

## LEGISLATIVE FACT SHEET

DATE: 02/01/21

BT or RC No: \_\_\_\_\_  
(Administration & City Council Bills)

SPONSOR: Parks, Recreation and Community Services Department  
(Department/Division/Agency/Council Member)

Contact for all inquiries and presentations: Daryl Joseph

Provide Name: Daryl Joseph

Contact Number: 904-255-7903

Email Address: Djoseph@coj.net

**PURPOSE:** White Paper (Explain Why this legislation is necessary? Provide; Who, What, When, Where, How and the Impact.) Council Research will complete this form for Council introduced legislation and the Administration is responsible for all other legislation. (Minimum of 350 words - Maximum of 1 page.)

The Parks, Recreation and Community Services Department has been providing the maintenance for the "Public Improvements II" area with a combination of subcontractors and City maintenance personnel.

Per section 6.2 of the Redevelopment Agreement, "Upon conveyance of the Public Improvement II to the City, the City shall maintain the Public Improvements II, provided, however, that the City is authorized by this Agreement to enter into a maintenance agreement on terms mutually acceptable to Developer and the City, by which Developer shall maintain the Public Improvements II for and on behalf of the City. The Parks, Recreation and Community Services Department (PRCS) respectfully request approval for legislation to enter into a maintenance agreement with Liberty Point, LLC for the Public Improvements II, commonly referred to as Berkman Plaza.

**APPROPRIATION:** Total Amount Appropriated \$126,000.00 as follows:  
List the source name and provide Object and Subobject Numbers for each category listed below:

(Name of Fund as it will appear in title of legislation)

Name of Federal Funding Source(s)	From: _____	Amount: _____
	To: _____	Amount: _____
Name of State Funding Source(s):	From: _____	Amount: _____
	To: _____	Amount: _____
Name of City of Jacksonville Fundir	From: <u>RPCM011PG 03410// 00111-166105-534100-000000-00000000</u>	Amount: <u>\$126,000.00</u>
	To: _____	Amount: _____
Name of In-Kind Contribution(s):	From: _____	Amount: _____
	To: _____	Amount: _____
Name & Number of Bond	From: _____	Amount: _____

Account(s):	To:	Amount:
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**PLAIN LANGUAGE OF APPROPRIATION / FINANCIAL IMPACT / OTHER:**

Explain: Where are the funds coming from, going to, how will the funds be used? Does the funding require a match? Is the funding for a specific time frame? Will there be an ongoing maintenance? ... and staffing obligation? Per Chapters 122 & 106 regarding funding of anticipated post-construction operation costs.  
 (Minimum of 350 words - Maximum of 1 page.)

Parks, Recreation and Community Services Department has budgeted funds for the ongoing maintenance for various locations within Duval County. The annual appropriation will be contingent upon approval by City Council of the City Funds requested in the approved budget.

**ACTION ITEMS: Purpose / Check List. If "Yes" please provide detail by attaching justification, and code provisions for each.**

ACTION ITEMS:	Yes	No	
Emergency?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Justification of Emergency: If yes, explanation must include detailed nature of emergency. <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>
Federal or State Mandate?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Explanation: If yes, explanation must include detailed nature of mandate including Statute or Provision. <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>
Fiscal Year Carryover?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Note: If yes, note must include explanation of all-year subfund carryover language. <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>
CIP Amendment?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Attachment: If yes, attach appropriate CIP form(s). Include justification for mid-year amendment.
Contract / Agreement Approval?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Attachment & Explanation: If yes, attach the Contract / Agreement and name of Department (and contact name) that will provide oversight. Indicate if negotiations are on-going and with whom. Has OGC reviewed / drafted? <div style="border: 1px solid black; padding: 5px; margin-top: 5px;">Parks, Recreation and Community Services Department, Kieth Meyerl. OGC ha</div>
Related RC/BT?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Attachment: If yes, attach appropriate RC/BT form(s).
Waiver of Code?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Code Reference: If yes, identify code section(s) in box below and provide detailed explanation (including impacts) within white paper. <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>
Code Exception?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Code Reference: If yes, identify code in box below and provide detailed explanation (including impacts) within white paper. <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>
Related Enacted Ordinances?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Code Reference: If yes, identify related code section(s) and ordinance reference number in the box below and provide detailed explanation and any changes necessary within white paper. <div style="border: 1px solid black; padding: 5px; margin-top: 5px;">Ord 81-891-352, 1999-511, 2006-716</div>

**ACTION ITEMS CONTINUED: Purpose / Check List. If "Yes" please provide detail by attaching justification, and code provisions for each.**

**ACTION ITEMS:**

	Yes	No
Continuation of Grant?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

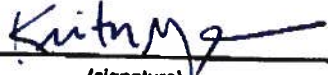
Explanation: How will the funds be used? Does the funding require a match? Is the funding for a specific time frame and/or multi-year? If multi-year, note year of grant? Are there long-term implications for the General Fund?

Surplus Property Certification?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Attachment: If yes, attach appropriate form(s).

Reporting Requirements?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Explanation: List agencies (including City Council / Auditor) to receive reports and frequency of reports, including when reports are due. Provide Department (include contact name and telephone number) responsible for

Division Chief: Kieth Meyer   
(signature)

Date: 2/2/21

Prepared By: Renee Harriman   
(signature)

Date: 2/2/21

**ADMINISTRATIVE TRANSMITTAL**

To: MBRC, c/o Jasmine Jordan, Budget Office, St. James Suite 325

Thru: Jordan Elsbury, Director of Intergovernmental Affairs, Office of the Mayor  
(Name, Job Title, Department)  
Phone: 255-5013 E-mail: jelsbury@coj.net

From: Jordan Elsbury, Director of Intergovernmental Affairs, Office of the Mayor  
Initiating Department Representative (Name, Job Title, Department)  
Phone: 255-5013 E-mail: jelsbury@coj.net

Primary Contact: Jordan Elsbury, Director of Intergovernmental Affairs, Office of the Mayor  
(Name, Job Title, Department)  
Phone: 255-5013 E-mail: jelsbury@coj.net

CC: Jordan Elsbury, Intergovernmental Affairs Liaison, Office of the Mayor  
Phone: 255-5013 E-mail: jelsbury@coj.net

## **MBRC Request**

### **Legislation Request for Berkman Plaza Maintenance Agreement Whitepaper**

*February 2, 2021*

#### **Background**

In July 1999, the City of Jacksonville entered into a Redevelopment Agreement with D B Holdings in accordance with JEDC/DDA Bid CF-0192-98 to develop certain land within the Redevelopment Area. The Redevelopment Agreement provides authorization for the City of Jacksonville to enter into a maintenance agreement with the developer, D B Holdings, for the "Public Improvements II" as defined in the Redevelopment Agreement. D B Holdings canceled the maintenance agreement effective November 4, 2016. The Parks, Recreation and Community Services Department has been providing the maintenance for the "Public Improvements II" area with a combination of subcontractors and City maintenance personnel.

Per section 6.2 of the Redevelopment Agreement, "Upon conveyance of the Public Improvement II to the City, the City shall maintain the Public Improvements II, provided, however, that the City is authorized by this Agreement to enter into a maintenance agreement on terms mutually acceptable to Developer and the City, by which Developer shall maintain the Public Improvements II for and on behalf of the City."

Exhibit F-2 Public Improvements II shall include all required design services and construction of the Riverwalk extension along the riverfront of the Project Parcel as well as the public walkways and parks within the Project Parcel.

#### **Recommended Action**

The Parks, Recreation and Community Services Department (PRCS) respectfully request approval for legislation to enter into a maintenance agreement with Liberty Point, LLC for the Public Improvements II, commonly referred to as Berkman Plaza.

REDEVELOPMENT AGREEMENT

This REDEVELOPMENT AGREEMENT (this "Agreement") is made this 23<sup>rd</sup> day of July, 1999 (the "Effective Date"), between the CITY OF JACKSONVILLE, a municipal corporation and a political subdivision of the State of Florida (the "City"), the JACKSONVILLE ECONOMIC DEVELOPMENT COMMISSION (the "Agency") and DB HOLDINGS, L.L.C., a Georgia limited liability company, as agent of the Harbor Companies (the "Developer").

ARTICLE I  
PRELIMINARY STATEMENTS

1. Creation of the Agency. By Ordinance No. 81-891-352, the City designated the Agency as a community redevelopment agency (a "CRA") as contemplated or permitted by Part III of Chapter 163, Florida Statutes, known as the Community Redevelopment Act (the "Act"), and conferred upon the Agency all the rights, powers, privileges, duties and immunities of a CRA.
2. Creation of Redevelopment Area. The City adopted a Resolution, in accordance with the Act, finding that the area in which the intended project falls was a slum or blighted area, the Council of the City of Jacksonville, Florida (the "Council") found that a blighted area in the Northside East Community Redevelopment Area (the "Redevelopment Area"), pursuant to criteria established in the Community Redevelopment Act of 1969, as amended, Chapter 163, Part III, Florida Statutes, as amended.
3. The Plan. After public hearing, a redevelopment plan for the Redevelopment Area, was reviewed, and Council approved a community redevelopment plan (the "Plan") for the Redevelopment Area.
4. The Project. The Agency, pursuant to JEDC/DDA Bid Number CF-0192-98 advertised requests for proposals from developers to develop certain land within the Redevelopment Area. The Developer submitted a proposal (the "Proposal") to construct and develop certain improvements, (as more particularly described on Exhibit "A" attached hereto, the "Improvements") on that certain parcel of land within the Redevelopment Area (the "Project Parcel") consisting approximately of eight and 41/100th (8.41) acres, and more particularly described on Exhibit "B" attached hereto. The Project Parcel and the Improvements are collectively referred to herein as, the "Project" and constitute, subject to terms and conditions within this Agreement, the obligations of Developer to construct. The Proposal included, among other things, preliminary concept plans and schematic drawings describing the Project. As is set forth in more detail in the Proposal, Phase I will include among other things one multi-story, 200-unit tower and related parking, 19 townhomes, and commercial support facilities including a restaurant site. Developer understands that City has indicated its commitment to construct a riverwalk, to and along the riverfront, and to construct public access walkways to said riverwalk. Phase II will include among other things, a multi-story,

200 unit tower, 7 townhomes, and related parking. The Project will represent a private capital investment (the "Capital Investment") in the Redevelopment Area of \$36,800,000 for Phase I and \$36,000,000 for Phase II.

5. City/Agency Determination. The City, in consultation with the Agency, has determined that the Project is consistent with the goals of the City in that the Project will, among other things:

- a. increase capital investment in the Target Area;
- b. stimulate major economic development projects in the Target Area;
- c. return non-tax paying property located in the Redevelopment Area to the City's tax rolls;
- d. generate significant new ad valorem taxes over a twenty year period, including significant new tax revenues for the public school system;
- e. provide downtown housing opportunities; and
- f. meet the overall community goal of business development and growth in the Target Areas.

6. Small Minority and Women-Owned Businesses. It is important to the economic health of the community that whenever a Developer receives incentives for construction, that Developer provides contracting opportunities to the maximum extent possible to small, minority, and women-owned businesses in Duval County.

## **ARTICLE II DEFINITIONS**

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

2. 1. City Council. The body politic, as the same shall be from time to time constituted, charged with the duty of governing the City.
2. 2. Improvements. Any buildings, structures and other improvements shown on the Concept Plans and the Project Documents, or either of them, constructed or to be constructed on or contiguous to the Project Parcel substantially in accordance with the Concept Plans, this Agreement and the Project Documents.
2. 3. Person. Any individual, corporation, firm, partnership, trust, association, joint venture or other entity of any nature.
2. 4. Secured Lender. The owner and holder of a first lien mortgage upon the Project Parcel or a Phase or part thereof, which mortgage secures indebtedness incurred solely for the acquisition, construction and development of the Project Parcel or part thereof, the Improvements or any Phase of the Improvements, or any permanent refinancing thereof.

2.5 Substantial Completion. The date when construction of any Improvement is sufficiently complete, in the opinion of the architect or engineer for such Improvement (or, if there is none, an architect or engineer selected by the Developer and approved by the Agency), so that the Improvement may be used for the purposes for which it is intended.

2.6 Financing Commitment. A letter or other indication from a lending institution pursuant to which said lending institution, on its behalf or on behalf of a group of institutions, states that it has reviewed the Developer's ability to provide its own funds together with the loan funds in an amount not less than \$36.8 million for Phase I sufficient to complete the Project, and that the lending institution will conditionally commit to loan a sum of approximately \$27 million to the Developer for the construction of the Project.

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

### **ARTICLE III** **APPROVALS: PERFORMANCE SCHEDULES**

3.1. Concept Plans. The preliminary concept plan prepared by Pucciano & English, Inc., Architects and Bradshaw, Gill & Associates, copies of which are attached hereto as Exhibit "C", which have been submitted by the Developer to the Agency is herein referred to as the "Concept Plans".

3.2. Zoning. The Agency shall provide Developer with evidence satisfactory to Developer that the Project Parcel is zoned to permit the development of the Project. If re-zoning of the Project Parcel is required, promptly after the Effective Date, the Agency shall process such rezoning application before the City Council and will use all reasonable efforts to see that the rezoning of the Project Parcel in accordance with such application is completed and finalized prior to the Closing Date (hereinafter defined). The Agency agrees to cooperate in the rezoning process and use reasonable efforts to see that the rezoning of the Project Parcel is accomplished in a timely manner.

3.3. Vacation of Streets. The Agency shall use all reasonable efforts to cause the vacation and abandonment of Courthouse Drive between Liberty and Washington Streets, and Washington Street from Courthouse Drive to East Bay Street, in accordance with the Concept Plans; provided however, that no application to vacate any street, road, alley or right-of-way shall be filed prior to the Effective Date. The Agency will use all reasonable efforts to see that the vacation and abandonment of the existing streets, roads, alleys and rights-of-way are completed and finalized prior to the Closing Date.

3.4. Streetscaping. The Agency shall provide streetscaping on the southside of East Bay Street along the entire frontage of the Phase I Parcel which streetscaping shall be substantially the

same as the existing streetscaping on Riverside Avenue. Such streetscaping shall commence within a reasonable time after the Closing Date and shall be complete on or before June 1, 2000. The Agency reaffirms its commitment to carry out streetscaping on the south side of East Bay Street along the entire frontage of the Phase II Parcel and the north side of East Bay Street along with the entire frontage of the Project parcel as sufficient funds become available.

3.5. Governmental Approvals. The Agency shall use all reasonable efforts to obtain or cause to be obtained by the Closing Date all approval, permits, subdivisions, variances or waivers necessary under applicable municipal laws (other than building permits) for such construction and in order that the Project as contemplated in this Agreement shall comply with all applicable zoning, subdivision, land use and/or environmental laws within the City's jurisdiction; provided that the foregoing shall not be deemed to relieve the Developer of the obligation to pay water charges, pollution control charges and electrical service charges respecting the Improvements, at their normal rates or levels. Prior to the Closing Date, Agency shall provide evidence satisfactory to Developer that the transfer of ownership to Developer, and the proposed use by Developer, of the sovereignty submerged lands as lie within the Project Parcel is permitted under State law and that the Project complies with the DRI for the Redevelopment Area.

3.6. Performance Schedule. The Developer and the Agency have jointly prepared a schedule of performance setting forth specific target dates and deadline dates for the performance of each party's respective obligations under this Agreement (herein called the "Performance Schedule"). The Performance Schedule has been approved by the Agency and the Developer and is attached hereto as Exhibit "D". By the execution hereof, and subject to the terms of this Agreement, the Developer hereby agrees to undertake and complete the construction and development of the Project, and to comply with all of the obligations and abide by all the dates set forth therein. By the execution of this Agreement, the Agency hereby agrees to complete those acts to be performed by the Agency within the dates set forth in the Performance Schedule, and to use all reasonable efforts to cause those acts to be performed by the City described in the Performance Schedule to be completed within the dates established by the Performance Schedule, and to otherwise comply with all of the obligations of the Agency and abide by all the dates set forth therein. Except as may otherwise be expressly permitted in this Agreement, in no event will the Performance Schedule be modified without the prior written approval of all parties to this Agreement.

3.7. Approval of Agreement. By the execution hereof, the parties certify as follows:

(a) Developer certifies that (i) 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 Developer entity; (ii) this Agreement does not violate any of the terms or conditions of such governing documents and the same is binding upon the Developer entities and enforceable against them in accordance with its terms; (iii) the Persons executing this agreement on behalf of the Developer entities are duly authorized and fully empowered to execute the same for and on behalf of the Developer entities; and (iv) each entity composing the Developer is duly authorized



to transact business in this state and has received all necessary permits and authorizations required by appropriate governmental agencies as a condition to doing business in this state.

(b) The Agency certifies that the execution and delivery hereof has been approved at a duly convened meeting of the Agency and the same is binding upon the Agency and enforceable against it in accordance with its terms.

(c) The City certifies that the execution and delivery hereof has been approved at a duly convened meeting of the City Council and the same is binding upon the City to the extent provided herein and enforceable against it in accordance with its terms.

#### **ARTICLE IV ACQUISITION AND DISPOSITION**

##### **4.1 Acquisition by Developer: Price: Payment.**

(a) The City shall convey good, marketable title to the Project Parcel to the Developer for the sum of one dollar (\$1.00). It is currently estimated that the Project Parcel will consist of approximately eight and 41/100th (8.41) acres. The parties will make a determination of the final size prior to the transfer of the Project Parcel from the City to the Developer.

(b) The Developer shall pay for any documentary stamps and recording fees required on the deeds to the Developer. The Agency shall pay for all title search and title commitment charges. The Agency has furnished or will furnish to the Developer all reports of any appraisals, surveys, geotechnical reports and environmental audits which have been conducted on the Project Parcel, specifically including a Phase II environmental assessment of the Project Parcel. If the Developer wishes to have any further appraisals, surveys, geotechnical reports or environmental reports provided, the Developer shall do so at its sole cost and expense.

(c) The Project Parcel shall be conveyed to the Developer by the City's special warranty deed, free and clear of any liens or encumbrances, subject only to (i) those matters that are disclosed by the title search/commitment furnished by the Agency to the Developer which are acceptable to Developer and which are not later removed from the title by the Agency, plus (ii) zoning matters, and (iii) taxes for the year of closing, if applicable, and further subject to the provisions of Section 8.5. ; provided, however, that the Phase II site shall also contain a provision identifying the City's right of reversion as set forth in this Agreement.

4.2 **Procedure for Closing.** Once the rezoning of the Project Parcel (if necessary), the abandonment or vacating of the existing streets and other existing rights-of-way, remediation of any environmental matters, approval of the use of the submerged land within the Project Area, and all other pre-closing obligations of Agency set forth in the Performance Schedule have been completed,

the Developer shall within a reasonable time (but in no event more than thirty (30) days thereafter) close its purchase of the Project Parcel from the Agency (the "Closing Date"). Prior to the conveyance of the Project Parcel, the Developer must deliver to the City a firm Financing Commitment.

4.3 Condition of the Project Parcel. The Project Parcel shall be conveyed to the Developer "as is," subject only to the removal by the City, including the procurement of necessary permits for the Christopher building, of all existing structures and improvements located on the Project Parcel, provided, further, however, that the City shall have no obligation to remove any subsurface facilities, structures or improvements on the Project Parcel

(a) It shall be the sole responsibility of the Developer, at the Developer's expense, to investigate and determine the soil conditions of the Project Parcel and their suitability for the Improvements to be constructed by the Developer or its assigns. If the conditions are not, in the opinion of the Developer suitable for such Improvements, then it is the sole responsibility of Developer to take all actions and do all things required to render them suitable, or to terminate the Agreement pursuant to Section 8.5.

(b) Neither the Agency nor the City makes any representation as to the presence on or under, or the escape, seepage, leakage, spillage, emission, discharge or release from Parcel of any hazardous substance as defined by the United States Environmental Protection Agency or any Federal, state or local law, rule or regulation.

Notwithstanding anything set forth above, the parties hereto acknowledge that it shall be the sole responsibility of the Developer, at the cost and expense of the Developer, to investigate and determine the soil conditions of the Project Parcel and the suitability of the Project Parcel for the improvements to be constructed by the Developer. If the soil conditions of the Project Parcel are not, in the opinion of the Developer, suitable for such Improvements, then it is the sole responsibility of the Developer to take all actions and do all things required to render them suitable.

4.4 JEA/City Site Assistance. The Agency shall recommend and encourage the JEA to provide, at its expense, such improvements as may be necessary to ensure that adequate potable water, sanitary sewer and electricity are available at the Project Parcel. The City and the Agency will assist and facilitate the Developer in obtaining applicable storm water permits from the St. Johns River Management District. Subject to the Developer obtaining the requisite permits, and at the request of Developer, the City will provide compensatory storm water treatment, if required for the Project, at a cost determined by the City's Public Works Department, which cost shall be payable by Developer. Such compensatory treatment shall be adequate in terms of capacity and location to accommodate 100% of the Developer's storm water drainage and retention requirements provided, however, that the Developer shall utilize its reasonable best efforts to treat soils, sediments and other urban run-off pollutants from vehicular use areas of the Project prior to discharging into the St. Johns river. The City shall grant assignable easements to the Developer for any required storm water drainage and retention at no cost to Developer. The City shall maintain such off-site storm water

drainage and retention facilities at no cost to Developer, its successors and assigns. In the event that potable water, sanitary sewer and electricity are not made available to the Project Parcel at no cost to the Developer, the Developer shall have the right to terminate this Agreement by written notice to the Agency on or before the Closing Date.

4.5 Phase II Lease. Until Developer is prepared to commence construction of Phase II of the Project on that part of the Project Parcel reserved for same (the "Phase II Parcel"), Developer agrees to lease the Phase II Parcel to the City for use as parking area. The portions of the Phase II Parcel to be leased to the City shall be mutually satisfactory to Developer and the City; provided, however, that during the construction of Phase I, Developer upon showing the need for use of a portion of the Phase II Parcel for a lay down area for said construction, shall be entitled to exclude said portion from the leased area. The entire Phase II Parcel shall be leased to the City following substantial completion of Phase I. The lease shall require lease payments of one dollar (\$1.00) per year. The lease will have a one year term, which will be automatically extended annually for additional one-year terms, unless Developer gives the City sixty (60) days written notice of Developer's intended commencement date for Phase II construction, which commencement date shall be the termination date for the lease and the cessation of the City's parking rights thereunder. During the term of the lease, the City shall indemnify and hold Developer harmless from and against all claims, costs, expenses, damages and liabilities arising from or relating to the City's use of the Phase II Parcel.

## ARTICLE V. PROJECT GRANT

### PHASE I

5.1 Project Grant Amount. The City shall make an economic development grant to the Developer (the "Phase I Project Grant"), in the not to exceed amount of \$1,115,000, beginning in the first year following the completion of construction of Phase I of the Project and its inclusion on the City tax rolls at full assessed value (the "Phase I Initial Year") and ending six (6) years thereafter (the "Phase I Final Year"). The Project Grant shall be payable by the City to the Developer in accordance with the provisions of this Article V.

5.2 Payments of Project Grant. The Phase I Project Grant shall be paid by the City to the Developer in cash or by check or wire transfer, in annual installments determined in accordance with Section 5.3, due and payable on or before May 15 of each calendar year, commencing May 15, of the Phase I Initial Year and ending May 15, of the Phase I Final Year, or when the amount of the Phase I Project Grant shall have been paid to the Developer, whichever occurs first. The City shall have no liability for any Phase I Project Grant in excess of the amount stated in Section 5.1 above or after payment of the final installment due May 15 of the Phase I Final Year and the Phase I Project Grant payments as determined pursuant to Subsection 5.3 shall not be subject to reduction or repayment

nor shall the Developer have any liability except as expressly provided in Section 5.5 of this Agreement.

5.3 Determination of Annual Installments. The amount of each annual installment of the Phase I Project Grant shall be the sum which is equal to (a) for years 2003 through 2005, ninety percent (90%); (b) for years 2006 and 2007, fifty percent (50%); and in year 2008, twenty-five percent (25%) of the Annual Project Revenues (as defined and determined in this Section 5.3) received by the City during the twelve (12) month period ended April 1 last 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 (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 (regardless of the ownership of such property), comprising the Project and the Project Parcel, (exclusive of the amount paid based on the assessed value of the land), less the amount of all municipal and county ad valorem taxes that would have been levied or imposed on the Project Parcel using the assessed value for the year 1999 (the "Base Year") which for purposes of this Agreement shall be zero, 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 Developer or other taxpayer or with respect to real property or tangible personal property comprising the Project or the Project Parcel, 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. By April 15 of each calendar year, commencing April 15, 2003, and ending April 15, 2008, the City shall calculate and give written notice to the Developer of the amount of the Annual Project Revenues received during the preceding twelve (12) month period ended April 1, together with a copy of the City's detailed calculations. If the Developer does not give written notice to the City of objection to the City's calculations within thirty (30) days after its receipt thereof, the City's calculations shall be considered acceptable.

5.4 Appropriation of Annual Installments: Limitation of Obligations. The City covenants and agrees with the Developer that it shall budget and appropriate for each city fiscal year, solely out of non-ad valorem revenues and other legally available funds, a sum equal to the Phase I Project Grant due for the twelve (12) month period ending April 1 of such fiscal year. Each annual installment of the Phase I Project Grant as provided in the Article V shall be payable by the City to the Developer solely out of non-ad valorem revenues and other legally available funds, and shall not constitute a pledge of or lien upon any other revenues or funds of the City, and the Developer and any person, firm or entity claiming by, through or under the Developer shall have no right to require the imposition of any tax or the establishment of any rate of taxation in order to obtain the amounts necessary to fully pay the Phase I Project Grant. No pledge or lien shall attach to any non-ad valorem revenues or other legally available funds prior to the time when the amount equal to the Phase I Project Grant for any calendar year has been so appropriated for payment of the next annual

installment of the Phase I Project Grant and the related Annual Project Revenues have been received by the City.

5.5 Reduction in Phase I Project Grant. The Phase I Project Grant levels are based on the estimated amount of the Developer's Capital Investment. Therefore, notwithstanding anything to the contrary set forth in this Agreement, the amount of the annual installment of the Phase I Project Grant shall be reduced by ten percent (10%) for each Investment Increment (as defined herein), or portion thereof, by which the Developer's Phase I Capital Investment is less than \$36,800,000. For the purposes hereof, "Investment Increment" shall be equal to \$3,680,000. The term "Capital Investment" shall mean funds used by the Developer or paid to third parties by the Developer in connection with the acquisition, planning, permitting, investigation, demolition, repair, renovation, construction or remediation of the Project and include the fair market value of any services provided by the Developer. The term "Capital Investment" shall not include replacements for, or repairs to, any equipment previously calculated as part of the Capital Investment. Within sixty (60) days from Substantial Completion of the Improvements, Developer shall furnish the Agency with written documentation to evidence the actual Capital Investment in a form to be mutually agreed upon.

5.6 Development Grant. As additional economic support to the Project, the City shall make a grant to Developer in the amount of \$1,500,000 (the "Additional Grant"), which Additional Grant shall be paid to Developer upon receipt of certification, prepared by the Developer's construction lender's inspector and delivered to the Executive Director of the Agency and the Director of Public Works for review and approval, that Developer has invested at least \$7,500,000 of private capital in the Project.

## PHASE II

5.7 Project Grant: Amount. The City shall make an economic development grant to the Developer (the "Phase II Project Grant"), in the not to exceed amount of \$1,215,000, beginning in the first year following the completion of construction of Phase II of the Project and its inclusion on the City tax rolls at full assessed value (the "Phase II Initial Year") and ending six (6) years thereafter (the "Phase II Final Year"). The Project Grant shall be payable by the City to the Developer in accordance with the provisions of this Article V.

5.8 Payments of Project Grant. The Phase II Project Grant shall be paid by the City to the Developer in cash or by check or wire transfer, in annual installments determined in accordance with Section 5.9, due and payable on or before May 15 of each calendar year, commencing May 15 of the Phase II Initial Year and ending May 15 of the Phase II Final Year or when the amount of the Phase II Project Grant shall have been paid to the Developer, whichever occurs first. The City shall have no liability for any Phase II Project Grant in excess of the amount stated in Section 5.7 above or after payment of the final installment due May 15 of the Phase II Final Year and the Phase II

Project Grant payments as determined pursuant to Subsection 5.9 shall not be subject to reduction or repayment nor shall the Developer have any liability except as expressly provided in Section 5.11 of this Agreement.

5.9 Determination of Annual Installments. The amount of each annual installment of the Phase II Project Grant shall be the sum which is equal to (a) for years 1 through 3, ninety percent (90%); (b) for years 4 and 5, fifty percent (50%); and in year 6, twenty-five percent (25%) of the Annual Project Revenues (as defined and determined in this Section 5.9) received by the City during the twelve (12) month period ended April 1 last 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 (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 (regardless of the ownership of such property), comprising the Project and the Project Parcel less (exclusive of the amount paid based on the assessed value of the land), the amount of all municipal and county ad valorem taxes that would have been levied or imposed on the Project Parcel using the assessed value for the year 1999 (the "Base Year") which for purposes of this Agreement shall be zero, 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 Developer or other taxpayer or with respect to real property or tangible personal property comprising the Project or the Project Parcel, 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. By April 15 of each calendar year, commencing April 15 of the calendar year which is three (3) years following the commencement of construction of Phase II, and ending April 15 of the calendar year which is nine (9) years following the commencement of construction of Phase II, the City shall calculate and give written notice to the Developer of the amount of the Annual Project Revenues received during the preceding twelve (12) month period ended April 1, together with a copy of the City's detailed calculations. If the Developer does not give written notice to the City of objection to the City's calculations within thirty (30) days after its receipt thereof, the City's calculations shall be considered acceptable.

5.10 Appropriation of Annual Installments: Limitation of Obligations. The City covenants and agrees with the Developer that it shall budget and appropriate for each city fiscal year, solely out of non-ad valorem revenues and other legally available funds, a sum equal to the Phase II Project Grant due for the twelve (12) month period ending April 1 of such fiscal year. Each annual installment of the Phase II Project Grant as provided in the Article V shall be payable by the City to the Developer solely out of non-ad valorem revenues and other legally available funds, and shall not constitute a pledge of or lien upon any other revenues or funds of the City, and the Developer and any person, firm or entity claiming by, through or under the Developer shall have no right to require the imposition of any tax or the establishment of any rate of taxation in order to obtain the amounts necessary to fully pay the Phase II Project Grant. No pledge or lien shall attach to any non-ad

valorem revenues or other legally available funds prior to the time when the amount equal to the Phase II Project Grant for any calendar year has been so appropriated for payment of the next annual installment of the Phase II Project Grant and the related Annual Project Revenues have been received by the City.

5.11 Reduction in Phase II Project Grant. The Phase II Project Grant levels are based on the estimated amount of the Developer's Capital Investment. Therefore, notwithstanding anything to the contrary set forth in this Agreement, the amount of the annual installment of the Phase II Project Grant shall be reduced by ten percent (10%) for each Investment Increment (as defined herein), or portion thereof, by which the Developer's Phase II Capital Investment is less than \$36,000,000. For the purposes hereof, "Investment Increment" shall be equal to \$3,600,000. The term "Capital Investment" shall mean funds used by the Developer or paid to third parties by the Developer in connection with the acquisition, planning, permitting, investigation, demolition, repair, renovation, construction or remediation of the Project and include the fair market value of any services provided by the Developer. The term "Capital Investment" shall not include replacements for, or repairs to, any equipment previously calculated as part of the Capital Investment. Within sixty (60) days from Substantial Completion of the Improvements, Developer shall furnish the Agency with written documentation to evidence the actual Capital Investment in a form to be mutually agreed upon.

5.12. Further disclaimer. The Project 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 V. The City shall not be obligated to pay the Project 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 project grant or any installment thereof. The Developer, or any person, firm or entity claiming by, through or under the developer, 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 project grant or any installment thereof.

## **ARTICLE VI** **THE DEVELOPMENT**

### 6.1 Scope of Development.

(a) The Developer shall construct and develop or cause to be constructed and developed, in substantial compliance with the times set forth in the Performance Schedule, all

Improvements which the Developer is obligated to construct and develop under the Performance Schedule and this Agreement. "Improvements" shall include, as set forth in Exhibit A, the apartment towers, related parking structures, amenities packages, internal common areas and other improvements for the benefit of residents of the Project Parcel (the "Private Improvements"). Further, in the event that the City opts to have Developer construct Public Improvements II as defined below in Section 6.2 to be made on the Project Parcel, then Developer agrees to construct the public walkways, parks, and the riverwalk, as set forth in Developer's Proposal and on Exhibit F page 2 attached, with such improvements, including design, not to exceed \$2.4 million.

(b) All Improvements shall be constructed by the Developer pursuant to a building permit or permits, if applicable, issued by the City covering each such Improvement.

6.2 Cost of Development. Except as otherwise set forth in this Agreement, the Developer shall pay the cost of constructing and developing the Private Improvements at no cost to the Agency or the City. The Agency and/or the City shall contribute up to \$2,300,000 (the "City Contribution") toward the cost of constructing a portion of the Public Improvements as is set forth on Exhibit F, page 1 (Public Improvements I). The City Contribution shall be deposited in a segregated account designated for the purposes herein (the "City Construction Fund") on or before the date that Developer closes a loan for construction of the Project. The City Construction Fund shall be disbursed as the Public Improvements are constructed based on a certification of completion prepared by the Developer's construction lender's inspector and delivered to the Executive Director of the Agency and the City's Director of Public Works for review and approval. Said inspector's certification shall be the only certification required to substantiate draws from the City Construction Fund. Draws from the City Construction Fund shall be disbursed in the same manner as disbursements are made by the Developer's construction lender under said lender's construction loan documents.

\$2.3  
for additional  
improvements

As the City has maintained its commitment to construct the riverwalk and public access, and as the timing of Developer's construction of its Improvements may interfere with City's construction, Developer agrees, should the City so elect, to construct the Public Improvements set forth on Exhibit F, page 2 hereto (the Public Improvements II), at a not-to-exceed cost of \$2,400,000, by notice given thirty days before the construction start date of same set forth on the Performance Schedule for Public Improvements. The above terms and conditions apply to the provision of funds for the Public Improvements II should the City make this election. However, if City does not make said election and instead City elects to construct Public Improvements II, Developer shall (at no cost to City) grant City all necessary easements for construction of Public Improvements II and upon completion of Public Improvements II, City shall cause to be prepared an as-built survey setting forth the legal description of such Public Improvements II and Developer shall thereafter convey (at no cost to City) fee title to the Public Improvements II to the City, reserving to Developer, its tenants, successors and assigns, a non-exclusive, perpetual easement for use and maintenance of the Public Improvements and access to the St. Johns River. Upon conveyance of the Public Improvements II to the City, the City shall maintain the Public Improvements II, provided, however, that the City is authorized by this

\$2.4  
riverwalk



Agreement to enter into a maintenance agreement on terms mutually acceptable to Developer and the City, by which Developer shall maintain the Public Improvements II for and on behalf of the City.

6.3 Design Review. All plans and drawings related to the exterior design, landscaping, streetscaping and Public Improvements (the "Exterior Design Plans") of the Project shall be submitted to a committee (the "Committee") appointed by the chairman of the Jacksonville Downtown Development Authority (the "Authority"). The Committee will work together with the City's Director of Public Works, the Project architect and the Developer in making recommendations to the Authority's governing board for changes to the Exterior Design Plans, and a copy of the approved Exterior Design Plans shall be attached to this Agreement and incorporated herein following final approval in accordance with Exhibit D - Performance Schedule.

6.4 Dedication to City. In the event the Developer constructs the Public Improvements II, Developer shall cause to be prepared an as-built survey setting forth the legal description of such Public Improvements II. Developer shall thereafter convey (at no cost to the City) fee title to the Public Improvements II to the City, reserving to Developer, its tenants, successors and assigns, a non-exclusive, perpetual easement for use and maintenance of the Public Improvements and access to the St. Johns River. Upon conveyance of the Public Improvements II to the City, the City shall maintain the Public Improvements II, provided, however, that the City is authorized by this Agreement to enter into a maintenance agreement on terms mutually acceptable to Developer and the City, by which Developer shall maintain the Public Improvements II for and on behalf of the City.

6.5 Improvements. In the event the Developer constructs the Public Improvement II, the Developer shall submit to the City and the Agency copies of the following (herein collectively called "Project Documents"):

- (a) All soil tests, engineering studies, plans, specifications and related documents, studies, tests, plans and drawings concerning any item comprising the Public Improvements II.
- (b) The initial design concepts for all Public Improvements II including a rough site and layout plan containing heights and density for each such Improvement. Such design concepts shall be compatible with the Concept Plans.
- (c) Preliminary plans and specifications for the Public Improvement II, including but not limited to all civil, architectural, structural, mechanical, electrical and landscaping plans and specifications, soil borings and foundation plans.
- (d) Final plans, specifications, construction drawings, permits and related documents concerning the Public Improvements II.

(e) Any revisions, corrections, amendments or supplements to any of the foregoing.

6.6. Agency Approval. The Agency has reviewed the Concept Plans. No Concept Plans shall be materially amended, revised, modified or otherwise altered without the prior written approval of the Agency, the City and any other governmental agency which approved the original Concept Plans, which approval shall not be unreasonably withheld, delayed or conditioned.

6.7. Approval by Other Governmental Agencies. All Project Documents shall also be approved by such other governmental agencies, whether state, local or federal, as have jurisdiction and require approval of them.

6.8. Authority of Agency to Monitor Compliance. During all periods of design and construction, the Executive Director of the Agency and the City's Director of Public Works shall have the authority (at no cost to the Developer) to monitor compliance by the Developer with the Project Documents and the Concept Plans. Insofar as practicable, the Agency 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 construction and with prior notice to the Developer, representatives of the Agency and the City shall have the right of access to the Project Parcel and to every structure on the Project Parcel during normal construction hours.

6.9. Timing of Completion. Construction of the Improvements shall be commenced and completed substantially in accordance with the terms of this Agreement and the Performance Schedule.

6.10. Obligation of Secured Lender. The Developer may collaterally assign its rights hereunder to a Secured Lender, upon giving written notice thereof to the Agency. In the event of the foreclosure of any mortgage or security agreement secured by the Project Parcel or any part of it, prior to the completion thereof or in the event of a deed in lieu of foreclosure, the lot or parcel of land covered by such mortgage or security agreement shall be developed in compliance with the terms of this Agreement and no Improvements shall be constructed by the Secured Lender, or a successor in interest of the Secured Lender, on the Project Parcel or any part thereof, other than those Improvements authorized by this Agreement unless a modification thereof is agreed to by the Agency. The Secured Lender may, during or after any such foreclosure proceeding or deed in lieu thereof, assign any rights it may have acquired in the Project Parcel, including the right to complete construction of the Improvements, to a third party provided such third party agrees to comply with the provisions of this Agreement and executes and delivers an assumption agreement to the Agency to that effect. No such collateral assignment, foreclosure or conveyance (and assumption by a third party) shall release the Developer from its obligations and liabilities under this Agreement.

6.11. Discrimination. The Developer shall not discriminate against any person, or group of persons, on account of race, color, creed, sex, age, religion, national origin, marital status, handicap, having children or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment

of all or any part of the Improvements nor shall the Developer or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with the reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees or vendees thereof, and any lease entered into for the leasing of any portion of either the Project Parcel or the Improvements shall contain a provision prohibiting the lessee from discriminating against any person, or group of persons, on account of race, color, creed, sex, age, religion, national origin, marital status, handicap, having children or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of all or any part of the Improvements.

6.12. **Insurance.** The Developer will maintain, at its sole cost and expense, adequate insurance with responsible insurers with coverage normally obtained by businesses similar to that of the Developer but covering at least: (i) damage to physical property from fire and other hazards for the full insurable value of such property; (ii) liability on account of injury to persons; and (iii) insurance against theft, forgery or embezzlement or other illegal acts of officers or employees in reasonable amounts.

6.13 **Performance Bond and Additional Obligations.** Developer will cause its contractor to procure and keep in force a performance bond, in a form approved by City, such approval not unreasonably withheld, which will remain in force as to its construction of the residential apartment towers. Should Developer not construct the parking garage, restaurant and townhouse portion of Phase I of the project to completion in accordance with this Agreement, the Developer agrees that it will pay the City the current appraised value (\$1,500,000) of the Phase I portion of the Project Site, and will repay the City's entire cash disbursement. The City's rights under this provision are in addition to any rights it may have at law and in equity for a violation of this Agreement by a failure to perform. Should the Developer not construct the parking garage and townhouse portion of Phase II of the project to completion in accordance with this Agreement, the Developer agrees that it will pay the City the current appraised value (\$1,700,000) for Phase II portion of the Project Site.

## ARTICLE VII

### PROJECT GOALS, COMMUNITY SERVICE COMMITMENT

7.1. **Construction and Operation Management.** Except as otherwise expressly provided herein, the Developer 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 the Proposal, the Project Concept Plan and this Agreement, and all applicable state and local laws, ordinances and regulations (including without limitation, applicable zoning, subdivision, building and fire codes). The Developer'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 Developer deems appropriate; provided however, that to the extent that the City furnishes to the Developer the names and identities of Jacksonville based Vendors, including without limitation Jacksonville based minority Vendors, and to the extent that Developer has the need to enter into contracts with Vendors outside of persons employed by Developer or companies affiliated with or controlled by Developer or its principals, then Developer agrees to include all such Jacksonville based Vendors in the process established by Developer 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 Developer; and

(d) the preparation of such budgets, cost estimates, financial projections, statements, information, and reports as the Developer deems appropriate.

7. 2. Periodic Reports. The Developer shall provide to the City and the Agency reports with respect to the Project on an annual basis for the duration of this Agreement, until completion of the Project, regarding all activities affecting the implementation of the Project, in accordance with this Agreement, including a narrative summary of progress on the Project, on report forms prepared by the Developer and approved by the City.

7. 3. Community Service Commitment. The Developer has actively participated in the community service activities more particularly described on Exhibit "E" attached hereto. The Developer agrees that, during the term of this Agreement, the Developer shall continue to participate in community service activities of the type set forth on Exhibit "E".

## **ARTICLE VIII**

### **DEFAULTS, REMEDIES, TERMINATION AND FURTHER RIGHTS**

8. 1. Agency Default. If the Agency is unable to:

(a) rezone the Project Parcel pursuant to Section 3.2 hereof prior to the Closing Date; or

(b) vacate the streets and other rights-of-way located in the Project Parcel pursuant to Section 3.3 hereof prior to the Closing Date; or

(c) complete any material obligations of Agency as set forth in the Performance Schedule at the time called for therein, then the Developer may, at its option, but as the Developer's sole remedy, terminate this Agreement. In the event of such termination, the Agency shall reimburse the Developer for all costs incurred by the Developer after the Effective Date and prior to the date of termination: reasonable attorney's fees, survey costs, environmental report fees, fees for wetlands assessments, costs of soils and geotechnical reports, appraisal costs, site design costs, infrastructure design costs, engineering work and costs of permitting. Notwithstanding the foregoing, the Agency's obligation to reimburse the Developer pursuant to this subparagraph shall not exceed the sum of \$100,000. Subject to the provisions set forth above, if the Agency defaults in the performance of any other material obligation imposed upon it under this Agreement or if the Agency fails to complete any material item required to be completed by it under the Performance Schedule at the time called for therein, the Developer shall deliver written notice of such default to the Agency. The Agency shall commence to cure such default within forty-five (45) days after the delivery of such notice of default from the Developer and diligently pursue such cure to completion within seventy-five (75) days after delivery of such notice as to any default which by its nature is capable of being cured within seventy-five (75) days (or within a reasonable period of time in no event to exceed one hundred twenty (120) days as to any default which by its nature is not capable of being cured within seventy-five (75) days). If the Agency does not commence to cure the default within the above time period, the Agency shall, at the option of the Developer, be liable to the Developer for specific performance or damages caused by such default.

#### 8.2 Developer Default.

(a) If the Developer defaults in the performance of any material obligation imposed upon it under this Agreement or if the Developer fails to complete any material item required to be completed by it under the Performance Schedule at the time called for therein, the Agency shall deliver written notice of such failure or default to the Developer. The Developer shall commence to cure such default within forty-five (45) days after delivery of such notice of default from the Agency and diligently pursue such cure to completion within seventy-five (75) days after delivery of such notice as to any default which by its nature is capable of being cured within seventy-five (75) days (or within a reasonable period of time in no event to exceed one hundred twenty (120) days as to any default which by its nature is not capable of being cured within seventy-five (75) days). If the Developer does not so commence to cure and cure such default within the above time period, the Agency may terminate this Agreement and/or the Developer shall, at the option of the Agency, be liable to the Agency for specific performance or damages caused by such default.

(b) If a delay by the Developer results from an event described in Section 10.4, the Performance Schedule shall be extended for the period of time lost by such delay.

(c) In the event that the Developer fails to commence construction of the Phase I Improvements in accordance with the terms of this Agreement and the Performance Schedule and

such failure continues for more than forty five (45) days after the Developer's receipt of written notice of its failure to do so, the Project Parcel shall revert to the City. Developer shall cooperate and execute all documents reasonably necessary to demonstrate that its interest in the Project Parcel has ceased. The instruments of conveyance shall be identical to those executed and delivered upon conveyance to the Developer and shall be subject to the same exceptions as those to which the conveyance to the Developer was subject; provided, however, that if the Developer has encumbered all or any portion of the Project Parcel with a mortgage or security agreement, the Developer shall secure a full release of the same and the cost of paying or discharging the same in full shall be at Developer's sole expense. Unless the Developer's default is caused by an event defined in Section 8.5 hereof, the Developer shall pay all closing costs incurred in reconveying such Project parcel to the Agency. Ad valorem taxes will be prorated between the Developer and the Agency as of the date of reconveyance of title to the Project Parcel. At closing of any documents necessary to effectuate clear title with the City on the reverter, Developer shall deliver to the Agency all plans, specifications, reports, surveys and other development materials in Developer's possession relating to the Project Parcel.

If any streets, roads or alleys within or without the Project Parcel have been vacated by the City prior to any conveyance or reconveyance to the Agency hereunder (whether under this section or any other section hereof), then the Developer shall include in such reverter, or if necessary in such conveyance or reconveyance all right, title and interest which the Developer acquired pursuant to such vacation.

Once the Developer has commenced construction of the Phase I Improvements, the Agency's right of reversion to Phase I of the Project Parcel shall terminate. Said termination of the reversion shall be evidenced by the recording of a Notice of Commencement by Developer.

(d) In the event Developer fails to commence construction of the Phase II Improvements on or before August 1, 2006, all right, title and interest of Developer in and to the land comprising Phase II of the Project Parcel (but only the land comprising Phase II) shall revert back to the City. Such reversionary right shall be set forth in the deed conveying title to Phase II of the Project Parcel to Developer. Such reversion shall occur automatically on August 2, 2006 in the event of Developer's failure to commence construction of the Phase II Improvements, without any further action by either Developer or the Agency.

Once the Developer has commenced construction of the Phase II Improvements, the Agency's reversionary right to Phase II of the Project Parcel shall terminate. Said termination of the reversion shall be evidenced by the recording of a Notice of Commencement by Developer.

For purposes of subsections (c) and (d) hereinabove, "commenced construction" shall mean that Developer filed its Notice of Commencement, has obtained necessary building permits and has commenced site development work.

(e) In the event that Phase II of the Project Parcel reverts to the Agency (or the City), Developer shall have, for a period commencing on the date of such reversion and continuing for a period of four (4) years, a right of first refusal to purchase Phase II of the Project Parcel. Upon receipt of a bona fide offer to purchase the property (the "Offer"), the Agency shall provide Developer written notice of such Offer (the "Notice") enclosing a copy of the Offer and specifying the terms of such Offer. The Notice shall provide that Developer's right to acquire Phase II of the Project Parcel shall be for the purchase price specified in the Offer, on the same time schedule as specified in the Offer, and on the same terms and conditions as set forth in the Offer. Within ten (10) days after receipt of the Notice, Developer shall deliver to the Agency written notice of its election to purchase Phase II of the Project parcel on the terms and conditions set forth in the Offer. If Developer so elects, Agency shall convey Phase II of the Project Parcel to Developer upon satisfaction of all such terms and conditions. If Developer declines to exercise the right of first refusal or exercises the right but fails to close the transaction, the Agency may proceed to sell or dispose of Phase II of the Project Parcel to the third party offeror but only on the terms and conditions set forth in the Offer. Any restrictive covenant which shall be recorded with respect to Phase II of the Project Parcel on the Closing Date shall include a reference to this right of first refusal in favor of Developer to give notice of Developer's rights therein. Once the Agency has sold Phase II of the Project Parcel in accordance with the terms of the Offer, Developer shall have no further right or interest in and to Phase II of the Project Parcel. If Developer acquires Phase II of the Project parcel pursuant to this right of first refusal, Developer agrees that the deed conveying the property to Developer may contain a condition which restricts the Developer from thereafter selling Phase II of the Project Parcel to the third party that made the Offer to purchase the property which resulted in the Notice.

8.3 Deviation from Performance Schedule. If the Agency or the Developer (the "notifying party") determines that it cannot reasonably comply with any deadline date set forth in the Schedule of Performance (after taking into account any applicable extension of that deadline pursuant to Section 10.4), it shall notify the other party thereof. The party receiving such notice shall, if such party reasonably determines that such deviation is material, and after providing written notice and the opportunity to cure as set forth in Sections 8.1 and 8.2 hereinabove, have the option of pursuing the rights and remedies set forth in this Article VIII or of negotiating an amendment to this Agreement with the notifying party; provided, however, that time extensions agreed to between the parties may be entered into by the president of the Developer or his designee, and by the Executive Director of the Agency.

8.4 Developer's Bankruptcy. Notwithstanding any contrary provision contained in this Agreement, in the event (a) an Order, judgment or decree is entered by any court of competent jurisdiction adjudicating the Developer bankrupt or insolvent, approving a petition seeking a reorganization or appointing a receiver, trustee or liquidator of the Developer or of all or a substantial part of its assets, or (b) there is otherwise commenced as to the Developer or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues unstayed for

more than sixty (60) days after any stay thereof expires, then the Agency may declare a default under this Agreement.

8.5. Termination Right. Prior to Closing, In the event that either (a) a title defect is discovered with respect to the project Parcel that the Agency is unable remedy or (b) an environmental condition is discovered on the Project Parcel, the cost of remediation of such condition that Developer is unwilling to pay, either Agency or the Developer shall have the right to terminate this Agreement by written notice delivered to the other party, and upon delivery of such notice, the parties shall have no further rights or obligations hereunder. Notwithstanding the foregoing, in the event that Agency delivers a termination notice to Developer pursuant to this Section 8.5., and Developer determines, in its sole discretion, that it desires to take title to the Project Parcel subject to the title defect or environmental matter set forth in the Agency's notice, Developer shall have the right to notify Agency of its intention to proceed to close the transaction, subject to said matters.

#### **ARTICLE IX ANTI-SPECULATION AND ASSIGNMENT PROVISIONS**

9.1 Purpose. The Developer represents and agrees that its acquisition of the Project Parcel and 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 (it being hereby acknowledged and agreed that Developer's holding title to Phase II of the Project Parcel pending commencement of construction of Improvements thereon shall not be deemed to be land speculation). The Developer further recognizes, in view of the importance of the development of the Project Parcel to the general health and welfare of the City and redevelopment of the Redevelopment Area that the qualifications, financial strength and identity of the general partners, principal shareholders, executive officers or joint venturers of the Developer are of particular concern to the City and the Agency.

9.2 Assignment: Limitation on Conveyance. The Developer agrees that it shall not without the prior written consent of the Agency, transfer or convey this Agreement or any provision hereof, except to an entity in which Developer is an owner. If any such prohibited assignment, transfer or conveyance is made, the Agency shall be entitled to recover from the Developer the amount by which the consideration paid or payable to the Developer for such assignment, transfer or conveyance exceeds the amount paid or payable by the Developer to the Agency. In addition, if the Developer transfers a controlling interest in the Developer and, as a result of such transfer, the use of the Improvements changes from the uses intended under this Agreement, the obligation of the City to pay any further amounts due under the Project Grant shall immediately terminate.

9.3 Permitted Mortgages. The proceeds of any mortgage given to a Secured Lender shall be used only to finance or refinance the Developer's costs of acquiring, constructing and developing the Project Parcel, or any Phase of it, or any Improvements thereon, pursuant to this Agreement and for no other purpose.



**ARTICLE X.**  
**GENERAL PROVISIONS**

10.1. **Amendment to the Plan and Ordinances.** Any amendment to the Plan by the City Council and any amendment by the City Council to any existing ordinance pertaining to the Redevelopment Area or any new ordinance enacted by the City Council pertaining to the Redevelopment Area which, in any such event, amends or concerns the Project Parcel, shall not be applicable to the Project Parcel or enforceable against the Developer unless the same shall have been approved in writing by the Developer.

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

10.3. **Approval.** Whenever this Agreement requires the Agency, the City, the Committee or the Developer to approve any contract, document, plan, specification, drawing or other matter, such approval shall not be unreasonably withheld, delayed or conditioned. The Developer and the Agency shall perform all obligations imposed upon them under this Agreement in a reasonable and timely fashion.

10.4. **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, government restrictions of priority, litigation, severe weather and other acts or failures beyond the control or without the control of either party; 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 in no event shall any of the foregoing excuse any financial liability of a party.

10.5. **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 Agency:

Executive Director  
Jacksonville Economic Development Commission  
220 East Bay Street, 14th Floor  
Jacksonville, Florida 32202

With copy to:

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

(b) The City:

Executive Director  
Jacksonville Economic Development Commission  
220 East Bay Street, 14th Floor  
Jacksonville, Florida 32202

With copy to:

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

(c) The Developer:

DB Holdings, L.L.C.  
3190 Northeast Expressway  
Suite 400  
Atlanta, Georgia 30341  
Attn: Alan Travis

With copy to:

Morris, Manning & Martin, L.L.P.  
1600 Atlanta Financial Center  
3343 Peachtree Road  
Atlanta, GA 30326  
Attn: Robert W. Reardon

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

10.7 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.

10.8 Amendment. No amendment or modification of this Agreement shall be effective or binding upon any party hereto unless such amendment or modification is in writing, signed by an authorized officer of the party claimed to be bound and delivered to the other party. This Agreement and any provision hereof may be amended or modified as aforesaid to carry out the purposes and intent of the Ordinance and this Agreement, without further City Council action, except that no increase in the City's financial commitments shall be made without City Council approval.

10.9 Waivers. All waivers, amendments or modifications of this Agreement must be in writing and signed by all parties. Any failures delays by either party in 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 either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, or any other rights or remedies for the same default or any other default by the other party.

10.10 Assignment. This Agreement and the rights, duties, obligations and privileges of the parties herein may not be assigned without the prior written consent of the other parties and any purported assignment without such written consent shall be void and of no force and effect and shall constitute a default of this Agreement. Notwithstanding the foregoing, Developer shall have the right to assign this Agreement to an entity in which Developer is an owner.

10.11 Indemnification. Each party agrees to indemnify and defend the other party from all suits or actions of any kind brought against the other party based on personal injury, bodily injury, death or property damage, destruction received or claimed to be received or sustained by any Person or Persons arising out of or in connection with any negligent act or omission of the party of its

subcontractor, its agents, employees or assigns in performing the duties and obligations required by this Agreement. This indemnification shall survive the termination of this Agreement. The Developer agrees to furnish the Agency copies of any insurance policies which the Developer carries covering the Project and such policies shall name the Agency as an insured thereunder as its interest may appear.

10.12 Severability. The invalidity, illegality or inability to enforce 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.

10.13 Contingent Fee. The Developer represents and warrants that it has not employed or retained any Person having a relationship with the City or the Agency to solicit or secure this Agreement and that it has not paid or agreed or promised to pay any such Person any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the execution of this Agreement.

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

10.15 City Liability. Nothing contained herein shall be deemed to impose directly or indirectly any obligation or liability on behalf of the City to carry out or perform any of the obligation or liabilities of the Agency, and the Developer agrees that the Developer shall look solely to the Agency for the performance of all of the terms and conditions hereof.

10.16 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.

10.17 Public Purpose. Upon acquisition or reacquisition by reverter as provided in this Agreement, the City and the Agency shall utilize the Project Parcel for the public purpose described in the Redevelopment Plan.

10.18 Exemption of City. Neither this Agreement nor the obligations imposed upon the Agency 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.

10.19 Parties to Agreement. This is an agreement solely between the Agency, the City and Developer. The execution and delivery hereof shall not be deemed to confer any rights or privileges

on any Person not a party hereto other than the successors or assigns of the Agency, the City and the Developer.

10.20 Venue: Applicable Law. 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 appropriate Federal District Court in Florida. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement.

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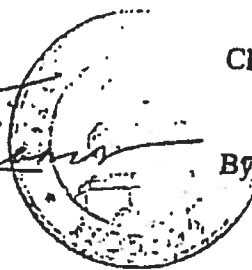
IN WITNESS WHEREOF, this Agreement is executed the day and year above written.

ATTEST:

*Linnie C. Williams*  
Linnie C. Williams  
Corporation Secretary

CITY OF JACKSONVILLE, FLORIDA

By *John A. Delaney*  
John A. Delaney, Mayor



"City"

(CORPORATION SEAL)

JACKSONVILLE ECONOMIC  
DEVELOPMENT COMMISSION

By *Leerie T. Jenkins*  
Leerie T. Jenkins  
Its Chairman

"Agency"

ATTEST:

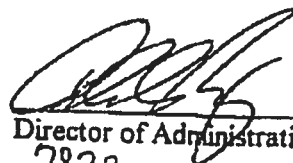

*Alan J. Travis*  
(Type/Print Name) ALAN J. TRAVIS  
Its \_\_\_\_\_  
(Title) \_\_\_\_\_

DB HOLDINGS, L.L.C.

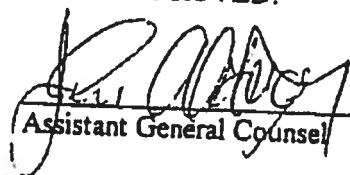
By *David Berkman*  
(Type/Print Name) DAVID BERKMAN  
Its MANAGER  
(Title) \_\_\_\_\_

"Developer"

**IN COMPLIANCE** with the Charter of the City of Jacksonville, I hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation to cover the foregoing contract, and provision has been made for the payment of monies provided therein to be paid.

  
\_\_\_\_\_  
Director of Administration and Finance  
7822 

**FORM APPROVED:**

  
\_\_\_\_\_  
Assistant General Counsel

6/13/99 CAL G\SHAREDC\INDYL\VEDCH\ARBOR\HARB506.FN4

**LIST OF EXHIBITS**

<b>Exhibit A</b>	<b>Description of Improvements</b>
<b>Exhibit B</b>	<b>Project Parcel Legal Description</b>
<b>Exhibit C</b>	<b>Concept Plans</b>
<b>Exhibit D</b>	<b>Performance Schedule</b>
<b>Exhibit E</b>	<b>Community Service Commitment</b>
<b>Exhibit F</b>	<b>Public Works I and Public Works II</b>



**EXHIBIT A  
HARBOR COMPANIES  
BERKMAN PLAZA  
IMPROVEMENTS**

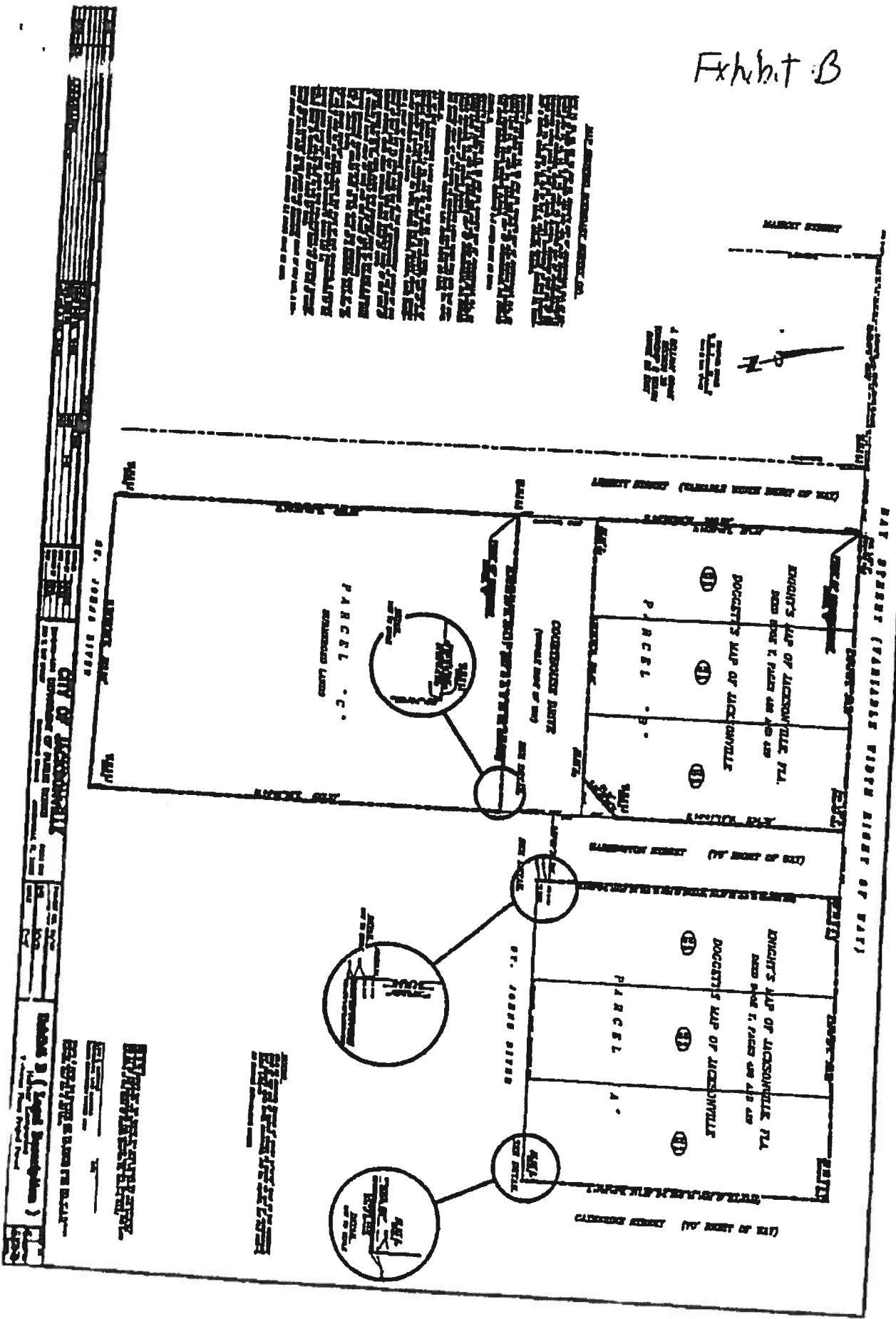
The Improvements shall consist of two (2) 200 unit high-rise apartment buildings, two (2) free standing parking garages to service parking for each building, pools, tennis courts, twenty six (26) private town home residences, premier restaurant, small community retail / service shops, and river taxi stop.

Phase I of the Improvements shall consist of one (1) 200 unit high-rise apartment building with related amenities including; private pool area with resort quality landscaping, three-story secured private parking garage providing approximately 488 parking spaces with roof-top tennis courts, sun deck and gardens. Other amenities / services will include, concierge, indoor squash court, library, cardiovascular room, weight training room, hospitality suites, wine cellar, business center with executive conference rooms, controlled access, monitored security, penthouse level gathering room with terrace, distinctive architecture and interior finishes. The apartments will be one, two, and three bedroom units ranging from approximately 620 square feet to over 1700 square feet of living area within each unit as well as 6 exclusive penthouse units that will provide over 2000 square feet of living area within each penthouse unit. Phase I Improvements also include nineteen (19) private town home residences that will provide over 1800 square feet of living area within each town home with secured private garage parking, plush landscaped grounds, a premier restaurant of over 10,000 square feet, over 6,000 square feet of small community retail / service shops, and river taxi stop.

Phase II of the Improvements shall consist of one (1) 200 unit high-rise apartment building with related amenities including; private pool area with resort quality landscaping, and a three-story secured private parking garage providing approximately 420 parking spaces. Other amenities / services will include, concierge, indoor squash court, library, cardiovascular room, weight training room, hospitality suites, wine cellar, business center with executive conference rooms, controlled access, monitored security, penthouse level gathering room with terrace, distinctive architecture and interior finishes. The apartments will be one, two, and three bedroom units ranging from approximately 620 square feet to over 1700 square feet of living area within each unit as well as 6 exclusive penthouse units that will provide over 2000 square feet of living area within each penthouse unit. Phase II Improvements also include seven (7) private town home residences that will provide over 1800 square feet of living area within each town home with secured private garage parking, and plush landscaped grounds.

Exhibit B

THE CITY OF JACKSONVILLE, FLORIDA, HAS RECEIVED THE FOLLOWING APPLICATION FOR A ZONING VARIANCE FROM THE CITY ENGINEER, JACKSONVILLE, FLORIDA, TO VARY THE ZONING REQUIREMENTS OF THE CITY ZONING ORDINANCES AS APPLICABLE TO THE PROPERTY DESCRIBED IN THE ATTACHED APPLICATION. THE CITY ENGINEER HAS REVIEWED THE APPLICATION AND HAS DETERMINED THAT THE VARIANCE REQUESTED IS NECESSARY TO PERMIT THE PROPOSED USE OF THE PROPERTY AND THAT THE VARIANCE IS IN THE BEST INTERESTS OF THE CITY AND THE PUBLIC. THE CITY ENGINEER HAS THEREFORE RECOMMENDED THAT THE VARIANCE BE GRANTED. THE CITY ENGINEER'S RECOMMENDATION IS BASED ON THE FOLLOWING FACTS: THE PROPERTY IS CURRENTLY ZONED AS RESIDENTIAL SINGLE-FAMILY (RS-1). THE PROPOSED USE OF THE PROPERTY IS AS A COMMERCIAL OFFICE BUILDING. THE PROPOSED USE IS NECESSARY TO PERMIT THE DEVELOPMENT OF THE PROPERTY AND TO PROVIDE EMPLOYMENT OPPORTUNITIES FOR THE RESIDENTS OF THE CITY. THE PROPOSED USE IS IN CONFORMANCE WITH THE CITY ZONING ORDINANCES AS APPLICABLE TO THE PROPERTY. THE CITY ENGINEER HAS THEREFORE RECOMMENDED THAT THE VARIANCE BE GRANTED.



**CITY OF JACKSONVILLE**  
 OFFICE OF THE CITY ENGINEER  
 100 N. GUY W. STREET, JACKSONVILLE, FLORIDA 32202  
 PHONE: 904-251-2200  
 FAX: 904-251-2201  
 WWW.JACKSONVILLEFLORIDA.GOV

**RECOMMENDATION**  
 I, THE CITY ENGINEER, DO HEREBY RECOMMEND THAT THE VARIANCE BE GRANTED TO THE PROPERTY DESCRIBED IN THE ATTACHED APPLICATION.

**APPROVED:** \_\_\_\_\_  
 CITY ENGINEER

**APPROVED:** \_\_\_\_\_  
 CITY COMMISSIONER

**APPROVED:** \_\_\_\_\_  
 CITY COMMISSIONER

MAP SHOWING BOUNDARY SURVEY OF:

RECORDED IN DEED BOOK Y, PAGES 428 AND 429, ALSO KNOWN AS DOGGETT'S WATER LOTS 11, 12, 13, 14, 15, AND 16, DOGGETT'S MAP OF JACKSONVILLE, ALL FORMER PUBLIC RECORDS, DUVAL COUNTY, FLORIDA, TOGETHER WITH ALL OF THE SUBMERGED LANDS LYING IN THE ST. JOHNS RIVER, SOUTHERLY OF SAID DOGGETT'S WATER LOTS 11, 12, AND 13, ALL IN THE J. BELLAMY GRANT, SECTION 38, TOWNSHIP 2 SOUTH, RANGE 26 EAST, SAID DUVAL COUNTY, FLORIDA.

PARCEL A

KNIGHT'S WATER LOTS 17, 18, AND 19, KNIGHT'S MAP OF JACKSONVILLE, FLA., AS RECORDED IN DEED BOOK Y, PAGES 428 AND 429, ALSO KNOWN AS DOGGETT'S WATER LOTS 11, 12, AND 13, DOGGETT'S MAP OF JACKSONVILLE, ALL FORMER PUBLIC RECORDS, DUVAL COUNTY, FLORIDA. EXCEPT ANY PORTION OF THE ABOVE DESCRIBED LANDS WHICH FALL INTO THAT CERTAIN COUNTY RIGHT OF WAY KNOWN AS COURTHOUSE DRIVE (COUNTY ROAD No. 6226). THE ABOVE DESCRIBED PARCEL CONTAINS 1.95 ACRES MORE OR LESS.

PARCEL B

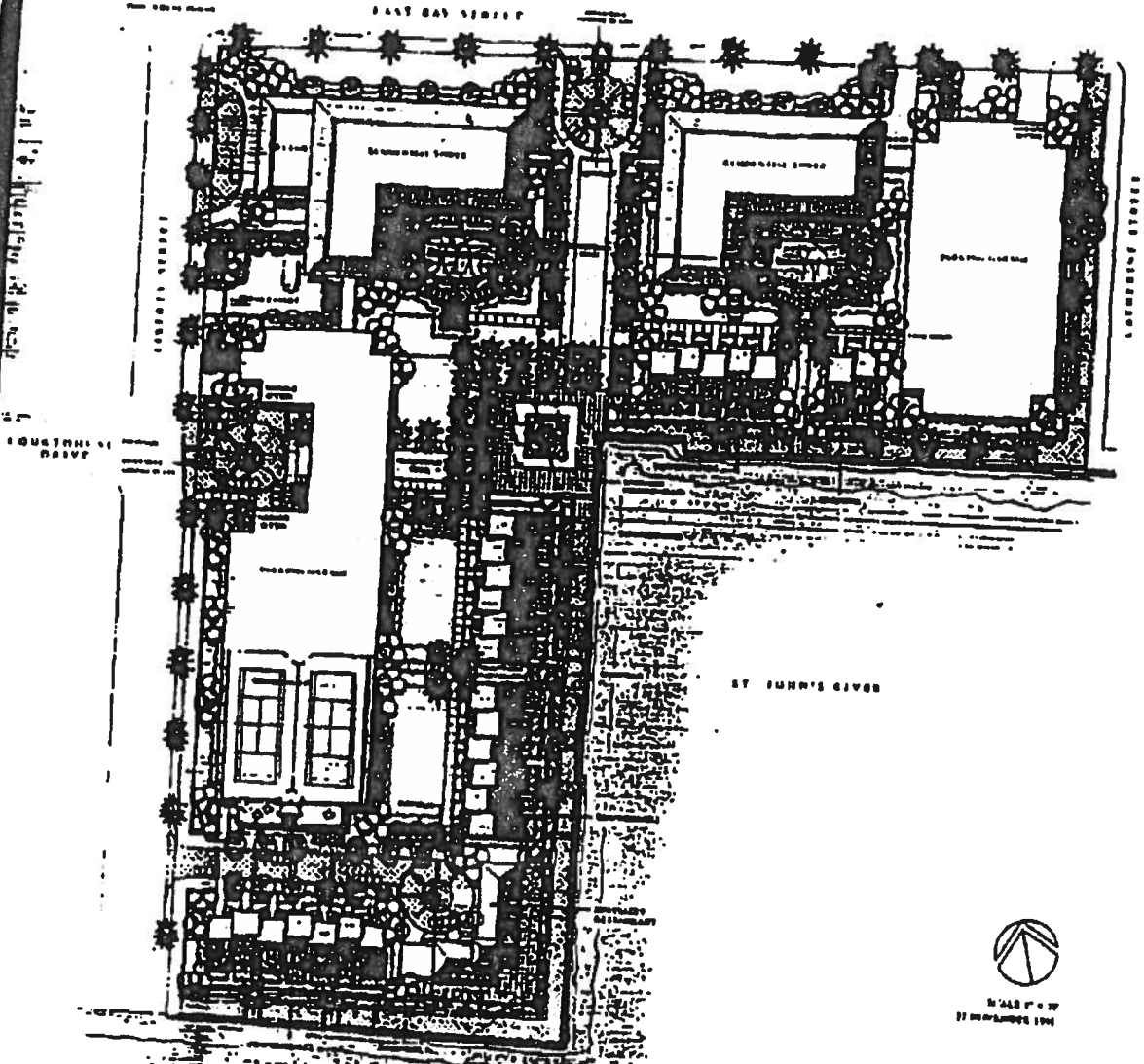
KNIGHT'S WATER LOTS 14, 15, AND 16, KNIGHT'S MAP OF JACKSONVILLE, FLA., AS RECORDED IN DEED BOOK Y, PAGES 428 AND 429, ALSO KNOWN AS DOGGETT'S WATER LOTS 14, 15, AND 16, DOGGETT'S MAP OF JACKSONVILLE, ALL FORMER PUBLIC RECORDS, DUVAL COUNTY, FLORIDA. THE ABOVE DESCRIBED PARCEL CONTAINS 2.3 ACRES MORE OR LESS.

PARCEL C

ALL OF THE SUBMERGED LANDS LYING IN THE ST. JOHNS RIVER SOUTHERLY OF DOGGETT'S WATER LOTS 11, 12, AND 13, AS SHOWN ON DOGGETT'S MAP OF JACKSONVILLE, FORMER PUBLIC RECORDS, SITUATE IN THE J. BELLAMY GRANT, SECTION 38, TOWNSHIP 2 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
FOR A POINT OF REFERENCE COMMENCE AT THE NORTHWESTERLY CORNER OF SAID DOGGETT'S WATER LOT 11, BEING ALSO THE POINT OF INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF BAY STREET WITH THE EASTERLY RIGHT OF WAY LINE OF LIBERTY STREET, BOTH BEING VARIABLE WIDTH RIGHT OF WAYS;  
THENCE SOUTH  $14^{\circ}30'46''$  WEST, ALONG SAID EASTERLY RIGHT OF WAY LINE A DISTANCE OF 355.52 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF COURTHOUSE DRIVE (A VARIABLE WIDTH RIGHT OF WAY) AND THE POINT OF BEGINNING;  
THENCE CONTINUE SOUTH  $14^{\circ}30'46''$  WEST, ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 425.52 FEET TO THE FACE OF A CONCRETE BULKHEAD ON THE ST. JOHNS RIVER;  
THENCE SOUTH  $73^{\circ}55'28''$  EAST, ALONG THE FACE OF SAID BULKHEAD, A DISTANCE OF 312.90 FEET TO AN INTERSECTION WITH THE SOUTHERLY PROLONGATION OF THE EASTERLY BOUNDARY LINE OF SAID DOGGETT'S WATER LOT 13;  
THENCE NORTH  $14^{\circ}41'16''$  EAST, ALONG SAID PROLONGATION AND EASTERLY BOUNDARY LINE, A DISTANCE OF 433.33 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF COURTHOUSE DRIVE (A VARIABLE WIDTH RIGHT OF WAY);  
THENCE NORTH  $75^{\circ}21'20''$  WEST, ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 314.11 FEET TO THE POINT OF BEGINNING.  
THE ABOVE DESCRIBED PARCEL CONTAINS 3.1 ACRES MORE OR LESS.

Harbor Companies  
Berkman Plaza  
Concept Plans

FOR LANDSCAPE ARCHITECTURE ONLY



SCALE 1" = 20'  
27 NOVEMBER 1961

**BERKMAN PLAZA**  
400 EAST BAY STREET JACKSONVILLE, FLORIDA

PICTIANO & ENGELSI - ARCHITECTS  
BRAUNSTADT GRIFF & ASSOCIATES - LANDSCAPE ARCHITECTURE AND PLANNING

PREPARED FOR HARBOR COMPANIES  
HARBOR INVESTMENTS, INC.

Exhibit C-2  
Harbor Companies  
Berkman Plaza  
Concept Plans  
"For Illustrative Purposes Only"

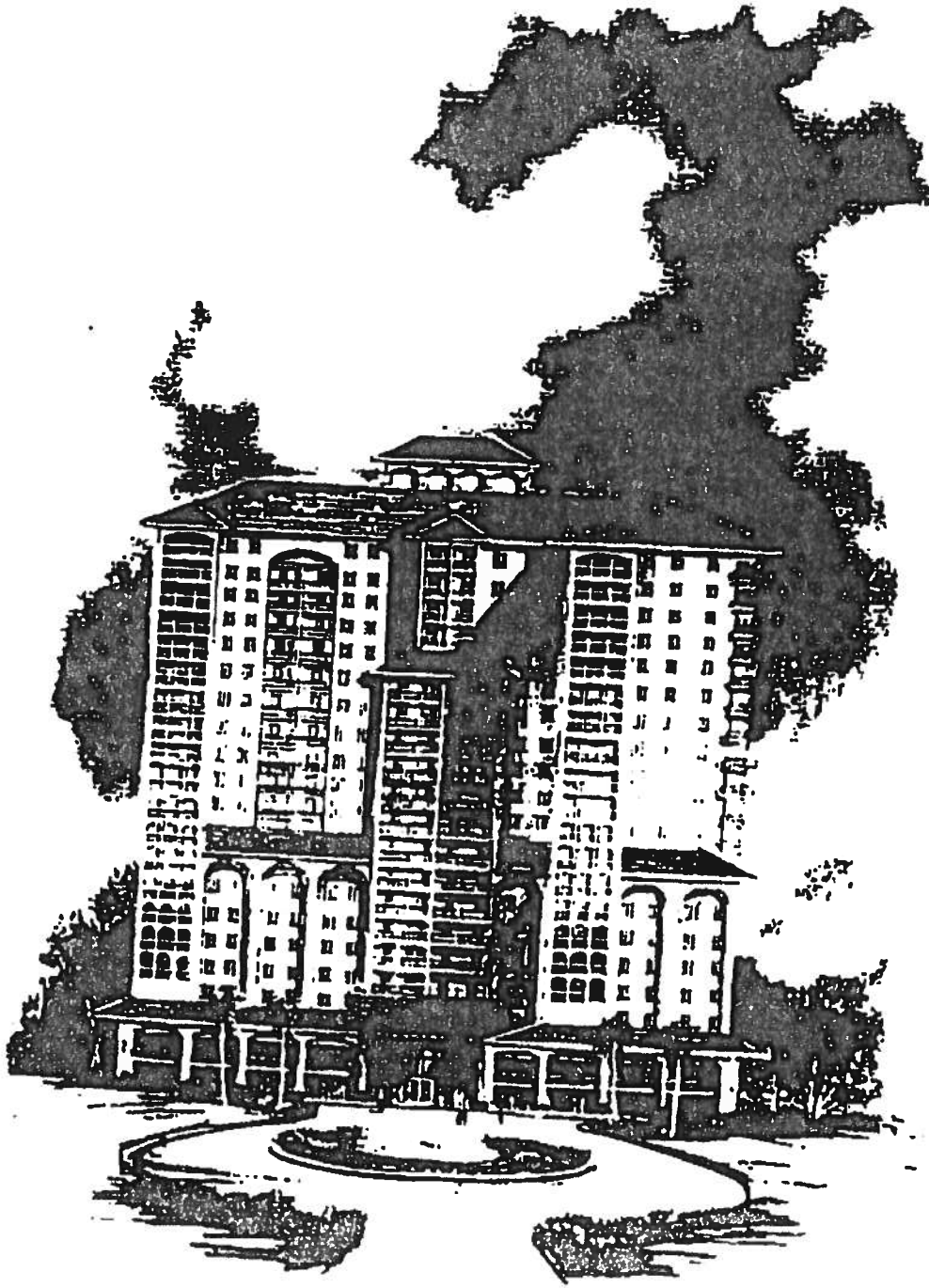


Exhibit C-3  
Harbor Companies  
Berkman Plaza

"For Illustrative Purposes Only"

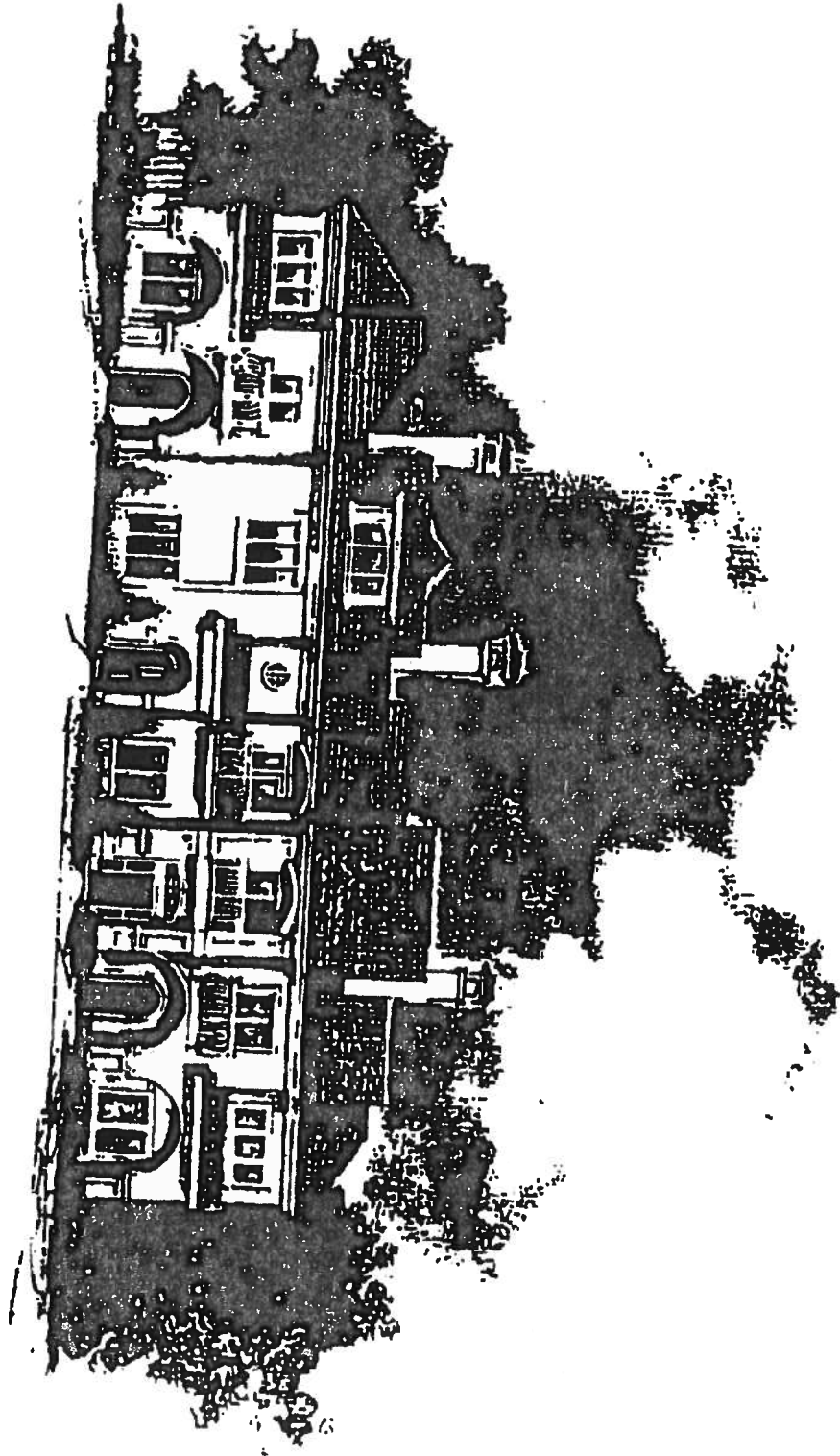


EXHIBIT D-1  
HARBOR COMPANIES  
BERKMAN PLAZA  
JEDC / AGENCY  
PERFORMANCE SCHEDULE

ACTION REQUIRED	START DATE	END DATE
Prepare current / updated boundary survey for Project Parcel	4/19/99	5/7/99
Prepare Phase II Environmental Assessment for Project Parcel	4/19/99	5/7/99
Prepare current Project Parcel appraisal	4/19/99	5/7/99
Obtain evidence of title for all portions of Project Parcel within the Project	4/19/99	5/11/99
Prepare seller's title commitment for Project Parcel	4/19/99	5/11/99
Prepare confirmation that the Project Parcel has no evidence of hazardous substances and / or waste	5/7/99	8/2/99
Prepare required zoning modifications for Project with Developer	5/7/99	8/12/99
Obtain evidence of DFR compliance for Project with Developer	6/1/99	8/12/99
Obtain AGOE Water Quality Certificate for Project with Developer	6/30/99	10/22/99
Obtain SJRWMD Water Quality Certificate for Project with Developer	6/30/99	10/22/99
Obtain all required FEMA approvals for the Project with Developer	6/30/99	10/22/99
Obtain SJRWMD storm water treatment / discharge approvals for the Project with Developer	6/30/99	10/22/99
Obtain all required general approvals/permits for construction within the St. Johns River for the Project with Developer	6/30/99	10/22/99
Obtain all required AGOE approvals/permits for construction within the St. Johns River for the Project with Developer	6/30/99	10/27/00
Obtain all required FEMA map amendments through a CEOMA application for the Project with Developer	6/30/99	8/5/99
Obtain all required easements within Project Parcel with Developer	6/30/99	9/1/99
Obtain utility Letters of Availability for all services required within within the Project with Developer	6/30/99	8/12/99
Obtain existing water pressure data at the Project with Developer	6/30/99	8/12/99
Obtain all required curb cut permits / approvals and for all required access agreements for the Project with Developer	6/30/99	10/7/99

HARBOR COMPANIES  
BERKMAN PLAZA  
JEDC / AGENCY  
PERFORMANCE SCHEDULE

ACTION REQUIRED	START DATE	END DATE
<del>Obtain evidence of easements availability for sanitary sewer lines Station 0+00 to 1+00 for improvements including sidewalk, park cover submerged lands within Project Parcel within Cavallo</del>	<del>6/30/99</del>	<del>5/1/99</del>
<del>Obtain evidence of easements availability for each improvement within the Project Parcel</del>	<del>6/30/99</del>	<del>5/1/99</del>
<del>Obtain all available utility company records and applications for the Project Parcel</del>	<del>6/30/99</del>	<del>5/1/99</del>
<del>Obtain all relevant Department requirements for Project with Developer</del>	<del>6/30/99</del>	<del>5/1/99</del>
Provide evidence of all required approvals from State of Florida for conveyance of submerged lands within the Project Parcel	6/30/99	9/1/99
Provide evidence of complete vacation of all existing easements not required within the Project Parcel	6/30/99	9/1/99
Provide evidence of complete abandonment of Washington Street and portions of Courthouse Drive within the Project Parcel	6/30/99	9/1/99
Demolish existing structures on Project Parcel	8/2/99	9/6/99
<del>Obtain electric service for construction on Project with Developer</del>	<del>8/2/99</del>	<del>9/6/99</del>
<del>Obtain water service for construction on Project with Developer</del>	<del>8/2/99</del>	<del>9/6/99</del>
Design of all Public Improvements within the Project Parcel including public walkways, parks, and riverwalk	8/2/99	9/6/99
Deposit City Contribution for payment of Public Improvements I into City Construction Fund account	8/16/99	9/6/99
Construction of all Public Improvements within the Parcel Project including public walkways, parks, and riverwalk	9/20/99	5/17/00
Construction of street landscape and improvements along East Bay Street.	1/12/00	8/1/00

~~XXXXXX~~ Action requires joint effort on the part of the Agency and the Developer under  
this Performance Schedule



EXHIBIT D 2  
 HARBOR COMPANIES  
 BERKMAN PLAZA  
 HARBOR / DEVELOPER  
 PERFORMANCE SCHEDULE

ACTION REQUIRED	START DATE	END DATE
Prepare an as-built survey of all existing improvements and / or utilities within the Project	4/12/99	5/28/99
Prepare current / updated topography for Project Parcel	4/12/99	5/28/99
Prepare architectural design for the Project	4/12/99	10/15/99
Prepare site design for the Project	4/12/99	10/25/99
Prepare site engineering design for the Project	4/26/99	10/25/99
Prepare required zoning modifications for the Project with Agency	5/27/99	8/12/99
Obtain all required zoning approvals for the Project with Agency	5/27/99	8/12/99
Obtain financing commitment for the Project	7/1/99	8/25/99
Provide results of elutriate testing of underlying sediments of submerged lands within the Project Parcel if required	6/30/99	8/12/99
Obtain all required ACOE water discharge permits for the Project with Agency	6/30/99	8/12/99
Obtain all required ACOE water discharge permits for the Project with Agency	6/30/99	8/12/99
Obtain all required FEMA approvals for the Project with Agency	6/30/99	8/12/99
Obtain all required FEMA approvals for the Project with Agency	6/30/99	8/12/99
Obtain all required general approvals/permits for construction within the State of Florida for the Project with Developer	6/30/99	8/12/99
Obtain all required ACOE approvals/permits for construction within the State of Florida for the Project with Agency	6/30/99	8/12/99
Obtain all required FEMA map amendments through a CROMA application for the Project with Agency	6/30/99	8/12/99
Obtain all required easements within Project Parcel with Agency	6/30/99	8/12/99
Obtain Utility Letters of Availability for all services required within the Project with Agency	6/30/99	8/12/99
Obtain existing water pressure data all over Project with Agency	6/30/99	8/12/99
Obtain all required curb-cut permits / approvals and / or all required access agreements for the Project with Agency	6/30/99	8/12/99

EXHIBIT D-2  
 HARBOR COMPANIES  
 BERKMAN PLAZA  
 HARBOR / DEVELOPER  
 PERFORMANCE SCHEDULE

ACTION REQUIRED	START DATE	END DATE
<del>Obtain all available utility company records about locations within Project with Agency</del>	<del>8/15/99</del>	<del>8/30/99</del>
<del>Obtain all fire department requirements for Project with Agency</del>	<del>8/15/99</del>	<del>8/30/99</del>
Prepare current Traffic Study for the Project	8/30/99	8/30/99
Prepare current Air Quality Study for the Project	8/30/99	8/30/99
<del>Obtain all available utility company records about locations within Project with Agency</del>	<del>8/15/99</del>	<del>8/30/99</del>
<del>Obtain all fire department requirements for Project with Agency</del>	<del>8/15/99</del>	<del>8/30/99</del>
Obtain building permits for the Project	10/18/99	11/1/99
Obtain approvals from Design Standards Committee for the Improvements within the Project	8/9/99	9/9/99
Developer takes title to the Project Parcel	8/25/99	9/1/99
Develop marketing program for the Project	9/2/99	9/13/99
<del>Obtain electric service for construction of Project with Agency</del>	<del>8/22/99</del>	<del>8/30/99</del>
<del>Obtain water service for construction of Project with Agency</del>	<del>8/22/99</del>	<del>8/30/99</del>
Develop pre-leasing program for the Project	9/13/99	9/27/99
Demolish existing utilities within the Project Parcel	10/18/99	12/20/99
Commence construction of Phase I of Project	11/1/99	11/2/99
Repair / modify / stabilize existing parking deck over submerged lands of the Project Parcel	2/1/00	5/3/00
Construction of underground utilities for Project- Phase I	11/1/99	12/20/99
Construction of apartment tower for Project- Phase I	1/12/00	4/6/01
Construction of parking garage for Project- Phase I	4/10/00	7/31/00

EXHIBIT D-2  
HARBOR COMPANIES  
BERKMAN PLAZA  
HARBOR / DEVELOPER  
PERFORMANCE SCHEDULE

ACTION REQUIRED	START DATE	END DATE
Initial occupancy of apartment tower for Project- Phase I	8/1/00	9/1/00
Construction of townhouses for Project- Phase I	4/17/00	10/16/01
Grand Opening Celebration and Reception for Project- Phase I	12/7/00	12/8/00

**[REDACTED]** Action requires joint effort on the part of the Developer and the Agency under this Performance Schedule

## **Exhibit E**

### **Harbor Development Agreement**

#### ***Community Service Commitment***

Harbor Companies has a history of community involvement in Atlanta where they are headquartered.

The following plan for community involvement has been developed for Jacksonville: Each year Harbor will identify a non-profit agency that they will work with. For the first year, Harbor will work with the Boys & Girls Clubs of Northeast Florida. Harbor Companies will be involved with the Leadership Service Program and the Youth of the Year event. In addition, Harbor will sponsor sports clinics at the clubs. Other interactions will be developed during the course of the year.

**EXHIBIT F-1  
HARBOR COMPANIES  
BERKMAN PLAZA  
PUBLIC IMPROVEMENTS**

**Public Improvements I shall include:**

- (a) all required design services, repairs, modifications, and / or reconstruction of the City owned parking deck over submerged lands within the Project Parcel, that may be required to complete the Improvements more specifically described in Exhibit "A" which is attached hereto at a cost of \$ 2,100,000.
- (b) City and Agency obtaining all required permits for and the complete demolition of the Christopher Building, including removal of waste from same from the Project Parcel at a cost of \$ 100,000.
- (c) City and Agency providing all streetscaping on the South side of East Bay Street along the entire frontage of the Phase I Project Parcel which streetscaping shall be substantially the same as the existing streetscaping on Riverside Drive at a cost of \$ 100,000.

Avenue

**EXHIBIT F-2  
HARBOR COMPANIES  
BERKMAN PLAZA  
PUBLIC IMPROVEMENTS**

**Public Improvements II shall include all required design services and construction of the riverwalk extension along the riverfront of the Project Parcel as well as the public walkways and parks within the Project Parcel at a cost of \$ 2,400,000.**