

**Southwest Ranches Council**  
Mayor Doug McKay,  
Vice Mayor Gary Jablonski  
Bob Hartman  
Denise Schroeder



**Town Administrator**  
Andrew Berns

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## **REQUEST FOR PROPOSALS**

**RFP No. 20-003**

Town of Southwest Ranches  
Is seeking proposals for:

### **LEASE AND DEVELOPMENT OF VACANT LAND AT THE WEST BROWARD INDUSTRIAL PARK**

**Date issued/available for distribution: November 4, 2019**

Proposer shall submit one (1) unbound original, five (5) bound copies of the completed proposal, and one (1) electronic copy of the entire proposal in a PDF or similar format, which must be received by the Office of the Procurement no later than **Monday, December 2, 2019, at 3:30 p.m. local time**. See Section 1.8 for mailing instructions.

**Pre-Proposal Conference : Non-Mandatory, Tuesday, November 12, 2019 at 10:00 a.m.** local time. See Section 1.4, of this RFP for the location of the Pre-Proposal Conference.

**Site Visit: Non-Mandatory, Tuesday, November 12, 2019 at 2:00 p.m.** local time. See section 1.5 of this RFP for the location of the Site Visit.

### **ENVELOPE MUST BE IDENTIFIED WITH THE DEADLINE DATE FOR SUBMISSION OF PROPOSALS AND THE RFP NUMBER**

**CAUTION**

Amendments to this Request for Proposals will be posted on the Southwest Ranches Procurement Department's website which can be accessed at <http://southwestranches.org/procurement>. As they are issued, all amendments to solicitations will be posted under the applicable solicitation on our system. It is the proposers sole responsibility to routinely check the system for any amendments that may have been issued prior to the deadline for receipt of bids.

Southwest Ranches shall not be responsible for the completeness of any RFP document, amendment, exhibit or attachment that was not downloaded from the system or obtained directly from the Procurement Department.

IN ACCORDANCE WITH THE PROVISIONS OF ADA, THIS DOCUMENT MAY BE  
REQUESTED IN AN ALTERNATIVE FORMAT.

**RFP NO. 20-003**  
**Table of Contents**

SECTION 1 GENERAL INFORMATION ..... 1

1.1 ISSUING OFFICE ..... 1

1.2 PURPOSE OF THE PROJECT ..... 1

1.3 OPPORTUNITY OFFERED ..... 1

1.4 PRE-PROPOSAL CONFERENCE ..... 2

1.5 SITE VISIT ..... 2

1.6 QUALIFICATION OF PROPOSERS ..... 2

1.7 TIMETABLE..... 2

1.8 PROPOSAL SUBMISSION ..... 3

1.9 CONTACT PERSON ..... 4

1.10 PROCUREMENT CODE ..... 5

1.11 CONE OF SILENCE ..... 5

1.12 ADDITIONAL INFORMATION/AMENDMENT(S)..... 5

1.13 DISCLAIMER ..... 6

SECTION 2 TERMS AND CONDITIONS ..... 6

2.1 ADHERENCE TO REQUIREMENTS..... 6

2.2 MODIFIED PROPOSALS ..... 6

2.3 WITHDRAWAL OF PROPOSALS ..... 7

2.4 LATE PROPOSALS, LATE MODIFIED PROPOSALS ..... 7

2.5 RFP POSTPONEMENT/CANCELLATION ..... 7

2.6 COSTS INCURRED BY PROPOSERS ..... 7

2.7 PROPRIETARY/CONFIDENTIAL INFORMATION ..... 7

2.8 NEGOTIATIONS ..... 7

2.9 RIGHT TO PROTEST ..... 7

2.10 RULES; REGULATIONS; LICENSING REQUIREMENTS ..... 8

2.11 EXCEPTIONS TO THE LEASE AGREEMENT ..... 8

2.12 SELECTION PROCESS..... 8

    2.12.1 Evaluation of Proposals ..... 8

    2.12.2 Award Recommendation ..... 10

    2.12.3 Negotiation..... 10

    2.12.4 Execution of Lease Agreement ..... 11

2.13 AWARD ..... 11

2.14 ASSIGNMENT ..... 11

2.15 CANCELLATION..... 11

2.16 RELATION TO PARTIES ..... 12

2.17 COMPLIANCE WITH LAW ..... 12

2.18 WAIVER OF LIABILITY ..... 12

2.19 INDEMNIFICATION..... 12

2.20 SECONDARY/OTHER VENDORS ..... 12

2.21 DEFAULT PROVISION ..... 12

2.22 GOVERNING LAW ..... 13

2.23 REMEDIES FOR BREACH..... 13

2.24 WRITTEN CONTRACT ..... 13

2.25 PUBLIC RECORDS LAW ..... 13

2.26 DISPUTES..... 14

2.27 SELECTION CRITERIA ..... 15

2.28	CONTRACT PROVISIONS (ATTACHMENT “2”)	15
2.28.1	Lease Agreement	15
2.28.2	Authorization to Sign	15
2.29	INSURANCE REQUIREMENTS	15
2.30	ENVIRONMENTAL POLLUTION INSURANCE	15
2.31	ADDITIONAL INSURANCE REQUIREMENTS	15
2.32	PERFORMANCE BOND /LETTER OF CREDIT	16
2.33	COMMENCEMENT OF WORK	16
2.34	NON-DISCRIMINATION & EQUAL EMPLOYMENT OPPORTUNITY	16
2.35	DISCLOSURE OF OWNERSHIP INTEREST	17
2.36	CONFLICT OF INTEREST	17
2.37	PUBLIC ENTITY CRIMES/DENIAL OR REVOCATION OF THE RIGHT TO TRANSACT BUSINESS WITH PUBLIC ENTITIES	17
SECTION 3 PROPOSAL REQUIREMENTS		18
3.1	PROPOSAL FORMAT AND CONTENT	18
3.1.1	Format	18
3.1.2	Letter of Transmittal	18
3.1.3	Table of Contents	18
3.1.4	Technical Proposal	18
3.2	EXPERIENCE, QUALIFICATIONS AND FINANCIAL INFORMATION	19
3.2.1	*Description of Business Organization	19
3.2.2	*History of Company	19
3.2.3	Experience	20
3.2.4	References	20
3.2.5	*Credit References	20
3.2.6	*Legal/Contractual History	20
3.2.7	*Financial Information	20
3.3	PROJECT APPROACH	21
3.3.1	Description of the Project	21
3.3.2	*Development Team	23
3.3.3	*Operation & Management	23
3.3.4	*Marketing	23
3.3.5	*Financial Pro forma	23
3.3.6	*Economic Benefits	23
3.3.7	*Exceptions to the Lease Agreement (Attachment “2”)	23
3.4	PROPOSAL RESPONSE FORM	23
3.4.1	Proposal Response Form	23
3.4.2	Lease Proposal	24
3.5	PROPOSAL GUARANTEE	24
3.6	DRUG FREE WORKPLACE CERTIFICATION	25
SECTION 4 TERM		25
4.1	TERM	25

## APPENDICES

APPENDIX	“A”- PROPOSAL RESPONSE FORM
APPENDIX	“B” - DRUG FREE WORKPLACE CERTIFICATION
APPENDIX	“C” - DISCLOSURE OF OWNERSHIP INTEREST FORM
APPENDIX	“D”- PROPOSAL CHECKLIST
APPENDIX	“E”- SWORN STATEMENT ON PUBLIC ENTITY CRIMES
APPENDIX	“F” – NON-COLLUSION AFFIDAVIT

## EXHIBITS

EXHIBIT “1” – LOCATION MAP
EXHIBIT “2” - SURVEY

## ATTACHMENTS

ATTACHEMNT “1” – SELECTION CRITERIA
ATTACHMENT “2” – CONTRACT PROVISIONS

## **SECTION 1 GENERAL INFORMATION**

### **1.1 ISSUING OFFICE**

This Request for Proposals (“RFP”) is issued by the Town of Southwest Ranches, a political subdivision of the State of Florida (“Town”), by and through its Procurement Department (“Department”). The Department is the SOLE point of contact concerning this RFP. All communications regarding this RFP must be done through the Department (See Section 1.9, Contact Person).

### **1.2 PURPOSE OF THE PROJECT**

The Department is soliciting proposals from qualified and experienced firms for the lease and development of up to 24.3622 +/- acres of unimproved land (“Property”) located generally west of NW 196th Avenue, north of Sheridan Street, and east of SW 202nd Avenue, in the West Broward Industrial Park.

The Department’s goals for this RFP are to:

- Provide for the development and operation of compatible commercial or industrial uses on the Property;
- Maximize the use of the Property;
- Generate revenues to the Town commensurate with the opportunity offered for the operation and maintenance of Town’s Industrial Park; and
- Ensure compatibility with surrounding communities.

### **1.3 OPPORTUNITY OFFERED**

The Department is soliciting proposals from qualified parties to lease and develop three (3) parcels of land, containing approximately 24.3622 +/- acres owned by the Town. In the event that less than the entire 24.3622 +/- acre parcel is proposed to be leased by a single proposer, one or more proposals may be accepted.

The Property is located generally west of NW 196th Avenue, north of Sheridan Street, and east of SW 202nd Avenue, in the West Broward Industrial Park in the Town of Southwest Ranches, Florida. The three parcels that comprise the Property are zoned Manufacturing (M) and identified by the Broward County Property Appraiser with ID numbers: 5139 02 04 0510; 5139 02 04 0500; and 5139 02 04 0490. A general location map is attached as Exhibit 1. The property will be leased for commercial or industrial purposes, “AS-IS” with no warranties or representations of any nature, including, without limitation, any relating to the proposer’s ability to use the Property for any intended purpose.

The Site, zoned M (Manufacturing), is located in a manufacturing and industrial district is intended for manufacturing and industrial uses, some of which involve the use, handling and storage of hazardous materials, or require a substantial amount of open air storage area. See

Article 55 of the Town's Code of Ordinances and Unified Land Development Code for additional information regarding uses and development standards. The Proposer is expected to include a detailed Site Plan to demonstrate how the Site will be used. The Site Plan should be developed in accordance with the Town's Code and must detail whether any conditional uses requiring a special exception use permit are necessary to achieve the intended goals and objectives.

A survey prepared by Avirom & Associates, Inc. of the Site dated March 5, 2016 is attached hereto as Exhibit "2".

#### **1.4 PRE-PROPOSAL CONFERENCE**

The Pre-Proposal Conference, will be held in the Town's Grand Oaks Conference Room or Council Chambers located at Town Hall on **Tuesday, November 12, 2019 at 10:00 a.m.** local time.

There will be a Town representative available to answer questions relative to this RFP; however, proposers should not rely on any oral representations, statements or explanations other than those made by this RFP or a formal Amendment to the RFP. Any questions or comments arising subsequent to the Pre-Proposal Conference must be presented, in writing, to the Contact Person (See Section 1.9) prior to the date and time stated in the Timetable (See Section 1.7).

In accordance with the provisions of ADA, auxiliary aids or services will be provided upon request with at least five (5) days notice.

#### **1.5 SITE VISIT**

The Site Visit, which will be held at The Property on **Tuesday, November 12, 2019 at 2:00 p.m.** local time.

There will be a Town representative available to answer questions relative to this RFP; however, proposers should not rely on any oral representations, statements or explanations other than those made by this RFP or a formal Amendment to the RFP. Any questions or comments arising subsequent to the Site Visit must be presented, in writing, to the Contact Person (See Section 1.9) prior to the date and time stated in the Timetable (See Section 1.7).

In accordance with the provisions of ADA, auxiliary aids or services will be provided upon request with at least five (5) days notice.

#### **1.6 QUALIFICATION OF PROPOSERS**

All proposers to this RFP shall have demonstrated experience in the lease and development of similar projects and shall meet all criteria/requirements identified in this RFP.

#### **1.7 TIMETABLE**

The anticipated schedule and deadline for this RFP and approval of the Lease Agreement is as follows:

<b>Activity</b>	<b>Date, Time and Location</b>
RFP available for download on website	<b>On or about: November 4, 2019 at:</b> <a href="http://southwestranches.org/procurement">http://southwestranches.org/procurement</a>
Pre-Proposal Conference	<b>10:00 a.m. local time, on Tuesday, November 12, 2019,</b> at Town’s Grand Oaks Conference Room or Council Chambers located at Town Hall.
Pre-Proposal Site Visit	<b>2:00 p.m. local time, on Tuesday, November 12, 2019, at The Property.</b>
Deadline for Submission of Written Comments/Questions	At Monday, November 18, 2019, the Office of the Procurement, 13400 Griffin Road, Southwest Ranches, FL 33330.
Response to Written Comments/Questions	Friday, November 22, 2019
Deadline for Submission of Proposals	<b>At 4 p.m. local time, on Monday, December 2, 2019,</b> at the Office of the Procurement, 13400 Griffin Road, Southwest Ranches, FL 33330.
Selection Committee meeting(s) and Oral Presentations (if necessary)	To be Determined
Award Date	To be Determined

## **1.8 PROPOSAL SUBMISSION**

All proposals must be submitted on 8 1/2 x 11 inch paper. One (1) unbound original and five (5) hard copies of the complete proposal must be received by the Town no later than 4 p.m. local time on Monday, December 2, 2019. Proposers must also submit an electronic copy of the proposal on CD or flash drive in the PDF or similar format. The original and all copies must be submitted in a sealed envelope or container. The proposers complete return address must be included on the outer envelope or wrapper enclosing any materials submitted in response to this RFP. The outer envelope or wrapper should be addressed as follows:

**Proposer Name**  
**Address**  
**Phone Number**

Town of Southwest Ranches  
Town Council  
Procurement Department  
13400 Griffin Road  
Southwest Ranches, FL 33330

RFP No.: 20-003  
Title: Lease and Development of Vacant Land

West Broward Industrial Park

Due Date: Monday, December 2, 2019

Hand-carried proposals may be delivered to the above address ONLY between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, excluding holidays observed by the Town.

Proposers are responsible for informing any commercial delivery service, if used, of all delivery requirements and for insuring that the required address information appears on the outer wrapper or envelope used by such service.

The Proposal Response Form (Appendix "A") must be signed by an officer of the proposing entity or other authorized person ("Authorized Person").

The submission of a signed proposal by a proposer will be considered by the Town as constituting a legal offer by the proposer to provide services required by this RFP at the proposed price identified therein.

No proposals will be accepted after the deadline for submission of proposals or at any location other than the location designated in this RFP.

## 1.9 CONTACT PERSON

The individuals designated as "Contact Person" for this RFP are:

Russell Muñiz, Assistant Town Administrator/Town Clerk  
13400 Griffin Road, Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
Email: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)

Or

Andrew D. Berns, Town Administrator  
13400 Griffin Road, Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490

Notwithstanding any provision of this RFP to the contrary, including, but not limited to Section 1.10, Cone of Silence below, proposers are advised that from the date of release of this RFP until the beginning of the Town Council meeting at which the Town Administrator makes his or her written recommendation to the Town Council, NO contact with Department staff (other than the Contact Person) is permitted, except as authorized by the Contact Person or as otherwise authorized or contemplated by this RFP as a part of the solicitation process (e.g., submission of questions, contract negotiations with designated representative of the Department, pre-proposal conference, site inspections, etc.) NO contact is permitted by a proposer or anyone representing a proposer with designated Selection Committee members concerning this RFP from the date of



release of the RFP until the beginning of the Town Council meeting at which the Town Administrator makes his or her written recommendation to the Town Council, except at the public Selection Committee Meeting(s).

### **1.10 PROCUREMENT CODE**

Article IX of the Town's Code of Ordinances establishes specific directions and guidelines for employees and agents of the Town to use in purchasing commodities and services. All requests for commodities and/or services, and all purchases shall be for a public purpose and in accordance with this code. This code provides the policies and procedures that frame the purchasing of contractual services and commodities starting with defining the procurement and proceeding through award of the contract or purchase order. The Town is committed to a system that provides quality, integrity and competition in a professional manner. Generally, purchasing procedures provide a mechanism to allow commodities and services to be purchased at the lowest possible cost, and consistent with the quality needed to meet the requirements of the town.

In addition to the procedures set forth in this code, the Town shall also adhere to the requirements of Florida Statutes, to the extent applicable to the Town.

### **1.11 CONE OF SILENCE**

The Cone of Silence means a prohibition on any communication regarding this RFP between a potential vendor, service provider, proposer, bidder, lobbyist, or consultant and the Town Council members, Town's professional staff including, but not limited to, the Town Administrator and his or her staff, or any member of the Town's selection or evaluation committee. See Article IX, Sec. 2-208(c) for additional information including permitted exceptions to the Code of Silence.

The Cone of Silence shall be imposed at the time of the advertisement of this RFP and shall terminate at the beginning of the Town Council meeting at which the Town Administrator makes his or her written recommendation to the Town Council. However, if the Town Council refers the solicitation back to the Administrator, staff or committee for further review, the Cone of Silence shall be re-imposed until such time as the Administrator makes a subsequent written recommendation and commencement of the Council meeting. The Cone of Silence shall also terminate in the event that the Town Administrator cancels the solicitation.

Prior to an award, violation of this the Cone of Silence shall result in the disqualification of the proposer from further consideration. Discovery of a violation after an award by a particular proposer shall render any RFP award to said proposer voidable by the town, and in the Town's sole discretion.

### **1.12 ADDITIONAL INFORMATION/AMENDMENT(S)**

Any questions, comments (i.e., additional information or clarifications) must be made, in writing via fax, e-mail, U.S. Mail no later than Monday, November 18, 2019, to the address listed in this RFP Timetable (See Section 1.7) or fax number or e-mail address listed for the Contact Person

(See Section 1.9 above). The request must contain the proposer's name, address, phone number, facsimile number and e-mail address.

Facsimiles must have a cover sheet which includes, at a minimum, the proposer's name, address, number of pages transmitted, phone number, facsimile number and e-mail address.

Changes to this RFP, when deemed necessary by the Town, will be completed only by written Amendment(s) issued prior to the deadline for submission of proposals. Proposers should not rely on any representations, statements, or explanation other than those made by this RFP or in any Amendment to this RFP. Where there appears to be a conflict between this RFP and any Amendment issued, the last Amendment issued shall prevail.

Amendments to this RFP will be posted on Town of Southwest Ranches Purchasing Department website which can be accessed at <http://southwestranches.org/procurement/>.

It is the sole responsibility of proposers to routinely check for any Amendments that may have been issued prior to the deadline for submission of proposals. Town shall not be responsible for the completeness of any RFP package not downloaded from this website or purchased directly from the Department. A proposer may verify with the designated Contact Person (See Section 1.9) that proposer has received all Amendments to this RFP prior to the submission of its proposal.

### **1.13 DISCLAIMER**

All documents and information, whether written, oral or otherwise, provided by the Town relating to this RFP are being provided solely as an accommodation and for informational purposes only, and the Town is not making any representations or warranties of any kind as to the truth, accuracy, or completeness of such documents or information, or as to the sources thereof. The Town shall have no liability whatsoever relating to such documents and information and all parties receiving the same shall not be entitled to rely on such documents and information, but shall have a duty to independently verify the accuracy of the information contained therein. Failure on the part of any proposer to examine, inspect and be completely knowledgeable of the terms and conditions of the Lease Agreement, the Property, its future plans and operational conditions, or any other relevant documents or matters, shall not relieve the selected proposer from fully complying with this RFP.

## **SECTION 2 TERMS AND CONDITIONS**

### **2.1 ADHERENCE TO REQUIREMENTS**

Proposers guarantee their commitment, compliance, and adherence to all requirements of this RFP by submission of their proposals.

### **2.2 MODIFIED PROPOSALS**

Proposers may submit a modified proposal to replace all or any portion of a previously submitted proposal until the deadline for submission of proposals specified in the RFP Timetable (See Section 1.7). The Town will only consider the latest proposal submitted.

### **2.3 WITHDRAWAL OF PROPOSALS**

A proposal may be withdrawn only by written notification. Letters of withdrawal received after the deadline for submission of proposals specified in the RFP Timetable (See Section 1.7) will not be accepted unless the Lease Agreement has been awarded to another proposer or no award has been made within ninety (90) days after the deadline for submission of proposals. Unless withdrawn, as provided in this subsection, a proposal shall be irrevocable until the time that a Lease Agreement is awarded.

### **2.4 LATE PROPOSALS, LATE MODIFIED PROPOSALS**

Proposals and/or modifications to proposals received after the deadline for submission of proposals specified in the RFP Timetable (See Section 1.7) shall not be considered.

### **2.5 RFP POSTPONEMENT/CANCELLATION**

Notwithstanding any provision of this RFP to the contrary, the Town, in its sole and absolute discretion, shall have the right to reject any and all, or parts of any and all proposals; commence a new solicitation process; postpone or cancel this RFP process; and/or waive any non-material irregularities in this RFP or the proposals received as a result of this RFP. In addition, the Town of Southwest Ranches Council may reject any proposal prior to award.

### **2.6 COSTS INCURRED BY PROPOSERS**

All expenses incurred with the preparation and submission of proposals to the Town, or any work performed in connection therewith, shall be borne by the proposer.

### **2.7 PROPRIETARY/CONFIDENTIAL INFORMATION**

Proposers are hereby notified that all information submitted as part of, or in support of, proposals will be available for public inspection after the opening of proposals, in compliance with Chapters 119 and 286, Florida Statutes, popularly known as the “Public Records Law” and the “Government in the Sunshine Law” respectively.

### **2.8 NEGOTIATIONS**

The Department may recommend the award of a Lease Agreement to the Town Council on the basis of the initial proposals received without further negotiation; therefore, each submitted proposal should contain the proposer's best offer. Negotiations, if any, will be conducted by a designated representative of the Department. No negotiation team shall be established for this RFP.

### **2.9 RIGHT TO PROTEST**

For purposes of this RFP, the term “Purchasing Code” shall mean Chapter 2, Article IX, of the Town of Southwest Ranches Code. Section 2-213 of the Code is hereby incorporated into this RFP by reference (“Bid Protest”). By responding to this RFP, all proposers agree that the Bid Protest procedures set forth in the Code are applicable to this RFP and shall comply with said procedures.

Any proposer may protest any recommendations for award of the Lease Agreement in accordance with Protest Procedures by submitting a written protest to the Director of Purchasing within five (5) business days after posting the Notice of Award Recommendation. Protests must be submitted in writing, addressed to the Director of Purchasing at 13400 Griffin Road, Southwest Ranches, FL 3330 and delivered via hand delivery, or mail.

## **2.10 RULES; REGULATIONS; LICENSING REQUIREMENTS**

The proposer shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including, but not limited to, those applicable to conflict of interest and collusion. Proposers are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered, including, but not limited to, Executive Order No. 11246 entitled “Equal Employment Opportunity” as amended by Executive Order No. 11375, and as supplemented by the Department of Labor Regulations (41 CFR, Part 60).

The Town, at its discretion, reserves the right to inspect any/all Proposer’s facilities to determine their capability of meeting the requirements for this RFP and the Contract to be awarded. Also, price, responsibility, and responsiveness of the Proposer, including the financial position, experience, staffing, equipment, materials, and references of Contractor, and past history of service by Contractor to the Town and/or with other units of State, and/or Local governments in Florida, or comparable private entities, may be taken into consideration in the award of a Contract. If the project involves services or costs based upon a unit price or ongoing services, the Town reserves the right to reduce the level of service within its sole discretion.

## **2.11 EXCEPTIONS TO THE LEASE AGREEMENT**

Proposers should generally identify any proposed exceptions to the example Lease Agreement (See Attachment “2”). It is preferred that proposers detail any proposed exception by identifying the section number(s) of the Lease Agreement, together with any proposed alternative language. Note that the Town is under no obligation whatsoever to accept any proposed exceptions to the Lease Agreement. Proposers should not propose modifications to any of the minimum requirements of this RFP.

## **2.12 SELECTION PROCESS**

### **2.12.1 Evaluation of Proposals**

- a. Determination of Responsiveness. All proposals timely received will be opened internally by the Department. A list of proposers that have submitted proposals in response to this RFP will be recorded. Each

proposal will be evaluated by the Department for responsiveness. A responsive proposal is one which has been signed, has been submitted by the specified submission time and conforms to the requirements of this RFP. Failure to provide the information required to be submitted with the proposal (as stated in Section 3) is considered sufficient cause to deem a proposal non-responsive. While poor formatting, poor documentation, and/or incomplete or unclear information may not be cause to reject a proposal without evaluation, such substandard submissions may adversely impact the evaluation of a proposal, especially information relating to establishing financial/business stability. Proposers, who fail to comply with all of the required and/or desired elements of this RFP, do so at their own risk.

- b. Selection Committee Meeting/Oral Presentations. Except as otherwise provided for herein, a Selection Committee will meet to evaluate all responsive proposals for purposes of making an award recommendation to the Department. Each proposer may be required to make an oral presentation to the Selection Committee and will be allowed a maximum of fifteen (15) minutes to make its presentation. Oral presentations shall be limited to clarifying and further detailing the content of the written proposal submitted and to providing answers to the Selection Committee's questions. The Selection Committee will not consider new or alternative proposals made during oral presentations; therefore, each written proposal submitted should contain the proposer's best offer.

Notwithstanding any provision of this RFP to the contrary, in the event only one (1) responsive, responsible proposal is received, no Selection Committee meeting shall be required, and the Department, in its sole and absolute discretion, may elect to negotiate with the sole proposer or cancel this RFP process.

- c. Raw Scoring/Individual Selection Committee Member Ranking. The Selection Committee will evaluate and score each proposal by reviewing the proposal against the selection criteria set forth in Attachment "1" to this RFP, Selection Criteria/Scoring Instructions. Selection Committee members may not assign equal total scores to proposals (i.e., each proposal must be assigned a varying number of total points). Each Selection Committee member shall rank the proposals based upon the total score assigned to each proposal by such member. The proposal with the highest total score will be ranked first (1st) by each member, the proposal with the next highest score will be ranked second (2nd) by each member and so on until all proposals have been ranked.
- d. Final Scoring and Ranking. After each Selection Committee member has ranked all of the proposals, the individual Selection Committee members' rankings for each proposal shall be totaled to establish an overall total

score for each proposal. The proposal with the lowest total score will be ranked first (1st), the proposal with the next lowest total score will be ranked second (2nd) and so on until all proposals have been ranked.

In the event of a tie, the proposal that received the most first (1st) place rankings from the individual Selection Committee members will receive the higher rank. In the event a tie remains, the proposal with the highest raw score based upon the total number of points assigned by all Selection Committee members will receive the higher rank.

- e. Final Ranking by Selection Committee. After the Selection Committee has established a final ranking for all proposals, the Selection Committee will review the rankings and make its recommendation for award to the Department for the proposer whose proposal was ranked first (1st) by the Selection Committee.

In the event more than one (1) responsive, responsible proposal is received and more than one (1) proposed use may be accommodated on the Property, Selection Committee shall make a recommended award to the Department to the proposal that was ranked first (1st) by the Selection Committee and may recommend a Lease Agreement be awarded to the second (2nd) ranked proposer if there is a sufficient amount of Property available to accommodate both uses and so on.

- f. Rights Reserved. Notwithstanding any provision of this RFP to the contrary, the Town, in its sole and absolute discretion, shall have the right to reject any and all, or parts of any and all, proposals; commence a new solicitation process; postpone or cancel this RFP process; and/or waive any non-material irregularities in this RFP or the proposals received as a result of this RFP. In addition, the Council may reject any proposal prior to award.

2.12.2 Award Recommendation. The Department will post the award recommendation(s) (“Notice of Recommended Award”) at the Department Offices for a period of five (5) business days for review by interested parties. The selection proposer will be notified of the recommendation for award by mail.

To obtain a current posting of Notices of Recommended Award, please visit the Department’s website: <http://southwestranches.org/procurement/>.

2.12.3 Negotiation. After the posting of the Notice of Recommended Award, the Department will enter into negotiations with the selected proposer, if applicable. If, for any reason, the Lease Agreement cannot be awarded to the selected proposer, or the Department determines that it is unable to negotiate a Lease Agreement with the selected proposer, the Department may elect to cancel the award recommendation and commence negotiations with the next highest ranked proposer, issue a new solicitation or elect to cancel the RFP process in its entirety. In the event the Department elects to commence negotiations with the next highest

ranked proposer, this process may continue until a Lease Agreement has been executed by a proposer or all proposers have been rejected. Proposers shall not have any rights against the Town, its officers, employees or agents arising from negotiations.

2.12.4 Execution of Lease Agreement. The selected proposer shall deliver a fully executed Lease Agreement, and any other documents required by the Lease Agreement, to the Department in the form negotiated by the Department and the selected proposer within ten (10) days of the Department's written request, unless this time frame is extended at the sole discretion of the Department. In the event the selected proposer fails to deliver the Lease Agreement and associated documents as required by this RFP within the prescribed timeframe, the Department may, in its sole and absolute discretion, elect to cancel the award recommendation and commence negotiations with the next highest ranked proposer, issue a new solicitation or elect to cancel the procurement process in its entirety. Should the selected proposer fail to execute and deliver the Lease Agreement to the Department in accordance with the requirements of this RFP, the Department may cancel the award recommendation and, if such failure occurs as a result of proposer's bad faith or its failing to comply with the representations in its proposal, the proposer's proposal guarantee shall be forfeited as liquidated damages and the proposal shall be deemed rejected.

## **2.13 AWARD**

It is the Department's desire to recommend approval of a Lease Agreement for the entire 24.3622 +/- acre site; however, in the event more than one (1) proposal is received, the Department may recommend more than one (1) Lease Agreement for approval by the Town Council upon completion of the solicitation process. The Department has no authority whatsoever to bind the Town to a Lease Agreement or any specific contractual terms or conditions; therefore, no Lease Agreement shall be effective until it is approved by the Council and signed by all parties thereto.

## **2.14 ASSIGNMENT**

This RFP and any Contract awarded pursuant hereto shall be binding upon and shall inure to the benefit of the Town and to any and all of its successors and assigns, whether by merger, consolidation, and transfer of substantially all assets or any similar transaction. Notwithstanding the foregoing, the Contract is personal to the Contractor, and Contractor may not, either directly or indirectly, assign its rights or delegate its obligations to Town hereunder without first obtaining the Town's consent in writing. Any such attempted assignment or delegation shall be deemed of no legal force and effect whatsoever.

## **2.15 CANCELLATION**

Failure on the part of the awarded Proposer to comply with the terms of this RFP and to execute and deliver any required Contract Documents, and insurance, will result in the cancellation or rescission of the award. In that event, the Town may proceed to award the Contract to the responsive and responsible Proposer with the next highest ranking by the selection committee, or to re-advertise the RFP, and in its sole discretion whenever deemed in the best interests of the Town.

## **2.16 RELATION TO PARTIES**

It is understood and agreed that nothing contained in this RFP or the Contract shall be deemed to create a partnership or joint venture with the Town. Contractor shall be in the relation of an independent contractor and is to have entire charge, control and supervision of the Work to be performed hereunder.

## **2.17 COMPLIANCE WITH LAW**

Contractor shall comply with all applicable laws, regulations and ordinances of any Federal, State, or Local Governmental authority having jurisdiction with respect to this RFP and any Contract awarded and shall obtain and maintain any and all material permits, licenses, approvals and consents necessary for the lawful conduct of the activities contemplated hereunder.

## **2.18 WAIVER OF LIABILITY**

The Town shall not in any way be answerable or accountable for any violations of applicable laws or for any injury, loss or damage arising from the negligence, acts or omissions of Contractor or any one of its employees, subcontractors or agents, or anyone else for whose actions Contractor may be responsible.

## **2.19 INDEMNIFICATION**

To the fullest extent permitted by Florida law, including Florida Statutes, Section 725.06, the Contractor hereby agrees to and shall indemnify, defend and hold harmless the Town, its officers and employees, from liabilities, damages, losses, costs, and expenses including, but not limited to, reasonable attorney fees (at both the trial and appellate levels), to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract or anyone else for whose actions Contractor may be responsible, regardless of the partial fault of any party indemnified hereunder.

## **2.20 SECONDARY/OTHER VENDORS**

The Town reserves the right in the event the primary vendor cannot provide an item(s) or service(s) in a timely manner as requested, to seek other sources without violating the intent of the this RFP or any Contract awarded.

## **2.21 DEFAULT PROVISION**

In case of default by the Contractor, the Town may procure the articles or services from other sources and hold the Proposer or Contractor responsible for any excess costs occasioned or incurred thereby.



## **2.22 GOVERNING LAW**

The validity of this RFP and any Contract awarded and the interpretation and performance of all of their respective terms shall be construed and enforced in accordance with the laws of the State of Florida, without regard to principles of conflict of laws thereof. The location of any action or proceeding commenced under, pursuant, or relating to this RFP or the Contract shall be in the State Courts of Florida located in Broward County, Florida.

## **2.23 REMEDIES FOR BREACH**

Should the selected Contractor fail to perform after Contract execution, the Town shall notify Contractor in writing of such failure to perform and Contractor shall have fourteen (14) days to cure such failure or such shorter time as may be set forth in the Contract. If Contractor fails to cure, then the Town shall have the right to immediately terminate the Contract for cause. In that event, the Town shall also be free to sue Contractor for damages, in addition to any other right or remedy that it may have under the Contract, at law or in equity. Nothing herein shall be construed as precluding the Town's right to terminate the Contract for convenience, and as set forth in the Contract.

## **2.24 WRITTEN CONTRACT**

The successful Proposer shall be required to enter into a written Contract with the Town, the Contract form shall be prepared by the Town, and shall incorporate the terms of this RFP, the accepted Proposal, and include a termination for convenience clause and other terms which may be required by the Town or its Procurement Code, and acceptable to the Town Council. The Contract shall be substantially in the form attached to this RFP. No Work shall be performed or payment due unless a written Contract is fully executed and has been approved by the Town Council.

## **2.25 PUBLIC RECORDS LAW**

The Town is subject to Chapter 119, Florida Statutes, "Public Records Law." No claim of confidentiality or proprietary information in all or any portion of a response will be honored unless a specific exemption from the Public Law exists and is cited in the response. An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. Contractor acknowledges the public shall have access at all reasonable times, to all documents and information pertaining to Town's contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the Town and the public to all documents subject to disclosures under applicable law.

To the extent that Contractor has been provided access to or has received security sensitive information, as defined by Florida Statutes, Section 119.071 and/or has executed a Confidential Information Acknowledgement and Agreement as part of the RFP process, Contractor shall keep

and maintain the security sensitive information as confidential and exempt from public disclosures as required by Florida Statutes.

Contractor agrees to keep and maintain public records required by the Town to perform the service in Contractor's possession or control in connection with Contractor's performance under this RFP and any Contract awarded, and upon the request from the Town's custodian of public records, to provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable amount of time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract if the Contractor does not transfer the records to the Town.

Upon completion of the Contract, Contractor agrees, at no cost to Town, to transfer to the Town all public records in possession of the Contractor or keep and maintain public records required by the Town to perform the service. If the Contractor transfers all public records to the Town upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology system of the Town.

Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination for cause of the Contract by Town.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT PHONE: (954) 434-0008; EMAIL: RMUNIZ@SOUTHWESTRANCHES.ORG; RUSSELL MUNIZ, ASSISTANT TOWN ADMINISTRATOR/TOWN CLERK, TOWN OF SOUTHWEST RANCHES, 13400 GRIFFIN ROAD, SOUTHWEST RANCHES, FLORIDA, 33330.

#### CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

Contractor shall comply with the requirements of 2 CFR §200.321 as applicable to this RFP. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination for cause of the Contract by Town.

## **2.26 DISPUTES**

After an award of the Contract, disputes shall be resolved as set forth in the Contract form which is attached to this RFP. Any default under this RFP shall subject Proposer to liability for any and all damages to Town caused thereby. Proposer agrees to reimburse Town for all costs and expenses, including attorney's fees and costs, incurred by the Town by reason of such default

whether or not suit is brought, and in any litigation commenced, at both the trial and appellate levels.

## **2.27 SELECTION CRITERIA**

See Attachment “1”, Selection Criteria/Scoring Instructions.

## **2.28 CONTRACT PROVISIONS (ATTACHMENT “2”)**

2.28.1 Lease Agreement. The selected proposer will be required to execute a contract in a form and substance similar to the attached Example Development Site Lease Agreement (Attachment “2”) (“Lease Agreement”), subject to negotiated exceptions.

2.28.2 Authorization to Sign. In addition to executing a Lease Agreement, the selected proposer will be required to complete a corporate resolution or notarized statement, indicating that the person having executed the Lease Agreement is authorized to legally bind the proposing entity. Additionally, if a selected proposer is a partnership, all general partners must sign the Lease Agreement and the notarized statement. If the selected proposer is a joint venture, all members of the joint venture must sign the Lease Agreement and the notarized statement.

## **2.29 INSURANCE REQUIREMENTS**

It shall be the responsibility of the selected proposer to provide evidence of the minimum amounts of insurance coverage specified in the Lease Agreement (Attachment “2”).

The selected proposer shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the term of the Lease Agreement, insurance coverages and limits (including endorsements) as described in the Lease Agreement (Attachment “2”). Failure to maintain the required insurance shall be considered a material default of the Lease Agreement. The requirements contained therein, as well as the Town's review or acceptance of insurance maintained by the selected proposer, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the selected proposer under the Lease Agreement.

## **2.30 ENVIRONMENTAL POLLUTION INSURANCE**

The Contractor shall carry an Environmental Pollution Insurance for pollution-related incidents, including the cost of cleaning up a site after a pollution incident, with limits not less than \$500,000.00 Dollars per occurrence with deductible not greater than \$100,000.00. An additional Form or endorsement to the Commercial General Liability Insurance to include an Environmental Pollution Insurance coverage providing the specified coverage, is acceptable.

## **2.31 ADDITIONAL INSURANCE REQUIREMENTS**

All insurance policies shall name and endorse the following as additional named insureds:

TOWN OF SOUTHWEST RANCHES  
Attn: Andrew D. Berns, Town Administrator

13400 Griffin Road.  
Southwest Ranches, FL 33330

The additional named insured endorsement shall be reflected on the Certificate of Insurance.

All insurance shall be issued by companies rated "A-" or better per A.M. Best's Key Rating Guide, latest edition and authorized to issue insurance in the State of Florida. It shall be the responsibility of the vendor and insurer to notify the Town Administrator of cancellation, lapse, or material modification of any insurance policies insuring the vendor, which relate to the activities of such vendor and the Town.

Such notification shall be in writing, and shall be submitted to the Town Administrator within thirty (30) days prior to cancellation of such policies. This requirement shall be reflected on the Certificate of Insurance.

Proposers are required to submit a list of claims presently outstanding and claims within the past ten (10) years against their liability coverage. This information must be listed on the form provided below and signed by the agent of the insurance carrier. If no outstanding claims exist, a statement of this fact must be signed by the agent of the insurance carrier.

Failure to fully and satisfactorily comply with the Town's insurance requirements set forth herein will authorize the Town Administrator to implement a rescission or cancellation of the Proposal award within thirty (30) days of awarding. The Proposer hereby holds the Town harmless and agrees to indemnify Town and covenants not to file a Proposal protest or sue the Town by virtue of such cancellation or rescission.

### **2.32 PERFORMANCE BOND /LETTER OF CREDIT**

The selected proposer shall be required to post a deposit with the Town equal to three (3) months' rental ("Security Deposit"). The Security Deposit shall serve as security for the payment of all sums due to the Town and shall also secure the performance of all obligations of the selected proposer to the Town. The Security Deposit shall be either in the form of a clean, irrevocable letter of credit or a surety bond in form and substance satisfactory to the Town.

### **2.33 COMMENCEMENT OF WORK**

The Town shall have no obligations whatsoever to any proposer by virtue of this RFP or any negotiations conducted hereunder. The Town's obligations shall not commence until a Lease Agreement is approved and executed by the Council. The Town will not be responsible for any work conducted by a proposer, even if performed in good faith, if such work occurs prior to the approval and execution of the Lease Agreement by the Town Council.

### **2.34 NON-DISCRIMINATION & EQUAL EMPLOYMENT OPPORTUNITY**

Proposer shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin, or physical or mental handicap, or marital status. Contractor shall take affirmative action to ensure that applicants are employed, and that

employees are treated during their employment without regard to their race, religion, age, color, sex or national origin, or physical or mental handicap, or marital status. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Proposer agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Contractor further agrees that he/she will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

Proposer understands and agrees that a material violation of this clause shall be considered a material breach of any resulting contract and may result in termination of the Lease Agreement, disqualification or debarment of Proposer from participating in Town contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. All agreements for design and construction services entered into for the construction of the Initial Leasehold Improvements shall include a commercial non-discrimination clause.

### **2.35 DISCLOSURE OF OWNERSHIP INTEREST**

The Disclosure of Ownership Interest Affidavit (“DOIA”) (Appendix “C”) must be completed on behalf of any individual or business entity that seeks to do business with the Town when applicable. Disclosure does not apply to nonprofit corporations, government agencies, or to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

Upon request from the Department, the selected proposer shall submit a completed DOIA within a reasonable time, as requested. If the selected proposer fails to submit a completed DOIA in a timely manner, the Town, at its sole discretion, may elect to cancel the recommended award.

### **2.36 CONFLICT OF INTEREST**

The award of any Contract hereunder is subject to the provisions of Chapter 112, Florida Statutes. Proposers must disclose with their Proposals, the name of any officer, director, partner, associate, agent, advisory board member or client/customer who is also an officer, former officer, or employee of the Town of Southwest Ranches or its agencies.

### **2.37 PUBLIC ENTITY CRIMES/DENIAL OR REVOCATION OF THE RIGHT TO TRANSACT BUSINESS WITH PUBLIC ENTITIES**

Pursuant to the provisions of 287.133(2)(a), Florida Statutes:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids,

proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for Category Two for a period of 36 months following the date of being placed on the convicted vendor list.

Proposer shall complete the attached Sworn Statement on Public entity Crimes (Appendix "E"), and submit it with its proposal.

### **SECTION 3 PROPOSAL REQUIREMENTS**

#### **3.1 PROPOSAL FORMAT AND CONTENT**

3.1.1 Format. Proposals should be typed, double spaced and submitted on 8 1/2" x 11" size paper, using a single method of fastening (e.g., stapled, binder, etc.). The electronic copy of the proposal should be submitted on a CD or flash drive in a PDF or similar format. Proposals should include only brief and concise narrative. The enclosure of elaborate or unnecessary verbiage or promotional material is discouraged.

3.1.2 Letter of Transmittal. Proposals should contain a Letter of Transmittal addressed to the contact person, and should, at a minimum, contain the following:

- a. The RFP number (i.e. RFP No. 20-003).
- b. Identification of proposer, including name address and telephone number.
- c. The name, title, address, telephone/fax number and e-mail address of proposer's contact person during the period of proposal evaluation.
- d. The printed name and title and the signature of a person authorized to bind proposer to the terms of the proposal.

3.1.3 Table of Contents. Proposals should contain a Table of Contents. The Table of Contents should outline all of the areas of the proposal in sequential order.

3.1.4 Technical Proposal. Proposals must contain all of the documents listed below, each fully completed, signed and notarized, as required. Failure of a proposer to provide the required information is considered sufficient cause to deem the proposal non-responsive.

All items should be submitted as a part of the proposal prior to the deadline for submission of proposals (See Section 1.7); however, if the item(s) marked by an asterisk ( \* ) are omitted, the proposer must submit such item(s) upon request from the Department within a time frame specified by the Department (normally within two (2) business days of request) or the proposal shall be deemed non-responsive. All other items must be submitted with the proposal or it shall be deemed non-responsive.

The Department reserves the right to request additional information to be used for evaluating responses received from any or all proposers, including, but not limited to, additional references or financial information. Further, the Department retains the right to disqualify from further consideration any proposer who fails to demonstrate sufficient ability to perform under the Lease Agreement.

Notwithstanding these submittal requirements, the Department reserves the right, at its sole discretion, to waive any minor irregularity relating to the proposal. Upon request, it shall be the responsibility of the proposer to address the determined minor irregularity within a time frame specified by the Department (normally within two (2) business days of request). Failure of a proposer to provide the required information within the specified time frame is considered sufficient cause to deem the proposal non-responsive.

A set of tabs to identify each section of the proposal should be inserted to facilitate quick reference. Each section of the proposal should be clearly labeled using the paragraph headings set forth below.

### **3.2 EXPERIENCE. QUALIFICATIONS AND FINANCIAL INFORMATION**

Each proposer shall submit an Executive Summary detailing its experience, qualifications, and background in the lease and development of similar projects, which shall include, at a minimum, the following information:

3.2.1 \*Description of Business Organization. Proposer shall include a description of proposer's business organization (i.e., corporation, LLC, partnership, joint venture or sole proprietorship) along with the following information, depending on the organizational structure:

- If a corporation, attach the Articles of Incorporation.
- If an LLC, attach the Articles of Organization.
- If a partnership, attach a copy of the Partnership Agreement.
- If a joint venture, list date of organization, attach a copy of the joint venture agreement, indicate if the joint venture has done business in Florida and where. Include a description of the business organization of each of the joint venture partners, including the organizational documents for each of the joint venture partners (i.e., corporations, attach the Articles of Incorporation for each joint venture partner, etc.).

3.2.2 \*History of Company. Proposer shall include a brief history of the company. Proposer shall note any changes in company name and ownership structure and any other names under which the company has been doing business. Proposer should note whether or not the company is currently registered to do business in the State of Florida. The selected proposer shall be registered to do business in the State of Florida prior to the effective date of the Lease Agreement. Proposer should indicate whether or not it intends to enter into the Lease Agreement in the name of proposer or to create a single purpose entity for the purpose of this project. In the event proposer is a joint venture, proposer should provide a history of each entity forming a part

of the joint venture. In the event of a newly-formed entity, the requirements listed below shall be furnished for the principal entity(ies) forming such newly-formed entity.

3.2.3 Experience. Proposer shall submit a detailed statement of its experience, qualifications, and background in the lease and development of similar projects. Proposer's statement should include, at a minimum, a detailed history of proposer's pertinent experience in the lease and development of similar projects within the preceding ten (10) years.

3.2.4 References. Proposer shall be required to submit a minimum of three (3) references with knowledge of proposer's recent experience in the lease and development of similar projects. Each reference should include the name of the company, contact names, addresses, and telephone/fax numbers. The contact person must have been informed that he or she is being used as a reference and that the Town may be calling them. DO NOT list persons who will be unable to answer specific questions regarding proposer's experience.

3.2.5 \*Credit References. Proposer shall include the names, addresses, and telephone numbers of at least two (2) credit references, including at least one (1) banking reference. In the event proposer is a joint venture, proposer shall provide the required information for each entity forming a part of the joint venture.

3.2.6 \*Legal/Contractual History.

- a. a. Proposer shall provide the name, location and date of any of the proposer's agreements for the lease or development of real property that have been terminated either voluntarily or involuntarily, within the past five (5) years. Proposers shall provide an explanation of the reason(s) for termination and a contact name, address and telephone number of the other contracting party. A contact person shall be someone who has personal knowledge of the contract. The contact person must have been informed that he or she is being used as a reference and that the Town may be calling them. DO NOT list persons who will be unable to answer specific questions regarding the requirement.
- b. Proposer shall provide a list of any judgments or lawsuits currently pending against the proposer or any lawsuit filed against or judgment offered against proposer within the last ten (10) years. Also list any lawsuits filed by proposer in the last ten (10) years.
- c. Proposer shall provide a written statement declaring whether proposer has ever declared bankruptcy, filed a petition in any bankruptcy court, filed for protection from creditors in bankruptcy court, or had involuntary proceedings filed in bankruptcy court and the status of each occurrence.
- d. In the event proposer is a joint venture, proposer shall provide the required information for each entity forming a part of the joint venture.

3.2.7 \*Financial Information. Proposer shall submit one (1) of the following (it is recommended that proposers redact social security numbers, if applicable):



- a. Balance sheets and income statements for the current fiscal year and prior two (2) fiscal years of operation, prepared in accordance with generally accepted accounting principles and compiled by an independent certified public accountant or notarized by the chief financial officer or owner; or
- b. The company's Federal income tax returns for the previous three (3) years as completed and filed with the Federal government. Sole proprietors should provide Schedule C from Form 1040 for the previous three (3) years. The Schedule C's must be accompanied by a statement from an independent certified public accountant or a statement by the chief financial officer or owner, indicating that the Schedules are copies of the ones filed with the 1040; or
- c. A statement from an independent certified public accountant attesting to the financial stability of the organization for the current and prior two (2) fiscal years of operation; or
- d. A reference letter from the proposer's bank or financial institution indicating the bank's relationship with the proposer and providing a credit reference. At the time of issuance of the reference letter, the bank/financial institution must have a minimum peer group rating that meets or exceeds the threshold levels in at least two (2) of the five (5) approved services as listed below:
  - 1. Thomson Reuters Bank Insight Quarterly Ratings - 50
  - 2. IDC Bank Financial Quarterly Listing - 125
  - 3. Veribanc, Inc. Listing - 3 Star Green Rating
  - 4. Standard & Poor's Listing - Single A
  - 5. Moody's Listing - Single A

The Town reserves the right to request additional information considered pertinent to indicate any and all proposer's financial and operational capabilities. Further, the Town retains the right to disqualify from further consideration any proposer who fails to demonstrate sufficient financial stability to perform under the Lease Agreement.

### **3.3 PROJECT APPROACH**

3.3.1 Description of the Project. Proposer shall provide a detailed description of its approach and methodology for the development, operation, management and maintenance of the project. The project description should include the following:

- a. A detailed description of the proposed uses, the proposed total square footage of each use proposed, including any ancillary uses proposed to be developed on the Property.

- b. A conceptual development plan, which should include the general location of the area proposed to be leased, a conceptual site plan and building renderings (interior and exterior). The conceptual site plan should indicate the location of proposed tenant improvements, including vehicular parking, site lighting, utilities, ingress and egress, etc. In the case where proposer intends to virtually duplicate an existing concept that proposer has developed elsewhere, proposer may substitute pictures or photographs of an existing facilities for the renderings.
- c. A description of how proposer intends to satisfy stormwater drainage requirements associated with development of the Property.
- d. A proposed construction schedule for development. Proposer must be capable of completing development within twenty four (24) months of the effective date of the Lease Agreement.
- e. A detailed development cost estimate, including hard and soft costs.
- f. A detailed financial plan, indicating the sources of funding to be used for tenant-constructed improvements.
- g. Proposed minimum capital investment for the design and construction of the tenant improvements. The proposed minimum capital investment will become a lease obligation subject to the limitations set forth in the Lease Agreement (See Attachment “2”). Engineering and architectural costs should be limited to twelve percent (12%) of the total proposed minimum capital investment. In addition, the proposed minimum capital investment should not include internal administrative or supervisory costs, consulting costs (other than engineering and architectural), furnishings, trade fixtures or equipment or other excluded costs (See Attachment “2”). No minimum dollar amount is established for the minimum capital investment. Proposers should propose an amount that is reasonable taking into consideration the nature of the tenant improvements proposed to be constructed on the Property.
- h. Justification for the proposed lease term in the event the proposed lease term exceeds ninety nine (99) years, including all renewal terms. For example, a longer lease term may be justified in order to provide sufficient time to amortize the capital investment. If a longer lease term is require for in order to finance the construction of the Initial Leasehold Improvements, proposer should include detailed information regarding the type of financing and the lender requirements.

**Note: The acceptance of a proposal by the Town shall not constitute approval of the proposer's submitted development plans.**

3.3.2 \*Development Team. Proposer shall include detailed information regarding the key development team members' relevant experience, education and/or expertise. Key development team members would include the architectural and engineering firm(s), general contractor and project manager for the project.

3.3.3 \*Operation & Management. Proposer shall include detailed information regarding the operation and management of the project upon completion of development.

3.3.4 \*Marketing. Proposer should include information regarding the methods to be used to market the uses proposed to be located on the Property.

3.3.5 \*Financial Pro forma. Proposer shall submit a financial pro forma detailing the following for the proposed development on the Property for the first (1st) five (5) lease years of the Lease Agreement:

- a. Anticipated gross rental and other revenues (if any, by category);
- b. Expenses by category, including, but not limited to, operating and maintenance expenses, rental to the Town, and utilities;
- c. General and administrative costs; and
- d. Debt service.

Proposers shall include in this section data and information indicating the expected rent to be paid to the Town and demonstrating that the rental and fees, as proposed, can be supported by the projected revenue stream without sacrificing the quality or service of the operations. Pro formas shall be evaluated by the Town for reasonableness, demonstrated understanding of the proposed Lease Agreement, viability of the proposed operations and financial offer, and ability to fund the operation.

3.3.6 \*Economic Benefits. Proposers should indicate the number of jobs estimated to be created by the proposed project, including those related to construction of the project, and how small, minority or women-owned businesses will be utilized on the project. Proposers should include information regarding any anticipated economic impacts that may result as a result of the project in this section.

3.3.7 \*Exceptions to the Lease Agreement (Attachment "2"). Proposers should identify any proposed exceptions to the Lease Agreement (See Section 2.11 of RFP) for purposes of negotiation of lease terms with the selected proposer. The Town shall have no obligation whatsoever to accept any proposed exceptions.

### **3.4 PROPOSAL RESPONSE FORM**

3.4.1 Proposal Response Form. Proposers must submit the attached Proposal Response Form (Appendix "A") with their proposals. Proposers should take into consideration the information detailed in this Section of the RFP prior to completing the Proposal Response Form.

3.4.2 Lease Proposal. Proposers may propose to lease the Property for the development of commercial or industrial uses compatible with surrounding communities, such as warehouse or office use.

- a. **Property Size.** Proposers may propose to lease up to 24.3622 +/- acres of unimproved ground, for the lease and development of compatible commercial or industrial uses. As a minimum requirement to respond to this RFP, proposers must propose to lease no less than twenty (10) acres of unimproved ground.
- b. **Lease Term.** The proposed term of the Lease Agreement, including all renewal term(s), shall not exceed ninety nine (99) years from the Date of Beneficial Occupancy (as defined in the Lease Agreement, see Attachment “2”) to allow the successful proposer sufficient time to recapture its initial investment and obtain a reasonable financial return. Lease term proposals shall be evaluated under the Project Approach criteria. In the event the proposed lease term exceeds ninety nine (99) years, including all renewals, proposers should also include the information provided for in Section 3.3.1 (h) above in the Project Approach section.
- c. **Property Uses.** The Property may be used for the development of compatible commercial or industrial uses. Proposals for use of the Property for residential purposes, or other uses determined incompatible with the surrounding properties will not be considered for this opportunity. The proposed Property use shall be evaluated under the Project Approach criteria.

### **3.5 PROPOSAL GUARANTEE**

Proposers must submit as a part of their proposal, a Proposal Guarantee in the amount of Five Thousand Dollars (\$5,000.00). The Proposal Guarantee shall be in the form of a bond issued by a surety or sureties satisfactory to the Town, or other acceptable form of Proposal Guarantee, limited to a cashier's check drawn on any state or national bank and made payable to the “Southwest Ranches Town Council”. Failure to submit the required Proposal Guarantee shall result in disqualification of the proposal. The Proposal Guarantee will be held by the Town to secure the obligations which proposer agrees to assume under this RFP. The Proposal Guarantees of non- selected proposers will be returned immediately following execution of the Lease Agreement by the Town Council. The selected proposer's Proposal Guarantee will not be returned until after execution of the Lease Agreement and after the Security Deposit (Surety Bond or Clean Irrevocable Letter of Credit) and certificate(s) of insurance, as required pursuant to the Lease Agreement, are received by the Town.

### **3.6 DRUG FREE WORKPLACE CERTIFICATION**

Proposer shall complete the attached Drug Free Workplace Certification (Appendix “D”), and submit it with its proposal.

## **SECTION 4 TERM**

### **4.1 TERM**

The proposed term of the Lease Agreement (See Attachment “2”), including all renewal term(s), shall not exceed fifty (99) years from the Date of Beneficial Occupancy (as defined in Section 3.01 of the Lease Agreement) to allow the successful proposer sufficient time to recapture its initial investment and obtain a reasonable financial return. In the event the proposed lease term exceeds ninety nine (99) years, including all renewals, proposers should also include the information provided for in Section 3.3.1(h) above in the Project Approach section.

**APPENDIX "A" - PROPOSAL RESPONSE FORM**

**APPENDIX "A"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**PROPOSAL RESPONSE FORM**

<b>Section 1 - Rental Proposal</b>		
<b>1. Total Available Property</b>  <i>Total Available Property : 24.3622 + Acres</i> <hr style="width: 50%; margin-left: 0;"/>	<b>2. Initial Rent Rate</b>  <hr style="width: 50%; margin-left: 0;"/>	<b>3. Proposed Initial Annual Rental</b>  <i>(1 X 2 =3)</i>  <hr style="width: 50%; margin-left: 0;"/>
<hr style="width: 80%; margin: 0 auto;"/> Proposed Acres	X \$ <hr style="width: 80%; margin: 0 auto;"/> Rate Per Acre	= \$ <hr style="width: 80%; margin: 0 auto;"/> Proposed Initial Annual Rental
<b>Section 2 - Proposed Lease Term (in years)</b>		
<p><i>Proposer shall indicate the proposed lease term and any renewal term(s) for the Property. The proposed lease term, including all renewal term(s), shall not exceed a total fifty (50) years from the Date of Beneficial Occupancy (as defined in the Lease Agreement). Indicate proposed lease term for the Property on the blank below:</i></p> <p><i>Proposed Initial Lease Term:</i> _____ (years)</p> <p><i>Proposed Renewal Term(s):</i> _____ (years)</p> <p><i>TOTAL Proposed Lease Term, including all renewals:</i> _____ (years)</p>		

**APPENDIX "A"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**PROPOSAL RESPONSE FORM**

**Section 3 - Uses Proposed**

*Proposer shall indicate in general terms the commercial uses that are proposed (e.g. warehouse, retail, office, etc.) in the blanks below. Detailed information should be included in the Project Approach section of your proposal.*

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By signing this Proposal Response Form, the proposer warrants and represents to the Town that the following statements are true and correct:

- a. This proposal is current, accurate and complete, and is presented to the Town for the performance of the Lease Agreement in accordance with the requirements stated in the RFP.
- b. This proposal is submitted without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same service and is, in all respects, fair and without collusion or fraud.
- c. Proposer has the financial ability to fully perform the terms and conditions as specified in the RFP and Lease Agreement.
- d. Proposer has received and reviewed all Amendments to the RFP.
- e. Proposer understands that Town that the Town has no obligation whatsoever to accept any proposed exceptions to the Lease Agreement.
- f. Proposer understands that proposer may not propose any exceptions to the minimum RFP requirements (see Section 3 of RFP) and failure to satisfy the minimum requirements will result in the proposal being deemed non-responsive.
- g. Proposer understands that failure to submit this Proposal Response Form will be cause for immediate rejection of its entire proposal.



**APPENDIX "A"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**PROPOSAL RESPONSE FORM**

**\*\*This signature page must be completed by an Authorized Person (see Section 1.8 of RFP)\*\***

Type or print proposer's contact information below:

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**COMPANY NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY/STATE/ZIP:** \_\_\_\_\_

**TELEPHONE NO.:** \_\_\_\_\_ **FAX NO.:** \_\_\_\_\_

**E-MAIL ADDRESS:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**\*\*\*You must affix a corporate seal or have the signature on this Proposal Response Form notarized.\*\*\***

(Corp. Seal)

OR:

BEFORE me the undersigned authority on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ personally appeared \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did not take an oath.

STATE OF \_\_\_\_\_

\_\_\_\_\_  
*(Signature of Notary)*

COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
*(Notary's Printed Name)*

My Commission Expires: \_\_\_\_\_

**APPENDIX "B" - DRUG FREE WORKPLACE CERTIFICATION**

**APPENDIX "B"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**

**(RFP No. 18-003)**

**DRUG FREE WORKPLACE CERTIFICATION**

The undersigned proposer hereby certifies that it will provide a drug-free workplace program by:

- (1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the offeror's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establishing a continuing drug-free awareness program to inform its employees about:
  - (i) The dangers of drug abuse in the workplace;
  - (ii) The offeror's policy of maintaining a drug-free workplace;
  - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Giving all employees engaged in performance of the contract a copy of the statement required by subparagraph (1);
- (4) Notifying all employees, in writing, of the statement required by subparagraph (1), that as a condition of employment on a covered contract, the employee shall:
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer in writing of the employee's conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or of any state, for a violation occurring in the workplace NO later than five days after such conviction.
- (5) Notifying the Town of Southwest Ranches in writing within 10 calendar days after receiving notice under subdivision (4) (ii) above, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 calendar days after receiving notice under subparagraph (4) of a conviction, taking one of the following actions with respect to an employee who is convicted of a drug abuse violation occurring in the workplace:
  - (i) Taking appropriate personnel action against such employee, up to and including termination; or

**APPENDIX "B"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**

**(RFP No. 18-003)**

**DRUG FREE WORKPLACE CERTIFICATION.**

- (ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency; and
- (7) Making a good faith effort to maintain a drug-free workplace program through implementation of subparagraphs (1) through (6).

\_\_\_\_\_  
(Proposer Signature)

\_\_\_\_\_  
(Print Proposer Name)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

by \_\_\_\_\_ as \_\_\_\_\_  
(Name of person who's signature is being notarized) (Title)

of \_\_\_\_\_ known to me to be the person described herein, or  
(Name of Company)

who produced \_\_\_\_\_ as identification, and who did/did not take an oath.  
(Type of Identification)

NOTARY PUBLIC:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

My commission expires: \_\_\_\_\_

**APPENDIX "C" – DISCLOSURE OF OWNERSHIP INTERESTS**

**APPENDIX "C"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**Disclosure of Ownership Interests**

**TO: TOWN OF SOUTHWEST RANCHES**  
**OFFICIALLY DESIGNATED REPRESENTATIVE**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, this day personally appeared \_\_\_\_\_, hereinafter referred to as "Affiant," who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant appears herein as:  
 an individual *or*  
 the \_\_\_\_\_ of \_\_\_\_\_.  
*[position—e.g., sole proprietor, president, partner, etc.] [name & type of entity—e.g., ABC Corp., XYZ Ltd. Partnership, etc.].* The Affiant or the entity the Affiant represents herein seeks to do business with the Town of Southwest Ranches through its Town Council.

2. Affiant's address is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

3. Attached hereto as Exhibit "A" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater interest in the Affiant's corporation, partnership, or other principal. Disclosure does not apply to nonprofit corporations, government agencies, or to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

4. Affiant acknowledges that this Affidavit is given to comply with the Town of Southwest Ranches policy, and will be relied upon by the Town of Southwest Ranches. Affiant further acknowledges that he or she is authorized to execute this document on behalf of the entity identified in paragraph one, if any.

5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct and complete.

*FURTHER AFFIANT SAYETH NAUGHT.*

\_\_\_\_\_  
\_\_\_\_\_, Affiant  
*(Print Affiant Name)*

*The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, [ ] who is personally known to me or [ ] who has produced \_\_\_\_\_ as identification and who did take an oath.*

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
*(Print Notary Name)*  
State of \_\_\_\_\_ at Large  
My Commission Expires: \_\_\_\_\_

**APPENDIX "C"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**Disclosure of Ownership Interests**

**EXHIBIT "A"**

Affiant must identify all entities and individuals owning five percent (5%) or more ownership interest in Affiant's corporation, partnership or other principal, if any. Affiant must identify individual owners. For example, if Affiant's principal is wholly or partially owned by another entity, such as a corporation, Affiant must identify the other entity, its address, and the individual owners of the other entity. Disclosure does not apply to any nonprofit corporation, government agency, or to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

**Name**

**Address**

_____	_____
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## APPENDIX "D" - PROPOSAL CHECKLIST



**APPENDIX "D"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**PROPOSAL CHECKLIST**

**Proposal Documents and Information**

- \_\_\_\_\_ **Letter of Transmittal**
- \_\_\_\_\_ **Table of Contents**
- \_\_\_\_\_ **Experience, Qualifications and Financial Information**
  - \_\_\_\_\_ Description of Business Organization
  - \_\_\_\_\_ History of Company
  - \_\_\_\_\_ Experience
  - \_\_\_\_\_ References
  - \_\_\_\_\_ Credit References
  - \_\_\_\_\_ Legal/Contractual History
  - \_\_\_\_\_ Financial Information

**Project Approach**

- \_\_\_\_\_ Description of Project – items (a) thru (j)
- \_\_\_\_\_ Development Team
- \_\_\_\_\_ Operation/Management
- \_\_\_\_\_ Marketing
- \_\_\_\_\_ Financial Pro Forma
- \_\_\_\_\_ Economic Benefits
- \_\_\_\_\_ Exceptions to Lease
- \_\_\_\_\_ SBE Participation Plan

**Required Appendices & Proposal Guarantee**

- \_\_\_\_\_ Proposal Response Form (Appendix A) - Signed by Authorized Representative
- \_\_\_\_\_ Drug Free Workplace Certification (Appendix B)
- \_\_\_\_\_ Disclosure of Ownership Interests (Appendix C)
- \_\_\_\_\_ Sworn Statement on Public Entity Crimes (Appendix E)
- \_\_\_\_\_ Non Collusion Affidavit (Appendix F)
- \_\_\_\_\_ Proposal Guarantee (\$5,000.00)
- \_\_\_\_\_ Documents Executed in Accordance with the Requirements of the RFP

\*\*\*Proposers are not required to complete or return this checklist. Proposers are advised to verify that all forms are completed correctly, including PDF document forms, and that all required forms are properly executed, where applicable. This checklist is provided solely as a reference for proposers and is not intended to be relied upon as the only information and documentation necessary to submit a responsive proposal to this RFP. This checklist does not, in any way, substitute or replace the requirements of the RFP. In the event of a conflict between this checklist and the RFP, the terms, conditions and requirements of the RFP shall control.\*\*\*

**APPENDIX "E"**  
**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a) FLORIDA STATUTES**  
**ON PUBLIC ENTITY CRIMES**

**APPENDIX "E"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a)**  
**FLORIDA STATUTES ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to \_\_\_\_\_  
by \_\_\_\_\_  
for \_\_\_\_\_  
whose business address is \_\_\_\_\_  
\_\_\_\_\_
- and (if applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Para. 287.133(1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Para. 287.133(1) (a), Florida Statutes, means:  
(i). A predecessor or successor of a person convicted of a public entity crime; or  
(ii). An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Para. 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the

legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. The statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO, OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

BIDDER: \_\_\_\_\_

**[Signatures on next page]**

By: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Personally known \_\_\_\_\_

Or Produced Identification \_\_\_\_\_  
(Type of Identification)

Notary Public - State of \_\_\_\_\_

\_\_\_\_\_  
Notary Signature

My Commission Expires \_\_\_\_\_

(Printed, typed, or stamped commissioned name of notary public)

BIDDER: \_\_\_\_\_

**APPENDIX "F" - NON-COLLUSION AFFIDAVIT**



By: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

Personally known \_\_\_\_\_

Or Produced Identification \_\_\_\_\_

(Type of Identification)

Notary Public - State of \_\_\_\_\_

\_\_\_\_\_  
(Notary Signature)

My Commission Expires: \_\_\_\_\_

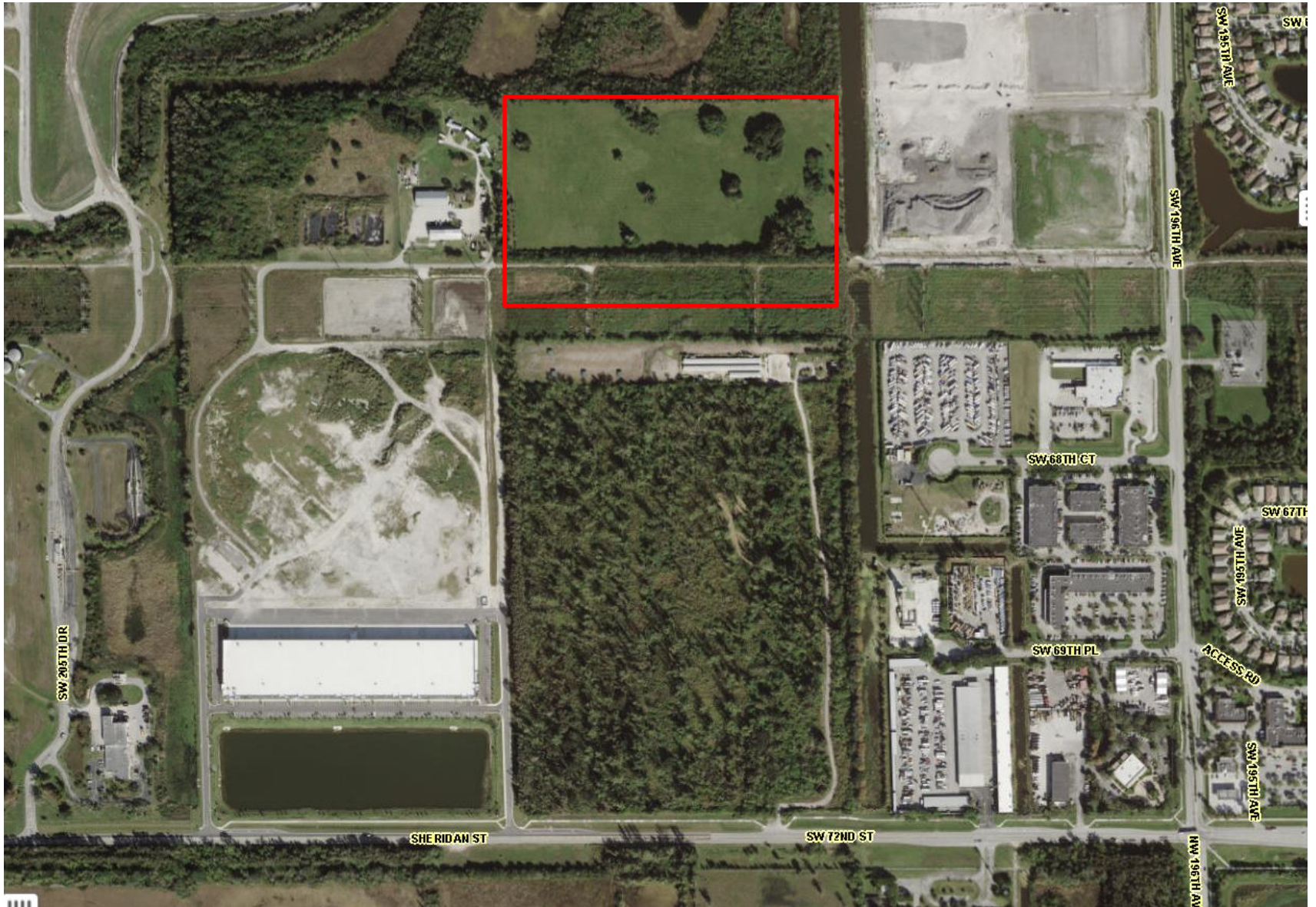
(Printed, typed, or stamped commissioned name of notary public)

BIDDER: \_\_\_\_\_



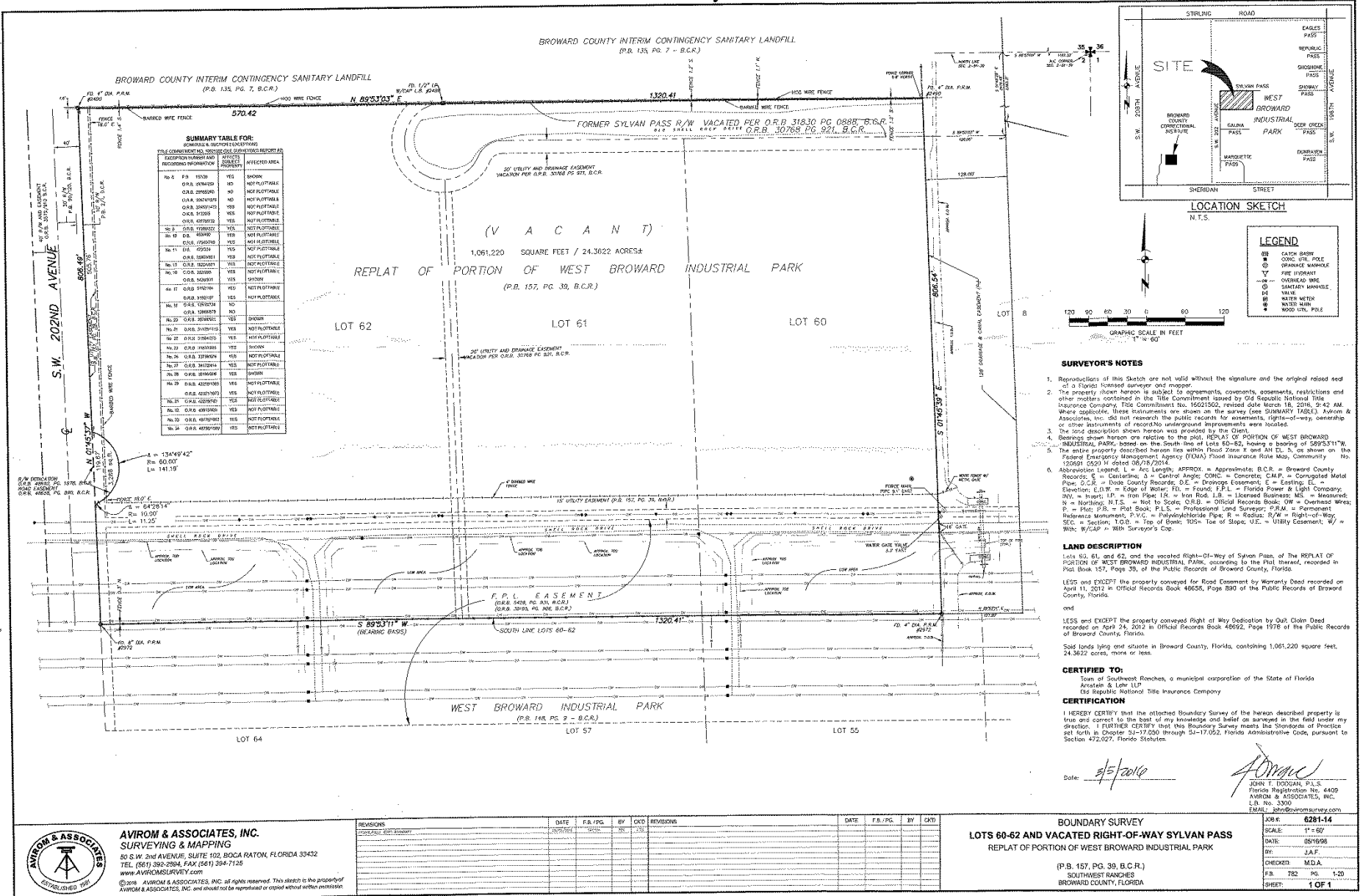
EXHIBIT 1  
LEASE AND DEVELOPMENT OF VACANT LAND  
WEST BROWARD INDUSTRIAL PARK

Location Map



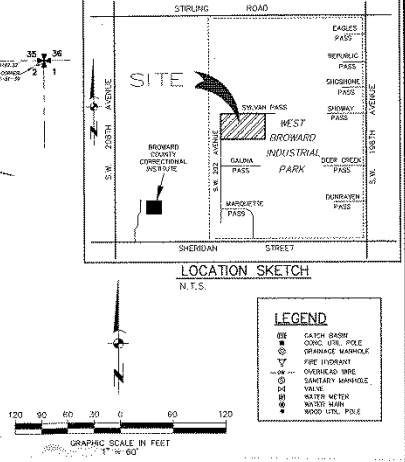
# Exhibit 2 LEASE AND DEVELOPMENT OF VACANT LAND WEST BROWARD INDUSTRIAL PARK

## Survey



**SUMMARY TABLE FOR PERMITS & IMPROVEMENTS**

PERMIT INFORMATION	STATUS	AFFECTED AREA
FD-5 PR 15730	YES	SHOW
ORA 2004040	NO	NOT APPLICABLE
ORA 2005040	NO	NOT APPLICABLE
ORA 1820401	NO	NOT APPLICABLE
ORA 2004040	NO	NOT APPLICABLE
ORA 152040	YES	NOT APPLICABLE
ORA 0504012	YES	NOT APPLICABLE
ORA 1005002	YES	NOT APPLICABLE
NO 12 DR 45000	YES	NOT APPLICABLE
NO 10 OR 100000	YES	NOT APPLICABLE
NO 11 DR 02024	YES	NOT APPLICABLE
ORA 3000011	YES	NOT APPLICABLE
ORA 1000001	YES	NOT APPLICABLE
NO 18 OR 30000	YES	NOT APPLICABLE
ORA 500001	YES	SHOW
ORA 300000	YES	NOT APPLICABLE
NO 11 OR 10000	YES	NOT APPLICABLE
ORA 300000	YES	NOT APPLICABLE
NO 17 OR 10000	NO	NOT APPLICABLE
ORA 30000	YES	NOT APPLICABLE
NO 22 OR 30000	YES	SHOW
ORA 10000	NO	NOT APPLICABLE
NO 7 OR 10000	YES	NOT APPLICABLE
NO 21 OR 30000	YES	NOT APPLICABLE
ORA 10000	YES	SHOW
NO 23 OR 10000	YES	NOT APPLICABLE
ORA 10000	YES	NOT APPLICABLE
NO 24 OR 30000	YES	NOT APPLICABLE
NO 25 OR 30000	YES	NOT APPLICABLE
ORA 10000	YES	NOT APPLICABLE
NO 26 OR 30000	YES	NOT APPLICABLE
ORA 10000	YES	NOT APPLICABLE
NO 27 OR 30000	YES	NOT APPLICABLE
ORA 10000	YES	NOT APPLICABLE
NO 28 OR 30000	YES	SHOW
ORA 10000	YES	NOT APPLICABLE
NO 29 OR 30000	YES	NOT APPLICABLE
ORA 10000	YES	NOT APPLICABLE
NO 30 OR 30000	YES	NOT APPLICABLE
ORA 10000	YES	NOT APPLICABLE
NO 31 OR 30000	YES	NOT APPLICABLE
ORA 10000	YES	NOT APPLICABLE
NO 32 OR 30000	YES	NOT APPLICABLE
ORA 10000	YES	NOT APPLICABLE
NO 33 OR 30000	YES	NOT APPLICABLE
ORA 10000	YES	NOT APPLICABLE
NO 34 OR 30000	YES	NOT APPLICABLE
ORA 10000	YES	NOT APPLICABLE
NO 35 OR 30000	YES	NOT APPLICABLE
ORA 10000	YES	NOT APPLICABLE



**SURVEYOR'S NOTES**

1. Reproductions of this Sketch are not valid without the signature and the original record set of a State Licensed Surveyor and map.
2. The property shown hereon is subject to agreements, covenants, assessments, restrictions and other matters contained in the Title Commitment issued by Old Republic National Title Insurance Company, Title Commitment No. 16503500, recorded 04 March 16, 2014, 9:42 AM. Where applicable, these instruments are shown on the survey (see SUMMARY TABLE). Aviom & Associates, Inc. did not research the public records for assessments, rights-of-way, easements, or other instruments of record nor underground improvements were located.
3. The land description shown hereon was provided by the Client.
4. Bearings shown hereon are relative to the plot, REPLAT OF PORTION OF WEST BROWARD INDUSTRIAL PARK, based on the South line of Lots 60-62, having a bearing of S89°53'11\"/>

**LAND DESCRIPTION**

Lots 60, 61, and 62, and the vacated Right-of-Way of Sylvan Pass, of the REPLAT OF PORTION OF WEST BROWARD INDUSTRIAL PARK, according to the Plat thereof, recorded in Plat Book 157, Page 33 of the Public Records of Broward County, Florida.

LESS and EXCEPT the property conveyed for Road Easement by Warranty Deed recorded on April 11, 2012 in Official Records Book 46655, Page 890 of the Public Records of Broward County, Florida.

and

LESS and EXCEPT the property conveyed Right of Way Dedication by Qui Cloim Deed recorded on April 24, 2014 in Official Records Book 46972, Page 1976 of the Public Records of Broward County, Florida.

Said lands lying one situate in Broward County, Florida, containing 1,061,220 square feet, 24.3622 acres, more or less.

**CERTIFIED TO:**

Town of Southwest Ranches, a municipal corporation of the State of Florida  
Attest & Seal JLP  
City Republic National Title Insurance Company

**CERTIFICATION**

I HEREBY CERTIFY that the attached Boundary Survey of the herein described property is true and correct to the best of my knowledge and belief as surveyed in the field under my direction. I FURTHER CERTIFY that this Boundary Survey meets the Standards of Practice set forth in Chapter 21-170.00 through 21-170.02, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

Date: 5/5/2016

*[Signature]*

John A. Aviom, P.L.S.  
Florida Registration No. 4409  
AVIOM & ASSOCIATES, INC.  
P.O. Box 3700  
Ft. Lauderdale, FL 33304  
EMAIL: john@aviomsurvey.com



**AVIOM & ASSOCIATES, INC.**  
SURVEYING & MAPPING  
80 S.W. 2nd AVENUE, SUITE 102, BOCA RATON, FLORIDA 33432  
TEL: (561) 360-2004 FAX: (561) 364-7152  
www.AVIOMSURVEY.com

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REVISIONS	DATE	FR./PG.	BY	CHKD	REVISIONS	DATE	FR./PG.	BY	CHKD
PROPOSED EMB EMB									

**BOUNDARY SURVEY**

**LOTS 60-62 AND VACATED RIGHT-OF-WAY SYLVAN PASS**

**REPLAT OF PORTION OF WEST BROWARD INDUSTRIAL PARK**

(P.B. 157, PG. 30, B.C.R.)  
SOUTHWEST RANCHES  
BROWARD COUNTY, FLORIDA

JOB NO. 6281-14  
SCALE: 1" = 50'  
DATE: 05/16/2016  
DW: J.A.F.  
CHECKED: M.D.A.  
FR: 752 PG: 1-20  
SHEET: 1 OF 1

**ATTACHMENT "1"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**Selection Criteria & Scoring Instructions**

SELECTION CRITERIA	MAXIMUM POINTS
<b>Financial Proposal</b> The Net Amount of the Rental Proposal listed in Section 1 of Proposal Response Form	40
<b>Experience, Qualifications and Financial Information</b> Section 3.2 of RFP	20
<b>Project Approach</b> Section 3.3 and Section 3.4.2(a),(c) and (d) of RFP	40
<b>Total Available Points</b>	<b>100</b>

**SCORING INSTRUCTIONS**

In accordance with Section 2.11 of the RFP, Selection Committee Members shall evaluate and score each proposal by reviewing the proposal against the Selection Criteria set forth in this Attachment, taking into consideration the Scoring Instructions set forth in this Attachment.

A. Financial Proposal. The Financial Proposal will be pre-scored by the Department and shall be determined based upon the highest net amount of the Rental Proposal listed in Section 1 of Proposal Response Form. Proposals may receive up to 40 points.

1. The proposal with the highest Financial Proposal will be awarded the full 40 points. In the event two or more proposals contain the identical amount designated as the highest Financial Proposal, all such proposals will be awarded 30 points.
2. All remaining proposals shall be scored on a basis relative to the proposal with the highest Financial Proposal (i.e., Each proposer's Financial Proposal will be divided by the highest Financial Proposal and then multiplied by 40 points to calculate the score. Stated by equation as follows:

$\text{Score} = \left( \frac{\text{Proposer's Financial Proposal}}{\text{Highest Financial Proposal}} \right) \times 40 \text{ points}$
---

3. Any calculated score with a fractional result will be rounded the nearest whole point.

**ATTACHMENT "1"**  
**EASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**Selection Criteria & Scoring Instructions**

- B. Experience, Qualifications and Financial Information. Proposals may receive up to 20 points based on the proposer's Experience, Qualifications and Financial Information. Selection Committee Members should review the information submitted in accordance with Section 3.2 of the RFP in determining the number of points to be allocated to each proposal for Experience, Qualifications and Financial Information.
- C. Project Approach. Proposals may receive up to 40 points based on the proposer's Project Approach proposal. The Project Approach criteria includes, but is not limited to: the size (acreage) of the Property proposed to be leased (Section 2.12 of the RFP states it is the Department's desire to recommend approval of a Lease Agreement for the entire 24.3622 +/- acre site); lease term (proposed initial term plus any renewal term); proposed uses, minimum capital investment and economic benefits. Selection Committee Members should review the information submitted in accordance with Sections 3.3 and 3.4(a), (c) and (d) of the RFP. Selection Committee Members should also consider the Town's purpose in issuing the RFP, as set forth in Section 1.2 of the RFP, when determining the number of points to be allocated to each proposal for Project Approach, including the desire to maximize the use of the Property.

**ATTACHMENT "2"**  
**EXAMPLE DEVELOPMENT SITE LEASE AGREEMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP NO. 20-003)**

**DEVELOPMENT SITE LEASE AGREEMENT**

**Department of Procurement**

**Town of Southwest Ranches**

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**TABLE OF CONTENTS**

**ARTICLE 1 – RECITALS**..... 3

**ARTICLE 2 – DEFINITIONS**..... 3

**ARTICLE 3 - EFFECTIVE DATE, TERM AND EVALUATION OF PREMISES** ..... 7

**ARTICLE 4 - PREMISES AND PRIVILEGES** ..... 9

**ARTICLE 5 - RENTAL, FEES. CHARGES AND SECURITY DEPOSIT**..... 10

**ARTICLE 6 - CONSTRUCTION OF IMPROVEMENTS** ..... 13

**ARTICLE 8 - OBLIGATIONS OF TENANT** ..... 19

**ARTICLE 9 - MAINTENANCE AND REPAIR** ..... 21

**ARTICLE 10 – UTILITIES**..... 23

**ARTICLE 11 - INSURANCE REQUIREMENTS** ..... 23

**ARTICLE 12 - DAMAGE TO OR DESTRUCTION OF PREMISES**..... 27

**ARTICLE 13 – ENCUMBRANCES** ..... 28

**ARTICLE 14 - TITLE TO IMPROVEMENTS** ..... 28

**ARTICLE 15 - EXPIRATION, DEFAULTS, REMEDIES AND TERMINATION**..... 28

**ARTICLE 16 - ASSIGNMENT, TRANSFER AND SUBLETTING**..... 31

**ARTICLE 17 - RIGHTS OF LEASEHOLD MORTGAGEES**..... 32

**ARTICLE 18 – INDEMNIFICATION** ..... 34

**ARTICLE 19 - EXTERIOR SIGNAGE** ..... 35

**ARTICLE 20 - LAWS. REGULATIONS AND PERMITS**..... 35

**ARTICLE 21 - AMERICANS WITH DISABILITIES ACT** ..... 38

**ARTICLE 22 - DISCLAIMER OF LIABILITY** ..... 39

**ARTICLE 23 - GOVERNMENTAL RESTRICTIONS**..... 39

**ARTICLE 24 - NON-DISCRIMINATION** ..... 40

**ARTICLE 25 - TOWN NOT LIABLE** ..... 40

**ARTICLE 26 - AUTHORIZED USES ONLY**..... 41

**ARTICLE 27 – MISCELLANEOUS** ..... 41

**DEVELOPMENT SITE LEASE AGREEMENT**

THIS DEVELOPMENT SITE LEASE AGREEMENT (this "Lease") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, by and between the Town of Southwest Ranches, a political subdivision of the State of Florida (the "Town"), and, \_\_\_\_\_ a, \_\_\_\_\_, having its office and principal place of business at \_\_\_\_\_ ("Tenant").

**WITNESSETH:**

WHEREAS, Town, by and through its Department of Procurement (the "Department"), owns and operates Property located within West Broward Industrial Park, Broward County, Florida (the "Industrial Park"); and

WHEREAS, Tenant submitted a proposal in response to Request for Proposals, 20-003 issued on October 1, 2019, for the lease of certain real property located in the Industrial Park, which is managed by the Department on behalf of the Town.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

**ARTICLE 1 – RECITALS**

The foregoing recitals are true and correct and are hereby incorporated herein by reference.

**ARTICLE 2 – DEFINITIONS**

The following words, terms, and phrases wherever used in this Lease shall have the meanings set forth in this Article and the meanings shall apply to both singular and plural forms of such words, terms and phrases.

- 2.1 "Additional Insured" has the meaning set forth in Section 11.08.
- 2.2 "Additional Rent" has the meaning set forth in Section 5.08.
- 2.3 "Adjustment Date" has the meaning set forth in Section 5.03(A).
- 2.4 "Industrial Park" has the meaning set forth in the Recitals.
- 2.5 "Industrial Park Rules and Regulations" means the Broward Industrial Park Rules and Regulations, as now or hereafter amended, and any successor ordinance or resolution regulating activities or operations on the Industrial Park.

- 2.6 **Insert if applicable:** "Appraisal Adjustment Date" has the meaning set forth in Section 5.03(D).
- 2.7 "Approval Deadline" has the meaning set forth in Section 3.08(B).
- 2.8 "Assignment" has the meaning set forth in Article 16.
- 2.9 "Bond" has the meaning set forth in Section 5.05.
- 2.10 "Business Day" means any day other than a Saturday, Sunday or holiday. Use of the word "day" as opposed to Business Day means a calendar day.
- 2.11 "Capital Investment Report" shall have the meaning set forth in Section 6.01(E).
- 2.12 "Town Party" means the Town and its elected officers, employees and agents.
- 2.13 "Damages" has the meaning set forth in Article 18.
- 2.14 "Date of Beneficial Occupancy" has the meaning set forth in Section 3.01.
- 2.15 "Department" means the Town of Southwest Ranches Procurement Department.
- 2.16 "Derelict Vehicle" means a vehicle that is in a wrecked, dismantled or partially dismantled condition, or which is discarded and in an inoperable condition.
- 2.17 "Director" means the Director or Acting Director of the Department of Procurement.
- 2.18 "Effective Date" means the date that this Lease is approved by the Southwest Ranches Town Council and signed by the parties.
- 2.19 "Environmental Laws" means all applicable Federal, State and local laws, statutes, ordinances, rules, regulations and governmental restrictions relating to the protection of the environment, human health, welfare or safety, or to the emission ,discharge, seepage or release of Hazardous Substances into the environment, including, but not limited to, ambient air, surface water, groundwater or land, or otherwise relating to the handling of such Hazardous Substances.
- 2.20 "Governmental Approvals" has the meaning set forth in Section 3.08.
- 2.21 "Hazardous Substances" shall mean any contaminant, hazardous or toxic substance, material or waste of any kind or any other substance that is regulated by any Environmental Laws.
- 2.22 "Improvement Cost" has the meaning set forth in Section 6.01(E).



- 2.23 "Initial Leasehold Improvements" has the meaning set forth in Section 6.01(A).
- 2.24 "Initial Rental" means the initial annual ground rental set forth in Section 5.01 [Insert if applicable: for the rental adjustments occurring prior to the Appraisal Adjustment Date: the rental established pursuant to Section 5.03(D) for rental adjustments occurring after the Appraisal Adjustment Date: and the rental established pursuant to Section 5.03(E) alter the Renewal Term.]
- 2.25 "Initial Rental Year" means 2019 during the Initial Term [Insert if applicable: for rental adjustments occurring prior to the Appraisal Adjustment Date; and calendar year for rental adjustments occurring after the Appraisal Adjustment Date; and for rental adjustments occurring during the Renewal Term.]
- 2.26 "Initial Term" has the meaning set forth in Section 3.01.
- 2.27 "Inspection Period" has the meaning set forth in Section 3.06(A).
- 2.28 "Inspections" includes, but is not limited to, the following: (a) physical inspection of the Property; (b) soil investigation; (c) environmental assessment; (d) topographic studies; and (e) engineering, utilities and site planning studies.
- 2.29 "Lease" means this Lease and all exhibits attached hereto, which are incorporated herein by this reference. Words such as "herein," "hereafter," "hereof," "hereby" and "hereunder" when used with reference to this Lease, refer to this Lease as a whole, unless context otherwise requires.
- 2.30 "Leasehold Mortgage" has the meaning set forth in Section 17.01.
- 2.31 "Leasehold Mortgagee" has the meaning set forth in Section 17.01.
- 2.32 "Lease Year" means a twelve (12) month period beginning on the Date of Beneficial Occupancy, and each twelve (12) month period thereafter, until the expiration or earlier termination of this Lease.
- 2.33 "Letter of Credit" has the meaning set forth in Section 5.05.
- 2.34 "Minimum Capital Investment" has the meaning set forth in Section 6.01(B).
- 2.35 "West Broward Industrial Park Development Area" means the property more particularly described in Exhibit "A".
- 2.36 "Phase I EA" has the meaning set forth in Section 20.05.
- 2.37 "Plans" have the meaning set forth in Section 6.01(C).

- 2.38 "Premises" means the Property together with all buildings, facilities and other improvements now or hereafter constructed thereon, subject to easements, rights-of-way and any other encumbrances of record.
- 2.39 "Property" means approximately 1,064,488.79 square feet of unimproved real property as more particularly described on Exhibit "A", subject to easements, rights-of-way and any other encumbrances of record. The parties acknowledge the boundary of the Property may change based upon the final site plan for the Initial Leasehold Improvements. Within ninety (90) days following issuance of approval of the site plan for the Initial Leasehold Improvements by Planning, Zoning and Building Department, the parties shall enter into an amendment to this Lease to reflect the final square footage and location of the Property based upon the approved site plan and replace Exhibit "A" with an updated survey and legal description. The updated survey and legal description will be prepared by Town's surveyor at no cost to Tenant.
- 2.40 "Proposal" means the written proposal submitted by Tenant in response to the RFP.
- 2.41 "Release Documents" has the meaning set forth in Section 17.08.
- 2.42 "Renewal Term" has the meaning set forth in Section 3.02.
- 2.43 "Rental" means the initial annual ground rental established in Section 5.01, as adjusted in accordance with Section 5.03.
- 2.44 "Request for Proposals" or "RFP" means Request for Proposals No. 20-003, issued by Town on October 1, 2019, as amended and/or supplemented.
- 2.45 "Security Deposit" has the meaning set forth in Section 5.05.
- 2.46 "Tenant Improvements" means all buildings, structures, pavement, facilities, landscaping and other improvements, above and below ground, constructed by Tenant upon the Premises during the Term, including the Initial Leasehold Improvements.
- 2.47 "Tenant Party" means Tenant and its subtenants, contractors, suppliers, employees, officers, licensees, agents and invitees.
- 2.48 "Term" means the Initial Term plus any Renewal Term.
- 2.49 "Title Review Period" has the meaning set forth in Section 3.03.
- 2.50 "Traffic Concurrency Allocation" has the meaning set forth in Section 6.06.

### **ARTICLE 3 - EFFECTIVE DATE, TERM AND EVALUATION OF PREMISES**

3.01 Term. The term of this Lease shall commence on the earlier of: (a) substantial completion of the Initial Leasehold Improvements as defined in Section 6.01(A); (b) the date Tenant commences using the Premises (or any part thereof) for the conduct of its business (other than construction); or (c) twenty four (24) months from the Effective Date (or such later date agreed to by Town pursuant to Section 6.01(A)) ("Date of Beneficial Occupancy") and expire 20 years thereafter, unless sooner terminated pursuant to the terms of this Lease ("Initial Term").

**[\*\*Total Lease Term, including all renewal terms may not exceed 99 years]**

3.02 Option to Renew. Provided that Tenant is not in material default of this Lease (or event has not occurred, which with the passage of time or giving of notice would constitute a material default), Tenant shall have the option to renew this Lease for an additional period of Twenty (20 years) ("Renewal Term"), by notifying Town in writing of Tenant's intent to exercise its option to renew not later than one hundred twenty (120) days prior to the expiration of the Initial Term, with time being of the essence. Such renewal shall be upon the same terms and conditions set forth herein.

**[\*\*Total Lease Term, including all renewal terms may not exceed 99 years]**

3.03 Title Insurance. Tenant shall have thirty (30) days following the Effective Date to examine Town's title to the Property (the "Title Review Period") and, at Tenant's option, obtain a title insurance commitment for the issuance of a leasehold title policy, agreeing to issue to Tenant a title insurance policy in such amount as deemed appropriate by Tenant. Tenant shall furnish a copy of the title insurance commitment and title policy, if applicable, to Town together with legible copies of all exceptions to coverage reflected thereon upon receipt. The cost of the title insurance commitment and title insurance policy and any premium shall be borne by Tenant.

3.04 Title Defects. In the event the title insurance commitment shows as an exception any matters, other than the Permitted Exceptions, which render title unmarketable or would unreasonably interfere with Tenant's intended development and use of the Property for the uses permitted hereunder, Tenant shall notify Town of Tenant's objections thereto prior to expiration of the Title Review Period. Town shall have the right, but not the obligation, within sixty (60) days from receipt of the notice, to cure such title defects or to make arrangements with the title insurer for the removal of such objections from the title insurance commitment. If the defect(s) shall not have been so cured or removed from the title insurance commitment by endorsement thereto at the termination of the sixty (60) day period, Tenant shall have the option of: (a) accepting title to the Property as it then exists; (b) providing Town with an additional ninety (90) days to remove such defects; or (c) terminating this Lease. Tenant shall provide Town with written notice of its election within ten (10) days after expiration of the sixty (60) day period. In the event Tenant elects option (b) above and Town is unable to cure such defects within the additional ninety (90) day period, Tenant shall have the option of: (a) accepting title to the Property, as it then exists; or (b) terminating this Lease. Tenant shall provide Town with written notice of its election within ten (10) days after expiration of the ninety (90) day period. In the event Tenant terminates this Lease pursuant to this Section, the parties shall be released from all obligations under this Lease, with the exception of those obligations arising hereunder prior to termination of this Lease or which expressly survive termination. In the event Tenant fails to

properly exercise its right to terminate this Lease, Tenant shall be deemed to have waived such right and shall be deemed to have accepted title to the Property subject to all matters of record.

3.05 Survey. Tenant shall have the right, within the Title Review Period, to obtain a current survey of the Property. The survey shall be prepared in accordance with the minimum technical standards for surveys within the State of Florida. If the survey reveals any encroachments, overlaps, boundary disputes or other defects, other than the Permitted Exceptions, which render title unmarketable or unreasonably interfere with Tenant's intended development and use of the Property for the uses permitted hereunder, the same shall be treated as title defects as described in Section 3.04 of this Lease and Tenant shall have the same rights and remedies as set forth therein.

3.06 Inspections. Commencing on the Effective Date and expiring sixty (60) days thereafter ("Inspection Period"), Tenant may conduct any Inspections that Tenant deems appropriate with respect to the Property. All Inspections performed hereunder shall be conducted at Tenant's sole cost and expense and shall be performed by licensed persons or firms dealing in the respective areas or matters. Tenant agrees to indemnify the Town Parties from and against any and all Damages arising from or out of a Tenant Party's entry upon and inspection of the Property except if such Damages are caused by a Town Party's negligence or willful misconduct or Town's breach of its obligations under this Lease. Tenant's obligation to indemnify the Town Parties pursuant to this Section shall survive the expiration or termination of this Lease. Prior to the expiration of the Inspection Period, Tenant shall provide Town with one (1) complete copy of all written reports detailing the results of the Inspections obtained by Tenant hereunder. If Tenant determines, in its sole discretion, that it will be unable to develop the Property for the uses permitted hereunder as the result of the Inspections, Tenant may elect to terminate this Lease upon written notice to Town within sixty (60) days after the expiration of the Inspection Period, time being of the essence. If termination notice is timely given by Tenant pursuant to this Section, this Lease shall be deemed terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Lease, except for those obligations arising hereunder prior to termination of this Lease or which expressly survive termination. In the event Tenant fails to properly exercise its right to terminate this Lease, Tenant shall be deemed to have waived such right. In the event Tenant terminates this Lease pursuant to this Section, Tenant, at its sole cost and expense, shall repair any damage resulting from the Inspections and restore the Property to the condition in which it existed prior thereto, using materials of like kind and quality.

3.07 Governmental Approvals. This Lease is expressly conditioned on Tenant's pursuit and receipt of any and all governmental approvals, permits and entitlements necessary for Tenant to construct the Initial Leasehold Improvements on the Property. The parties acknowledge and agree that the term "Governmental Approvals" shall not include internal approval processes of Tenant or the Department's review on behalf of the Town under Article 6 of this Lease.

- (A) Town shall cooperate with Tenant in the pursuit of the Governmental Approvals by executing applications and other instruments necessary to obtain the required Governmental Approvals when the property owner is required to execute such applications or instruments, which may be signed on behalf of Town by the Director or her designee the Department's Deputy Director of Development.

Tenant acknowledges that: (a) Town shall be acting in its proprietary capacity in executing such applications or instruments and that nothing in this Section 3.08 shall be construed as obligating or requiring Town to take any specific action on such applications or instruments when acting in its governmental or regulatory capacity; and (b) any and all costs incurred in the pursuit of the Governmental Approvals shall be borne solely by Tenant.

- (B) Provided that Tenant submits its applications in a timely manner and continues to work diligently in good faith to obtain all Governmental Approvals, if Tenant has not received all required Governmental Approvals on or before the date that is twelve (12) months from the Effective Date ("Approval Deadline"), Tenant shall be entitled to terminate this Lease upon prior written notice to Town within thirty (30) days after the expiration of the Approval Deadline, if termination notice is timely given by Tenant to Town pursuant to this Section 3.08(B), this Lease shall be deemed terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Lease, except for those obligations arising hereunder prior to termination of this Lease or which expressly survive termination.

#### **ARTICLE 4 - PREMISES AND PRIVILEGES**

4.01 Description of Premises. Town hereby demises and leases to Tenant, and Tenant rents from Town, the Property, subject to the terms, conditions and covenants set forth herein.

4.02 Description of Specific Privileges, Uses and Rights. Tenant shall have the right and obligation to use the Property for the purpose of constructing, operating, and maintaining \_\_\_\_\_ on the Property.

4.03 Prohibited Uses, Products and Services. Tenant agrees the Premises shall be utilized solely for the uses permitted herein and for no other purpose whatsoever. Tenant shall not provide any products or services not specifically authorized by this Lease or the Department.

4.04 Restrictions on Privileges, Uses and Rights.

- (A) The rights granted hereunder are expressly limited to the improvement, maintenance, and operation of the Premises pursuant to the terms and conditions of this Lease.
- (B) Parking of boats, motor homes or inoperable vehicles and the stockpiling or storage of inoperable equipment, machinery and containers on the Premises is strictly prohibited.
- (C) All storage and dumpsters must be screened or concealed from public view, and storage shall be limited to storage incidental to Tenant's overall operation on the Premises.

4.05 Condition and Use of the Premises. Except as otherwise provided for herein, and subject to Tenant's rights to complete inspections pursuant to Sections 3.03, 3.04, 3.05, and 3.06 Tenant accepts the Premises in its "AS IS CONDITION" and "WITH ALL FAULTS," together

with all defects, latent and patent, if any. Tenant further acknowledges that Town has made no representations or warranties of any nature whatsoever regarding the Premises including, but not limited to, the physical and/or environmental condition of the Premises or any improvements located thereon; the value of the Premises or improvements; the zoning of the Premises; title to the Premises; the suitability of the Premises or any improvements for Tenant's intended use; or Tenant's legal ability to use the Premises for Tenant's intended use.

#### **ARTICLE 5 - RENTAL, FEES, CHARGES AND SECURITY DEPOSIT**

5.01 Rental. For the use and occupancy of the Premises, Tenant shall pay to Town initial annual ground rental of (\$\_\_\_\_) per square foot, for approximately \_\_\_\_\_square feet of ground or (\$\_\_\_\_) annually.

5.02 Commencement and Time of Payment of Rental. Payment of the Rental by Tenant to Town shall commence upon the Date of Beneficial Occupancy. Rental shall be payable in equal monthly installments, in advance, on or before the first (1st) day of each and every month throughout the Term of this Lease. All payments must be delivered (together with applicable sales taxes), without demand and without any deduction, holdback or set off whatsoever, to: Procurement Department, 13400 Griffin Road, Southwest Ranches, FL 33330, or at such other address as may be directed by the Department from time to time. Payments shall be made payable to "Southwest Ranches."

5.03 Adjustment of Rental. [Based on the length of the Initial Term, the Town may require one or more appraisal-only adjustment]

- (A) On October 1, 2022, and each three (3) year anniversary thereof (each such date, an "Adjustment Date"), the then current Rental shall be adjusted in accordance with the provisions of this Section. The new Rental shall be determined by an appraisal obtained by Town, which shall set forth the fair market rental for the Premises (exclusive of the Tenant Improvements). The appraisal shall be performed, at Town's sole cost and expense, by a qualified appraiser selected by Town. Town shall notify Tenant in writing of the fair market rental of the Property as established by the appraisal, which shall become the new Rental subject to the limitations set forth in Section 5.03(B) below. Tenant shall commence paying the new Rental on the Adjustment Date. The new Rental shall not be less than the Rental for the prior period. This Lease shall automatically be considered as amended to reflect the new Rental rate, without formal amendment hereto, upon Town's written notification of the establishment of the new Rental rate applicable to the Property.
- (B) Notwithstanding the foregoing, the Rental payable hereunder shall not exceed an amount that would be obtained by multiplying the Initial Rental by a fraction, the numerator of which shall be the "Consumer Price Index" (as hereinafter defined) figure for May of the calendar year in which such adjustment is to become effective and the denominator of which shall be the Consumer Price Index figure for April of the Initial Rental Year.

- (C) For the purposes hereof, the "Consumer Price Index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, United States city average, all items (1982 - 1984 = 100), not seasonally adjusted, or any successor thereto as promulgated by the Bureau of Labor Statistics of the United States Department of Labor. In the event that the Consumer Price Index ceases to use the 1982 - 1984 average of one hundred (100) as the standard reference index base period, the then current standard reference index base period shall be utilized. In the event the Consumer Price Index (or successor or substitute Consumer Price Index) is not available, a reliable governmental or other nonpartisan publication evaluating information theretofore used in determining the Consumer Price Index shall be used.
- (D) (Insert if applicable: Notwithstanding any provision of this Lease to the contrary, on October 1, \_\_\_\_\_ and on October 1, \_\_\_\_\_ (each, an "Appraisal Adjustment Date"), the then current Rental shall be adjusted and new Rental shall be determined as set forth in this Section by appraisal and shall not be subject to the provisions of Section 5.03(B). Prior to the Appraisal Adjustment Date, Town, at its sole cost and expense, shall obtain an appraisal of the Premises (exclusive of the Tenant Improvements during the Initial Term) to determine its fair market rental value. Prior to the Appraisal Adjustment Date, Town shall provide a complete copy of the appraisal to Tenant. In the event Tenant objects to the fair market rental value set forth in the appraisal obtained by Town, Tenant shall notify Town in writing of its objection within thirty (30) days of receipt of Town's appraisal. Provided Tenant has notified Town in writing of its objection to Town's appraisal within the aforementioned thirty (30) day period, Tenant, at its sole cost and expense, may obtain a second appraisal. Tenant shall provide Town with a copy of the second appraisal within sixty (60) days of the date of Tenant's objection notice. In the event a second appraisal is not obtained, the Rental shall be adjusted on the Appraisal Adjustment Date in accordance with the rental rate set forth in the first appraisal. In the event a second appraisal is obtained, and the rental rates established in the two (2) appraisals vary by an amount less than or equal to twenty five percent (25%) of the average of the two (2) appraisals, then the Rental shall be adjusted on the Appraisal Adjustment Date based on the average of the two (2) appraisals. In the event the two (2) appraisals vary by an amount greater than twenty five percent (25%) of the average of the two (2) appraisals, then Town and Tenant shall jointly retain an appraiser, reasonably acceptable to both parties, to perform a third appraisal. Except as otherwise provided for below, the cost of the third appraisal shall be borne equally by the parties. In the event the parties are unable to agree upon the selection of the appraiser to conduct the third appraisal, Town shall have the right to select the third appraiser; provided, however, the cost of the third appraisal shall be borne solely by Town. In the event a third appraisal is obtained, the Rental shall be adjusted, effective as of the Appraisal Adjustment Date, by the average of the three (3) appraisals. The Rental established pursuant to this Section shall become the new- Initial Rental for purposes of future rental adjustments pursuant to Section 5.03(B). The parties agree that any appraisers selected pursuant to this Section shall be qualified M.A.I., appraisers with demonstrated experience in appraising commercial properties.]

- (E) [Insert if applicable: In the event Tenant exercises its option to renew, the initial Rental applicable to the Premises (inclusive of all Tenant Improvements) during the Renewal Term shall be determined by appraisal in accordance with the provisions of this Section and shall not be subject to the provisions of Section 5.03(B). Town, at its sole cost and expense, shall obtain an appraisal of the Premises to determine its fair market rental value. The appraisal shall be performed by a qualified M.A.I., appraiser selected by Town with demonstrated experience in appraising commercial properties. Town shall provide a complete copy of the appraisal to Tenant no less than ninety (90) days prior to the date Tenant is required to exercise its option to renew. The Rental established pursuant to this Section shall become the new Initial Rental for purposes of future rental adjustments.]
- (F) The amount of any rental adjusted pursuant to this Section shall not be less than the rental for the prior period. This Lease shall automatically be considered as amended to reflect the adjusted rental rate, without formal amendment hereto, upon Town's written notification of the establishment of the adjusted rental rate applicable to the Property.

5.04 Any delay or failure of Town in computing the adjustment in the Rental, as hereinabove provided, shall not constitute a waiver of or in any way impair the continuing obligation of Tenant to pay such adjusted annual Rental from the applicable Adjustment Date. Late Payments - interest. Tenant shall pay to Town interest at the rate of one and one-half percent (1.5%) per month on any late payments commencing ten (10) days after the amounts are due. The Department, in its sole and absolute discretion, may elect to waive the aforementioned late fees in appropriate circumstances as determined by the Department.

5.05 Security Deposit. Prior to the Effective Date of this Lease, Tenant shall post a security deposit with Town equal to three (3) monthly installments of Rental (the "Security Deposit"). The Security Deposit shall serve as security for the payment of all sums due to Town and shall also secure the performance of all obligations of Tenant to Town. The Security Deposit shall be either in the form of a clean, Irrevocable Letter of Credit ("Letter of Credit") or a Surety Bond ("Bond") in form and substance satisfactory to Town. In the event of any failure by Tenant to pay any rentals or charges when due or upon any other failure to perform any of its obligations or other default under this Lease, then in addition to any other rights and remedies available to Town at law or in equity, Town shall be entitled to draw on the Security Deposit and apply same to all amounts owed. Upon notice of any such draw, Tenant shall immediately replace the Security Deposit with a new Letter of Credit or Bond in the full amount of the Security Deposit required hereunder. Tenant shall promptly increase the amount of the Security Deposit to reflect any increases in the Rental payable hereunder; provided, however, if the amount of required Security Deposit increase resulting from adjustment of the Rental is less than fifteen percent (15%) of the amount of Security Deposit currently held, no increase in the Security Deposit shall be required. The Security Deposit shall be kept in full force and effect throughout the Term of this Lease and any extension thereof and for a period of six (6) months after the termination of this Lease. Not less than forty-five (45) days prior to any expiration date of a Letter of Credit or Bond, Tenant shall submit evidence in form satisfactory to Town that such security instrument



has been renewed. Failure to renew a Letter of Credit or Bond or to increase the amount of the Security Deposit as required by this Section shall: (a) entitle Town to draw down the full amount of such Security Deposit; and (b) constitute a default of this Lease entitling Town to all available remedies. The Security Deposit shall not be returned to Tenant until all obligations under this Lease are performed and satisfied. Prior to consent from Town to any assignment of this Lease by Tenant, Tenant's assignee shall be required to provide a Security Deposit to Town in accordance with the terms and conditions of this Section.

5.06 Triple Net Lease. This Lease shall be deemed to be "triple net" without cost or expense to Town including, but not limited to, cost and expenses relating to taxes, insurance, and the maintenance and operation of the Premises.

5.07 Taxes and Fees. Tenant shall pay, on or before their respective due dates, all Federal, State and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon the Premises (including improvements thereon) or the estate hereby granted, or upon Tenant, or upon the business conducted on the Premises, or upon any of Tenant's property used in connection therewith, or upon any rentals or other sums payable hereunder, including, but not limited to any ad valorem taxes, and sales or excise taxes on rentals, and personal property taxes against tangible and intangible personal property of Tenant. Tenant hereby covenants and agrees to pay monthly to Town, as "Additional Rent," any sales, use or other tax, or any imposition in lieu thereof (excluding State and/or Federal Income Tax) now or hereinafter imposed upon the rents, use or occupancy of the Premises imposed by the United States of America, the State of Florida or Broward County, notwithstanding the fact that the statute, ordinance or enactment imposing the same may endeavor to impose the tax upon Town as landlord/lessor, to the extent as applicable.

5.08 Additional Rent. Any and all sums of money or charges required to be paid by Tenant under this Lease, other than the annual rental, shall be considered "Additional Rent", whether or not the same is specifically so designated and Town shall have the same rights to enforce due and timely payment by Tenant of all Additional Rent as are available to Town with regards to annual rent.

5.09 Accord and Satisfaction. In the event Tenant pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. Town may accept any check or payment without prejudice to Town's right to recover the balance due or to pursue any other remedy available to Town pursuant to this Lease or under the law.

## **ARTICLE 6 - CONSTRUCTION OF IMPROVEMENTS**

6.01 Tenant Construction Requirements. Except as otherwise provided for herein, Tenant shall make no additions, alterations or improvements to the Premises, or improvements constructed thereon, without the prior written approval of the Department, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant acknowledges and agrees that it shall not be deemed unreasonable for the Department or Town to withhold consent to any improvements determined to be a potential hazard. Any such additions, alterations or

improvements shall be made in accordance with the construction requirements contained herein and as established by the Department. All improvements constructed or placed on the Premises, including drainage and landscaping, shall be of attractive construction and first-class design, shall comply with any and all applicable governmental laws, regulations, rules and orders shall follow standard construction methods, and shall be constructed in accordance with the requirements of this Article. Notwithstanding the foregoing, additions, alterations or improvements to interior improvements to the Premises that do not require a building permit, such as interior painting and replacement of flooring, and replacement of damaged exterior landscaping with the same landscaping materials, shall not require the Department's prior approval.

(A) Initial Leasehold Improvements.

- (1) Tenant shall cause the design and construction of the following improvements at Tenant's sole cost and expense: (a) a \_\_\_\_\_ on the Property; and (b) all other improvements and infrastructure, whether located on or off the Property, necessary to support the development of the Property, including, but not limited to, electrical systems, sewage, wastewater disposal, landscaping, lighting, signage, parking, roadways and driveways necessary for ingress, egress and circulation, storm water control systems, lighting and security measures, as required (the "Initial Leasehold Improvements").
- (2) Construction of the Initial Leasehold Improvements shall be completed no later than twenty four (24) months following the Effective Date, subject to force majeure, unless otherwise approved by the Department in writing, which approval shall not be unreasonably withheld, conditioned or delayed for reasons beyond the reasonable control of Tenant. Substantial completion of the Initial Leasehold Improvements will occur when the applicable governmental authority issues a temporary or permanent certificate of occupancy or completion for the \_\_\_\_\_ to be built on the Property. Tenant shall promptly notify Town in writing when the applicable government authority issues a temporary or permanent certificate of occupancy or completion for such improvements.
- (3) The cost of the design and construction of the Initial Leasehold Improvements shall be at Tenant's sole cost and expense.

- (B) Minimum Capital Investment. Tenant shall expend not less than \_\_\_\_\_ Dollars (\$\_\_\_\_) on the design, construction and installation of the Initial Leasehold Improvements (the "Minimum Capital Investment"). Capital expenditure costs that may be counted toward the Minimum Capital Investment shall include all costs paid for work performed, services rendered and materials furnished for the construction of the Initial Leasehold Improvements, subject to the following terms, conditions and limitations:

- (1) The cost of design (subject to the limitations set forth herein), construction and acquisition of the Initial Leasehold Improvements; bonds; construction insurance; and building, impact and concurrency fees shall be included in the Minimum Capital Investment.
- (2) No more than twelve percent (12%) of the Minimum Capital Investment for payments made by Tenant to independent contractors for engineering and architectural design work may be included in the Minimum Capital Investment.
- (3) Only true third party costs and payments made by Tenant shall be included in the Minimum Capital Investment. Costs incurred by any sublessee, licensee or other occupant of the Premises, or any portion thereof, other than Tenant shall not be included in the Minimum Capital Investment.
- (4) Costs for consultants (other than engineering and design consultants, as provided above) shall not be included in the Minimum Capital Investment. Legal fees and accountant fees shall not be included in the Minimum Capital Investment.
- (5) Finance and interest expenses shall not be included in the Minimum Capital Investment.
- (6) Administrative, supervisory and overhead or internal costs of Tenant shall not be included in the Minimum Capital Investment.
- (7) Costs associated with acquisition or installation of personalty, such as furnishings, trade fixtures and equipment, not permanently affixed to the Premises, or any other personalty whatsoever, shall not be included in the Minimum Capital Investment.
- (8) Any costs associated with any improvements other than the Initial Leasehold Improvements shall not be included in the Minimum Capital Investment unless Tenant has obtained written approval from the Department prior to incurring such costs.

(C) Construction Requirements. Prior to constructing any improvements on the Premises or any other portion of the Industrial Park (including, but not limited to, the Initial Leasehold Improvements), Tenant, without cost to Town, shall prepare detailed preliminary construction plans and specifications for the improvements (hereinafter collectively referred to as the "Plans") in accordance with standards established by the Department and deliver the preliminary Plans to the Department for review, comment and adjustment. The Department shall review the preliminary Plans and provide a written response to Tenant within fifteen (15) Business Days after receipt of the preliminary Plans; Approval of the Plans, including Plans for improvements that are required by Tenant's franchisor as part of its corporate identity program,

shall not be unreasonably withheld, conditioned or delayed. In the event the Department does not approve the preliminary Plans, Tenant will be notified of the reasons for the disapproval and the necessary modifications and/or alterations to the Plans. Tenant shall resubmit modified Plans to the Department within thirty (30) days of the date of the Department's written notice of disapproval and Department shall provide a written response to Tenant within fifteen (15) Business Days thereafter whether the modified Plans have been approved. Within one hundred twenty (120) days following approval of the preliminary Plans by the Department, Tenant shall prepare or cause to be prepared final working Plans in substantial conformity to the approved preliminary Plans and shall submit the final working Plans to the Department for approval. Upon approval of the final working Plans by the Department, Tenant shall obtain all permits and other government approvals required for the commencement of construction. Prior to commencement of construction, Tenant shall deliver to the Department one (1) complete set of the final working Plans as approved by the governmental agencies exercising jurisdiction thereover. Minor changes from the final working Plans shall be permitted if such changes may be reasonably inferred from the final working Plans, or if they are made to comply with requirements of any governmental agency exercising jurisdiction thereover.

- (D) Within sixty (60) days following Tenant's receipt of a certificate of occupancy or certificate of completion, as appropriate, for improvements constructed pursuant to this Article, Tenant, at its sole cost and expense, shall have prepared and deliver to the Department: one (1) complete set of as-built drawings in a hardcopy format, one (1) complete set of as-built drawings in a PDF format and one (1) complete set of as-built drawings in Auto CADD files in the latest version acceptable to the Department.
- (E) Within sixty (60) days following the substantial completion of construction of the Initial Leasehold Improvements, Tenant shall, at its sole cost and expense, have prepared and delivered to the Department a detailed statement attested to and certified by an independent Certified Public Accountant, reasonably acceptable to Town, detailing the costs of the Initial Leasehold Improvements to evidence satisfaction of the Minimum Capital Investment and SBE participation requirements of this Agreement, ("Capital Investment Report"). The Capital Investment report shall include schedules detailing: (a) the total cost of design and construction of the Initial Leasehold Improvements; (b) the Minimum Capital Investment made by Tenant to complete the Initial Leasehold Improvements by category and amount, subject to the terms, limitations and conditions of Section 6.01(B) ("Improvement Cost"); (c) the name of each SBE firm that participated in the design and/or construction of the Initial Leasehold Improvements, the total dollar amount paid to each SBE and the overall percentage of SBE participation; and (d) the amount of the Mitigation Credit, subject to the terms, conditions and limitations of Section 6.01(A)(4). The Capital Investment Report shall be in a form and substance reasonably satisfactory to Town and shall be prepared and certified by a qualified and licensed independent Certified Public Accountant, not a regular employee of

Tenant, selected by Tenant, and shall include an opinion regarding the information contained in the schedules. The Capital Investment Report shall not contain a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, regarding the information contained in the required schedules.

- (F) All improvements constructed upon the Premises shall be completed at Tenant's sole cost and expense, and shall be completed in accordance with the approved Plans.
- (G) Approval of Town shall extend to and include architectural and aesthetic matters and Town reserves the right, in its sole and absolute discretion, to reject any design proposals submitted and to require Tenant to resubmit any such design proposals until they receive Town's approval.

6.03 Construction Bonds. Tenant shall ensure that all improvements are constructed to completion in accordance with the approved Plans and that all persons or entities performing work or providing materials relating to such improvements including, but not limited to, all contractors, subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Prior to the commencement of any improvements to the Premises, the estimated cost of which exceeds Two Hundred Thousand Dollars (\$200,000), Tenant shall cause to be made, executed and delivered to Town at Tenant's sole cost a bond that is in a form and substance reasonably satisfactory to Town that a company reasonably acceptable to Town issues, and that guarantees Tenant's compliance with its obligations arising under this Lease. Tenant may not subdivide improvements or phase projects for the purpose of avoiding the foregoing bond requirement. Town shall be named as the obligee on the bonds. In lieu of the bond required by this Section, Tenant may file with Town an alternative form of security in the form of cash, money order, certified check, cashier's check, clean irrevocable letter of credit, or security of a type listed in Part II of Chapter 625, Florida Statutes; provided, however, the form of the security and company issuing such security, if applicable, shall be subject to the prior written approval of Town and shall be in accordance with Town's standard policies and procedures. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond required by this Section. Any such alternative form of security may be reduced by Tenant subject to approval of Town during the construction of the improvements, but not more than once per month, based upon the percentage of completion of the improvements plus retainage, and the Department, on behalf of the Town, may execute such certificates, notices or other documents as may be necessary to effectuate such reduction. Tenant shall provide Town evidence reasonably satisfactory to Town evidencing the percentage of completion of the improvements, including, but not limited to, an executed Application and Certification for Payment (A1A Document G702) indicating the balance to finish the work, including retainage.

#### 6.04 Contractor Bonds/Insurance.

- (A) Tenant shall cause its contractors to furnish for the benefit of Town a payment and performance bond satisfying the requirements of Section 255.05, Florida Statutes, in

a form approved by Town. Tenant shall require its contractors to name Town as a dual obligee on the bond(s).

(B) Tenant shall also require its general contractor to provide the following insurance:

- (1) Commercial General Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) per aggregate, which shall not exclude products/completed operations. Town and Tenant shall be each be endorsed an additional insured on the Commercial General Liability policy, and Town's endorsement shall comply with the requirements of Sections 11.08 and 11.09(B).
- (2) Business Auto Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per accident.
- (3) Environmental Liability/Pollution Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per pollution condition and Two Million Dollars (\$2,000,000) annual aggregate, providing coverage for damages including, without limitation, third- party liability, clean up, corrective action, including assessment, remediation and defense costs, subject to the terms and conditions of the respective policies.
- (4) Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes and all federal laws. The Workers' Compensation policy shall include Employer's Liability with minimum limits of One Million Dollars (\$1,000,000) per accident.
- (5) Builder's Risk in accordance with Section 11.07.

6.05 No Liens. Tenant agrees that nothing contained in this Lease shall be construed as consent by Town to subject the estate of Town to liability under the Construction Lien Law of the State of Florida and understands that Town's estate shall not be subject to such liability. Tenant shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Tenant of this provision of this Lease. If so requested by Town, Tenant shall file a notice satisfactory to Town in the Public Records of Broward County, Florida, stating that Town's estate shall not be subject to liens for improvements made by Tenant. In the event that a construction lien is filed against the Premises or other Town property in connection with any work performed by or on behalf of Tenant, Tenant shall satisfy such claim, or transfer same to security, within thirty (30) days from the date of filing. In the event that Tenant fails to transfer or satisfy such claim within the thirty (30) day period, Town may do so and thereafter charge Tenant all costs incurred by Town in connection with the satisfaction or transfer of such claim, including attorneys' fees, and Tenant shall promptly pay to Town all such costs upon demand, as Additional Rent.

6.06 Traffic Concurrency Allocation. Tenant acknowledges and agrees that Tenant shall be obligated, at Tenant's sole cost and expense, to obtain traffic concurrency approval for the additional traffic demand generated by Tenant's proposed development.

[Insert if applicable: ARTICLE 7- QUALITY AND CHARACTER OF SERVICES]

[Town reserves the right to develop standards for the quality and character of services based upon the proposed use(s) of the Premises.]

7.01 Quality of Merchandise. Tenant shall offer for sale only products and merchandise, which are safe, free of adulteration, sanitary and properly labeled in accordance with applicable laws.

7.02 Hours of Operation. Tenant shall actively operate the Premises in a business-like manner and the businesses located on the Premises shall maintain such hours of operation of comparable businesses.

7.03 Right to Object. Town shall have the right to raise reasonable objections to the appearance or condition of the Premises, the quality and quantity of merchandise, the character of the service, the hours of operation, the appearance and performance of employees providing services to the public, and to require any such conditions or practices objectionable to the Department to be remedied by Tenant.

7.04 Nondiscriminatory Services Requirement. Tenant shall provide all services authorized hereunder to its customers and patrons upon a fair, equal, and nondiscriminatory basis and charge fair, reasonable, and nondiscriminatory prices; provided, however, that Tenant may make or give such reasonable and nondiscriminatory discounts, rebates, or other similar price reductions as it may desire to its employees, Industrial Park employees, seniors and military personnel.

7.05 Type of Operation. Tenant shall maintain and operate the Premises in an orderly, proper, and first-class manner, which does not unreasonably annoy, disturb, or offend others at the Industrial Park considering the nature of such operations.

7.06 Replacements and Refunds. Tenant shall, without any additional charge to the purchaser, exchange any product determined by the purchaser to be unsatisfactory, flawed, defective, or of poor quality or shall provide a full refund of the purchase price.

7.07 Personnel. Tenant shall ensure the Premises is managed, maintained, and operated under the supervision and direction of qualified and experienced manager(s), as reasonably determined by Tenant. Tenant shall provide Town with contact information for one or more local representative(s) of the Tenant who will be available by telephone in case of an emergency.]

**ARTICLE 8 - OBLIGATIONS OF TENANT**

8.01 Observance of Rules and Regulations. Tenant covenants and agrees to observe and obey, and to require all Tenant Parties to observe and obey such rules and regulations of the

Department and Town (including amendments and supplements thereto) regulating the conduct and operations of Tenant and others on the Premises as may from time to time be promulgated. The obligation of Tenant to require such observance and obedience on the part of a Tenant Party shall pertain only while such Tenant Party is on or in occupancy of any portion of the Premises.

8.02 Noise and Vibrations. Tenant shall take all reasonable measures to:

- (A) Reduce to a minimum, vibrations tending to damage any equipment, structure, building or portion of a building that is on the Premises or is a part thereof, or is located elsewhere on the Industrial Park; and
- (B) Minimize noise impacts resulting from its operations on other tenants of the Industrial Park and surrounding communities.

8.03 Regulation of Conduct. Tenant shall control the conduct, demeanor and appearance of its employees, subtenants and others doing business with Tenant on the Premises.

8.04 Garbage and Debris. Tenant shall be responsible for the provision of trash removal services for the Premises at Tenant's sole cost and expense and agrees to deposit trash, garbage and debris in appropriate containers for collection.

8.05 Nuisance, Waste or Injury. Tenant shall not commit any nuisance, waste or injury on the Premises and shall not do, or permit to be done, anything which may result in the creation, commission or maintenance of such nuisance, waste or injury on the Premises.

8.06 Vapors, Fumes or Emissions. Tenant shall not create, nor permit to be caused or created upon the Premises any obnoxious odor, smoke, noxious gases or vapors; provided, however, that fumes resulting from the normal operations of properly certified and maintained trucks and other vehicles shall be excepted from this provision. Tenant shall ensure that emissions generated by any such trucks, and other vehicles comply with all provisions of applicable environmental emissions laws and regulations.

8.07 Utilities Systems. Tenant shall not do, or permit to be done, anything which may interfere with the functionality or accessibility of the utilities systems installed or located on or about the Premises that are also used by other occupants, customers or users of Industrial Park

8.08 Overloading of Floor or Paved Areas. Tenant shall not overload any floor or paved area on the Premises and shall repair at its sole cost and expense, any floor, including supporting members, and any paved area damaged by overloading.

8.09 Hazardous Conditions. Tenant shall not do or permit to be done any act or thing upon the Premises that:

- (A) Will invalidate or conflict with any insurance policies covering the Premises or the Industrial Park; or



(B) May constitute a hazardous condition that increases the risk normally attendant upon the operations permitted by this Lease.

8.10 Flammable Liquids. All flammable liquids that are kept or stored at the Premises must at all times be handled, stored and used in accordance with all applicable Federal, State and local laws.

8.11 Fire Extinguishing System. From time to time and as often as reasonably required by the Department or any governmental authority having jurisdiction, Tenant shall conduct pressure, water flow, and other appropriate tests of the fire extinguishing system and apparatus, which are maintained by Tenant or any subtenant.

8.12 Derelict Vehicles/Towing Services. Tenant shall not permit the temporary or permanent storage of any Derelict Vehicles on the Premises. Tenant shall cause Derelict Vehicles to be removed from the Premises within twenty-four (24) hours after written notice from the Department. Tenant shall be responsible for obtaining towing services for the removal of Derelict Vehicles and abandoned or unauthorized vehicles at no cost to Town.

8.13 Emergency Evacuation and Hurricane Plans. Tenant shall provide the Department with emergency evacuation and hurricane plans within thirty (30) calendar days of the Date of Beneficial Occupancy. These plans shall be detailed procedures of actions to be taken by Tenant and its subtenants, if any, in the event of an emergency evacuation or hurricane warning. Tenant shall update its emergency evacuation and hurricane plans annually, if requested by the Department.

8.14 Security of Premises. Tenant acknowledges and accepts full responsibility for the security and protection of the Premises, and any and all inventory, equipment, facilities and improvements now existing or hereafter placed on or installed in or upon the Premises, and for the prevention of unauthorized access to its facilities. Tenant fully understands that the police security protection provided by Davie Police Department is limited to that provided to any other business situated in Southwest Ranches, Florida by the Davie Police Department, and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Premises and improvements constructed thereon, shall be the sole responsibility of Tenant and shall involve no cost to Town

## **ARTICLE 9 - MAINTENANCE AND REPAIR**

9.01 Maintenance/Repair of Premises. Tenant shall be responsible for all repairs and maintenance of the Premises (which shall include, but shall not be limited to, all landscaped areas, paved areas, buildings and improvements thereon), whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Maintenance and repairs shall be in quality and class comparable to the original work. Tenant shall be required to keep all landscaped areas, paved areas, curbing, buildings, equipment and other improvements in good condition and repair throughout the Term of this Lease. Without limiting the generality thereof, Tenant shall:

- (A) Repair and maintain all doors, windows, pavement, equipment, lighting fixtures, furnishings, fixtures, roof, exterior walls, signage and structural support system(s).
- (B) Refurbish the Premises as often as is necessary to preserve the Premises in good condition and repair, including furnishings, fixtures and equipment used in the operation of the Premises. Routine refurbishment may include, but is not limited to, replacement of worn or damaged flooring, furnishings and/or wall coverings; interior and exterior painting; parking lot restriping; and other similar work.
- (C) Provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, order, ordinance, resolution or regulation of any applicable governmental authority.
- (D) Repair any damage to landscaped areas, paving or other surface(s) of the Premises.
- (E) Take anti-erosion measures, including, but not limited to, the planting and replanting of grasses with respect to all portions of the Premises not paved or otherwise improved.
- (F) Repair and maintain all utilities including, but not limited to, service lines for the supply of water, gas service lines, electrical power, telephone and telecommunications conduits and lines, sanitary sewers and storm sewers which are now or which may be subsequently located upon the Premises leased to Tenant and which are used exclusively by Tenant or any of its subtenants.
- (G) Repair and maintain those portions of the storm water drainage system serving the Premises.
- (H) Maintain all furnishings, fixtures, machinery, and operating equipment used in the operation of the Premises in good condition and repair.

9-02 Cleanliness of Premises/Maintenance of Landscaping.

- (A) Tenant shall maintain the Premises in a neat, orderly, sanitary, clean and presentable condition and shall cause routine janitorial and pest control services to be provided for the Premises at Tenant's sole cost and expense. Tenant shall maintain vehicular parking, landscaped medians and all surrounding landscaped areas in a clean and neat manner, free from trash and debris.
- (B) Tenant shall be responsible for maintaining all landscaping on the Premises in good condition and free of unsightly conditions. Tenant's landscaping responsibilities shall include, without limitation, watering grass, shrubs and trees; mowing the grass on a regular basis; trimming the trees and fertilizing grass, shrubs and trees; and replacing damaged or dead landscaping.

9.03 Inspections. The Department shall have the right to enter the Premises during regular business hours upon reasonable prior notice to Tenant to inspect same for the purpose of determining whether Tenant is in compliance with the requirements of this Lease. In the event Tenant is not in compliance with this Lease, as reasonably determined by the Department, the Department shall provide Tenant with written notice of such noncompliance. If corrective action is not initiated within thirty (30) days and pursued in a diligent manner to completion, the Department may cause the same to be accomplished at Tenant's sole cost and expense. Tenant agrees that Tenant shall assume and be liable to Town for payment of all costs incurred by Town, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee shall constitute Additional Rent hereunder and shall be due and payable within thirty (30) calendar days of the date of the Department's written notice

## **ARTICLE 10 – UTILITIES**

10.01 Utility Costs. Tenant shall pay for all electric and all other utility charges for the Premises. Metering devices shall become the property of Town upon installation. Tenant shall be responsible for the extension of utility mains and service to the Property and such utility mains shall become the property of Town upon installation.

10.02 Interruption of Service. No failure, delay or interruption in supplying any utility services for any reason whatsoever (whether or not a separate charge is made therefore) shall be construed to be an eviction of Tenant or grounds for any diminution or abatement of rental or shall be grounds for any claim by Tenant under this Lease for damages, consequential or otherwise.

10.03 Water, Industrial and Sanitary Sewage Systems. Tenant acknowledges and agrees that Tenant shall satisfy all stormwater drainage requirements applicable to Tenant's development within the boundaries of the Premises. Town shall have the right, in its sole and absolute discretion and at its sole cost and expense, to relocate or otherwise modify any stormwater drainage improvements located outside the Premises; provided that such relocation or modification does not negatively impact the Premises' drainage. Tenant shall provide, operate and maintain adequate facilities for separating, neutralizing and treating industrial waste and foreign materials generated within the Premises and the proper disposal thereof as required by all applicable federal, state and local laws, regulation and rules, as now or hereafter amended.

## **ARTICLE 11 - INSURANCE REQUIREMENTS**

Unless otherwise specified in this Lease, Tenant shall, at its sole expense, maintain in full force and effect at all times during the Term and any extension thereof, the insurance limits, coverages and endorsements required herein. Tenant acknowledges and agrees that the requirements contained in this Article, or Town's review or acceptance of insurance, shall not in any manner limit or qualify the liabilities and obligations assumed by Tenant under this Lease.

11.01 Commercial General Liability. Tenant shall carry Commercial General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage, and not less than Two Million Dollars

(\$2,000,000) in the aggregate. The insurance policy must include coverage that is no more restrictive than the latest edition of the commercial general liability policy, without restrictive endorsements as filed by the Insurance Service Office (ISO), and the policy must include coverage's for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, and personal injury. Personal injury coverage shall include coverage that has the employee and contractual exclusions removed. The ISO form of the policy must be acceptable to the Town.

11.02 Business Auto Liability. Tenant shall maintain Business Automobile Liability Insurance with limits of liability not less than One Million Dollars (\$1,000,000) each occurrence for owned, non-owned and hired automobiles. In the event Tenant has 110 owned automobiles, Tenant shall maintain only Hired & Non-Owned Auto Liability Insurance. This coverage may be satisfied by way of endorsement to the Commercial General Liability/Industrial Park Liability policy, or a separate Business Auto Liability policy. This coverage shall be provided on a primary basis.

11.03 Environmental Liability. Tenant shall carry an Environmental Pollution Insurance for pollution-related incidents, including the cost of cleaning up a site after a pollution incident, with limits not less than \$500,000.00 Dollars per occurrence with deductible not greater than \$100,000.00. An additional Form or endorsement to the Commercial General Liability Insurance to include an Environmental Pollution Insurance coverage providing the specified coverage, is acceptable.

11.04 Business Interruption Insurance. Tenant shall maintain Business Interruption Insurance, which shall include Rent Insurance in an amount not less than the annual rental payable hereunder. Rent Insurance shall be carried in the name of Tenant as named insured and shall be payable to Town to be applied to rental for the period from the occurrence of the damage or destruction until completion of the restoration or repairs.

11.05 Worker's Compensation & Employer's Liability. Tenant shall maintain Worker's Compensation & Employer's Liability in accordance with Chapter 440, Florida Statutes, and Federal law. This coverage shall be provided on a primary basis.

11.06 Umbrella or Excess Liability. If necessary, Tenant may satisfy the minimum limits required above for Commercial General Liability and/or Business Auto Liability coverage under Umbrella or Excess Liability Insurance. The Umbrella or Excess Liability policy shall have an aggregate limit not less than the highest "each occurrence" limit for the Commercial General Liability, Business or Auto Liability. Town shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability policy, unless the Certificate of Insurance notes the Umbrella or Excess Liability policy provides coverage on a "Follow-Form" basis.

11.07 Property, Wind & Flood Insurance.

(A) Builder's Risk Insurance. Tenant shall maintain Builder's Risk insurance covering the Tenant's building(s), betterments and improvements during the course of construction at the Premises in an amount at least equal to one hundred percent (100%) of the estimated completed property or project value as well as subsequent modifications of that sum. Coverage shall be provided on an All-Risk basis including coverage for the perils of wind and flood. Tenant agrees this coverage shall be provided on a primary basis.

(B) After construction is completed, Tenant shall maintain:

- (1) Property insurance in an amount not less than one hundred percent (100%) of the total replacement cost of the buildings, betterments and improvements, including those made by or on behalf of Tenant as well as Tenant's contents located on the Premises. The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than twenty-five percent (25%) of the Property insurance limit. This coverage shall be provided on a primary basis.
- (2) Flood insurance, regardless of the flood zone, in an amount not less than one hundred percent (100%) of the total replacement cost of the buildings, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant as well as Tenant's contents, located on the Premises, or the maximum amount available from the National Flood Insurance Program. This coverage shall be provided on a primary basis.
- (3) Windstorm insurance, unless included as a covered peril in the property insurance, in an amount not less than one hundred percent (100%) of the total replacement cost of the building, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant as well as Tenant's contents, located on the Premises, or the maximum amount available under the Florida Windstorm Underwriting Association. This coverage shall be provided on a primary basis.

11.08 Additional Insured Endorsement. Tenant shall endorse Town as "Additional Insured" on each of the liability policies required to be maintained by Tenant hereunder, with the exception of Workers' Compensation/Employers Liability and Business Auto Liability. The "Additional Insured" endorsements shall provide coverage on a primary basis. Each "Additional Insured" endorsement shall read: "Southwest Ranches, a Political Subdivision of the State of Florida, its Officers, and Employees", or as otherwise approved or modified by Town.

11.09 Certificate of Insurance.

(A) Tenant shall provide the Department with a certificate of insurance, or certificates of insurance, evidencing limits, coverages and endorsements required herein within the time frames set forth below:

- (1) Commercial General Liability insurance prior to the Effective Date;
  - (2) Business Auto Liability insurance prior to allowing vehicles on to the Premises;
  - (3) [Delete if not applicable: Environmental Liability insurance on or before the Date of Beneficial Occupancy;
  - (4) Business Interruption and] Workers' Compensation insurance on or before the Date of Beneficial Occupancy.
  - (5) Builder's Risk insurance and Property, Wind and Flood insurance within the time frames set forth in Section 11.07.
- (B) All certificates of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or is not renewed, Tenant shall provide Town a new certificate of insurance or certificates of insurance evidencing replacement coverage no later than thirty (30) days prior to the expiration or cancellation of the coverage. The certificate holder's name and address shall read "Southwest Ranches, a Political Subdivision of the State of Florida, its Officers, and Employees," 13400 Griffin Road, Southwest Ranches, FL 33330.

11.10 Waiver of Subrogation. By entering into this Lease, Tenant agrees to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, Tenant shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. The requirements of this paragraph shall not apply to any policy, a condition to which the policy specifically prohibits such an endorsement, or voids coverage if Tenant enters into such an agreement on a pre-loss basis.

11.11 Premiums and Proceeds. Tenant shall not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any, condition, provision, or limitation of the property, flood or wind insurance policies. Tenant shall be responsible for all premiums, including, but not limited to, increases for property, flood and wind insurance policies. Tenant agrees that all property, flood and windstorm insurance proceeds shall be made available for use to promptly replace, repair or rebuild the building, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant.

11.12 Deductibles, Coinsurance & Self-Insured Retention. Tenant shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy.

11.13 Right to Review or Adjust Insurance. The Town may review, modify, reject or accept any required policies of insurance, including, but not limited to, limits, coverages or endorsements, required by this Article from time to time throughout the Term and any extension thereof. Town may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, Town shall provide Tenant a written notice of rejection, and Tenant shall comply within thirty (30) days of receipt of the notice.

11.14 No Representation of Coverage Adequacy. Tenant acknowledges the limits, coverages and endorsements required by this Article are intended to minimize liability for Town. Tenant agrees that it will not rely upon the requirements of this Article when assessing the extent or determining appropriate types or limits of insurance coverage to protect Tenant against any loss exposures, whether as a result of this Lease or otherwise.

## **ARTICLE 12 - DAMAGE TO OR DESTRUCTION OF PREMISES**

12.01 Removal of Debris. If the Premises, or any portion thereof, is damaged by fire, the elements or other casualty, Tenant shall promptly remove all debris resulting from such damage from the Premises. Tenant shall take all necessary actions to place the Premises in a neat and orderly condition to ensure the safety of persons entering upon the Premises. If Tenant fails to promptly comply with the provisions of this Section, Town may take such measures as it deems necessary to render the Premises in a neat, orderly, and safe condition. Tenant agrees that Tenant shall fully assume and be liable to Town for payment of any costs incurred by Town, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to Town within thirty (30) days from the date of written notice provided by the Department.

12.2 Tenant's Obligations. Tenant assumes full responsibility for the condition of the Premises and the character, acts and conduct of all persons admitted to the Premises by or with the actual or constructive consent of Tenant or with the consent of any person acting for or on behalf of Tenant. If the Premises, or any portion thereof, are damaged in any way whatsoever, whether by an act of God or by the act, default or negligence of a Tenant Party, Tenant shall, at its sole cost and expense, restore the Premises to the condition existing prior to such damage. Tenant shall commence restoration as soon as reasonably practicable after any such damage and shall diligently pursue such restoration to completion in accordance with the construction requirements set forth in Article 6. All repairs and restoration shall be performed by Tenant at Tenant's sole cost and expense, in accordance with the construction requirements contained herein. If Tenant fails to restore the Premises as required by this Section, Town shall have the right to enter the Premises and perform the necessary restoration. Tenant agrees that Tenant shall fully assume and be liable to Town for payment of the costs of restoration, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to Town within thirty (30) days from the date of the written notice provided by the Department.

12.3 Insurance Proceeds. Upon receipt by Tenant of the proceeds of any insurance policy or policies required hereunder, the proceeds shall be deposited in an escrow account so as to be available to pay for the cost of any required repair, replacement or rebuilding. The proceeds

shall be disbursed at the direction of Tenant during construction to pay the cost of such work. If the amount of the insurance proceeds is insufficient to pay the costs of the required repair, replacement or rebuilding of damaged improvements, Tenant shall pay any additional sums required to complete the required repair, replacement or rebuilding into the escrow account. If the amount of the insurance proceeds is in excess of the costs of the required repair, replacement or rebuilding, the excess amount shall be remitted to Tenant.

### **ARTICLE 13 – ENCUMBRANCES**

Except as otherwise provided for herein, Tenant shall not, in any manner, mortgage, pledge or otherwise encumber this Lease, the Premises or any improvements now existing or hereinafter erected or constructed upon the Premises without Town's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. Any such encumbrance without Town's approval shall be null and void. Tenant shall cause to be removed any and all liens of any nature arising out of or resulting out of or resulting from the performance of any work or labor performed upon the Premises or the furnishing of any materials for use upon the Premises, by, on behalf of or at the direction of a Tenant Party. This provision shall be construed to include a prohibition against any mortgage, pledge, or encumbrance by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

### **ARTICLE 14 - TITLE TO IMPROVEMENTS**

14.01 Title to Improvements on the Premises. Except as otherwise provided for herein, Tenant shall be deemed to be the owner of all Tenant Improvements during the Term. Upon expiration of the Term or earlier termination of this Lease, all buildings, structures, pavements, facilities, landscaping and other improvements, above and below ground, constructed or placed upon the Premises by Tenant, title to which has not previously vested in Town hereunder shall become the absolute property of Town, and Town shall have every right, title, and interest therein, free and clear of any liens, mortgages, and other encumbrances. Upon the request of Town, Tenant shall provide Town with a bill of sale or other evidence of the transfer of ownership of the Tenant Improvements together with evidence satisfactory to Town that the improvements are free from liens, mortgages and other encumbrances.

14.02 Survival. The provisions of this Article shall survive expiration or termination of this Lease.

### **ARTICLE 15 - EXPIRATION, DEFAULTS, REMEDIES AND TERMINATION**

15.01 Expiration. This Lease shall automatically terminate at the end of the Initial Term, unless renewed in accordance with Section 3.02. In the event this Lease is renewed in accordance with Section 3.02, this Lease shall automatically terminate at the end of the Renewal Term.

15.02 Default. The occurrence of any one or more of the following events shall constitute a material default of this Lease by Tenant:

- (A) The vacating or abandonment of the Premises by Tenant.



- (B) The failure by Tenant to make payment of rental or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three (3) Business Days after such payment is due and payable.
- (C) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, where such failure continues for a period of thirty (30) days after written notice thereof from Town to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. Nothing contained in this paragraph shall be deemed to alter or affect the cure period for performance of any covenant, condition or provision for which a specific time period is provided in this Lease.
- (D) To the extent permitted by law: (a) the making by Tenant or any guarantor thereof of any general assignment, or general arrangement for the benefit of creditors; (b) the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy [unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days]; (c) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (d) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

Notwithstanding any provision of this Lease, Tenant acknowledges and agrees the Department may require Tenant to immediately cease any activity, which could result in an Industrial Park hazard or endanger safety of any Industrial Park user, as reasonably determined by the Department.

15.03 Remedies. In the event of a material default by Tenant, Town may at any time thereafter, with or without notice or demand and without limiting any other right or remedy which Town may have under the law by reason of such default or breach, elect to exercise any one of the following remedies:

- (A) Declare the entire rent for the balance of the Term or any part thereof due and payable forthwith, and bring an action for the recovery thereof.
- (B) Terminate Tenant's right to possession of the Premises by any lawful means and re-enter and re-take possession of the Premises for the account of Tenant, in which case the rent and other sums hereunder shall be accelerated and due in full, and Tenant shall be liable for the difference between the rent which is stipulated to be paid hereunder plus other sums as described herein and what Town is able to recover from its good faith efforts to relet the Premises, which deficiency shall be

paid by Tenant. Upon such reletting, all rentals received by Town shall be applied, first to the payment of any indebtedness, other than rent due hereunder from Tenant; second, to the payment of any reasonable costs and expenses of such reletting, which shall include all damages incurred by Town due to Tenant's default including, but not limited to, the reasonable cost of recovering possession of the Premises including reasonable attorneys' fees, and reasonable real estate commissions paid by Town relating to the unexpired term of this Lease; third, to the payment of rent due and unpaid hereunder; and the remainder, if any, shall be paid to Tenant.

- (C) Treat this Lease as terminated and re-enter and re-take possession of the Premises for the account of Town, thereby terminating any further liability under this Lease on the part of Tenant and Town. Notwithstanding the foregoing, Town shall have a cause of action to recover any rent remaining unpaid when Town retakes possession of the Premises for the account of Town.
- (D) Stand by and do nothing, holding Tenant liable for rental as it comes due.
- (E) Pursue any other remedy now or hereinafter available to Town under the laws of the State of Florida.

Notwithstanding anything in this Lease to the contrary, Town shall have the right to bring an action for its damages upon the occurrence of a default by Tenant and Town reserves all rights which laws of the State of Florida confer upon a landlord against a tenant in default. Tenant hereby waives any additional notice Tenant may be entitled to pursuant to Florida law.

15.04 Termination by Tenant. Tenant may terminate this Lease, if Tenant is not in default of this Lease (including, but not limited to, its payments to Town hereunder), by giving Town ninety (90) days advance written notice, upon or after the happening of any one of the following events:

- (A) The default by Town in the performance of any covenant or agreement herein required to be performed by Town and the failure of Town to remedy such default for a period of thirty (30) days after receipt from Tenant of written notice to remedy same; provided, however, that no notice of cancellation, as provided herein, shall be of any force or effect if Town shall have remedied the default within such thirty (30) day period; or in the event the same cannot be cured within such thirty (30) day period and Town has commenced such cure and thereafter diligently pursues the same until completion.
- (B) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Industrial Park and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict the operation of Tenant, for a period of at least ninety (90) days.

15.05 Default by Town. Town shall not be in default unless Town fails to perform obligations imposed upon Town hereunder within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Town, specifying wherein Town has failed to perform such obligations; provided, however, that if the nature of Town's default is such that more than thirty (30) days are reasonably required for its cure, then Town shall not be deemed to be in default if Town commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.

5.06 Surrender of Premises. Tenant expressly agrees that it shall immediately surrender the Premises to Town in good condition, upon expiration or termination of this Lease, depreciation and wear from ordinary use for the purpose for which the Premises were leased being excepted. In the event Tenant shall holdover, refuse, or fail to give up the possession of the Premises at the termination of this Lease, Tenant shall be liable to Town for any and all damages, and in addition thereto, Tenant shall also be strictly liable to pay to Town during the entire time period of such holdover, double rental, as provided for in Section 83.06, Florida Statutes. Tenant shall remove all of its personal property from the Premises prior to the expiration of this Lease. Any personal property of Tenant not removed by Tenant shall, at the option of Town, become the property of Town, or alternatively, may be disposed of by Town at Tenant's expense.

#### **ARTICLE 16 - ASSIGNMENT, TRANSFER AND SUBLETTING**

Tenant shall not, in any manner, assign, transfer or otherwise convey an interest in this Lease, the Premises or any portion thereof ("Assignment"), without the prior written consent of Town, which consent shall not be unreasonably withheld, conditioned or delayed. Town shall not be deemed to have withheld its consent unreasonably unless Town has been furnished evidence establishing that the proposed assignee: (a) has the ability to make the rental payments required under this Lease; (b) has sufficient experience to operate the facilities constructed or to be constructed on the Premises in the manner required hereunder; (c) has the ability to otherwise perform all of the terms, conditions and covenants of this Lease; and (d) agrees to assume all obligations, responsibilities and liabilities of Tenant arising on and after the effective date of the Assignment. Any attempted Assignment without Town approval shall be null and void. In the event Town consents in writing to an Assignment, Tenant shall have the right to assign this Lease to the extent permitted by Town's consent to such Assignment, provided that the use of the Premises shall be limited to the same uses as are permitted under this Lease. Any permitted Assignment shall be subject to the same conditions, obligations and terms as set forth herein. Tenant shall have the right to sublease the Premises subject to the prior written consent of Town, which consent shall not be unreasonably withheld. All subleases shall be subject to the same conditions, obligations, and terms as set forth herein and Tenant shall be fully responsible for the observance by its subtenants of the terms and covenants contained in this Lease. Notwithstanding any provision of this Lease to the contrary, the consent of Town shall not be required for an Assignment of this Lease in its entirety where all or substantially all of the assets of Tenant are acquired by another entity by reason of a merger, acquisition, or other business reorganization, provided that Tenant provides written notice to Town ten (10) days prior to the change in ownership. Town may freely assign this Lease at any time without the consent of Tenant, and upon assumption by such assignee of Town's obligations hereunder, Town shall be released from all liability and obligation arising hereunder upon such assignment.

## **ARTICLE 17 - RIGHTS OF LEASEHOLD MORTGAGEES**

17.01 Right to Mortgage. Tenant may encumber its leasehold estate and interest in the Premises by mortgage, security agreement or other such instrument (any such instrument is hereinafter referred to as "Leasehold Mortgage", and the holder thereof is referred to as "Leasehold Mortgagee") during the Term of this Lease; provided, however, that the entire proceeds of any loan or future advance secured thereby shall be utilized for the construction and improvement of the Premises and further provided that Town shall not be obligated to, nor deemed to have subjected or subordinated Town's fee simple interest in the Premises to any Leasehold Mortgage, nor subordinated Town's interest in this Lease to such Leasehold Mortgage. Town's interests in the fee and this Lease are and shall remain at all times superior and prior in right to any Leasehold Mortgage.

17.02 Notice of Default. A Leasehold Mortgagee may provide written notice of its Leasehold Mortgage in the same manner and at the same address as required by this Lease for notices delivered to Town, together with the name and address of the Leasehold Mortgagee. In the event such notice is delivered to Town, Town, upon serving Tenant with any notice under this Lease, shall also serve a copy of that notice upon the Leasehold Mortgagee in the same manner as required by this Lease for notices delivered to Tenant. The delivery shall be made at the address the Leasehold Mortgagee shall have designated in writing to Town. Town agrees to give the Leasehold Mortgagee written notice of any default by Tenant and of Town's intention to terminate this Lease for any reason at least sixty (60) days before the effective date of such termination. The Leasehold Mortgagee shall have the right to perform any of Tenant's covenants or to cure any default by Tenant which is curable by it or to exercise any right conferred upon Tenant by the Terms of this Lease within such sixty (60) day period or such longer period if the default by Tenant is of such nature that it cannot be cured within such sixty (60) day period, provided that the Leasehold Mortgagee diligently and actively undertakes to cure such default and pursues such cure to completion within a reasonable period of time under the circumstances. The sole remedy available to Leasehold Mortgagee due to the failure of Town to provide Leasehold Mortgagee with notice as required hereunder shall be the tolling of the applicable cure period afforded to Leasehold Mortgagee herein until the earlier of provision of such notice to Leasehold Mortgagee or Leasehold Mortgagee's receipt of actual knowledge of such notice. Town's failure to provide Leasehold Mortgagee notice as required hereunder shall not alter or affect Tenant's rights or obligations under this Lease, nor extend any cure period afforded to Tenant hereunder, or entitle Tenant to damages or other remedies.

17.03 Opportunity to Cure. Town will recognize the Leasehold Mortgagee as the tenant of the Premises and accept the performance by the Leasehold Mortgagee of Tenant's obligations under this Lease, upon written notice from the Leasehold Mortgagee to Town that it has taken possession of the Premises, for so long as the Leasehold Mortgagee is in possession of the Premises, and provided that Leasehold Mortgagee diligently and actively undertakes to cure and pursues such cure to completion within a reasonable period of time under the circumstances any then-existing defaults by Tenant, and performs Tenant's obligations under this Lease. Town agrees that it will not unreasonably withhold or delay its consent to any future assignment by the Leasehold Mortgagee of the rights of Tenant under this Lease; provided that: (a) there is no existing default under this Lease or the Leasehold Mortgagee or such assignee diligently and actively undertakes to cure any such default and pursues such cure to completion as provided

above, and (b) the assignee has similar recent experience and knowledge regarding operations being conducted on the Premises and has the financial ability to perform under this Lease, as reasonably determined by Town. Upon any valid permitted assignment of this Lease by the Leasehold Mortgagee, Leasehold Mortgagee shall have no further liability under this Lease for obligations arising after such assignment. Any action by the Leasehold Mortgagee to cure any default by Tenant or otherwise to exercise Tenant's rights under this Lease shall not be deemed to be an assumption by the Leasehold Mortgagee of Tenant's obligations under this Lease unless the Leasehold Mortgagee takes possession of the Premises pursuant to a foreclosure or other enforcement of its security interest in this Lease or otherwise expressly assumes such obligations in writing. If the Leasehold Mortgagee takes possession of the Premises or succeeds to the interest of Tenant, Town shall accept the Leasehold Mortgagee as tenant under this Lease, and this Lease shall continue in full force and effect, provided that there are no then existing uncured defaults under this Lease, and Leasehold Mortgagee performs all obligations of Tenant under this Lease.

17.04 No Lease Amendments. This Lease shall not be amended, modified, terminated or canceled by reason of the exercise of any option or election by Tenant under this Lease, or by the giving of any notice by Tenant under this Lease, unless such amendment, modification, termination or cancellation is assented to in writing by any Leasehold Mortgagee. Any such attempted amendment or modification, termination or cancellation without that assent shall be void.

17.05 Limitation of Liability. A Leasehold Mortgagee shall only be liable to perform the obligations imposed on Tenant in this Lease during the period that the Leasehold Mortgagee is in possession or ownership of the leasehold estate created by this Lease.

17.06 Certificates. Each party agrees, at any time and from time to time upon not less than twenty (20) days prior written notice by the other party, to execute, acknowledge and deliver to the other party a statement in writing certifying: (a) whether this Lease is in full force and effect, and if it is alleged that this Lease is not in full force and effect, setting forth the nature thereof in reasonable detail; (b) whether this Lease has been supplemented or amended, specifying the manner in which it has been supplemented or amended; (c) the date to which all rental payments have been made; (d) the commencement and expiration date of this Lease; and (e) whether or not, to the best of the knowledge of the signer of such statement, the other party is in default or may be with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease and if in default, specifying each such default, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by the other party, any prospective assignee of the other party's interest in this Lease or any Leasehold Mortgagee, but reliance on such certificate may not extend to any default as to which the signer shall not have had actual knowledge, [in the event Tenant or Leasehold Mortgagee shall require a certificate beyond the aforementioned statements (a) thru (e). additional time will be required to obtain Council approval of a certificate; alternatively, a specific estoppel certificate form may be submitted with the agenda item and approved by the Council in advance]

17.07 Subordination of Landlord's Lien. Town does hereby subordinate its statutory landlord's lien to the lien and operation of any Leasehold Mortgage. This subordination of Town's lien shall be self operative.

17.08 Release of Lien. Upon the scheduled expiration or early termination of this Lease, provided such termination is in accordance with the terms of this Lease including, but not limited to, this Article, Tenant and/or Leasehold Mortgagee, as appropriate, shall promptly execute, in recordable form, and deliver to Town, a termination of lease, termination of memorandum of lease, release of mortgage and such other documents as Town may reasonably require (collectively, the "Release Documents"). In the event Tenant or Leasehold Mortgagee fails to provide the foregoing Release Documents within thirty (30) days after Town's written request therefor, Town shall be entitled to execute the same for and on behalf of Tenant and/or Leasehold Mortgagee and Tenant and Leasehold Mortgagee hereby appoint Town as attorney in fact for the limited purpose of execution of such Release Documents.

17.09 Indemnification. By acceptance of the rights and benefits conferred upon a Leasehold Mortgagee by this Article, such Leasehold Mortgagee agrees, for itself and its successors and assigns, that it shall be bound by the terms of this Article as if such Leasehold Mortgagee were a direct party hereto and further agrees to protect, defend, reimburse, indemnify and hold the Town Parties harmless from and, against any and all Damages arising from to the Leasehold Mortgagee's negligence or willful misconduct in connection with its entry upon the Premises for inspection or other purposes.

17.10 Personal Property. Notwithstanding any other provision of this Lease to the contrary, Tenant may, without Town's or Department's consent, from time to time, secure financing or general credit lines and grant the lenders thereof, as security therefor: (a) a security interest in Tenant's personal property located at the Premises, and/or (b) the right to enter the Premises to realize upon any personal property so pledged. Upon Tenant providing notice of such financing to Town, Town agrees to evidence its consent in writing to such security interest. All of Tenant's personal property shall be and remain the personal property of Tenant. Town expressly waives its statutory and common law landlord's liens as same may be enacted or may exist from time to time and any and all rights granted under any present or future laws to levy or distraint for rent, whether in arrears or in advance, against the aforesaid personal property of Tenant on the Premises and further agrees to execute any reasonable instruments evidencing such waiver (upon Tenant's request).

## **ARTICLE 18 – INDEMNIFICATION**

Tenant agrees to protect, defend, reimburse, indemnify and hold the Town Parties free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney fees at trial and appellate levels) and causes of action of every kind and character (collectively referred to herein as "Damages") against, or in which Town is named or joined, arising out of this Lease or use or occupancy of the Premises by any Tenant Party, including, but not limited to those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with a Tenant Party's acts,

omissions or operations hereunder, or the performance, non-performance or purported performance of a Tenant Party or any breach of the terms of this Lease; provided, however, Tenant shall not be responsible to a Town Party for Damages that are solely attributable to the negligence or willful misconduct of such Town Party. Tenant further agrees to hold harmless and indemnify the Town Parties for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to a Tenant Party's activities or operations or use of the Premises whether or not Tenant was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving the activities. This indemnification shall be extended to include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Tenant. Tenant recognizes the broad nature of this indemnification and hold-harmless provision, and acknowledges that Town would not enter into this Lease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by Town in support of this indemnification in accordance with the laws of the State of Florida. The obligations arising under this Article shall survive the expiration or termination of this Lease.

#### **ARTICLE 19 - EXTERIOR SIGNAGE**

Tenant may install and operate upon the Premises, at Tenant's sole cost and expense, signs representing the businesses operating on the Premises. Tenant covenants and agrees that, in the exercise of its privilege to install and maintain appropriate signage on the Premises, Tenant shall submit to Town the size, design, content, and intended location of each and every sign it proposes to install on or within the Premises for Town's prior written approval. No signs of any type shall be installed on or within the Premises without the prior written approval of Town as to the size, height, design, content, and location. Handwritten, hand lettered and hand held exterior signs are prohibited. Town shall have the right to require Tenant to remove any unapproved signage. In the event Tenant fails, refuses or neglects to remove any unapproved signage within fifteen (15) days of Town's written notice to do so, Town may also elect, at its sole option, to cause such signage to be removed on behalf of and for the account of Tenant. Tenant shall reimburse Town the actual cost of such removal services, plus a twenty-five percent (25%) administrative overhead within thirty (30) days of the date of the invoice therefor. Town's failure to require removal of any sign placed on or about the Premises without written permission shall not be deemed a waiver of Town's authority to require removal of any unapproved sign.

#### **ARTICLE 20 - LAWS, REGULATIONS AND PERMITS**

20.01 General. Tenant agrees that throughout the Term and any extension thereof, Tenant shall at all times be and shall remain in full and complete compliance with all applicable Federal, State and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature but not limited to, as now or hereafter amended, including, but not limited to, TSA directives, FAA Advisory Circulars and Industrial Park Rules and Regulations.

20.02 Permits and Licenses Generally. Tenant agrees that it shall, at its sole cost and expense, be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations,

however designated, as may be required at any time throughout the Term of this Lease or any extension thereof by any Federal, State or local governmental entity or any court of law having jurisdiction over the operations and activities conducted on the Premises by Tenant, including ensuring that all legal requirements, permits, and licenses necessary for, or resulting directly or indirectly from, Tenant's operations and activities on the Premises have been obtained and are in full legal compliance. Upon the written request of Town, Tenant shall provide to Town certified copies of any and all permits and licenses which Town may request.

0.03 Air and Safety Regulation. Tenant agrees that it shall conduct its operations and activities under this Lease in a safe manner, shall comply with all safety regulations of the Department and with safety standards imposed by applicable Federal, State and local laws and regulations and shall require the observance thereof by all Tenant Parties transacting business with or for Tenant, resulting from, or in any way related to, the conduct of a Tenant's business on the Premises. Tenant shall procure and maintain such fire prevention and extinguishing devices as required by Town and by law and shall at all times be familiar and comply with the fire regulations and orders of County and the fire control agency with jurisdiction at the Industrial Park, as same may now exist or hereafter come into being. Tenant hereby agrees that neither Tenant, nor employee or contractor or any person working for or on behalf of Tenant, shall require any personnel engaged in the performance of Tenant's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as same may be amended from time to time, as well as all State and local laws, regulations, and orders relative to occupational safety and health.

20.04 Environmental and Natural Resource Laws, Regulations and Permits.

- (A) Notwithstanding any other provision of this Lease to the contrary, Tenant hereby expressly covenants, warrants, guarantees and represents to Town, upon which Town expressly relies, that Tenant is knowledgeable of, and shall fully comply with, any and all Environmental Laws applicable to Tenant and its operations hereunder.
- (B) Tenant acknowledges that, if its operations involve the generation, processing, handling, storing, transporting and disposal of Hazardous Substances, such operations may be subject to regulation under applicable Environmental Laws. Tenant further expressly covenants, warrants, guarantees and represents that it is fully qualified to handle and dispose of any and all such Hazardous Substances, in a manner which is both safe and in full compliance with any and all applicable Environmental Laws.
- (C) Tenant hereby expressly assumes and accepts full responsibility and liability for compliance with all such applicable Environmental Laws in the handling and disposal of any and all Hazardous Substances resulting from or arising out of Tenant's operations conducted on the Premises, and Tenant shall, prior to commencement of any such operations pursuant to this Lease, secure any and all permits, and properly make all necessary notifications as may be required by any



and all governmental agencies having jurisdiction over parties or the subject matter thereof. Tenant further represents, warrants, guarantees and covenants to Town, upon which Town hereby expressly relies, that Tenant and any Tenant Party required to be so trained working for, or on behalf of, Tenant have been, or will be prior to commencement of operations on the Premises, fully and properly trained in the handling of all such Hazardous Substances, and that such training, at a minimum, complies with any and all applicable Environmental Laws.

- (D) Tenant shall provide to Town satisfactory documentary evidence of all such requisite legal permits and notifications, as hereinabove required and as may be further required, upon request, from time to time by Town.
- (E) If Tenant is deemed to be a generator of hazardous waste, as defined by applicable Environmental Laws:
  - (1) Tenant shall obtain an EPA identification number and the appropriate generator permit and shall comply with all requirements imposed upon a generator of hazardous waste, including, but not limited to, ensuring that the appropriate transportation and disposal of such materials are conducted in full compliance with Environmental Laws;
  - (2) Tenant shall maintain an accurate inventory list (including quantities) of all such hazardous waste, whether stored, disposed of, or recycled, available at all times for inspection at any time on the Premises by Town;
  - (3) Tenant shall notify the Broward County Solid Waste Authority, Broward County Environmental Resources Management Department, and such other appropriate agencies as Town may from time to time designate, of all Tenant's hazardous waste activities, if any; and
  - (4) Tenant shall provide to the Department and to all appropriate governmental entities having jurisdiction thereover, contact information for its emergency coordinator in case of any spill, leak, or other emergency situation involving hazardous, toxic, flammable, and/or other pollutant/contaminated materials.
- (F) Violation of any part of the foregoing provisions or disposal by Tenant of any Hazardous Substances in violation of the provisions of this Article shall be deemed to be a default under this Lease and shall be grounds for termination of this Lease unless cured within ten (10) days of receipt of notice from Town or as expeditiously as possible if the default cannot be completely cured within the ten (10) day period. Tenant shall be strictly liable for, and hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any way connected with the improper use, handling, storage, and/or disposal of Hazardous Substances by a Tenant Party on or from the Premises, regardless of whether or not a default notice has been issued and notwithstanding any other

obligations imposed upon Tenant pursuant to the terms of this Lease. All such remedies of Town with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive expiration or termination of this Lease.

- (G) Tenant agrees to protect, defend, reimburse, indemnify and hold the Town Parties harmless from and against any and all Damages arising from, resulting out of or in any way caused by or connected to a Tenant Party's failure to comply with applicable Environmental Laws. Tenant understands that this indemnification is in addition to and is a supplement of Tenant's indemnification agreement set forth in Article 18. Tenant acknowledges the broad nature of this indemnification and hold-harmless clause and that Town would not enter into this Lease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by Town in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this Section shall survive the expiration or earlier termination of this Lease.

20.05 Environmental Assessment. At least one hundred twenty (120) days, but no more than one hundred eighty (180) days, prior to the expiration or earlier termination of this Lease, Tenant shall cause a Phase I Environmental Assessment (the "Phase I EA") of the Premises to be prepared and delivered to Town. If requested by Town or, if the Phase I EA indicates that there is a potential that environmental conditions may exist on the Premises or the adjacent property based on activities of a Tenant Party occurring on or after the Effective Date of this Lease, Tenant shall promptly cause a Phase II Environmental Assessment of the Premises to be prepared and delivered to Town. The EAs shall be prepared by a professional geologist or engineer licensed by the State of Florida, acceptable to Town, and shall be prepared to meet the standards of practice of the American Society of Testing and Materials, to determine the existence and extent, if any, of Hazardous Substances on the Property. The EAs shall state that Town is entitled to rely on the information set forth in the EAs. The EAs shall be prepared and delivered to Town at Tenant's sole cost and expense. The Phase II EA must address any potential environmental conditions or areas of contamination identified in the Phase I portion of the assessment. Tenant shall, at its sole cost and expense, promptly commence and diligently pursue to completion any assessment, remediation, clean-up and/or monitoring of the Premises necessary to bring the Premises and/or adjacent property into compliance with Environmental Laws. The requirements of this paragraph shall be in addition to any other provisions of this Lease relating to the condition of the Premises and shall survive the termination or expiration of this Lease. Nothing in this Section shall be construed as obligating Tenant to remediate any condition identified in the Environmental Assessments or caused by the activities of a Town Party.

## **ARTICLE 21 - AMERICANS WITH DISABILITIES ACT**

Tenant shall comply with all applicable requirements of the Americans with Disabilities Act, the State of Florida Accessibility Requirements Manual, and Section 504 of the

Rehabilitation Act of 1973 and all implementing rules, regulations and orders, including, but not limited to 28 CFR Parts 35 and 36 and 49 CFR Parts 27 and 37, and shall cooperate with Town to ensure Tenant remains in compliance with such requirements throughout the Term of this Lease.

## **ARTICLE 22 - DISCLAIMER OF LIABILITY**

TOWN HEREBY DISCLAIMS, AND TENANT HEREBY RELEASES THE TOWN PARTIES, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY ANY TENANT PARTY DURING THE TERM OF THIS LEASE OR ANY EXTENSION THEREOF INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF A TENANT PARTY THAT MIGHT BE LOCATED OR STORED ON THE PREMISES, UNLESS SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY A TOWN PARTY'S SOLE NEGLIGENCE OR IS CAUSED BY TOWN'S BREACH OF ITS OBLIGATIONS UNDER THIS LEASE. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL THE TOWN BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO THE LEASING OF THE PREMISES PURSUANT TO THIS LEASE.

## **ARTICLE 23 - GOVERNMENTAL RESTRICTIONS**

23.01 County Tax Assessment Right. None of the terms, covenants and conditions of this Lease shall in any way be construed as a release or waiver on the part of Town, as a political subdivision of the State of Florida, or any of the public officials of Town, of the right to assess, levy, and collect any ad valorem, non-ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the Premises, the business or property of Tenant.

23.02 Release. Tenant acknowledges that noise and vibration are inherent to the operation of Industrial Park and hereby releases Town from any and all liability relating to the same.

23.03 Exclusive Rights. Except as otherwise provided for in this Section, Tenant understands and agrees that the rights granted under this Lease are nonexclusive, other than the exclusive right of use of the Premises, and that Town may grant similar privileges to another lessee or other lessees on other parts of the Industrial Park.

## **ARTICLE 24 - NON-DISCRIMINATION**

### 24.01 Non-Discrimination in Town Contracts.

- A. Town is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Tenant warrants and represents that throughout the term of this Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered a default of this Agreement.
- B. As a condition of entering into this Lease, Tenant represents and warrants that it will comply with Town's Commercial Nondiscrimination Policy. As part of such compliance, Tenant shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of contractors, vendors, suppliers, or commercial customers in the design and construction of the Initial Leasehold Improvements, nor shall the Tenant retaliate against any person for reporting instances of such discrimination. Tenant shall provide equal opportunity for contractors, vendors and suppliers to participate in all of its public sector and private sector contracting and supply opportunities in connection with the design and construction of the Initial Leasehold Improvements, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in Town's relevant marketplace. Tenant understands and agrees that a material violation of this clause shall be considered a material breach of this Lease and may result in termination of this Lease, disqualification or debarment of Tenant from participating in Town contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Tenant shall include this language in its contracts for the design and construction of the Initial Leasehold Improvements.

24.02 Federal Non-Discrimination Covenants. Tenant represents and warrants to Town that Tenant shall comply with all applicable Federal Nondiscrimination Requirements set forth in Exhibit "B" attached hereto.

## **ARTICLE 25 - TOWN NOT LIABLE**

Town shall not be responsible or liable to Tenant for any claims for compensation or any losses, damages or injury whatsoever sustained by Tenant resulting from failure of any water supply, heat, air conditioning, electrical current, or sewerage or drainage facility, or caused by natural physical conditions on the Premises, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water,

windstorm, tornado, hurricane, act of God or state of war, civilian commotion or riot, or any cause beyond the control of Town. All personal property placed on or moved on to the Premises shall be at the sole risk of Tenant. Town shall not be liable for any damage or loss of any personal property placed or moved on to the Premises.

### **ARTICLE 26 - AUTHORIZED USES ONLY**

Notwithstanding anything to the contrary herein, Tenant shall not use or permit the use of the Premises or the Industrial Park for any illegal or improper purpose or for any purpose which would invalidate any policies of insurance, now existing or hereafter written on the Premises or the Industrial Park for Town or Tenant.

### **ARTICLE 27 – MISCELLANEOUS**

27.01 Waiver. The failure of either party to insist on strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that either party may have for any subsequent breach, default, or non-performance, and neither parties' right to insist on strict performance of this Lease shall be affected by any previous waiver or course of dealing.

#### 27.02 Subordination.

- (A) Subordination to Bond Resolution. This Lease and all rights granted to Tenant hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by Town in the Bond Resolution, and Town and Tenant agree that to the extent permitted by authorizing legislation, the holders of the bonds or their designated representatives may exercise any and all rights of Town hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Tenant and Town with the terms and provisions of this Lease and Bond Resolution.
- (B) Subordination to State/Federal Agreements. This Lease shall be subject and subordinate to all the terms and conditions of any instrument and documents under which Town acquired the land, of which the Premises are a part, or improvements thereon, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Tenant understands and agrees that this Lease shall be subordinate to the provisions of any existing or future agreement between Town and the United States of America or State of Florida, or any of their agencies, relative to the operation or maintenance of the Industrial Park, the execution of which has been or may be required as a condition precedent to the expenditure of state or federal funds for the development of the Industrial Park.

27.03 Easements. Nothing in this Lease shall impair any existing utility easements, nor impair the right of access to any existing utility lines. Town reserves the right to grant easements, licenses and rights-of way to others over, under, through, across or on the Premises reasonably

necessary for the development, operation or provision of utility services to adjacent properties; provided that such grant is not materially detrimental to the proper conduct of Tenant's operations. The Town agrees to cooperate in good faith with Tenant to determine the appropriate location of such easements, licenses and rights-of-way in an effort to avoid unnecessarily impacting Tenant's operations. Tenant agrees to consent and join to such easements, licenses and rights-of-way upon the written request of Town.

27.04 Independent Contractor. Tenant or any successor in interest to this Lease, is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and Town shall in no way be responsible therefor.

27.05 Governmental Authority. Nothing in this Lease shall be construed to waive or limit Town's governmental authority as a political subdivision of the State of Florida to regulate Tenant or its operations. Town's obligations under this Lease are made in a proprietary capacity, rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statues and laws, nor to alter or impair Town's governmental functions, including, but not limited to, Town's right to lawfully exercise its regulatory authority over the development of the Premises, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of Town's governmental authority.

27.06 Rights Reserved to Town. All rights not specifically granted Tenant by this Lease are reserved to Town.

27.07 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision, clause or any portion thereof of this Lease shall have no effect upon the validity of any other part or portion hereof.

7.08 Governing Law. This Lease shall be governed by and in accordance with the laws of the State of Florida.

27.09 Venue. Venue in any action, suit or proceeding in connection with this Lease shall be filed and held in a State court of competent jurisdiction located in Broward County, Florida.

27.10 Notices. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, telecopied or faxed (provided in each case a receipt is obtained), or alternatively shall be delivered by the United States Postal Service, Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a Business Day and on the next Business Day if transmitted after 5PM or on a non-Business Day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which

notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

Town:

Attn: Procurement and Budget Officer  
13400 Griffin Road, Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490

With a copy to:

Attn: Town Attorney  
13400 Griffin Road, Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490

Tenant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

Any party may from time to time change the address to which notice under this Lease shall be given such party, upon three (3) days prior written notice to the other party.

27.11 Inspector General. County has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed Town contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of Tenant, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Broward County Code, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

27.12 Paragraph Headings. The heading of the various articles and sections of this Lease are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

27.13 No Recording. Neither this Lease, nor any memorandum or short form hereof, shall be recorded in the Public Records of Broward County, Florida, without the prior written consent of the Department. Upon the scheduled expiration or early termination of this Lease, provided such termination is in accordance with the terms of this Lease, Tenant shall promptly execute, in recordable form, and deliver to Town a termination of the memorandum of this Lease. In the event Tenant fails to provide the foregoing termination document within thirty (30) Business Days after Town's written request therefor, Town shall be entitled to execute the same for and on behalf of Tenant and Tenant hereby appoints Town attorney-in-fact for the limited purpose of execution of such termination document

27.14 Binding Effect. The terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and subtenants, if any. This provision shall not constitute a waiver of any prohibition against or limitations regarding assignment or subletting.

27.15 Performance. The parties expressly agree that time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

27.16 Construction. No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Lease. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof, shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

27.17 No Broker. Tenant represents and warrants that Tenant has not dealt with any real estate salesperson, agent, finder or broker in connection with this Lease and further agrees to indemnify, defend and hold harmless Town from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Tenant. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees plus cost at trial and all appellate levels, expended or incurred in the defense of any such claim or demand. The obligations set forth in this paragraph shall survive the termination of this Lease.

27.18 Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the Effective Date. This notice is required by Section 287.133(3)(a), Florida Statutes.



27.19 Scrutinized Companies. As provided in Section 287.135, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who perform hereunder, have not been placed on the Scrutinized Companies Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statutes, or is engaged in business operations in Cuba or Syria. If Town determines, using credible information available to the public, that a false certification has been submitted by Tenant, this Lease may be terminated and a civil penalty equal to the greater of Two Million Dollars (\$2,000,000) or twice the amount of this Lease shall be imposed, pursuant to Section 287.135, Florida Statutes.

27.20 Annual Appropriation. Nothing in this Lease shall obligate Town during any fiscal year to expend money or incur any liability that involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Town's obligations under this Lease, which involve the expenditure of money, shall be subject to annual budgetary funding and appropriations by the Town Council.

27.21 Consent or Action. Wherever this Lease requires Town or Department's consent or approval or permits Town or Department to act, such consent, approval or action may be given or performed by the Director.

27.22 Entirety of Agreement. The parties agree that this Lease sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Lease may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

27.23 Remedies Cumulative. The rights and remedies of the parties hereto with respect to any of the terms and conditions of this Lease shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.

27.24 Incorporation by References. All terms, conditions and specifications of the RFP; the Proposal; and all exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by reference. In the event of any conflict and for purposes of resolving any disputes which may arise regarding this Lease, the order-of-precedence shall be: (a) this Lease; (b) the RFP; and (c) the Proposal.

27.25 No Third Party Beneficiaries. No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizen or employees of Town and/or Tenant.

27.26 Force Majeure. Notwithstanding anything to the contrary set forth herein, neither party shall be liable for failure to perform any of its obligations under this Lease in the event it is prevented from so performing by an event of force majeure, including, strike, lockout, breakdown, accident, weather, order or regulation of or by any governmental authority or failure

to supply or inability by the exercise of reasonable diligence to obtain supplies, parts or employees necessary to furnish such services or because of war or other emergency or for any other cause beyond its reasonable control. Where there is an event of force majeure the party prevented from or delayed in performing its obligations under this Lease must immediately notify the other party giving full particulars of the event of force majeure preventing that party from, or delaying that party in, performing its obligations under this Lease and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfill its or their obligations under the Lease. Upon completion of the event of force majeure the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Lease. An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

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

27.28 Survival. Notwithstanding any early termination of this Lease, Tenant shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Tenant hereunder arising prior to the date of such termination.

(Remainder of page left blank intentionally)

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the day and year first above written.

**ATTEST:**

**SOUTHWEST RANCHES,  
A POLITICAL SUBDIVISION OF  
THE STATE OF FLORIDA, BY ITS  
TOWN COUNCIL**

**CLERK AND COMPTROLLER**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS  
AND CONDITIONS**

By: \_\_\_\_\_  
Town Attorney

By: \_\_\_\_\_  
Director

**Signed, sealed and delivered in the  
presence of two witnesses for TENANT:**

**TENANT:**  
\_\_\_\_\_

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

(Seal)

Exhibit "A"  
Property

Exhibit "B"  
Federal Non-Discrimination Covenants

## **FEDERAL NONDISCRIMINATION REQUIREMENTS**

### A. Title VI Clauses for Compliance with Nondiscrimination Requirements.

During the performance of this Agreement, Tenant, for itself, its assignees, and successors in interest, agrees as follows:

1. **Compliance with Regulations:** Tenant will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities ("Nondiscrimination Acts and Authorities" as set forth in paragraph B below), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** Tenant, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Tenant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Tenant of Tenant's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Tenant will so certify, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the non-discrimination provisions of this Agreement, Town will impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to Tenant under this Agreement until Tenant complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: Tenant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Tenant will take action with respect to any subcontract or procurement as the sponsor may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Tenant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Tenant may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Tenant may request the United States to enter into the litigation to protect the interests of the United States.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Tenant, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities, as may be amended, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Industrial Park and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing

entities (42 USC §§ 12131 - 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

C. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. Tenant for itself and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Tenant will use the Tenant Premises and any License Area in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts And Authorities.
2. In the event of breach of any of the above nondiscrimination covenants, Town will have the right to terminate this Agreement and to enter or re-enter and repossess the Tenant Premises and any License Area and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

D. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.

Tenant for itself and its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement the Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and



Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. In the event of breach of any of the above nondiscrimination covenants, Town will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

E. Industrial Park Concession Disadvantaged Business Enterprises ("ACDBE").

This Agreement may be subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of Town that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. Tenant agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Tenant agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

F. General Civil Rights Provision.

Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Tenant transfers its obligation to another, the transferee is obligated in the same manner as Tenant. This provision obligates Tenant for the period during which the property is owned, used or possessed by Tenant. This provision is in addition to that required by Title VI of the Civil Rights.