwise take all necessary action in connection with this Agreement and the Resolution.

12.32 **Attorney's Fees.**

Each party shall be responsible for its own attorneys' fees and costs in connection with any legal action related to this Agreement.

[Signatures appear on the following pages.]

IN WITNESS WHEREOF, this Agreement is executed the day and year above written.

ATTEST:

CITY OF JACKSONVILLE

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Donna Deegan, Mayor

WITNESS:

FOC QOF, LLC

Print Name: _____

By: _____

Name: _____

Its: _____

Print Name: _____

Form Approved:

Office of the General Counsel

GC-#1626013-v4-PHX_- _JAX_EDA.DOCX

Encumbrance and funding information for internal City use:

Account or POA Number: _____

1Cloud Account for Certification of Funds	Amount

This above stated amount is the maximum fixed monetary amount of the foregoing Contract. It shall not be encumbered by the foregoing Contract. It shall be encumbered by one (1) or more subsequently issued purchase order(s) that must reference the foregoing Contract. All financial examinations and funds control checking will be made at the time such purchase order(s) are issued.

In accordance with Section 24.103(e), of the *Jacksonville Ordinance Code*, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Contract; provided however, this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance[s] shall be made by subsequent purchase order[s], as specified in said Contract.

Director of Finance
City Contract Number: _____

LIST OF EXHIBITS

- Exhibit A Description of the Project Parcel
- Exhibit B Improvements
- Exhibit C JSEB Reporting Form
- Exhibit D Annual Survey
- Exhibit E Non-Foreign Entity Affidavit
- Exhibit F Disbursement Request Form

Exhibit A
Description of Project Parcel

That certain real property located generally at 2320 and 2336 N. Liberty Street and 2303, 2335, 2402 Market Street, 2401 Hubbard Street, and the parcel located on the southwest corner of Market Street and 15th Street East, as identified by Real Estate Tax Parcels #044938-0005, 044911-0000, 044941-0010, 044942-0000, 044910-0000, 044912-0000, and 044941-0060, Jacksonville, Florida 32206.

Exhibit B Improvements

Company proposed to renovate seven (7) parcels of real property located within the City of Jacksonville in two (2) phases, as further detailed below. The Company intends to renovate the land and buildings located on each of the Phase One Project Parcel and Phase Two Project Parcel in two phases and, once developed, is expected to include restaurant improvements, artists' studios, co-working spaces, offices, retail and event space.

Phase One Improvements

Renovations and other interior and exterior improvements to the land and two buildings located at 2320 N. Liberty Street, 2336 N. Liberty Street, and 2335 Market Street. Improvements made for development of a breezeway connecting the Phase One Project Parcels may also be included in the capital investment for Phase One.

Phase Two Improvements

Renovations and other interior and exterior improvements to land and buildings located at 2402 Market Street and 2303 Market Street, 2401 Hubbard Street and the parcel located on the southwest corner of Market Street and 15th Street East, comprised of both the Bunker Building Improvements and the Phoenix Building Improvements, as described below:

- a) Phoenix Building Improvements: renovations and improvements to be made to the existing building and property located at 2303 Market Street.
- b) Bunker Building Improvements: renovations and improvements to be made to the existing building and property located at 2402 Market Street, 2401 Hubbard Street, and the parcel located on the southwest corner of Market Street and 15th Street East.

EXHIBIT D
Annual Survey 2024

Please complete the form below as it relates to the project for which you received City or State assistance. Should you have any questions, please call (904) 255-5447 or email OEDFinance@coj.net. Send completed form to: City of Jacksonville, Office of Economic Development, Finance and Compliance, 117 West Duval Street, Suite 275, Jacksonville, FL 32202, Fax: (904) 630-1019, Email: OEDFinance@COJ.NET

Company name: _____

Mailing Address: _____

Primary Contact Name: _____

Primary Contact Title: _____

Phone: _____ Email: _____

Signature: _____ Reporting Date: _____

As of 12/31/2024:

I. EMPLOYMENT INFORMATION

Number of Jobs at Project Site	[1]
Number of Jobs at Project Site before Project	[2]
Net New Jobs (subtract line [2] from line [1])	
Average Wage of New Employees (excluding benefits)	\$
Estimated cost of benefits as a percentage of Average Wage	%

II. CAPITAL INVESTMENT INFORMATION

Project Land Costs	[3] \$
Project Structure Costs	[4] \$
Project Equipment Costs	[5] \$
Other Costs	[6] \$
Total Project Costs (sum [3] through [6])	\$

III. ASSESSED PROPERTY VALUE

Assessed Value of Property In 2024 Duval County Property Tax Bill:	
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Exhibit E

NON-FOREIGN ENTITY AFFIDAVIT

STATE OF FLORIDA
COUNTY OF DUVAL

BEFORE ME, the undersigned authority, personally appeared _____, who being first duly sworn, on oath deposes and says under penalty of perjury that he/she is the _____ of _____, a _____ corporation (“Company”) who is or may be a recipient of certain economic incentives from CITY OF JACKSONVILLE, a political subdivision and municipal corporation of the State of Florida, including a REV Grant, and hereby attests, affirms and certifies that (i) I am duly authorized and empowered and have sufficient knowledge to execute and deliver this Affidavit, (ii) Company is not owned or controlled by the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic (collectively and individually, a “Foreign Country of Concern”), including any agency of or any other entity of significant control of such Foreign Country of Concern; where “controlled by” means having possession of the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise, and a person or entity that directly or indirectly has the right to vote 25 percent or more of the voting interests of the company or that is entitled to 25 percent or more of its profits is presumed to control the foreign entity; and (iii) Company is not an entity that is a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a Foreign Country of Concern, or a subsidiary of such entity. The undersigned does hereby execute this affidavit for the purpose of complying with the provisions of Section 288.007, Florida Statutes, Economic Incentives to Foreign Countries of Concern Prohibited.

DATED as of _____, 2024.

Print Name: _____

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 202_, by _____ as _____ of _____, a _____ corporation, on behalf of said corporation. Said individual [] is personally known to me or [] has produced _____ as identification.

Name: _____
NOTARY PUBLIC, State of Florida
Serial Number (if any) _____
My Commission Expires: _____

(SEAL)

**Exhibit F
Disbursement Request Form**

Name: _____ Request Number: _____
 Address: _____ Document Number: _____
 Phone: _____ Date Submitted: _____
 Tax ID #: _____

- | | | |
|----|-----------------------------------|----------|
| 1. | Amount of Maximum Grant: | \$ _____ |
| 2. | Grant funds disbursed to date: | \$ _____ |
| 3. | Amount Requested in this Draw: | \$ _____ |
| 4. | Remaining Balance of Grant Funds: | \$ _____ |

Disbursements will be provided upon completion of each Phase of the Project in accordance with the terms of the Agreement. Once the Phase is complete, a final inspection by the City must be performed. Upon receipt of such invoices, receipts, and/or contractor's affidavit, cancelled checks (or evidence that payment has cleared Company's banking account), and other documents required by the City evidencing that the costs and expenses were actually incurred and paid for by the Company and were expended on and pertain to the Improvements and/or other evidence (including without limitation site inspections and inspection reports) that may be required at the discretion of the City, the Company will be paid via a check or electronic payment from the City within fifteen (15) business days of OED's approval of the same.

COMPANY PAYMENT REQUEST

Property _____ Payment # _____ = _____ % Complete
 Address: _____

Company: _____ Amount Requested: \$ _____

Company: I hereby request an inspection to receive payment for the amount of \$ _____. I certify that I have satisfactorily completed the necessary Improvements to justify this request **and that all bills incurred for labor used and materials furnished in making said repairs and improvements have been paid in full to this date.**

Attached is a description of the work completed, copies of applicable permits, the amount of payment requested by work item and such invoices, receipts and/or contractor's affidavit, cancelled checks (or evidence that payment has cleared grantee's banking account), and other documents required by the City evidencing that the costs and expenses were actually incurred and paid for by the Grantee and were expended on and pertain to the Improvements.

Company Signature: _____ Date: _____