

Draft 12/02/2025

DEVELOPMENT AGREEMENT

by and between

THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

And

LOF DEVELOPMENT, LLC

Dated as of _____, 2025

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is entered into as of this ____ day of _____, 2025 (“Effective Date”), by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government and political subdivision of the Commonwealth of Kentucky (the “Lessee”), and **LOF DEVELOPMENT, LLC**, a Kentucky limited liability company, or its permitted assigns (the “Developer”), each referred to herein as a “Party” and collectively, as the “Parties”.

RECITALS

A. The Lessee issued a Government Center Public-Private Partnership (“P3”) Request for Proposals on or about September 27, 2024, hereinafter the “RFP” and attached as Exhibit A as a means of identifying developers for the design, development and construction of a new government center to be developed in Lexington, Kentucky (the “Project”), as well as operate and maintain and potentially finance the Project.

B. On or about December 4, 2024, in response to the RFP, Developer proposed to (i) provide the development, design and construction services for, (ii) cause the construction of, (iii) finance, and (iv) operate and maintain the Project for the benefit of the Lessee, among other services (the proposal along with Developer’s oral presentation slides, “Proposal”, attached herein as Exhibit B).

C. The Project consists of an approximately 94,000 square foot renovation and 10,000 square foot addition (the “Government Center”), as further described in Exhibit E. The Project will be on certain land located at 200 W. Vine Street and 260 W. Vine Street, Suite 400 (the “Project Site,” legal descriptions of which are attached hereto as Exhibit F), which Project Site is, or will prior to commencement of construction be, owned in fee simple or leased by the Lessee.

D. The Project will be initially financed from a construction loan (the “Construction Loan”) from a commercial bank (the “Bank”) extended to Developer. The Construction Loan is expected to provide sufficient monies for the purchase of the Project Site, pay the cost of the development of the Project and possibly pay capitalized interest during the construction period. Lessee and Developer will enter into a certain Lease Agreement (the “Lease”) whereby the Lessee agrees to lease the Project from Developer after the Project’s completion. A copy of the form of the Lease is attached here to as Exhibit Q. It is further anticipated that lease purchase obligations (the “Lease Obligations”), representing ownership interests in the right to receive payments of base rent under the Lease, will be issued pursuant to an underwriting led by a national underwriter. The proceeds of sale of the Lease Obligations will be used to refund and retire the Construction Loan, pay costs of issuance and provide for the funding of certain reserves. This Development Agreement and the Lease Agreement are hereinafter collectively referred to as the “P3 Agreement”.

E. The Developer and the Lessee have agreed to enter into this Agreement to set forth their respective rights and obligations with respect to the design, development and construction of the Project.

NOW, THEREFORE, in consideration of the foregoing premises, the terms and conditions set forth below, and intending to be legally bound, the Parties hereto agree as follows:

ARTICLE I. DEVELOPMENT OF THE PROJECT

1.1 Description of the Project. The foregoing recitals are hereby incorporated into and made a part of this Agreement. The Parties agree that the Developer will develop, design and construct the Project on the Project Site in accordance with the Project Timeline. The Project will be known as the “LFUCG Government Center Project,” or such other name as determined from time to time by the Lessee.

1.2 Definitions.

(a) Preliminary Budget. Preliminary Budget shall mean the good faith estimate by Developer for the total amount to be paid to the Developer for performance of the Work and completion of the Project, which amount is identified on Exhibit H and includes site control (building and parking garage), redevelopment (construction and design), and soft (financing and Developer’s Fee). The Preliminary Budget includes a \$30,000,000.00 tenant improvement contribution by Lessee to the Developer upon _____ and a five percent (5%) development fee, based only on construction costs and design fees, but not including property acquisition, financing, or other costs, to be paid by Lessee to Developer at the time of each construction draw. Each individual line item in the schedule of values shall not be subject to individual budgets, with only the overall Preliminary Budget serving as a not to exceed amount. Each of the items identified in the first sentence of this Section can be further explained as follows:

- (i) *Site control costs (building and parking garage):* This amount will be a stipulated or lump sum for the purchase of the property in accordance with the Purchase and Sale Agreement to be executed simultaneously herewith.
- (ii) *Redevelopment costs (construction and design):* The design costs shall be 8% of the construction hard costs for the design and construction administration services. The construction costs shall be a good faith, not to exceed, estimate for all construction costs at the time of the Preliminary Budget, which amount shall be guaranteed upon execution of the GMP Amendment. Each individual line item in the GMP Amendment schedule of values shall not be subject to individual budgets, with only the overall GMP serving as the not to exceed amount.
- (iii) *Soft costs (financing and Developer’s Fee):* The financing costs are an allowance, subject to adjustment based on the actual costs. Developer’s Fee is defined in Section 1.2(e).

(b) Guaranteed Maximum Price or GMP. The Cost of the Work plus the Developer’s Fee is guaranteed by the Developer not to exceed the GMP (as adjusted by Change Orders and Change Directives) to be entered into after execution of this Agreement and to be identified in the Development Agreement Amendment in substantially the form attached hereto as Exhibit O. The Lessee shall not be liable to Developer for any design

and construction costs or expenses incurred by the Developer in excess of the GMP, as adjusted in accordance with the Contract Documents. Developer will be entitled to a five percent (5%) development fee, based only on construction costs and design fees, but not including property acquisition, financing, or other costs, to be paid by Lessee to Developer at the time of each construction draw.

(c) Contractor(s). Contractor(s) shall mean all contractors, suppliers, architects, consultants, engineers and other persons or entities, including but not limited to those persons and entities identified in Section 1.3(b), directly retained by Developer for the Project.

(d) Cost of the Work. Cost of the Work means the costs identified in the Development Agreement Amendment for which the Developer shall be entitled to payment.

(e) Developer's Fee. The Developer's Fee is five percent (5%) of the Cost of the Work. For the sake of clarity, the five percent (5%) Developer's Fee does not apply to property acquisition and financing costs.

(f) Contract Documents. The Contract Documents consist of this Agreement between the Lessee and Developer and its attached Exhibits; procurement statutes, regulations, policies, and ordinances; any best and final offer; any clarifications concerning the Developer's Proposal; and any subsequent modifications, Change Orders, Change Directives, amendments, and addendums regarding the Work or Project. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work and to require Developer to provide the highest quality and greatest quantity consistent with the Contract Documents.

(g) Environmental Laws. Environmental Laws shall mean all applicable federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local Governmental Authorities with respect thereto, including, without limitation, CERCLA and similar state law.

(h) Final Completion. Final Completion shall mean: (i) Substantial Completion, (ii) full completion of all punch list items, (iii) receipt by Lessee of a complete set of lien releases from the Developer, the General Contractor and from all first tier subcontractors invoicing an amount in excess of \$10,000.00 for the Project, (iv) completion of the Developer's obligations in Section 2.6 herein, and (v) the meaning generally ascribed the term in the course of dealing in connection with the completion of the construction and equipping of the Project. Final Completion shall be achieved within forty-five (45) days after Substantial Completion (the "Final Completion Deadline"), unless such punch list item cannot be completed within forty-five (45) days due to events outside Developer's control and Developer provides written notice of such within ten (10) days after Substantial

Completion or, if such occurrence or event giving rise to the need for additional time occurs after Substantial Completion, within three (3) days after such occurrence or event, wherein the Parties shall reach a mutually agreeable deadline to complete such item(s).

(i) Force Majeure. A Force Majeure event is an event whereby the Developer is materially delayed in the commencement or progress of the Work resulting from acts of God, strikes, civil riots, acts of war or terrorism, floods, restrictions by Governmental Authorities, pandemics or epidemics, or other causes beyond the Developer's control. A Party claiming Force Majeure shall notify the other of such delay by notice in accordance with this Agreement not more than ten (10) business days after the beginning of such delay and the cause(s) thereof.

(j) Governmental Authorities. Governmental Authorities means all applicable rules, regulations, ordinances, statutes, and guidelines promulgated by any applicable governmental or quasi-governmental authorities, agencies, or organizations.

(k) Hazardous Materials. Hazardous Materials shall mean any and all substances, materials, chemicals, or wastes that are now classified or considered to be hazardous or toxic under any Environmental Law, or that are or become regulated by any Governmental Authority because of toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness, or reactivity under any Environmental Law applicable to the Project, and shall also include: (a) gasoline, diesel fuel, and any other petroleum hydrocarbons; (b) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (c) polychlorinated biphenyls; (d) radon gas; and (e) flammable liquids and explosives.

(l) Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Developer, contractor(s), architects, and consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

(m) Progress Inspection Agent or PIA. PIA means [INSERT NAME].

(n) Project Timeline. Project Timeline shall mean the period of time, dates, deadlines and/or milestones for the completion of the Work, including authorized adjustments. The Project Timeline is attached as Exhibit G and incorporated herein by reference.

(o) Site Plan. Site Plans are architectural drawings that depict the layout of the Project Site, including the placement of buildings, pathways and other relevant features.

(p) Subcontractor(s). Subcontractor(s) shall mean all contractors, subcontractors, suppliers, architects, engineers, consultants and other persons or entities of any tier retained by a Contractor or Subcontractor for the Project.

(q) Submittal. A Submittal is any submission to the Lessee for review and approval demonstrating how the Developer proposes to conform to the Contract Documents for those portions of the Work for which the Contract Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Contract Documents unless incorporated into a Change Order.

(r) Substantial Completion. The term "Substantial Completion" shall mean the date on which: (a) the Developer provides to the Lessee a certificate of occupancy or equivalent for use of the Project in accordance with the Plans and Specs; (b) the Lessee, its employees, agents and invitees have ready, unobstructed access to the Project; and (c) the Project is broom cleaned and ready for its intended use.

(s) Term. This Agreement shall remain in effect from the Effective Date until the later of (i) Final Completion of the Project or (ii) termination of all obligations of the Developer under this Agreement.

(t) Warranty Period. The Warranty Period shall mean the time period two (2) years from the date of Substantial Completion.

(u) Work. The term "Work" means, without limitation, the design, engineering, material and equipment procurement, value engineering, management, supervision, construction and related services required to fulfill the Developer's obligations under the Contract Documents, including all labor, materials, equipment, inspections, testing, tools, supplies, fuel, transportation, installation, temporary facilities, supervision, cleanup, and services provided or to be provided by the Developer for completion of the Project as set forth in the Contract Documents or reasonably inferable from the Contract Documents as necessary to produce the intended results. The Work is intended to result in Developer completely designing and constructing the Project for Lessee's use, within the Project Timeline and incorporating the criteria agreed upon by the Lessee and Developer as set forth herein. The Work may constitute the whole or a part of the Project.

1.3 Project Design.

(a) Project Design. All architectural, engineering, interior design, landscaping, construction and other services for the Project (the "Professional Services") to be provided by any third-party shall be provided by qualified providers, pursuant to separate contractual arrangements between the Developer and such firms or between the construction manager or consultant and such firms. The Developer, by itself and/or via the General Contractor, shall negotiate contracts with, and shall monitor and oversee all aspects of the performance of, the construction manager and all contractors and any other professional firms providing architectural design, engineering, interior design, landscaping, construction, or other services for the Project.

(b) Developer Contractors. The following entities are intended to be retained by the Developer in connection with the Project, and they shall herein be designated as

follows (subject to the Developer's ability to negotiate mutually agreeable and commercially reasonable terms and conditions in each contract for services):

(i) "Architect": Champlin/Haupt Architects, Inc. d/b/a Champlin Architecture and EOP Architects

(ii) "General Contractor": D.W. Wilburn, Inc.

The Developer shall have the right to select other Contractors as necessary or desirable, in addition to the foregoing, for the design, permitting, development, and construction of the Project, all in its reasonable discretion. The Developer shall not substitute any of the listed entities above without the written permission of the Lessee which will not be unreasonably withheld, conditioned or delayed. The Developer shall include language in its agreement with each of the Contractors that the Lessee is a third-party beneficiary to said agreements, but in no event shall such third-party beneficiary rights of Lessee entitle such Contractors to have any direct rights against the Lessee. The Lessee, upon request, shall be entitled to a copy of the agreement between the Developer and the Contractors to ensure this requirement, along with the other relevant requirements provided in this Agreement, are incorporated therein.

1.4 Schematic Design. The Lessee shall have the opportunity to review and approve, with such approval being provided to the Developer in writing, the schematic design for the Project, including but not limited to, the Project Site Plans, unit mix, elevations, and other general design criteria for the Project (the "Schematic Design"). The Developer will present and has presented to the Lessee for review and comment the Project Site Plans, conceptual program, and floor and unit plans, which the Designer will use to prepare the Schematic Design, based upon conceptual program provided by the Lessee. To facilitate the Lessee's review of the Schematic Design, the Developer will discuss with the Lessee and keep the Lessee reasonably apprised of proposed or contemplated changes and additions to the plans and programming as they progress. Except as otherwise agreed to between the Parties, in the event the Lessee does not respond in writing to the Developer regarding the Schematic Design within thirty (30) days of receipt thereof, the Schematic Design, as submitted to the Lessee by the Developer, shall be deemed approved by the Lessee.

1.5 Design Development. Based on the Lessee's approval of the Schematic Design Documents, and on the Lessee's authorization of any adjustments in the Project requirements and the Lessee's notice to proceed, the Designer shall prepare Design Development Documents for the Lessee's approval (the "Design Development Documents"). The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

1.6 Standard of Care. Architectural and engineering services shall be procured from licensed, independent design professionals retained by Developer or furnished by licensed employees of Developer, as permitted by the law. Design Professional shall furnish and provide the architectural and engineering services necessary to design the Project in accordance with Lessee's reasonable requirements. The architectural and engineering services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, and complexity, during the time in which the Services are provided and in the geographic area in which the Services are provided.

1.7 Plans and Specifications. The plans and specifications for the Project (the "Plans and Specs") will be provided by the Developer to the Lessee prior to the start of construction for the Lessee's review and approval or rejection prior to the start of construction, which shall be provided in writing to the Developer. If the Lessee does not respond in writing to the Developer regarding the Plans and Specs within thirty (30) days of receipt thereof, the Plans and Specs, as submitted to the Lessee by the Developer, shall be deemed approved by the Lessee. The Plans and Specs shall be: (a) consistent with the approved Schematic Design (the Developer agrees to keep the Lessee apprised of proposed changes and additions to the approved Schematic Design as they progress); and (b) in conformity with the requirements of the Governmental Authorities. Notwithstanding any other provision of this Agreement, the Developer agrees to work together with the Lessee, in good faith, on all aspects of the Project to achieve results that are acceptable to both the Developer and the Lessee. Written approval of Plans and Specs by the Lessee shall include a list of the approved variances from the Schematic Design, if any.

1.8 Design Approvals. The Lessee shall actively participate in the design of the Project. The Lessee shall review all of the following for compliance with the Schematic Design:

- (a) Design development documents at the 100% level.
- (b) Construction documents ("Construction Documents") at the 75% level.
- (c) Construction Documents at the 100% level.

The Lessee's review of the Construction Documents at the 100% level shall be limited to comments and verification that the Lessee's comments to the Construction Documents at the 75% level have been incorporated into the Construction Documents at the 100% level and any material deviation of the Construction Documents at the 100% level from the prior construction and Schematic Design Documents previously reviewed and approved. The Developer agrees to consider and reasonably act to implement the Lessee's comments and suggestions, including, without limitation, those regarding "value management" in conjunction with the Design Development Documents and the Construction Documents. In the event that the Lessee does not respond in writing to the Developer regarding the Design Development Documents or the Construction Documents within thirty (30) days of receipt thereof, said documents, as submitted to the Lessee by Developer shall be deemed approved by Lessee.

1.9 Timelines and Approvals. The Developer shall provide the drawings, plans and specifications through the Schematic Design phase for approval by the Lessee by [INSERT DATE]. Provided that the Lessee approves the Schematic Design and/or provides the relevant

required instructions for revisions within 30 days of receipt, the Developer shall provide the drawings, plans and specification through the Design Development phase for approval by the Lessee by [INSERT DATE]. The Developer shall provide the Lessee notice of any changes in the Project Timeline for delivery of the above documents promptly following the Developer learning that the Project Timeline has changed.

The Developer shall provide such further documents and information as are reasonably requested by the Lessee in conjunction with the Lessee's review and approval of the Design Development Documents. The Lessee agrees to review the Design Development Documents and each level of the Construction Documents within thirty (30) days of submission by the Developer. In the event the Lessee does not respond in writing to the Developer regarding any Design Development Documents within thirty (30) days of receipt thereof, the drawings, plans and specifications, as submitted to the Lessee by the Developer shall be deemed approved by Lessee.

The Developer shall provide the drawings, plans and specifications in accordance with the Project Timeline. The Developer shall provide such further documents and information as are reasonably requested by the Lessee in conjunction with the Lessee's review and approval of the Design Development Documents and the Construction Documents.

The Lessee's review and approval of Schematic Design, Design Development Documents, Construction Documents, Plans and Specs, and Site Plans (hereafter defined) shall not constitute or be interpreted as a representation or indemnity by the Lessee to any person or entity (i) that such Documents or Plans and Specs are in conformity with the requirements of the Governmental Authorities, as defined below, or (ii) against any deficiency in such Schematic Design, Design Development Documents, Plans and Specs, or Site Plans or for any deficiency or defect in any work thereunder or against any breach of any contract. Inspections and approvals of the Schematic Design, Design Documents, Plans and Specs, Site Plans, and the Project, the workmanship and materials used in the Project, and the exercise of any other right of inspection, approval, or inquiry granted to the Lessee in this Agreement are acknowledged to be solely for the protection of the Lessee's interests, and under no circumstances shall they be construed to impose any responsibility or liability of any nature whatsoever on the Lessee to the Developer or any person or entity, nor shall it constitute a representation or indemnity of the Lessee to any person or entity against any deficiency or defects in the Project or against any claimed breach of contract for the design or construction of the Project.

1.10 Contingency. The Lessee may, in its discretion, maintain a contingency to cover any modifications or changes to the Work for which the Developer would be entitled to a Change Order or Change Directive (the "Lessee Contingency") . The Lessee shall have full and complete discretion on the amount, and exclusive use, of the Lessee Contingency. Any and all unused Lessee Contingency funds shall be retained by the Lessee.

1.11 Design Review. The Developer and the Lessee agree to communicate and coordinate throughout the design process. Meetings shall be held twice a month involving the Developer, the Developer Representative (as defined in Section 8.10), Developer's Contractors and Subcontractors whose work will be discussed at such meetings, the Lessee, the Lessee Representative (as defined in Section 8.10). The Lessee Representative shall be permitted to provide input throughout the design phase regarding all aspects of the Project, including but not

limited to exterior elevations, building systems, construction techniques, materials, Plans and Specs and GMP.

1.12 Ownership of Instruments of Service.

(a) The Developer, for itself and any of the Contractors and Subcontractors, hereby grants to the Lessee the copyright and ownership for all digital and paper Instruments of Service, provided that Lessee issues payments of all sums due and owing upon payment for each phase of the Work.

(b) The Instruments of Service shall be produced by Revit software or in a format and manner reasonably acceptable to and compatible with the Lessee and shall include a complete electronic set of "as built" drawings and one complete printed set of "as built" drawings.

(c) Notwithstanding the foregoing, in the event of termination of this Agreement before Final Completion, all rights of ownership to the Instruments of Service will, at the Lessee's request, be assigned to the Lessee upon payment of any amounts due the Developer at the time of termination, with digital copies and original paper copies of all Instruments of Service being provided.

1.13 Site Plans. Preliminary site plans will be agreed upon by the Developer and Lessee as soon as reasonably practicable and affixed to this Agreement as Exhibit I once agreed upon (the "Preliminary Site Plans") and are subject to any necessary changes as determined by the Developer, provided that such changes are (a) approved in writing by the Lessee, (b) in substantial conformity with the approved Schematic Design, and (c) in conformity with the requirements of the Governmental Authorities; provided, however, that if the Lessee does not respond in writing to the Developer regarding the Site Plans within thirty (30) days of receipt thereof, the Site Plans, as submitted to the Lessee by the Developer, shall be deemed approved by the Lessee.

1.14 Communications. In the event differences between the Parties arise, the Parties agree to act in good faith to resolve their differences. The Developer agrees to provide written, weekly update reports to the Lessee's Designated Representative regarding the status of the Project's development and Project Timeline. The Lessee may visit the Project Site to observe the progress and performance of the work at any time. If such site visits are during normal business hours and would be of a nature that would interfere with construction, the Lessee will coordinate such visits/observations with the Developer Representative to avoid undue interference with construction. In entering the Project Site, the Lessee and its representatives shall comply with all reasonable restrictions of the Developer or its agents, Contractors and Subcontractors intended to prevent personal injury or property damage.

1.15 Submittals.

(a) Prior to submission of any Submittals, the Developer shall prepare a Submittal schedule and shall submit the schedule for the Lessee's approval. The Lessee's approval shall not be unreasonably withheld, conditioned or delayed. The Submittal schedule shall (1) be coordinated with the Project Timeline, (2) allow the Lessee reasonable time to review Submittals, and (3) be periodically updated to reflect the progress

of the Work. If the Developer fails to submit a Submittal schedule, the Developer shall not be entitled to any increase in the GMP or extension of the Project Timeline based on the time required for review of Submittals.

(b) By providing Submittals the Developer represents to the Lessee that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

(c) The Developer shall perform no portion of the Work for which the Contract Documents require Submittals until the Lessee has approved the respective Submittal.

(d) The Work shall be in accordance with approved Submittals except that the Developer shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Contract Documents. The Work may deviate from the Contract Documents only if the Developer has notified the Lessee in writing of a deviation from the Contract Documents at the time of the Submittal and a Change Order is executed authorizing the identified deviation. The Developer shall not be relieved of responsibility for errors or omissions in Submittals by the Lessee's approval of the Submittals.

(e) All Professional Services or certifications to be provided by the Developer, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Lessee and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

1.16 Royalties, Patents and Copyrights. The Developer shall pay all royalties and license fees necessary for completion of the Work and Project. The Developer shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Lessee and its separate contractors and consultants harmless from loss on account thereof. If the Lessee receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Developer, the Lessee shall give prompt written notice to the Developer.

1.17 Contingent Assignment of Agreements. Each agreement for a portion of the Work is assigned by the Developer to the Lessee, provided that: (i) assignment is effective only after termination of the Agreement by the Lessee and only for those agreements the Lessee accepts by written notification to the Developer and the Contractors whose agreements are accepted for assignment; and (ii) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement. When the Lessee accepts the assignment of an agreement, the Lessee assumes the Developer's rights and obligations under this Agreement. Upon such assignment to the Lessee under this Section 1.17, the Lessee may further assign the agreement to a successor design-builder or other entity. If the Lessee assigns the agreement to a successor

design-builder or other entity, the Lessee shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

1.18 P3 Study. In the event the Project is delivered as a P3 under KRS 65.028, the Developer must conduct and include in the GMP a feasibility study that addresses all requirements in 200 KAR 5:355(2)(2). The Lessee retains final approval authority over which entity conducts the study. The study must be complete within thirty (30) days after negotiations are completed.

1.19 Development Agreement Amendment.

(a) Within thirty (30) days after Lessee's approval of the Schematic Design, the Developer shall prepare, complete and submit to Lessee in writing the Development Agreement Amendment in substantially the form attached hereto as Exhibit O, including but not limited to: (i) a list of the preliminary design documents and other information, including the Developer's clarifications, assumptions and deviations, upon which the Development Agreement Amendment is based; (ii) the proposed GMP with a corresponding schedule of values that comprise the GMP; (iii) the proposed Target Completion Date; (iv) qualifications and/or exclusions, if any; (v) the date, if any, on which the Development Agreement Amendment expires, which date shall be no shorter than thirty (30) days after Lessee's receipt of the same.

(b) In no event shall the Lessee's or Developer's execution of this Agreement bind or obligate the Lessee or the Developer to execute a Development Agreement Amendment.

(i) If the Lessee and Developer agree on the Development Agreement Amendment, they shall execute the Development Agreement Amendment setting forth the terms of their agreement, wherein such Amendment shall be incorporated herein as a Contract Document. Any costs and/or expenses incurred by Developer relating to the Work prior to execution of the Development Agreement Amendment shall be subsumed into and included in the GMP in the Development Agreement Amendment.

(ii) Notwithstanding anything contained in this Agreement to the contrary, particularly Section 6.4, if the Lessee and Developer cannot or otherwise do not agree on a Development Agreement Amendment, including but not limited to the General Contractor being unwilling to execute a construction contract within the Preliminary Budget, the Lessee or Developer shall be entitled to immediately, upon written notice, terminate this Agreement without cause or fault, in which case the Lessee's liability to the Developer for the Project, the Work and this Agreement shall be limited to the Developer's reasonable, direct and actual costs for Work performed in accordance with the Contract Documents through the date of such termination including any unpaid costs due the Contractors, plus Developer's Fee on such performed Work, without recovery for the loss of any anticipated profits on Work not performed.

ARTICLE II. CONSTRUCTION OF THE PROJECT

2.1 Construction of the Project. Developer shall construct and equip the Project, or cause the Project to be constructed and equipped, to Final Completion utilizing only new and good quality materials in accordance with the terms of this Agreement. The Lessee reserves the right to monitor the construction of the Project from inception to Final Completion.

2.2 Staging Areas and Right of Entry. During the Term of this Agreement, the Lessee will grant to the Developer and its employees, Contractors, Subcontractors, agents and representatives (collectively, the "Developer Parties"), subject to the terms and conditions of this Agreement, the right to enter on to those areas identified as "Staging Areas", which Developer shall identify and will include the entire existing parking garage for parking and other needs as applicable at no cost to Developer. Developer will prepare a plan accordingly for the Lessee's approval, for the following purposes and subject to the restrictions set forth below:

- (a) Location and maintenance of construction assets and equipment, including construction trailers, prior to and during construction of the Project;
- (b) Storage of equipment and materials for the construction of the Project; and
- (c) Short-term parking for the Developer Parties while working on the Project Site.

Upon the vacation of the Staging Areas by the Developer Parties, the Developer as part of the cost of the GMP shall (a) remove any and all structures, equipment, supplies, construction materials, trash and debris from the Staging Areas and (b) repair any damage to the Staging Areas and surrounding areas caused by the Developer Parties and restore them to substantially the same condition that existed prior to the Developer's entry thereon. The Lessee will have no responsibility for security at or of the Staging Areas, including but not limited to any damaged or stolen materials, equipment, tools, appliances or supplies, regardless of whether such is to be incorporated into the Project.

The Developer shall, with the assistance and cooperation of the Lessee, obtain licenses or similar usage agreements for any portions of the Staging Areas not owned by the Developer or the Lessee.

2.3 Target Completion Date. Time is of the essence as to all of Developer's duties and obligations in this Agreement. The target date for Substantial Completion for the Project is referred to herein as the "Target Completion Date". The Developer shall give the Lessee prompt (but not later than five (5) business days after the occurrence of the event giving rise to the delay) written notice of (a) its failure to meet any milestone date set forth in the Project Timeline; or (b) the occurrence of any Force Majeure event or act or omission by the Lessee, that has caused or is reasonably likely to cause a delay (or total stoppage) in the progress of the Project. The Lessee and the Developer shall execute a written confirmation of the date of Substantial Completion of the Project.

The Parties recognize that time is of the essence of this Agreement and that Lessee will suffer financial loss if the Project is not completed by the Target Completion Date, plus any extensions thereof allowed in accordance with this Section. If the Project does not reach Substantial Completion of the Project by the Target Completion Date, Lessee will be entitled to the remedies set forth in Section 6.2(b).

2.4 Performance of Construction.

(a) The Developer shall, after the awarding of the construction contracts, cause the commencement and diligent continuance of the construction of the Project.

(b) The Developer shall be solely responsible for all means, methods and techniques in the performance of all Work and constructing the Project. The construction of the Project shall be performed in a diligent and continuous fashion utilizing an adequate workforce in order to expeditiously construct the Project.

(c) All Work shall be performed pursuant to good construction practices and sound professional standards, and in compliance with all laws and legal regulatory requirements of Governmental Authorities relating to the construction and the performance of the Work and the Contract Documents, including but not limited to Exhibit C. All Work shall be performed in a good and workmanlike manner, utilizing new, good quality materials as provided in the Plans and Specs. The Developer shall be responsible for the supervision of the Work, and shall advise the Lessee as to the progress of such work. The Lessee and its designated engineer shall be advised in advance of, and may attend, any meeting with the construction manager and Contractors and may visit the Project Site to observe the progress and performance of the Work at any time.

2.5 Standard of Work; Warranty.

(a) All Work shall be performed in a good and workmanlike manner in accordance with the provisions of this Agreement and all requirements of Governmental Authorities. The Project shall be constructed applying sound and generally accepted construction practices and sound professional standards utilizing materials of a quality and type standard in the industry for similar projects.

(b) The Developer hereby guarantees and warrants to the Lessee as follows:

(i) The Work will be performed in a good and workmanlike manner.

(ii) The Work will be completed consistent with the Plans and Specs and the Contract Documents, as modified by approved Change Orders.

(iii) The Work will be free from faults and defects.

(iv) The Work will be in compliance with all applicable laws, ordinances, rules and regulations and the Contract Documents, including but not limited to Exhibit L.

(c) Before or up to the end of the Warranty Period, the Developer shall promptly correct Work rejected by the Lessee for failing to conform to the requirements of the Contract Documents and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Lessee whose expenses and compensation were made necessary thereby, shall be at the Developer's expense without increase in the Project Timeline.

(d) If, during the Warranty Period, any of the Work is not in accordance with the requirements of the Contract Documents, the Developer shall commence correction promptly (but not later than five (5) business days for Work affecting life, health and/or safety, but otherwise not later than ten (10) business days) after receipt of written notice from the Lessee, and proceed with prompt diligence, to do so at the Developer's expense. If the Developer fails to correct such nonconforming Work as provided above, then the Lessee may correct it. The Developer, upon written notice from the Lessee, shall pay the Lessee, within ten (10) days after the date of such notice, all of the Lessee's reasonable costs and expenses incurred in connection with such correction. Any disputes shall be resolved in accordance with Article VII below.

(e) The Warranty Period shall be extended with respect to portions of the Work first performed after Final Completion by the period of time between Final Completion and the actual completion of that portion of the Work.

(f) The Developer shall assist the Lessee in conducting an inspection of the Project prior to the expiration of the Warranty Period. In addition to foregoing, the Developer will make available for the benefit of the Lessee all warranties of Contractors and Subcontractors with respect to the Project and Work and the materials utilized in connection therewith. The Developer will assist the Lessee in the enforcement of warranties and coordinate all warranty work until all provisions of the Warranty Period are satisfied. All warranty notices and claims submitted during the Warranty Period shall be honored, notwithstanding the expiration of such period following such submittal.

(g) Nothing contained in this Section 2.5 shall be construed to establish a period of limitation with respect to other obligations the Developer has under the Contract Documents. Establishment of the Warranty Period for correction of Work as described in this Section 2.5 relates only to the specific obligation of the Developer to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Developer's liability with respect to the Developer's obligations other than specifically to correct the Work.

(h) The Developer shall perform all Work in such manner to preserve all manufacturers' and other special warranties.

2.6 Developer Obligations. The Developer will take all necessary actions to accomplish the construction of the Project and perform the Work, including but not limited to, the following:

- (a) Procuring any and all licenses, permits, and approvals for the development and construction of the Project;
- (b) Contracting and paying for all design, engineering, and testing services for the Project;
- (c) Entering into all construction contracts for the construction of the Project;
- (d) Meeting, at weekly intervals during the course of construction of the Project, with representatives of the Lessee and the General Contractor for the Project;
- (e) Executing all documentation and taking all action necessary to cause the disbursement of funds obtained for the construction of the Project;
- (f) Performing all other actions with regard to the development and construction of the Project as contemplated pursuant to this Agreement;
- (g) Establishing and maintaining at a location on or near the Project Site a complete set of the current Plans and Specs for the Project for review by the Lessee and its representatives during regular business hours;
- (h) Being responsible for all security for the Project Site and any off-site storage or staging areas utilized by the Developer during the construction period. The Developer will, throughout all construction periods, be responsible for the enforcement of discipline and good order among workers on the Project Site and any off-site storage or staging areas. All signage shall be subject to the Lessee's prior written approval; and
- (i) Unless otherwise exempted under KRS 45.590, performing all applicable obligations under KRS 45.570.

The following items will be included in the GMP: ad valorem personal property taxes assessed against the buildings and other improvements that are part of the Project and the materials used in construction of such buildings or other improvements that are assessed as of any date prior to Substantial Completion of the Government Center.

Notwithstanding any other provision contained herein, Lessee acknowledges that the interest rate on the certificates of participation and/or bonds and the cost to issue the certificates of participation and/or bonds may vary from projections and the amounts set out in the Preliminary Budget and Developer has no liability in connection therewith beyond the amounts set out in the Preliminary Budget.

To the extent that Lessee can purchase materials for the Project without the payment of sales tax and may do so in accordance with all applicable statutes, regulations, and ordinances, Lessee will endeavor to do so upon the request of Developer or the General Contractor and the Parties shall reasonably cooperate to comply with such request. Any such savings of sales tax shall reduce the GMP.

2.7 Changes to the Project; Change Orders.

(a) General. Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by Change Order or Change Directive, subject to the limitations stated in this Section 2.7 and elsewhere in the Contract Documents. A Change Order shall be based upon agreement between the Lessee and Developer. The Lessee may issue a Change Directive without agreement by the Developer. Except as provided in Section 2.7(c), a change in the GMP and the Project Timeline shall be accomplished only by a Change Order. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Lessee has been unjustly enriched by an alteration or addition to the Work, whether or not there is any unjust enrichment to the Work, shall be the basis of any claim for an increase in any amounts due under the Contract Documents or a change in any time period provided in the Contract Documents. There shall be no oral orders to change the Work. Each party agrees that if it proceeds on an oral order to change the Work, such party shall waive any claim for additional compensation or additional time or other relief for such work and the parties shall not be excused from compliance with the Contract Documents.

(b) Change Orders. A Change Order is a written instrument signed by the Lessee and Developer stating their agreement upon all of the following: (i) the change in the Work; (ii) the amount of the adjustment, if any, in the GMP; and (iii) the extent of the adjustment, if any, in the Project Timeline. The Developer agrees to perform the modifications in the Work as set forth in each fully executed Change Order. If a Change Order requested by the Lessee results in additional costs or expenses to the Developer, the Developer shall submit an application for payment in accordance with Section 3.2. Agreement on any Change Order shall constitute a full, final and complete waiver and settlement of any and all claims, demands, and causes of action that Developer has, or may have in the future, arising out of or relating to the Change Order and the direct impact of the occurrences, acts, omissions, or events upon which the Change Order is based. Notwithstanding the foregoing, any Change Order shall not limit or have the effect of limiting any rights and remedies afforded to the Lessee regarding defective Work and/or warranty obligations.

(c) Change Directives.

(i) A Change Directive is a written order signed by the Lessee directing a change in the Work prior to agreement on adjustment, if any, in the GMP or Project Timeline. The Lessee may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the GMP and Project Timeline being adjusted accordingly.

(ii) A Change Directive shall be used in the absence of total agreement on the terms of a Change Order, but only in the event a Change Order is first requested by Lessee.

(iii) If the Change Directive provides for an adjustment to the GMP, the adjustment shall be based on one or a combination of the following methods: (a) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; (b) unit prices stated in the Contract Documents or subsequently agreed upon; (c) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or (d) as provided in Section 2.7(c)(vii).

(iv) If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Lessee or Developer, the applicable unit prices shall be equitably adjusted.

(v) Upon receipt of a Change Directive, the Developer shall promptly proceed with the change in the Work involved and advise the Lessee of the Developer's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the GMP or Project Timeline.

(vi) A Change Directive signed by the Developer indicates the Developer's agreement therewith, including adjustment in GMP and Project Timeline or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

(vii) If the Developer does not respond promptly or disagrees with the method for adjustment in the GMP, the PIA shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 2.7(c)(iii)(c), the Developer shall keep and present, in such form as the PIA may prescribe, an itemized accounting together with appropriate supporting data. If the Lessee or the Developer disputes the PIA's determination of adjustments to the GMP or Project Timeline, that party may proceed as provided in Article VII. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 2.7(c)(vii) shall mean the cost of the Work unless this is a stipulated sum contract, in which event costs shall be limited to the following:

- a) Additional costs of professional services;
- b) Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- c) Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

- d) Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Developer or others (the aggregate amounts charged to the Lessee for the Developer's rental equipment shall not exceed 100% of the fair market purchase value);
- e) Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- f) Additional costs of supervision and field office personnel costs directly attributable to the change.

(viii) The amount of credit to be allowed by the Developer to the Lessee for a deletion or change that results in a net decrease in the GMP shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

(ix) When the Lessee and Developer agree with a determination concerning the adjustments in the GMP and Project Timeline, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Lessee and Developer shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

(x) The Lessee, or its designees, shall have the right to examine, inspect, copy and audit the books and records of Developer and any Contractor with respect to all changed Work to be compensated on a cost reimbursable basis in order to verify the accuracy, correctness, completeness and propriety of all costs and allowances allowed.

2.8 Review and Inspections; Punch List.

(a) The Lessee shall have the right, but not the obligation, to have such additional independent consulting architects, engineers, or any other appropriate consultants retained and paid for by the Lessee to inspect the Work as it progresses and to review the Plans and Specs. Such inspections shall be coordinated through the Lessee's Representative with the Developer so as not to unreasonably interfere with or delay construction of the Project. If during the course of the Work, the Lessee shall determine the Work is not proceeding in accordance with the Plans and Specs, the Lessee shall give notice in writing to the Developer that includes the Lessee's best efforts to specify the particular deficiency or omission. Thereupon, the Developer shall take, or cause to be taken, correction efforts within two (2) business days of receipt of such notice and continue with prompt diligence to correct the same. The failure to give such notice shall not give rise to any liability for the Lessee and shall not be considered a waiver of any right of the Lessee under this Agreement, including without limitation, the enforcement of the

representations and warranties of the Developer under this Agreement and the requirements with respect to construction of the Project in accordance with the Plans and Specs.

(b) Prior to the Lessee's occupancy of the Project, and concurrent with the Developer's preparation of its punch list, the Lessee will walk through the Project with the Developer and, to the extent that the Developer's punch list items pertain to the Project, or to any other of the Lessee's interests in the Project, give input as to matters to be included in said punch list.

2.9 Minimal Disturbance. During the construction of the Project, the Developer shall use commercially reasonable efforts to minimize the amount of disturbance to the current facilities located on or around the Project Site, including pedestrian and vehicular circuitry around the Project Site.

2.10 Permits and Approvals. The Developer shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Agreement is performed. The Developer shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Agreement. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. Subject to the provisions set out in Section 2.6 above, Developer shall pay any sales, use, personal property and other taxes arising out of this Agreement as a cost included in the GMP and the transaction contemplated hereby. Developer shall pay any royalties or licenses required for elements by other parties that Developer has utilized in the performance of this work on the Project as a cost included in the GMP.

2.11 Assistance and Cooperation. To the extent required to complete the Project, Developer shall cause all buildings, structures, and other improvements required for the Work, both above-ground and underground, to be removed from the Project Site, and the Developer shall obtain all necessary utilities for the Project Site (including without limitation electricity, natural gas, potable water, sanitary sewer, and telephone, telecommunication, and data service). The Developer shall vacate, in the event that it is necessary, any easements, existing storm water or wastewater lines, or rights-of-way located within the boundaries of the Project Site and relocate, as necessary, any utility or other installations within such vacated rights-of-way or other areas of the Project Site where feasible. The Parties agree to work in good faith to establish such easements as may be reasonably requested by the other.

2.12 Insurance. Beginning no later than the earlier of commencement of (a) staging or (b) the Work (including, without limitation, commencement of Professional Services, excavation, demolition and other site work) and continuing until two (2) years after Substantial Completion (except continuing until nine (9) years after Substantial Completion as to the General Contractor), the Developer shall cause the Contractors and Subcontractors to procure and maintain the minimum insurance coverage described in this Section 2.12 or such other coverage types and amounts required by the Lessee, its lender, or any conditions of the loans and financing arrangements discussed herein, whichever provides greater coverage, with an insurer reasonably acceptable to the Lessee and rated at least A-VIII by A.M. Best.

(a) Employers Liability Coverage. The Contractors and Subcontractors shall maintain employers' liability coverage with (1) an each-accident limit of not less than \$1,000,000, (2) an each-employee limit of not less than \$1,000,000, and (3) a disease policy limit of not less than \$1,000,000.

(b) Pollution Liability Coverage. The General Contractor shall maintain pollution liability insurance with an each-occurrence limit of not less than \$2,000,000, and an aggregate limit of not less than \$2,000,000. If the Work of any other Contractor or Subcontractor involves the transport, dissemination, use, or release of pollutants, such Contractor or Subcontractor shall maintain pollution liability insurance with an each-occurrence limit of not less than \$2,000,000, and an aggregate limit of not less than \$2,000,000.

(c) Commercial General Liability. The General Contractor shall maintain commercial general liability ("CGL") coverage which provides (1) an each-occurrence limit of not less than \$3,000,000, (2) a general-aggregate limit of not less than \$10,000,000, and (3) a deductible not in excess of \$250,000. All other Contractors and Subcontractors shall maintain CGL coverage which provides (1) an each-occurrence limit of not less than \$1,000,000, (2) a general-aggregate limit of not less than \$2,000,000, and (3) a deductible not in excess of \$50,000.

(i) The CGL insurance shall be written on ISO occurrence form CG 00 01 10 01 or a substitute form, providing at least equivalent coverage for liability arising from premises, operations, independent contractors, products/completed-operations, personal and advertising injury, and liability assumed under an insured contract.

(ii) The Contractors and Subcontractors shall include the Lessee as an additional insured under the CGL policy using ISO endorsement CG 20 10 07 04, or CG 20 37 07 04, or a substitute form(s) providing equivalent coverage.

(iii) The CGL insurance provider shall be of recognized financial standing and carry a rating of A-VIII or better by A.M. Best.

(iv) The CGL insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs which cover the additional insured(s).

(v) The CGL policy shall not exclude coverage to the additional insured(s) for bodily injury or property damage arising out of the products/completed-operations hazard.

The Developer shall cause: (i) the General Contractor to maintain CGL coverage as set forth above for at least nine (9) years following Substantial Completion of the Project; and (ii) all other Contractors and Subcontractors to maintain CGL coverage as set forth above for at least two (2) years following Substantial Completion of the Project.

(d) Automobile Liability. The Developer shall cause the Contractors and Subcontractors to maintain business automobile coverage reasonably satisfactory to the Lessee covering vehicles owned, and non-owned vehicles used, with policy limits of not less than \$1,000,000 per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage, with the Lessee being added as an additional insured under such policy.

(e) Workers' Compensation. The Developer shall cause the Contractors and Subcontractors to maintain workers' compensation coverage meeting the requirements of Kentucky law.

(f) Umbrella/Excess Liability.

(i) The Contractors and Subcontractors may employ an umbrella/excess liability policy to achieve the above-required minimum coverage.

(ii) The Developer shall cause the General Contractor to maintain no less than \$30,000,000 of umbrella/excess liability coverage in excess of the CGL amounts it shall be required to carry as set forth above.

(g) Professional Liability. The Developer shall cause any Contractor and Subcontractor who will be performing Professional Services on the Project to each maintain professional liability insurance with a per-claim limit of not less than \$5,000,000 per claim and an annual aggregate limit of not less than \$5,000,000.

(i) The professional liability policy shall have an effective date which is on or before the date on which the Developer first started to provide any Project-related services.

(ii) Upon submission of the associated certificate of insurance and at each policy renewal, the Developer shall advise the Lessee in writing of any actual or alleged claims which may erode the professional liability policy's limits.

Builder's Risk. Upon the expansion of the work to include any construction, the Developer shall maintain or cause to be maintained All Risk and Builder's Risk - Completed Value Form Property Insurance ("Builder's Risk") covering all physical loss or damage to the Project covered by the extended coverage endorsement then in use in the Commonwealth of Kentucky (including vandalism and malicious mischief) in an amount not less than full replacement value of the Project with deductible not in excess of \$50,000. All such insurance shall be written on an occurrence basis. Such insurance shall include the Lessee as an additional insured under the Builder's Risk policy.

All insurance policies to be maintained pursuant to this Section 2.12 must be issued by a company authorized to conduct business in the Commonwealth of Kentucky that is reasonably acceptable to the Lessee. All insurance policies shall contain a provision that the policies and coverages shall not be altered or cancelled without thirty (30) days' prior written notice to the Lessee. All insurance (except workers' compensation and professional liability) maintained by

the Contractors and/or Subcontractors shall name the Lessee as an additional insured. All insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs which cover the Lessee. All insurance shall be written on an occurrence basis. The Developer shall furnish certificates and other evidence of insurance coverage prior to commencement of the earlier of (y) staging or (z) construction of the Project (including, without limitation, commencement of excavation, demolition and other site work) and prior to each policy renewal date. Upon request of the Lessee, the Developer shall furnish or cause to be furnished certified copies of policies evidencing all insurance coverage required under this Agreement.

All insurance policies required to be maintained by the Developer, Contractors, and/or Subcontractors shall name the Lessee and the Developer as additional insureds (except workers' compensation and professional liability). The Developer and all of the Contractors and Subcontractors of any tier shall provide waivers of subrogation in favor of the Lessee.

The Developer's insurance requirements in this Section 2.12 are based on the assumption that Developer will not be involved in any of the following activities relating to or arising out of the Project: (i) performing construction or installation activities; (ii) performing design or other professional services; (iii) performing any labor or services relating to or arising out of the Work; (iv) performing any supervisory, management or other advisory services on the Project site; and/or (v) delivering materials, equipment or any other widgets to the Project site. To the extent any of the preceding assumptions are incorrect, or change later to be incorrect, the Developer shall be required to procure and maintain the insurance required of the General Contractor under this Section 2.12.

2.13 Bonds. The Developer shall, either by itself or via its Contractors, provide payment and performance bonds for the for the design and construction portion of the Preliminary Budget and GMP, as adjusted in accordance with this Agreement, from a company lawfully authorized to issue surety bonds in the jurisdiction where the Project is located and reasonably acceptable to the Lessee and in a form reasonably acceptable to the Lessee. The payment and performance bonds shall name both the Developer (if not procuring such bonds) and Lessee as dual obligees.

2.14 Liens. The Developer shall cause title to the Project to be and remain, during performance of the Work, free from and clear of all liens, claims, and encumbrances created by, through or under the Developer or any Contractor or Subcontractor, except for (a) real estate taxes and assessments that are a lien but not yet due and payable, (b) liens or claims for materials supplied or labor or services performed in connection with the Project that are bonded-off or otherwise removed in accordance with applicable laws within fourteen (14) days of the filing of such lien and in any event prior to the commencement of an action to foreclose on such lien and (c) any other liens or exceptions that are approved in writing by the Lessee.

2.15 Environmental Laws. The Developer shall not commit or permit a violation of any Environmental Laws (as defined below) to exist with respect to the Project. Neither the Developer nor its Contractors or Subcontractors shall use or permit to be used all or any portion of the Project for the storage, treatment, use or disposal of any substance for which a license or permit is required by state, federal or local Environmental Laws and for which no such license or permit has been obtained. Without limitation express or implied, unless caused by the negligence or willful

misconduct of the Lessee, the Developer shall pay all sums and take all such actions as may be required to avoid or discharge the imposition of any lien on the Project facilities under any Environmental Law to the extent caused by a violation by the Developer, its Contractors or Subcontractors of this Section 2.15, and the Developer shall indemnify and save harmless the Lessee Indemnified Parties (hereafter defined) from any and all loss, claims, liabilities, fines, and expenses (including attorney's and expert fees) incurred or suffered by the Lessee by virtue of the failure of the Developer, its Contractors, or Subcontractors, to comply with the provisions of this Section 2.15 or by virtue of the failure of the Developer, its Contractors, or Subcontractors, to comply with any Environmental Law in connection with the presence of any Hazardous Materials in violation of such Environmental Laws.

2.16 Unforeseen Conditions. If the Developer encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents including, but not limited to, Hazardous Materials and structural issues or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Developer shall promptly provide written notice to the Lessee before conditions are disturbed and in no event later than fourteen (14) days after first observance of the conditions. The Lessee shall promptly investigate such conditions and, if the Lessee determines that they differ materially and cause an increase or decrease in the Developer's cost of, or time required for, performance of any part of the Work, the Lessee shall recommend an equitable adjustment in the GMP based upon the actual cost to address the unforeseen condition or Project Timeline, or both. If the Lessee determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Agreement is justified, the Lessee shall promptly notify the Developer in writing, stating the reasons. If the Developer disputes the Lessee's determination or recommendation, the Developer may proceed as provided in Article VII. Except as otherwise provided in the Contract Documents, Lessee is not aware of any structural issues or Hazardous Materials on the Project site.

2.17 Safety.

(a) The Developer shall be responsible for initiating, maintaining and supervising commercially reasonable safety precautions and programs in connection with the performance of the Agreement.

(b) The Developer shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to:

(i) employees on the Work and other persons who may be affected thereby;

(ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Developer or the Contractors or other person or entity providing services or work for the Developer; and

(iii) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

(c) The Developer shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

(d) The Developer shall implement, erect, and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

(e) When use or storage of explosives or other Hazardous Materials or equipment, or unusual methods, are necessary for execution of the Work, the Developer shall exercise commercially reasonable care, and carry on such activities under supervision of properly qualified personnel and give the Lessee reasonable advance notice, and shall not commence, use, or store until authorized in writing by the Lessee.

(f) The Developer shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents or otherwise covered by a waiver of subrogation) to property referred to in this Section 2.17, to extent caused in whole or in part in whole or in part by the negligence or other fault of Developer, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Developer is responsible under this Section 2.17; except damage or loss attributable to acts or omissions of the Lessee, or anyone directly or indirectly employed by the Lessee, or by anyone for whose acts the Lessee may be liable, and not attributable to the fault or negligence of the Developer. The foregoing obligations of the Developer are in addition to any other obligations of the Developer's under this Agreement.

(g) The Developer shall cause the General Contractor to designate a responsible member of the General Contractor's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the General Contractor's superintendent unless otherwise designated by the Developer in writing to the Lessee.

(h) The Developer shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

(i) If the Lessee or Developer suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

2.18 Cleaning Up. The Developer shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Developer shall remove waste materials, rubbish, the Developer's tools, construction equipment, machinery and surplus materials from and about the Project. The Developer shall cause the General Contractor to, (1) keep its own work area within the Project site reasonably free and clear of all waste materials and other rubbish accumulated in connection with the execution of its Work, (2) clean and remove from its own Work and from all contiguous work of others any soiling, staining, mortar, plaster, concrete or dirt caused by the execution of its Work and make good all defects resulting therefrom, (3) at the completion of its Work in each area, perform such cleaning as may be required to leave the area "broom clean", and (4) upon Final Completion, remove all of its tools, equipment, scaffolds, shanties and surplus materials. The Project site shall be kept reasonably neat and clean at all times to eliminate hazards, reduce hazard from fire, and to allow easy circulation for workers and materials. Any sidewalk, roadway, or temporary passageway used by the public must be kept clean and safely usable at all times. In the event the Developer fails to cause the General Contractor to clean up as required, the Lessee may give five (5) days' notice to the Developer, which shall be considered given when submitted in writing to the Developer Representative. After five (5) days, if the deficiency has not been remedied to the Lessee's satisfaction, the Lessee may proceed with the required clean up and deduct the cost thereof, including the cost of additional services of the Lessee's Representative, from any amounts due to the Developer.

2.19 Lessee's Right to Stop Work. If the Developer fails to correct material non-conformances in the Work, fails to carry out Work generally in accordance with the Contract Documents, fails to make material submissions in accordance with the Contract Documents, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials or equipment so as to be able to complete the Work within the Project Timeline, and fails within a ten (10) day period after receipt of written notice from the Lessee to commence and continue correction of such default or neglect with diligence and promptness, the Lessee may issue a written order to the Developer to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Lessee to stop the Work shall not give rise to a duty on the part of the Lessee to exercise this right for the benefit of the Developer or any other person or entity.

2.20 Lessee's Right to Carry Out the Work. If the Developer defaults or neglects to carry out the Work in accordance with the Contract Documents that materially impacts the Project and fails within a ten (10) day period after receipt of written notice from the Lessee to commence and continue correction of such default or neglect with diligence and promptness, the Lessee may, immediately and without further notice, without prejudice to other remedies the Lessee may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Developer the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Developer are not sufficient to cover such amounts, the Developer shall pay the difference to the Lessee.

2.21 Equal Opportunity. During the performance of this Agreement, the Developer agrees as follows:

(a) The Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin;

(b) The Developer shall take affirmative action in regard to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, and selection for training, so as to ensure that applicants are employed and that employees during employment are treated without regard to their race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin;

(c) The Developer shall state in all solicitations or advertisements for employees placed by or on behalf of the Contractors that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin;

(d) The Developer shall post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of the nondiscrimination clauses required by this section; and

(e) The Developer shall send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the Contractor's commitments under the nondiscrimination clauses.

ARTICLE III. PAYMENTS

3.1 Applications for Payment.

(a) Before submitting the first application for payment, the Developer shall provide a Schedule of Values to the Lessee, consisting of a breakdown of the GMP, with a separate line item for Professional Services.

(b) Included with each application for payment, the Developer shall submit statements and waivers of lien covering all portions of the Work for which disbursement is required to a date specified therein and covering all Work to a reasonably current date, all in compliance with the mechanic's lien laws of the Commonwealth of Kentucky and with the requirements of the Lessee and any financing requirements of the Project, together with invoices and other supporting data, including but not limited to statements and waivers of liens from Contractors and first tier Subcontractors invoicing an amount in excess of \$10,000 for the Project, as the Lessee or any Project lender or financier may require to satisfy each that all monies due any person or party are known and paid, and that any lien or claim for the Work to such date is waived or released, and that the Project remains lien free and claim free.

3.2 Progress Payments.

(a) On or before the 10th day of each month after the Work has commenced, the Developer shall submit to the Lessee and the Bank an application for payment in accordance with the Schedule of Values based upon the Work completed and materials suitably stored on the Project site or at other locations approved in writing by the Lessee. Approval of payment applications for such stored materials shall be conditioned upon submission by the Developer of bills of sale and applicable insurance or such other procedures satisfactory to the Lessee to establish the Lessee's title to such materials, or otherwise to protect the Lessee's interest including transportation to the site.

(b) Within fifteen (15) days after receipt of each monthly application for payment, the Lessee shall complete and issue to the Developer the Certification for Payment in substantially the form attached hereto as Exhibit R of the Lessee's acceptance or rejection, in whole or in part, of such application for payment.

(i) Lessee Approval. If such application is approved in whole by the Lessee, the Developer shall submit the Certification for Payment to the Bank to process and issue payment for the agreed upon application for payment amount.

(ii) Lessee Rejection. If such application is rejected in whole or in part, the Lessee shall indicate the reasons for its rejection. If the Lessee and Developer cannot agree on a revised amount, then, simultaneously, (i) the Developer shall submit to the Bank to process the Certification for Payment and issue payment for the undisputed amount; and (ii) the PIA will review and certify the disputed amounts due, if any, to the Developer and the Developer will issue the Certification for Payment in such amounts as the PIA deems appropriate. Developer shall submit to the Bank the Certification for Payment to pay Developer the appropriate amount for those items disputed by Lessee but approved by the PIA for which application is made, less amounts previously paid by the Lessee and retainage, in accordance with Subsection (b) above. Those items rejected by the PIA shall be due and payable when the reasons for the rejection have been removed, as certified by the PIA. In no event shall the Bank be entitled to issue payment to Developer for any disputed amounts not approved by the PIA pursuant to this Article III.

(c) Undisputed payments due to Developer that are delayed by Lessee, less any amount of allowable retainage, shall bear interest commencing thirty (30) days after the later of (i) such payment is due, (ii) the General Contractor has submitted all documentation required by the Bank in connection with the application for payment, and (iii) the Bank has conducted its inspections in connection with such application for payment, at one percent (1%) interest per annum. Notwithstanding the foregoing, in no event shall the Lessee be liable to the Developer for any interest wherein any untimely payments are not due to the acts, omissions, or other fault of the Lessee.

(d) The Developer warrants and guarantees title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or

not, will upon receipt of such payment by Developer be free and clear of all liens, claims, security interests, or encumbrances.

(e) The progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

(f) Within fifteen (15) days after receipt of the Developer's application for payment after Substantial Completion of the Work, the Lessee shall complete and issue to the Developer the Certification for Payment, therein entitling the Bank to pay the Developer the unpaid balance of the GMP that is due and owing, less a sum equal to two hundred percent (200%) of the Lessee's reasonably estimated cost of completing any non-conforming, defective and/or incomplete Work. The Lessee thereafter shall complete and issue to the Developer a final Certification for Payment upon completion of all such items, therein entitling the Bank to pay the Developer the final payment.

(g) The Developer shall pay each Contractor no later than the time period required by applicable law, but in no event more than seven (7) days after receipt of payment from the Bank the amount to which the Contractor is entitled, reflecting percentages actually retained from payments to the Developer on account of the portion of the Work performed. The Developer shall, by appropriate agreement, require the Contractors to make payments to Subcontractors in a similar manner.

(h) Subject to Sections 3.2(a) and (b), it is the intent of the Developer and Lessee to cause the General Contractor to be paid by the 25th day of each month following the month of the monthly application for payment.

3.3 Retainage. Until fifty percent (50%) of the Project has been completed in accordance with the Contract Documents, the Lessee and/or Bank shall withhold ten percent (10%) retainage from the amount of any undisputed payment due, and after fifty-one percent (51%) of the Project has been completed, there shall be no additional withholding of retainage on subsequent Applications for Payment so that five percent (5%) retainage is withheld at the time of Substantial Completion. Said retainage only applies to construction activities and not design activities.

3.4 Adjustment of Application for Payment. Subject to the written approval of the PIA, the Lessee may adjust or reject an application for payment or, upon five (5) business days' prior notice and Developer's failure to commence cure within said five (5) business days and thereafter diligently cause completion of such cure, nullify a previously issued Certification for Payment, in whole or in part, as may reasonably be necessary to protect the Lessee from loss or damage based upon the following:

(a) The Developer's failure to perform the Work as required by the Contract Documents that materially impacts the Project;

(b) Except as accepted by the insurer providing Builder's Risk or other property insurance covering the Project, loss or damage arising out of or relating to this Agreement and caused by Developer to Lessee or others to whom the Developer or Lessee may be liable;

(c) Developer's failure to pay its Contractors following receipt of payment from the Bank for that portion of the Work or for supplies, provided the Bank is making payments to the Developer in accordance with this Agreement;

(d) Damaged or defective Work that materially impacts the Project, including design and construction, not remedied;

(e) Material damage to the Lessee or a separate contractor;

(f) Reasonable evidence of delay in performance of the Work that will more likely than not cause the Work to not be completed by the Target Completion Date or the Final Completion Date, and that the unpaid balance of the GMP is not sufficient to offset damages that more likely than not will be sustained by the Lessee as a result of the anticipated delay;

(g) Reasonable evidence demonstrating the unpaid balance of the GMP is more likely than not insufficient to fund the cost to complete the Work;

(h) Material third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Lessee is provided by the Developer; and

(i) Failure of the Developer to comply with any material provision of the Contract Documents.

The Lessee will not be deemed to be in default of the Agreement by reason of (1) withholding a Certification for Payment, in whole or in part, while any of the foregoing grounds remain uncured or (2) the Bank withholding payment as permitted by Section 3.2 or this Section 3.4. When the above reasons for withholding payment are removed, as determined by the PIA, the PIA will complete and issue to the Developer a Certification for Payment entitling the Bank to issue payment of the withheld amount within thirty (30) days of written notice of removal of such reasons.

3.5 Final Completion and Payment.

(a) Neither final payment nor any remaining retained percentage shall become due until the Developer submits to the Lessee in form and substance reasonably satisfactory to the Lessee (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Lessee or the Lessee's property might be responsible or encumbered, (less amounts withheld by the Lessee or Bank) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Developer knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the drawings marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, (7) if required by the Lessee, evidence from the Developer it has paid the Contractors and from the Contractors

that they have paid to Subcontractors the amounts that they were entitled to receive out of the previous payments received from the Lessee or Bank, (8) final waivers of lien from the Developer and the Contractors and from all first tier Subcontractors invoicing an amount in excess of \$10,000.00 for the Project, (9) documentation of operation and maintenance training of all systems, all final certifications, guarantees, assignments of all applicable warranties and guarantees and similar documents, (10) the Developer has left the Project in a clean condition and repaired and/or restored any items damaged by Developer, (11) all temporary facilities for the site, along with construction tools, forms, and similar components have been removed, (12) all unused excess materials and specified attic stock from the Project have been delivered to the Lessee unless otherwise directed in writing by the Lessee, and (13) all lien waivers and releases required to release construction lien rights from the Developer and the Contractors and from all first tier Subcontractors invoicing an amount in excess of \$10,000.00 for the Project. In addition, neither final payment nor any remaining retained percentage shall become due until the Lessee receives all permits and certificates of occupancy relating to the Developer's scope of Work and necessary for the operation and occupancy of the Project.

(b) If the Developer does not accomplish Final Completion by the Final Completion Date, the Lessee may thereafter engage other contractors to complete the remaining Work. The Lessee may deduct its resulting costs and expenses from amounts otherwise payable to the Developer, and Developer shall reimburse the Lessee for any expenses the Lessee does not deduct within ten (10) days after demand.

(c) Final payment by the Lessee or Bank or occupancy or use by Lessee, in whole or in part, shall not constitute or operate as a waiver of any claims relating to or arising out of this Agreement, the Project or the Work.

(d) In accepting final payment, the Developer waives all claims except those expressly made in writing at the time of submission of its final application for payment.

3.6 Limitation on Payment Obligation. Notwithstanding anything in this Article III or elsewhere in this Agreement to the contrary, the obligation of Lessee to make payments to the Developer for its services rendered hereunder shall be strictly limited to amounts which are disbursed by the Bank under the Construction Loan, the Preliminary Budget or the GMP, or amounts which are available under the Lease following the issuance of the Lease Obligations. The Developer shall have no recourse against Lessee except in regard to amounts which are disbursed by the Bank under the Construction Loan, or are in the Preliminary Budget or the GMP, or are amounts which are available under the Lease following the issuance of the Lease Obligations.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Lessee. The Lessee represents and warrants that the following matters are true and correct as of the date of this Agreement and shall be true and correct throughout the term of this Agreement:

(a) To the Lessee's knowledge, all of the documents provided to the Developer by the Lessee are true, correct, and complete in all material respects.

(b) There are no actions, suits or proceedings pending or threatened against or affecting the Lessee which could impair the Lessee's ability to perform its obligations under this Agreement.

(c) This Agreement and all of the documents or instruments being executed in connection with the transactions contemplated hereunder (i) have been duly authorized, executed and delivered, (ii) are the legal, valid and binding obligations of the Lessee, enforceable against it in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium, and other principles relating to or limiting the rights of contracting parties generally), and (iii) do not violate any provision of any agreement to which it is a party or to which it is subject.

(d) No brokerage commission, finder's fee or other similar compensation is payable in connection with the transactions contemplated hereunder.

4.2 Representations and Warranties of the Developer. The Developer represents and warrants that the following matters are true and correct as of the date of this Agreement and shall be true and correct throughout the term of this Agreement:

(a) To the Developer's knowledge, all of the documents provided to the Lessee by the Developer are true, correct and complete in all material respects.

(b) There are no actions, suits or proceedings pending or threatened against or affecting the Developer which could impair the Developer's ability to perform its obligations under this Agreement.

(c) The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Kentucky and qualified to do business in the Commonwealth of Kentucky.

(d) This Agreement and all of the documents or instruments being executed in connection with the transactions contemplated hereunder (i) have been duly authorized, executed and delivered, (ii) are the legal, valid and binding obligations of the Developer, enforceable against it in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally), and (iii) do not violate any provision of any agreement to which it is a party or to which it is subject.

(e) No brokerage commission, finder's fee or other similar compensation is payable in connection with the transactions contemplated hereunder.

4.3 Definition of Knowledge. Whenever a representation or warranty is made in this Agreement to the "knowledge" of a Party, such representation and warranty shall be limited to (a) facts and circumstances within the actual and present knowledge of such Party, and (b) facts and

circumstances that were disclosed in any written notice at any time received by such Party. The knowledge of the Lessee is limited to the present knowledge after due inquiry of its Mayor.

ARTICLE V. INDEMNIFICATION

5.1 Indemnification Obligations. The Developer shall indemnify, defend (with counsel reasonably satisfactory to the Lessee), and hold harmless the Lessee, its affiliates, and their respective officers, directors, agents, employees, and representatives ("Lessee Indemnitees") from and against, and compensate such persons for, all liabilities, expenses, costs, damages, losses and claims, including the advancement of litigation costs and attorneys' fees, arising out of or relating to the negligence or willful act or omissions or breach of this Agreement by the Developer, its employees, agents or consultants, or any persons for whom they may be responsible; provided, however, that the Developer shall not be required to indemnify a Lessee Indemnatee to the extent the loss was caused by the Lessee Indemnatee's own negligence or willful misconduct. The Developer's liability and responsibility to the Lessee shall survive termination or expiration of this Agreement; however, the Developer's duty to defend (but not its duty to indemnify and hold harmless) pursuant to this Section 5.1 shall not apply to professional errors and omissions and shall expire two (2) years after Substantial Completion.

No claim, cause of action, or right of action of the Lessee Indemnitees under this Section shall be deemed to have accrued, and the running of any statute of limitations or rule of repose applicable to any claim, right, or cause of action of any Lessee Indemnatee arising under this Section shall not be deemed to have commenced, until such Lessee Indemnatee has received a specific and explicit written demand or suit asserting the specific claim for which defense and indemnification is subsequently sought from Developer by such Lessee Indemnatee. The Developer's obligations under this Section do not limit any other right or obligation of indemnity that exists in favor of any Indemnatee.

5.2 Successors and Assigns. The indemnification obligations set forth in this Article V are intended to and shall include the indemnification of all affected officers, members, managers, officials, directors, trustees, employees, and agents of each Party seeking indemnification, respectively, and their successors and permitted assigns. All insurance required to be maintained pursuant to this Agreement is in support of, and not in satisfaction of the Developer's indemnification obligations. The indemnification obligations are intended to and shall be enforceable thereby to the full extent permitted by law and shall survive the termination of this Agreement.

5.3 No Limitations on Damages. In claims against any person or entity indemnified under Section 5.1 by an employee of the Developer or a Contractor or Subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 5.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Developer or its architect, engineer or contractor or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

5.4 Contractors. The Developer shall include in its agreements with its Contractors indemnification language substantially similar to that in this Article V, wherein the Contractors shall be required to defend and indemnify the Lessee to the same extent to which the Developer is required to do so pursuant to this Article V.

ARTICLE VI. DEFAULT AND TERMINATION

6.1 Events of Default. Any one or more of the following events (each an “Event of Default”) shall constitute a breach of this Agreement:

(a) The filing by the Developer of any petition for dissolution or liquidation of the Developer, or the commencement by the Developer of a voluntary case under any applicable bankruptcy, insolvency or other similar law for the relief of debtors, foreign or domestic, now or hereafter in effect, or the Developer shall have consented to the entry of an order for relief in an involuntary case under any such law, or the appointment of or taking possession by a receiver, custodian or trustee (or other similar official) for the Developer or any substantial part of its property, or a general assignment by the Developer for the benefit of its creditors, or the Developer shall have taken any corporate action in furtherance of any of the foregoing; or the filing against the Developer of an involuntary petition in bankruptcy that results in an order for relief being entered or, notwithstanding that an order for relief has not been entered, the petition is not dismissed or stayed within ninety (90) days of the date of the filing of the petition, or the filing under any law relating to bankruptcy, insolvency or relief of debtors of any petition against the Developer that either (i) results in a finding or adjudication of insolvency of the Developer, or (ii) is not dismissed or stayed within ninety (90) days of the date of the filing of such petition;

(b) The Developer shall fail to maintain or cause to be maintained insurance as required by this Agreement;

(c) The Developer shall fail to meet a milestone set forth in the Project Timeline which will, subject to (i) delays attributable to Lessee, (ii) unforeseen conditions described in Section 2.16, or (iii) Force Majeure, materially adversely impact the ability of the Project to achieve Substantial Completion by the Target Completion Date;

(d) The Developer shall breach in any material respect any of its representations or warranties under this Agreement or shall fail to observe or perform any material term, covenant or condition of this Agreement;

provided, however, such failure or breach pursuant to Sections 6.1(c) and (d), shall not constitute an Event of Default so long as the Developer cures such failure or breach within seven (7) days of written notice from the Lessee; and if such failure is of such a nature that it cannot be corrected within such seven (7) day period and the Lessee, in its reasonable discretion, agrees such failure cannot be corrected in such a period, institutes curative action within seven (7) days, diligently pursues such action to completion and cures such failure within a reasonable period. Notwithstanding the foregoing and for the sake of clarity, the seven (7) day period shall apply to

an Event of Default under Sections 6.1(c) and (d) only. Each of Section 6.1(a) and (b) shall constitute an Event of Default immediately upon such failure.

6.2 Remedies; Remedies Cumulative.

(a) If an Event of Default shall have occurred, the Lessee shall have all other rights available at law, in equity or otherwise, including without limitation, the right to (i) remove and replace the Developer as the developer of the Project, or (ii) require the Developer to complete, or cause to be completed, all or any part of the Project. In either such event, the Developer shall hold the Lessee harmless from any damages or additional costs arising from the Event of Default. In the event that the Lessee elects to remove and replace the Developer as developer of the Project the Lessee shall (i) assume control of the Developer's work and oversee completion of the Project; and (ii) cause Developer to be released from all liability under the Construction Loan. The Lessee shall send written notice of such assumption to the Developer and any leasehold mortgagee and, upon receipt of such notice, the Developer shall forthwith assign to the Lessee or its designee all of the Developer's and its affiliates' right, title and interest in and to any and all construction and professional service contracts (including the contract with the General Contractor) and related agreements and warranties, all payment, completion, construction or surety bonds, any and all insurance policies and all funds then remaining in the accounts subject to the terms of any construction escrow agreement, and all other documents and things reasonably requested by the Lessee or its designee to allow the Lessee or its designee to complete the Work and operate the Project in the manner contemplated by this Agreement.

(b) Remedies for Failure to Meet Target Completion Date. The Parties recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Lessee if the Project does not reach Substantial Completion by the Target Completion Date. Accordingly, instead of requiring any such proof, the Parties agree that if the Developer does not reach Substantial Completion by the Target Completion Date for reasons other than (i) delays attributable to the Lessee, (ii) unforeseen conditions described in Section 2.16, or (iii) Force Majeure, then the Developer shall pay the Lessee the following as liquidated damages for delay (but not as a penalty):

\$5,000.00, for each day that expires from the Target Completion Date until the Project reaches Substantial Completion.

(c) No failure to exercise and no delay in exercising, on the part of any Party to this Agreement, any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Substantial Completion of the Project will not relieve Developer of its obligation to achieve Final Completion of the Project. The rights, remedies, powers and privileges provided in this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

(d) When the Lessee terminates the Agreement for an Event of Default, the Developer shall not be entitled to receive further payment until the Work is finished and shall otherwise remain liable to the Lessee for all damages incurred as a result of the Event of Default.

6.3 Suspension for Convenience. The Lessee may, without cause, order the Developer in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Lessee may determine. The GMP and Project Timeline shall be adjusted for increases in the cost and time caused by such suspension, delay or interruption. No adjustment shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Developer is responsible; or (ii) that an equitable adjustment is made or denied under another provision of the Agreement. In case of such suspension for convenience, the Developer shall be entitled to compensation for Work properly executed and actual and reasonable costs incurred by reason of such suspension, along with reasonable overhead and profit on the Work executed including stored materials.

6.4 Termination for Convenience.

(a) The Lessee may, at any time, terminate the Agreement for the Lessee's convenience and without cause.

(b) Upon receipt of written notice from the Lessee of such termination for the Lessee's convenience, the Developer shall: (i) cease operations as directed by the Lessee in the notice; (ii) take actions necessary, or that the Lessee may direct, for the protection and preservation of the Work; (iii) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Contractors (except those contracts or purchase orders subject to assignment pursuant to this Agreement) and enter into no further Project agreements and purchase orders; (iv) where directed by the Lessee, immediately transfer to the Lessee all materials, supplies and work in progress acquired by the Developer in connection with the performance of the Work; and (v) immediately deliver all plans, drawings, specifications and other necessary information to the Lessee.

(c) In case of such termination for the Lessee's convenience, the Developer shall be entitled to compensation for Work properly executed and actual and reasonable costs incurred by reason of such termination, along with reasonable overhead and profit on the Work executed which shall also include payment for materials stored onsite or, if stored offsite, upon Developer's prompt delivery of such offsite materials.

(d) In case of such termination for the Lessee's convenience, Lessee shall cause Developer to be released from all liability under the Construction Loan.

6.5 Conversion to Termination for Convenience. Upon a determination that a termination of this Agreement by the Lessee other than a termination for convenience under Section 6.4 was wrongful or improper for any reason, such termination shall automatically be deemed converted to a convenience termination under Section 6.4, and the Developer's remedy for such wrongful termination shall be limited to the recoveries specified under Section 6.4.

ARTICLE VII.
CLAIMS AND DISPUTE RESOLUTION

7.1 Claims.

(a) Definition. A “Claim” is a demand or assertion by the Lessee or the Developer seeking, as a matter of right, payment of money, adjustments to the GMP or Project Timeline, or other relief with respect to, arising out of or relating to the Agreement.

(b) Notices.

(i) Prior to Final Payment, a party must initiate by written notice to the other party and the PIA (if applicable to the claim at issue) within: (a) the later of 21 days after occurrence of the event giving rise to such Claim or 21 days after the Lessee or the Developer first recognizes the condition giving rise to the Claim; or (b) any other notice requirements provided in the Contract Documents, whichever is shortest.

(ii) After Final Payment, Claims by the Developer that have not otherwise been waived under this Agreement must be initiated by prompt written notice to the Lessee.

(c) Continued Performance. Pending final resolution of a Claim, except as directed in writing by the Lessee, the Developer shall proceed diligently with performance of the Agreement and continue to instruct the Bank to make payments in accordance with the Contract Documents.

(d) Claims for Additional Cost. If the Developer intends to make a Claim for an increase in the GMP, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Such notice to Lessee shall include, to the extent then known by Developer, full details and substantiating data to permit evaluation by the Lessee. If further, or other, information subsequently becomes known to the Developer, it shall be promptly furnished to the Lessee in writing. The Developer shall be entitled to an equitable increase in the GMP for delays caused by the acts or omissions of Lessee; however, for all other delays, the Developer’s sole remedy for delays shall be an equitable increase in the Project Timeline, without increase in the GMP.

(e) Claim for Additional Time. If the Developer intends to make a Claim for an increase in the Project Timeline, written notice as provided herein shall be given. The Developer’s Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

7.2 Dispute Resolution Procedure.

(a) Direct Discussions. If the Parties cannot reach resolution on a Claim, dispute or other matter in controversy relating to or arising out of this Agreement (a "Dispute"), the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the Parties' representatives are unable to resolve the Dispute within five (5) business days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that a resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) business days to endeavor to reach a resolution. If the Dispute remains unresolved after fifteen (15) days from the date of first discussion, the Parties shall submit such Dispute to the dispute resolution procedures provided below.

(b) Mediation. If direct discussions pursuant to Section 7.2(a) do not result in resolution of the Dispute, the Dispute shall be subject to mediation as a condition precedent to binding dispute resolution. Mediation shall be administered by the American Arbitration Association (the "AAA") in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement, unless the Parties mutually agree otherwise. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of mediation shall be shared equally by the Parties.

(c) Binding Dispute Resolution. If mediation is unsuccessful in resolving the Dispute, the Parties may litigate the matter in the Fayette County Circuit Court.

7.3 Attorneys' Fees. The prevailing party in any litigation arising from or relating to this Agreement shall be entitled to recover its attorneys' fees and Court fees from the other Party.

ARTICLE VIII. MISCELLANEOUS

8.1 Anti-Discrimination. In recognition that applicable federal and state anti-discrimination law, including but not limited to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, as amended, and the Kentucky Equal Employment Opportunity Act, KRS 45.560 to KRS 45.640, prohibits discriminatory exclusionary barriers to participation by protected individuals and businesses in Lessee procurements based on race, color, national origin, sex, age, and disability, and in furtherance of Lessee's ongoing efforts to eliminate discriminatory exclusionary barriers and to enhance procurement opportunities for protected individuals and businesses, Developer shall exhaust all reasonable efforts, to the maximum extent practicable, to utilize certified disadvantaged business enterprises, minority-owned, women-owned and veteran owned small businesses, based on their availability to perform services in the local market, in subcontracting for the project.

8.2 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. The Parties hereby agree that all demands, claims, actions, causes of action, suits, proceedings and litigation between or among the Parties or arising out of this Agreement shall be filed, tried, and litigated only in the Fayette Circuit Court, Commonwealth of Kentucky. In connection with the foregoing, the parties hereto irrevocably consent to the jurisdiction and venue of such courts and expressly waive any claims or defenses of lack of jurisdiction of or proper venue by such courts.

8.3 Waiver of Consequential Damages. The Parties waive claims against each other for consequential, punitive, indirect and special damages arising out of or related to this Agreement, whether in contract or tort, including but not limited to the loss of anticipated profit. Notwithstanding the foregoing, nothing in this Section shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

8.4 Exhibits, Entire Agreement, Beneficiaries. All exhibits referred to herein shall be considered a part of this Agreement as fully as if and with the same force and effect as if such exhibit had been included herein in full. This Agreement, and all the agreements and exhibits identified herein, represent the entire agreement between the Lessee and the Developer with regard to the Project and all prior agreements are superseded hereby. This Agreement is for the sole benefit of the Lessee and the Developer and for any mortgagees of any mortgage that the Developer shall hereafter execute, and no other party other than those specifically listed in this Agreement are benefited hereby.

8.5 Relationship of the Parties. The relationship of the Parties shall be limited to the development and construction of the Project. The Parties shall act as independent contractors of each other with regard to this Agreement. Nothing herein shall be deemed to create a partnership or joint venture between the Parties, nor to authorize either Party to act as an agent for the other. All personnel and staff of each Party shall be and remain employees or agents of, or independent contractors with, that Party and not of or with the other Party. Neither Party shall represent to any third-party that the Parties are partners, co-venturers or principal and agent, or have any other relationship other than that of independent contractors with regard to this Agreement.

8.6 No Waiver. The failure of any Party to seek redress for violation, or to insist upon the strict performance of any covenant, agreement, provision, or condition of this Agreement shall not constitute a waiver of such strict performance and the Parties shall have all remedies provided in this Agreement and by applicable law with respect to any subsequent act which would originally constitute a violation.

8.7 Interpretation. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. The paragraph headings used in this Agreement are intended for reference purposes only and shall not be considered in the interpretation of the terms and conditions of this Agreement. No provision of this Agreement is to be interpreted for or against either Party because that Party or its legal counsel drafted such provision. In the case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to

this Agreement; (b) this Agreement; (c) design documents approved by Lessee under Article I; (d) the RFP and all attachments and addenda; (e) procurement statutes, regulations, policies, and ordinances; (f) any best and final offer; (g) any clarifications concerning the Developer's Proposal; and (h) the Developer's Proposal. Except as otherwise provided, among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Where figures are given, they shall be preferred to scaled dimensions. Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meaning.

8.8 Severability. If one or more of the provisions of this Agreement (including items incorporated by reference) or any application of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions of this Agreement and any other application of such provisions shall in no way be affected or impaired.

8.9 Amendments and Assignments. This Agreement may be amended, from time to time, only with the written consent of the Lessee and the Developer. This Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent may be withheld in the discretion of the non-assigning Party.

8.10 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument.

8.11 Notices. All notices, demands, requests, consents and other instruments required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly delivered and deemed to have been received (a) upon personal delivery, (b) two (2) business days after deposit with a nationally recognized overnight delivery service, (c) if mailed, upon the first to occur of actual receipt or four (4) business days after being placed in the United States mail, postage prepaid, registered or certified mail, with return receipt requested, or (d) upon receipt of electronic confirmation of receipt in the event of delivery by facsimile or electronic mail (provided that a copy of such correspondence is also delivered by one of the methods described in (a) – (c) above within one (1) day following delivery of such facsimile or electronic mail). The addresses to which notices shall be sent are set forth below. Notice of any change in address by any of the Parties to this Agreement shall be given in writing to the other Party as provided above, and shall be effective only upon actual receipt:

If to the Lessee, to:

Lexington-Fayette Urban County Government
Attn: [NAME]
[ADDRESS]
[ADDRESS]
[EMAIL]

With a copy to: Frost Brown Todd LLP
Attn: Jason Halligan
325 West Main Street, Suite 301
Lexington, KY 40507
jhalligan@fbtlaw.com

If to Developer, to:

LOF Development, LLC
c/o Donald Vittitow

E-mail: _____

Facsimile: _____

With a copy to: LOF Development, LLC
c/o Ron Tritschler

E-mail: _____

Facsimile: _____

If to the General Contractor, to:

Doug Wilburn

E-mail: _____

Facsimile: _____

Each of the Lessee and the Developer shall designate a representative (hereinafter the "Lessee Representative" and the "Developer Representative"), who each shall be authorized to receive such oral notices as may be made from time to time under the Agreement (but only if and when oral notices are expressly permitted under this Agreement), perform such actions as are specifically assigned to said representative under this Agreement and act on behalf of the Parties on a day-to-day basis with respect to the Project. A Party may change its representative on ten (10) days' prior written notice to the other Party.

The initial Lessee Representative shall be [INSERT NAME].

The initial Developer Representative shall be [INSERT NAME].

8.12 Additional Acts. In connection with this Agreement, as well as all transactions contemplated by this Agreement, the Lessee and the Developer each agree to work in good faith and execute and deliver such additional documents and instruments and take all such necessary action and perform such additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement and all such transactions; provided, however, this Agreement may be modified only in accordance with the terms hereof.

8.13 Announcements. Except as may be required by law or Governmental Authorities, the Parties shall agree on the content and date of any public announcement or statement concerning the existence of this Agreement or its subject matter or anything related to the Project.

8.14 Preliminary Design Services Agreement. The Parties may enter into a Preliminary Design Services Agreement (attached herein as Exhibit J), which will set forth a limited scope of work for certain design services subject to the terms of this Agreement.

8.15 Kentucky Local Government P3 Board. This Agreement, as part of the overall P3 Agreement, shall not be binding until approved by the LFUCG Council and, if applicable, by the Kentucky Local Government P3 Board pursuant to KRS 5.028(12), upon which the Lessee shall issue a Full Notice to Proceed, attached hereto as Exhibit P. The Full Notice to Proceed shall constitute the "final execution" of the P3 Agreement for the full scope of work as contemplated by KRS 65.028(12)(c). If the P3 Agreement is not approved in full by the P3 Board, the Parties agree to work in good faith to modify the P3 Agreement in a mutually acceptable manner for the Board's reconsideration, if applicable.

[Remainder of page intentionally blank. Signatures appear on the following pages.]

**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT**

Approved as to Legal Form for the Lessee:

IN WITNESS WHEREOF, I hereto affix my hand and official seal at _____,
Kentucky, this ____ day of _____, 20__.

Notary Public

[Lessee Signature Page to Development Agreement]

LOF DEVELOPMENT, LLC
a Kentucky limited liability company

By: _____
Its:

STATE OF KENTUCKY)
) SS:
_____ COUNTY)

BEFORE ME, a Notary Public, in and for said county and state, personally appeared [____], the [____], of LOF Development, LLC (the "Developer"), a Kentucky limited liability company, for and on behalf of said corporation, who acknowledged that he did sign the foregoing instrument and the same was his free act and deed and the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I hereto affix my hand and official seal at _____, _____, this ____ day of _____, 20__.

Notary Public

[the Developer Signature Page to Development Agreement]

Exhibit A:

LFUCG Center Public-Private Partnership Request for Proposals

Exhibit B:
Developer Proposal and Oral Presentation Slides

Exhibit C:
Basis of Design

Exhibit D:
Council Ordinance #xxx-2025

Exhibit E:
Project Description

Exhibit F:
Description of Project Site

Exhibit G:
Project Timeline
(Subject to change)

Exhibit H:
Project Preliminary Budget

Exhibit I:
Preliminary Site Plans
(Subject to Change)

**To be added upon final adjustments to Preliminary Site Plans
and agreement of Lessee and Developer**

Exhibit J:
Preliminary Design Services Agreement

Exhibit K:
Commonwealth Economic P3 Study and Report

Exhibit L

Kentucky Local Government P3 Board Determination

Exhibit M

Ad Valorem Status Declaration – Fayette County PVA

Exhibit N

Sales Tax Exemption Declaration – Kentucky Department of Revenue

Exhibit O

Development Agreement Amendment

Exhibit P:

Full Notice to Proceed

In accordance with the Development Agreement signed by the Lexington-Fayette Urban County Government and the LOF Development, LLC on [], 2025 (the "P3 Agreement"), and following the Kentucky Local Government P3 Board's approval of the P3 Agreement and the Lexington-Fayette Urban County Government's full execution of the P3 Agreement, the Lexington-Fayette Urban County Government hereby as of the date of [] provides to the LOF Development, LLC the Full Notice to Proceed with the full scope of Work of the P3 Agreement.

Lexington-Fayette Urban County Government

By: _____ its authorized representative

Title: _____

Exhibit Q:
Lease Agreement

Exhibit R
Certificate for Payment