

Council Auditor's Office
Bill 2022-871: Kids Kampus Amended Redevelopment Agreement

Project

- Separates the original agreement into separate agreements for the Hotel and Office Building
- Authorizes the sale of the City-owned Office Building Parcel (rather than leasing the parcel to the Developer for \$36,000 annually for an initial term of 40 years) at the March 2022 appraised value of \$3,200,000, providing for a right of reverter and repurchase if construction commencement does not occur by the performance schedule deadline
- Requires City to relocate utilities located under the Service Road at its expense
- Extends the completion of the project by six months to June 30, 2026 and grants the Developer an additional six months to exercise its right of first offer to lease or purchase the Future Development Parcel, now by June 30, 2025
- Revises the Developer's minimum capital investment for the Hotel and Office Building and adds Minimum Required Direct Cost amounts

	Original Agreement	Amended & Restated Agreement**	Increase/ (Decrease)
Hotel Improvements			
Minimum Required Capital Investment	\$242,907,231	\$334,552,000	
Office Building Improvements			
Minimum Required Capital Investment	\$58,150,317	\$53,050,000	
Total Minimum Required Capital Investment	\$301,057,548*	\$387,602,000	\$86,544,452

*The original agreement did not identify the breakdown of Minimum Required Capital Investment between Hotel and Office Building Improvements. The amounts reflected above were obtained from DIA's analysis of the original agreement.

**The amended and restated agreement also includes Minimum Required Direct Costs of \$281,947,000 for the Hotel Improvements and \$43,015,000 for the Office Building Improvements.

Incentives

- The total amount of the REV Grant is being increased by \$11,017,545 and is being separated into two separate grants
- The amount of the Completion Grant is not changing, but will now be made in two payments, with the second payment contingent upon completion of the Office Building Improvements

Incentive	Original Agreement	Amended & Restated Agreement	Increase/ (Decrease)
Hotel REV Grant		\$50,581,200	
Office Building REV Grant		\$8,120,300	
Subtotal REV Grants	\$47,683,955	\$58,701,500	\$11,017,545
Hotel Completion Grant – 1 st Payment		\$23,634,887	
Hotel Completion Grant – 2 nd Payment		\$2,200,000	
Subtotal Completion Grant	\$25,834,887	\$25,834,887	\$0
Maximum Indebtedness	\$73,518,842	\$84,536,387	\$11,017,545

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Cost Disbursement Agreements for City-Owned Improvements

- The Developer is now required to construct all City-owned Improvements, rather than having the option
- The Agreements are being revised to increase the maximum indebtedness for all three agreements
- The scope of the Marina Improvements Cost Disbursement Agreement is being expanded to include dredging and reconstruction of the adjacent Bulkhead and the Pier
- The payment terms are being revised from reimbursement at completion to a monthly reimbursement on a work performed and invoiced basis, subject to a 10% retainage by the City to be paid at substantial completion of each improvement
- \$22.1 million was funded in the FY 22/23 CIP for the City-Owned Improvements and the remaining \$21.1 million is scheduled to be funded in out years

Improvement	Original Agreement	Amended & Restated Agreement	Increase/ (Decrease)
Marina Improvements	\$7,180,133	\$13,170,939	\$5,990,806
Bulkhead Improvements	\$0	\$6,921,680	\$6,921,680
Pier Improvements	\$0	\$8,763,506	\$8,763,506
Subtotal	\$7,180,133	\$28,856,125	\$21,675,992
Marina Support Building Improvements	\$6,192,967	\$9,875,667	\$3,682,700
Riverwalk Improvements	\$3,900,000	\$4,103,135	\$203,135
Total City-Owned Improvements	\$17,273,100	\$42,834,927	\$25,561,827

Performance Schedule

Deadline	Original Agreement	Amended & Restated Agreement (1)
Commence Hotel Improvements	Horizontal - by 6/1/22 Vertical - not specified	Horizontal - by 12/31/22 Vertical - by 9/1/23
Complete Hotel Improvements	12/31/25	6/30/26
Commence Office Improvements	Horizontal - by 6/1/22 Vertical - not specified	Horizontal - by 12/31/22 Vertical - by 6/1/24
Complete Office Improvements	12/31/25	6/30/26
Completion of Marina Improvements (includes Marina, Bulkhead and Pier)	The earlier of completion of the Hotel and Office Building Improvements or 12/31/25	Earlier of 36 months from the Marina Closure Date or 6/30/26 (2)
Completion of Marina Support Building Improvements	The earlier of completion of the Hotel and Office Building Improvements or 12/31/25	The earlier of the opening of the Hotel Improvements to customers or 6/30/26
Completion of Riverwalk Improvements	The earlier of completion of the Hotel and Office Building Improvements or 12/31/25	The earlier of the opening of the Hotel Improvements to customers or 6/30/26

Notes:

1. All milestones are subject to a day for day extension if 1) utilities have not been relocated and 2) the temporary construction easement to the Future Development Parcel has not been provided
2. Allows for closure of the Marina and Riverwalk for a maximum of 36 months (previously Developer was required to use reasonable efforts to keep them open during construction)

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Waivers

- Waives Code Sec. 122.811(a) to allow the Developer to coordinate the sale of any surplus City property in coordination with the construction of the improvements and apply the revenues toward the cost of the City-owned improvements
- Waives the Public Investment Policy to authorize the REV Grant for the Office Building

ROI

- The ROI has been recalculated based on the terms of the amended and restated agreements
- The increase in the ROI is due to an increase in the estimated ad valorem revenues based on increased capital investment amounts and revised assumptions for the Hotel based on an updated market study showing increased occupancy and average daily rate

	Original Agreement	Amended & Restated Agreement
DIA calculated ROI	1.01 (Overall)	1.10 (Hotel) 1.23 (Office)

Finance Amendment:

1. Include language authorizing the Completion Grant in bill
2. Correct scrivener's errors
3. Attach revised Exhibit 2 (BT) to correct account strings
4. Attach revised Exhibit 3 (CIP Sheet) to correct project scope
5. Place revised agreements on file to:
 - a. Clarify how savings between City-owned improvements can be shared between various Project Components
 - b. Add maximum dollar amount for Bulkhead Improvements
 - c. Clarify responsibility of future signalized intersections along Gator Bowl Blvd
 - d. Correct Developer name within Guaranty Modification
 - e. Replace Marina Improvements Budget Estimate Schedule
 - f. Mirror language in Riverwalk Costs Disbursement Agreement for project management fees
 - g. Strike reference to Ch. 126 in Riverwalk and Marina Improvements Cost Disbursement Agreements
 - h. Clarify unused development rights related to Office Building Improvements will return to DIA
 - i. Clarify DIA Board discretion to permit deviation below stated minimum developments
 - j. Insert base year value for Office Building REV Grant
 - k. Remove insurance requirements for Office Building
 - l. Correct scrivener's errors
 - m. Require Developer to obtain estoppel letter from the Jaguars regarding required parking spaces pursuant to the Jaguars lease and deliver to the City within 30 days of Closing of the Office Parcel
 - n. Mirror applicable conditions for disbursement of the first payment of the Completion Grant on the Hotel to the second payment related to the Office Building Improvements
 - o. Include 5-year sliding scale clawback on Completion Grant if the Hotel is not operated as a Four Seasons or global change in the name of the Four Seasons brand
 - p. Revise the Tower Crane License Agreement to restrict advertising, flags, banners, placards, or signage (other than as required by law) from being hung, attached, or displayed in connection with the cranes or related equipment
 - q. Revise Hotel Improvements to eliminate the requirement for a minimum of 250 integrated structured parking spaces and instead require a minimum of 75,000 sq. ft. structured parking facility

Addendum/Modification and obtain approval therefor, and ultimately obtaining no further action approval from FDEP as to the Future Development Parcel, based upon implementation of the Remedial Action Plan and other applicable requirements of the FDEP.

The Developer or its designated Affiliate shall have the right to acquire riparian rights along the southerly border of the Future Development Parcel if Developer or its designated Affiliate is the successful bidder for the Future Development Parcel. Such riparian rights shall be conveyed by the City at the time of closing or ground lease of the Future Development Parcel to Developer or its designated Affiliate. The Developer or its designated Affiliate may obtain a submerged lands lease over such state-owned lands, subject to regulatory approval, and may elect to construct a private or public marina on such submerged lands fronting the Future Development Parcel.

The Future Development Parcel is bisected by an existing thirty-five foot (35') wide Easement reserved in Official Records Book 1687, Page 483, of the public records of Duval County. Developer may choose to make an offer only on that portion of the Future Development Parcel east of Easement 4 if Developer so elects.

A thirty (30) day notice disposition regarding the Future Development Parcel will be published at the time an offer is received from Developer and the terms thereof are approved by the DIA Board, which approval may be withheld in its sole discretion. Any disposition of the Future Development Parcel is contingent upon approval thereof by the DIA Board and City Council. Notwithstanding anything to the contrary in this Article 7, neither the City nor the DIA are obligated to accept any offer from the Developer and/or approve any disposition to Developer, and notice to the Developer of the rejection of its offer by the DIA Board shall result in the immediate termination of the ROFO without further action.

7.3 **Stadium Parking Contingency.**

(a) Developer acknowledges that the temporary construction easement over the Future Development Parcel and Retained Parcels 3 and 4 (as set forth on **Exhibit X** attached hereto and for the purposes of this Section, the "TCE") and other rights that may be granted to Developer and Shipyards Office, LLC as contemplated by this Agreement or the Office Building Redevelopment Agreement (collectively, the "Developer Rights") may impact the parking and other obligations that the City is required to provide to the Jaguars pursuant to the terms of the Jaguars Lease (defined below). As such, notwithstanding anything in this Agreement to the contrary, ~~as a condition to precedent to the City's obligation to execute the TCE,~~ Developer shall cause the Jaguars to deliver to the City, upon the earlier to occur of (i) the execution of the TCE, or (ii) thirty (30) days from the date of Closing on the Office Building Parcel, an executed estoppel letter addressed to the City, in form and substance reasonably acceptable to the City, consenting to the granting of the TCE and Developer Rights and stating that the Jaguars waive all rights to claim any breach or default under the Jaguars Lease arising out of or

that tax year, and (ii) the amount of the adjusted Annual Project Revenues paid by the Developer.

11.4 **Further disclaimer.**

The REV Grant shall not be deemed to constitute a debt, liability, or obligation of the City, DIA 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, DIA or of the State of Florida or any political subdivision thereof, but shall be payable solely from the funds provided therefor in this Article 11. The City and DIA shall not be obligated to pay the REV Grant or any installment thereof except from the non-ad valorem revenues or other legally available funds provided for that purpose, and neither the faith and credit nor the taxing power of the City, DIA or of the State of Florida or any political subdivision thereof is pledged to the payment of the REV Grant or any installment thereof. The 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, DIA or of the State of Florida or any political subdivision thereof for the payment of the REV Grant or any installment thereof.

Article 12.
PROJECT COMPLETION GRANT

12.1 **Project Completion Grant; Amount.**

The Developer shall be eligible for a Project Completion Grant ("Project Completion Grant") in the up to, maximum amount equal to \$25,834,887.00, payable in part upon Substantial Completion of the Hotel Improvements in accordance with this Agreement. The remaining balance of the Project Completion Grant shall be payable, if at all, at such time as the Office Building Improvements are Substantially Completed in accordance with the Office Building Redevelopment Agreement. The City's obligation to make the Project Completion Grant is subject to the terms and conditions of this Agreement.

12.2 **Disbursement of Project Completion Grant.**

Upon Substantial Completion of the Hotel Improvements in accordance with the terms and conditions of this Agreement, Developer shall be eligible for the first installment of the Project Completion Grant, in the amount of \$23,634,887 (the "First Payment"). Upon the Substantial Completion (as defined in the Office Building Redevelopment Agreement) of the Office Building Improvements in accordance with the terms and conditions of the Office Building Redevelopment Agreement, the Developer is eligible for the second and final payment of the Project Completion Grant in the amount of \$2,200,000 (the "Second Payment"). Disbursement of the First Payment of the Project Completion Grant is subject to the terms and conditions to disbursement below and the other terms of this Agreement. Disbursement of the Second Payment of the Project

Completion Grant, which can be applied for concurrently with disbursement of the First Payment of the Project Completion Grant, is conditioned on Developer being eligible for the First Payment in accordance with this Agreement, and Substantial Completion (as defined in the Office Building Redevelopment Agreement) of the Office Building Improvements in accordance with the terms and conditions of the Office Building Redevelopment Agreement, and is also subject to the conditions to disbursement as set forth in subparagraphs (a) and (c) – (i) below but made applicable as to the Office Building Improvements, Office Building Parcel, and Office Building Redevelopment Agreement, as applicable.-

(a) The Hotel Improvements shall have been Substantially Completed in all respects in accordance with this Agreement and in accordance with the Performance Schedule, as may be modified by a Force Majeure Event or extended by the CEO of the DIA pursuant to Article 4 hereof, consistent with the requirements of this Agreement. The Developer shall furnish to the DIA a temporary certificate of occupancy for the Hotel Improvements, or such other permits and/or certificates (including a certificate of substantial completion from the architect or engineer of record) as shall be required to establish to the DIA's satisfaction that the Hotel Improvements have been Substantially Completed and are not subject to any material violations or uncorrected conditions noted or filed in any City department.

(b) The Developer shall have entered into a fully executed license agreement to operate the Hotel Improvements as a luxury Four Seasons hotel and residential property for a term of not less than ten years.

(c) All property taxes on the Hotel Parcel must be current, and the Hotel Improvements must be open to the general public and operating in accordance with the uses described in this Agreement.

(d) No Event of Default with respect to Developer's obligations under this Agreement with respect to the Hotel Improvements or an event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default with respect to Developer's obligations under this Agreement with respect to the Hotel Improvements has occurred and is continuing. Notwithstanding the foregoing, nothing set forth herein shall abridge Developer's right to cure any notice of default within any applicable notice and cure period.

(e) The Developer shall submit to the DIA a proper contractor's final affidavit and pay applications supporting the Minimum Required Capital Investment to DIA's reasonable satisfaction;

(f) The disbursement request shall be made after Substantial Completion of the Hotel Improvements and satisfaction of all conditions under this Agreement upon written application of Developer pursuant to a Disbursement Request in the form of attached **Exhibit Z**. The Disbursement Request shall be accompanied by the following supporting data: (i) processed pay applications for the Hotel Improvements as

of the date of the Disbursement Request, and (ii) AIA Forms G702 and G703 certified by the General Contractor and Design Professional for the completed Hotel Improvements. The Disbursement Request shall constitute a representation by Developer that the work done and the materials supplied to the date thereof are in accordance with the City approved plans and specifications for such work; that the work and materials for which payment is requested have been physically incorporated into the respective Improvements; that the value is as stated; that the work and materials conform with all applicable rules and regulations of the public authorities having jurisdiction; and that no Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing under this Agreement with respect to the Hotel Improvements.

(g) Developer shall take all action necessary to have any mechanic's and materialmen's liens, judgment liens or other liens or encumbrances filed against the Hotel Parcel (other than any consensual mortgage) released or transferred to bond within twenty (20) days of the date Developer receives notice of the filing of such liens or encumbrances. If any such lien or encumbrance is filed, the City shall not be required to make any disbursement of the Project Completion Grant until such lien or encumbrance is bonded over or removed and the City receives a copy of the recorded release. The City shall not be obligated to disburse any of the Project Completion Grant to Developer if, in the reasonable opinion of the City, any such disbursement or the Hotel Parcel would be subject to a mechanic's or materialmen's lien or any other lien or encumbrance other than inchoate construction liens. Developer shall be fully and solely responsible for compliance in all respects whatsoever with the applicable mechanic's and materialmen's lien laws.

(h) The Developer shall deliver to the DIA an as-built survey of the Hotel Improvements within sixty (60) days after the completion thereof.

(i) The Developer shall have provided to the DIA, in form and substance reasonably satisfactory to the DIA, any such other document, instrument, information, agreement or certificate the DIA may reasonably require related to the construction or completion of the Hotel Improvements.

12.3 **No Warranty by City or DIA**

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

managing member's interest, the substitution of a general partner or managing member, or the addition of a general partner or managing member, or (iii) all or substantially all of the assets of the entity are sold, assigned, transferred or conveyed.

(g) If a Cessation of Four Seasons Operations occurs during the first five years after Substantial Completion of the Hotel Improvements, and unless otherwise approved by City Council, then the following shall be due and payable by the Developer to the City upon Cessation of Four Seasons Operations;

(i) \$25,834,887, if the Cessation of Four Seasons Operations occurs within 12 months after disbursement of the Project Completion Grant;

(ii) \$20,667,910, if the Cessation of Four Seasons Operations occurs after 12 months but within 24 months of disbursement of the Project Completion Grant;

(iii) \$15,500,932, if the Cessation of Four Seasons Operations occurs after 24 months but within 36 months of disbursement of the Project Completion Grant;

(iv) \$10,333,955, if the Cessation of Four Seasons Operations occurs after 36 months but within 48 months of disbursement of the Project Completion Grant; or

(v) \$5,166,977, if the Cessation of Four Seasons Operations occurs after 48 months but within 60 months of disbursement of the Project Completion Grant.

The term "Cessation of Four Seasons Operations" shall mean a change in the flag and brand name under which the Hotel Improvements are operated from the Four Seasons to another name, brand, or flag, or the Hotel closes its operations for any reason other than a Force Majeure Event. Notwithstanding the foregoing, the rebranding of all Four Seasons Hotels and Resorts locations in the United States to another uniform brand name shall not constitute a Cessation of Four Seasons Operations.

17.4 Hotel Parcel Reverter Process.

Notwithstanding the fact that the Reverter (as set forth in the Deed) shall be immediately effective upon the recording of the Notice (as defined in the Deed), Developer shall, at its sole cost and expense and within thirty (30) days of the recording of the Notice, deliver a Special Warranty Deed conveying the Project Parcel to the City and cause to be issued in the City's favor an owner's policy of title insurance for the fair

Council Member Bowman

**Amendment to Bill Number 2022-871; Redevelopment Agreement
between Shipyards Hotel, LLC and the City of Jacksonville and the
Downtown Investment Authority**

Amend bill 2022-871 to:

Amend the On File Marina Improvements, Bulkhead Improvements and Pier Improvements
Costs Disbursement Agreement to:

1. Remove the requirement of the Developer to obtain Builder's Risk insurance due to unavailability in the market, and authorize the City, subject to future appropriation by City Council, to make additional disbursements during the construction period to restore any damage to the Improvements caused by a casualty event and not as a result of the negligence of the Developer or its contractors; and
2. Require the Developer to obtain 100% replacement value Builder's Risk insurance if it becomes available in the future within the construction period.

All as further detailed and set forth on Exhibit 1 attached hereto.

(2) A satisfactory inspection report with respect to the applicable Project Component from the City, which shall be delivered with the applicable Disbursement Request.

(3) An updated Budget showing the amount of money spent or incurred to date on particular items and the remaining costs for the applicable Project Component which shall be delivered with the applicable Disbursement Request.

(4) An updated Schedule of Values, which shall be delivered with the applicable Disbursement Request.

5.5 **Conditions to Final Disbursement.** The City's obligation hereunder to make the final Disbursement with respect to any Project Component is conditioned upon City's receipt of all of the following, each in form and substance reasonably satisfactory to the City:

(1) A Disbursement Request, together with all required Supporting Documentation.

(2) An updated Budget, showing the amount of money spent or incurred to date on all of the Improvements.

(3) Evidence that all Improvement Completion Conditions have been satisfied with respect to such Project Component.

(4) A complete set of signed and sealed "as built" Plans and Specifications.

(5) A final as-built survey showing all of the Improvements and applicable easements in compliance with the requirements of Section 8.9.

(6) Evidence reasonably satisfactory to the City that Developer has Substantially Completed the applicable Project Component and has provided satisfactory evidence of the satisfaction of the Improvements Completion Conditions set forth in Section 8.13 below.

ARTICLE 6 CASUALTY OF IMPROVEMENTS

City and Developer acknowledge and agree that Developer has not been able to procure builder's risk insurance at commercially reasonable rates for the Improvements in accordance with **Exhibit G** attached hereto. If any Improvements shall be damaged or destroyed by a casualty (fire, wind, storm surge, or other act outside the control of Developer or Contractor and which is typically an insured loss ordinarily covered by a builder's risk insurance policy) (each, a "**Casualty Event**") prior to Completion of Construction, Developer shall cause the General Contractor to diligently restore and rebuild the damaged Improvements as nearly as possible to the condition they were in immediately prior to such damage or destruction. The work of repair and restoration shall be commenced by Developer as soon as reasonably possible, with due consideration given to, among other things, clearing of damaged portions of the Improvements and site preparation, redesign, rebidding and repermitting. Once construction has commenced, Developer shall cause Contractor to proceed diligently thereafter to complete the construction or repair, subject to

reasonable delays due to Force Majeure Events. Subject to future appropriation by City Council, the City shall make progress disbursements to Developer for the restoration costs of the damaged Improvements in the same manner as required by Article 4 and Article 5 of this Agreement (each, a “**Casualty Disbursement**”). The City acknowledges and agrees that its obligation to make a Casualty Disbursement is in addition to, and not in lieu of, the City’s obligation to disburse funds to Developer for the initial construction of such damaged Improvements in accordance with the terms of this Agreement. The City shall make Casualty Disbursements to Developer for restoration of Improvements to the extent such Improvements have been previously completed or partially completed as of the date of such Casualty Event. Any Casualty Disbursement shall not count against the Maximum Project Component Disbursement Amount for such Project Component. The maximum liability of the City under this paragraph shall be the lesser of the replacement value of the Marina Improvements (for the purposes of this Article 6, “Marina Improvements” shall exclude the Bulkhead Improvements and Pier Improvements”), Bulkhead Improvements and the Pier Improvements or the maximum amount of \$28,856,125 unless increased as set forth below. As to the Marina Improvements and Pier Improvements, any such funding provided by the City shall have a 2% deductible (in the amount of \$438,688.90) for named windstorms or hail, and a \$10,000 deductible for other than windstorm or hail as is typical in standard builder’s risk policies issued in Florida that shall be the responsibility of the Developer and Developer shall be responsible for all costs of restoration in excess of the foregoing City funds and deductible amounts. Notwithstanding anything to the contrary herein, the City shall have no obligation to fund any restoration of the Marina Improvements, Bulkhead Improvements or Pier Improvements to the extent such damage is the result of the negligence or willful misconduct of Developer or its contractors or subcontractors, in which event such restoration costs will be the responsibility of the Developer. The City’s obligations pursuant to this Article 6 are subject to and contingent upon a future appropriation of funds therefor by City Council.

Notwithstanding the foregoing, to the extent 100% replacement value builder’s risk insurance for the Marine Improvements and Pier Improvements becomes available in Florida subsequent to the Effective Date hereof for a premium of \$200,000 or less, with the City’s prior written consent, Developer agrees, or it shall require the General Contractor, to obtain such insurance consistent with the requirements of **Exhibit G** attached hereto. The costs for the premiums to obtain such insurance shall be borne by the Developer in an amount up to \$200,000 as to the Marina Improvements and Pier Improvements. The Developer shall be responsible for all deductibles and costs of restoration in excess of such insurance proceeds. If 100% replacement value builders risk insurance becomes available but the premium therefor costs in excess of \$200,000, the City may require Developer to obtain the same provided that the City funds any insurance premium in excess of \$200,000 prior to policy issuance.

If Developer or its contractor does not obtain builder’s risk insurance for the Marina Improvements and Pier Improvements for the construction term, or only for a portion of the construction term, then the unexpended premium amount shall not be eligible to be used as a cost savings hereunder.

Notwithstanding anything to the contrary herein, in the event the City’s financial obligations under this Article 6 are reasonably anticipated to exceed \$28,856,125, the parties agree to reasonably cooperate regarding the budget for such restoration and repairs and the City agrees to file legislation seeking City Council approval for any additional funding required and Developer

shall not be required to commence restoration or replacement of any portion of the Improvements until resolution of the relative financial obligations pursuant to this paragraph.

In the event builder's risk insurance for the Marina Improvements and Pier Improvements becomes available in Florida subsequent to the Effective Date hereof at commercially reasonable rates, but is only available for less than replacement value, and the City desires to have the Developer or its general contractor obtain such coverage, the parties hereto agree to negotiate in good faith regarding their respective financial obligations relating thereto and the City agrees to file legislation seeking City Council approval for any additional City funding, if any, required.

The Developer will take commercially reasonable protective measures in the event of a predicted weather event and will reasonably cooperate with the City's Department of Public Works regarding the timing of installation of various project elements so as to minimize seasonal risk of storm damage when appropriate as reasonably requested by the City's Department of Public Works.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

Developer represents and warrants to City that, to its knowledge:

7.1 Authority; Enforceability. (a) The execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents of Developer; (b) this Agreement and any documents executed in connection herewith do not violate any of the terms or conditions of such governing documents and this Agreement is binding upon Developer and enforceable against it in accordance with its terms; (c) the person(s) executing this Agreement on behalf of Developer is (are) duly authorized and fully empowered to execute the same for and on behalf of Developer; and (d) Developer is duly authorized to transact business in the State of Florida and has received all necessary permits and authorizations required by appropriate governmental agencies, if any, as a condition to doing business in the State of Florida.

7.2 Survival. All of the representations and warranties of Developer, as set forth in this Agreement, shall survive the making of this Agreement and shall be continuing for a period of one year after the Completion Date as set forth herein.

ARTICLE 8 COVENANTS

8.1 Construction of the Improvements. Unless otherwise agreed in writing by City, ongoing physical construction of the Improvements shall commence by the Commencement Date as established pursuant to Section 2.2 and shall be carried on diligently without any Impermissible Delays.

8.2 Manner of Construction of the Improvements. Developer shall cause the Improvements to be constructed in a good and workmanlike manner, in substantial accordance

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management. The above limits may be provided through a combination of primary and excess policies.

Automobile Liability \$1,000,000 Combined Single Limit (Coverage for all automobiles, owned, hired or non-owned used in performance of the Agreement)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Design Professional Liability \$5,000,000 per Claim
\$10,000,000 Aggregate

Any entity hired to perform professional services as a part of this Agreement shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement and with a five (5) year reporting option beyond the annual expiration date of the policy.

Builders Risk %100 Completed Value of the Project

Such insurance shall be on a form acceptable to the City's Office of Insurance and Risk Management. The Builder's Risk policy shall include the SPECIAL FORM/ALL RISK COVERAGES. The Builder's Risk and/or Installation policy shall not be subject to a coinsurance clause. A maximum \$10,000 deductible for other than windstorm and hail. For windstorm and hail coverage, the maximum deductible applicable shall be 2% of the completed value of the Improvements. Named insured's shall be: Developer, Contractor, the City, and respective members, officials, officers, employees and agents, the Engineer, and the Program Management Firms(s) (when program management services are provided). The City of Jacksonville, its members, officials, officers, employees and agents are to be named as a loss payee.

Builder's Risk policy is not required as of the Effective Date hereof as City and Developer have determined that such coverage is not available or not available at commercially reasonable rates.

Pollution Liability \$5,000,000 per Loss
\$5,000,000 Annual Aggregate

Any entity hired to perform services as part of this Agreement for environmental or pollution related concerns shall maintain Contractor's Pollution Liability coverage. Such Coverage will include bodily injury, sickness, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to destruction of tangible property including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;