



CITY OF DELAND
MEETING OF THE DELAND CITY COMMISSION AND THE DOWNTOWN
COMMUNITY REDEVELOPMENT AGENCY
JULY 5, 2023 AT 6:30 PM
CITY COMMISSION CHAMBERS, CITY HALL
120 SOUTH FLORIDA AVENUE
AGENDA

CALL TO ORDER

ROLL CALL

NEW BUSINESS

1. Consideration re Glasshouse Contract.

ADJOURNMENT

The DeLand City Commission holds its regular meetings on the first and third Mondays of each month at 7:00 p.m. in the DeLand City Commission Chambers, 120 South Florida Avenue, DeLand. Notice of special meetings, workshops, changes in dates, times or locations are provided by separate Public Notices, which are posted at City Hall and on the City's web site.

The City of DeLand may take action on any matter during this meeting, including items that are not set forth within this agenda.

Public participation is encouraged on any matter on the agenda. If you desire to be recognized by the Mayor, please fill out a Speaker's Card and present it to the City Clerk.

Minutes of the DeLand City Commission meetings are not transcribed verbatim. If any person decides to appeal a decision made by the City Commission with respect to any matter considered at a public meeting or hearing, he/she will need a record of the proceedings including all testimony and evidence upon which the appeal is to be based. To that end, such person will want to ensure that a verbatim record of the proceedings is made by a court reporter, at the person's own expense.

In accordance with the American Disabilities Act, persons needing a special accommodation in order to participate in the proceedings should notify the City Clerk's Office at least 48 hours in advance of the meeting: 626-7132.

Assisted Listening System receivers are available for the hearing impaired, and can be obtained from the City Clerk.

If you wish to obtain information regarding the City Commission's Agenda, please call the City Clerk's Office: 626-7132.

We respectfully request that all pagers and cell phones be turned OFF during City Commission meetings.

Electronic Information! City Commission agendas and short form minutes are now available on the City's web page: www.deland.org.

CITY OF DELAND

Request for City Commission and Downtown Community Redevelopment Agency Action July 5, 2023

SUBJECT: Consideration re Glasshouse Contract.

DEPARTMENT: Legal

PREPARED BY: Darren Elkind, City Attorney

ATTACHMENTS: Glasshouse Acquisition and Redevelopment Agreement, Z21-186 Glasshouse PD Rendition Letter

APPROVED BY: Michael Grebosz, Asst. City Manager, June 27, 2023

SUMMARY/HIGHLIGHT:

On July 9, 2020, the City of DeLand (the “City”) and the City of DeLand Downtown Community Redevelopment Agency (the “CRA”) entered into an Acquisition and Redevelopment Agreement (the “ARA”) with Glasshouse Square, LLC (“Glasshouse”) for the redevelopment of the former county jail site between New York and Georgia Avenues. The ARA had a whole host of requirements, but central to the contract was the requirement that Glasshouse get a planned development zoning approved for the site (the “PD”). Glasshouse did apply for a PD rezoning but the City Commission, sitting in its capacity as the City’s zoning authority, denied the rezoning request. Absent the granting of a rehearing by the City Commission, the City’s Land Development Regulations prohibit the filing of another application for PD rezoning of the same property for one year. At this point in time City staff is requesting that the City and CRA declare a default under the ARA (a default does not mean that Glasshouse purposefully defaulted – quite the opposite in that they attempted to get the PD approved – but simply that one of the conditions of the ARA was not met) and authorize staff to take all actions necessary to provide any required notice(s) to Glasshouse and otherwise terminate the ARA and wrap the matter up. This meeting is being held for this limited purpose, and the future use of the property will not be addressed at this meeting.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government

SUSTAINABILITY:

N/A

FISCAL IMPACT:

This item does not in and of itself have a direct fiscal impact. Obviously any increased tax and tif revenues related to the proposed project will not be realized.

RECOMMENDATION:

Staff recommends that the City Commission and CRA declare a default, authorize city staff to send a notice of same, and authorize staff to take all actions necessary to subsequently terminate the Glasshouse Acquisition and Redevelopment Agreement.

BACKGROUND/DISCUSSION:

In 2018, the City issued a request for proposals for the redevelopment of the county jail site a. A copy of the ARA is attached to this agenda item. Glasshouse was selected from amongst the proposers. The City, the CRA and Glasshouse entered into a non-binding Memorandum of Understanding (much like the typical letter of intent used in real estate transactions) on May 28, 2019 and ultimately entered into the ARA on July 9, 2020, the effective date of which is also July 9, 2020. The ARA required Glasshouse to submit an application for PD rezoning which it did, but the application was ultimately denied by the City Commission after multiple meetings related largely to the parking components of the project. The proposal submitted by Glasshouse, portions of which were incorporated into the ARA, depicted the development of a significant parking area for the project (see Exhibit C in the attached ARA). The ARA expressly required a private parking lot to serve the needs of the Glasshouse development, but allowed for the specific parking ratios, standards and location to be addressed through the PD rezoning process. Due to the fact that the City's planning staff and Glasshouse could not come to any agreement on the parking element of the project, the matter was brought before the City Commission in advance of the PD rezoning hearing in order to get input from the City Commission on the parking. Ultimately, Glasshouse did not identify a specific off-site parking lot for the PD and also offered to make a per space payment to the City in lieu of actually providing parking. This issue is not germane to the notice of default that is the subject of this agenda item, but it serves to provide some background on the process that has taken place.

At its June 5, 2023 meeting, the City Commission held the first reading of the Glasshouse PD rezoning ordinance and denied the application by a 4-1 vote. The letter notifying Glasshouse of the denial and the reasons therefor is attached to this agenda item. The ARA required Glasshouse to make commercially reasonable efforts to apply for and obtain approval of its plat, site plan and construction permits within 24 months of the effective date (i.e. by July 9, 2022). In order to obtain those permits, Glasshouse first had to have the PD rezoning approved. Since it has not obtained approval of the required PD rezoning, Glasshouse has been unable to meet these additional requirements. The ARA requires the City to provide Glasshouse with 30 days' notice of default and an opportunity to cure. After the expiration of the 30 day period, the City and CRA have the option to terminate the ARA or seek to have a court order Glasshouse to comply with the ARA. Staff is requesting that the City Commission and CRA authorize the issuance of the default notice and direct staff to take all future steps necessary to terminate the ARA.

This item is being heard jointly by the City Commission and the CRA for the limited purpose of declaring a default and directing staff to issue the required default notice and authorizing staff to take all actions necessary to subsequently terminate the ARA. At this meeting there should not be a discussion of the use of the subject property, any other future actions that may be taken, or any other matters which are not directly related to issuing the notice of default and termination of the ARA.

ACQUISITION AND
REDEVELOPMENT AGREEMENT

THIS ACQUISITION AND REDEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the 9th of July, 2020 (the "Effective Date"), by and between the City of DeLand, a Florida municipal corporation (the "City"), the City of DeLand Downtown Community Redevelopment Agency (the "CRA") and GlassHouse Square, LLC, a Florida limited liability company ("GlassHouse").

STATEMENT OF PURPOSE

The City is the owner of certain property with frontage on W. New York Avenue and W. Georgia Avenue which is the former site of the Volusia County Jail, being more particularly described on Exhibit A, attached hereto and incorporated by this reference (the "Property"). The Property is located within the DeLand Downtown Redevelopment District as well as the City's Historic District. The existing jail building is in a deteriorated condition, contains asbestos, is unsightly, and is hindering the continued redevelopment that is and has been occurring in the immediate area in which the jail building is located. The City desires that the Property be redeveloped for a mixed use, in-fill project with a variety of uses including, without limitation, professional offices, retail, commercial, multifamily residential and residential lofts, and entertainment and event spaces, all of which are to be consistent with the aesthetic qualities of downtown DeLand, and in furtherance of the City's Downtown Community Redevelopment Plan, and the Florida Community Redevelopment Act of 1969, Florida Statutes, Chapter 163.

The City is the owner of certain property with frontage on W. Georgia Avenue which is the former site of a Volusia County employee parking lot, being more particularly described on Exhibit B, attached hereto and incorporated by this reference (the "Option Parcel"). The City desires that the Option Parcel be redeveloped for an in-fill project allowing a variety of uses, including, without limitation, retail commercial, multifamily residential and residential lofts, entertainment and event space uses, consistent with the aesthetic of downtown DeLand, and in furtherance of the City's Downtown Community Redevelopment Plan, and the Florida Community Redevelopment Act of 1969, Florida Statutes, Chapter 163.

The City issued a Request for Proposals (the "RFP") seeking private sector proposals for redevelopment of the Property and the Option Parcel, GlassHouse responded to the RFP, and the City selected GlassHouse as the developer with whom it desired to negotiate an agreement for redevelopment of the Property and the Option Parcel. Pursuant to a public hearing on May 28th, 2019, the City and GlassHouse executed a "Memorandum of Understanding" summarizing the development and business terms pursuant to which Glasshouse would redevelop the Property with a mix of uses anchored by the Deltran Operations U.S.A. Inc. world headquarters. The parties desire to enter into a binding contract related to this project as set forth in this Agreement.

GlassHouse is undertaking considerable financial risk by agreeing to develop the Property pursuant to this Agreement. The City, finding this economic development opportunity to be in the best interest of the City and the health, safety and welfare of the citizens of DeLand, has offered to facilitate the downtown redevelopment project by providing certain economic incentives to GlassHouse with the expectation that the City's involvement will encourage and accelerate the timing of the redevelopment, thus generating additional tax revenues, benefiting the downtown economy and enhancing the potential for future development of neighboring properties.

The City finds that City's provision of the economic incentives pursuant to this Agreement constitutes a public purpose, and the Florida Legislature has found that government sponsored public-private arrangements and the promotion and support, including financial assistance, of economic development activities are in the public interest and achieve a public benefit.

The CRA, is a community redevelopment agency created by the City pursuant to the Community Redevelopment Act of 1969, Part III, Chapter 163, Florida Statutes (the "Act") and is charged with undertaking redevelopment functions and managing the tax increment fund for the City of DeLand's Downtown Community Redevelopment Area.

The CRA finds that the obligations undertaken by it pursuant to this Agreement are consistent with the intent and requirements of the Act, and that the provisions of this Agreement are consistent with and further the goals and objectives of the Downtown DeLand Redevelopment Plan.

The parties hereto have agreed to memorialize the terms and conditions pursuant to which the City will convey the Property to GlassHouse and convey the Option Parcel to GlassHouse if GlassHouse exercises its option, and under which GlassHouse shall redevelop the Property and (if applicable) the Option Parcel, and under which the CRA shall pay and otherwise perform as provided herein. Nothing in this Agreement is intended to bind the City, the CRA or any agency or employee thereof with regard to any required zoning or development related approval, receipt of such approvals being a condition of performance by GlassHouse as more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing matters, which are incorporated herein by reference, mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by all parties, the parties hereto agree as follows:

1. **Definitions.** In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings:
 - 1.1. *City Code* - The Code of Ordinances of City of DeLand.
 - 1.2. *Completion* - The date when the City issues certificates of occupancy for the majority of units or certificates of completion (or similar approval) for a majority of units which are ready for tenant/owner finishes before occupancy, for a particular Phase or Project.

- 1.3. *Development Order* - Rezoning to a planned unit development, site plan approval, issuance of a building permit or similar action by the City and all other government entities with jurisdiction over a Project necessary for GlassHouse to develop a Project pursuant to the requirements of this Agreement including, without limitation, all permits required from the U.S. Army Corps of Engineers, St. Johns River Water Management District, Florida Department of Environmental Protection, Florida Department of Transportation, County of Volusia, and the City of DeLand.
- 1.4. *Month* - When used with reference to calculation of dates, shall refer to the monthly anniversary of the starting date or event; for example, two months after February 15, 2020, is April 15, 2020.
- 1.5. *PD Agreement* - The Planned Development Agreement, as amended from time to time, by and between the City and GlassHouse rezoning the Property for the redevelopment program contemplated herein. It is acknowledged that the Option Parcel, if the option therefor is exercised by GlassHouse, will be developed under a separate planned development agreement.
- 1.6. *Parcel* - One of the parcels of real estate upon which a Project or Projects may be constructed. The Parcels shall be described as set forth in Section 3.3 below.
- 1.7. *Phase* - One or more of the phases of development of the Property or, as applicable, the Option Parcel. The term is sometimes used in connection with the Project to be constructed as a Phase. The term is somewhat interchangeable with "Project" but is primarily used with reference to the order of development of a Project vis-à-vis other Projects.
- 1.8. *Project* - One or more of the following development projects contemplated to be developed by GlassHouse under this Agreement:
 - 1.8.1. GlassHouse Square Project - The development of the Property pursuant to this Agreement, as set forth in Section 3.4.1.a.
 - 1.8.2. Option Parcel Project - The plans for development of the Option Parcel pursuant to this Agreement, as set forth in Section 3.4.1.c.
2. **Purpose.** The purpose of this Agreement is to provide for the redevelopment of the Property and, if applicable, the Option Parcel, in accordance with Section 3, so as to enhance the quality of life and the aesthetic and useful enjoyment of the DeLand downtown area, fulfill the goals of the RFP, promote economic development and investment in the downtown area, and further the objectives of the Downtown Community Redevelopment Plan, all while providing GlassHouse with the tools to gain financial reward commensurate with the risk it is undertaking.
3. **Redevelopment Program.** Subject to the provisions of this Agreement, GlassHouse shall redevelop the Property pursuant to the provisions of this Section and the PD Agreement and, if applicable, the Option Parcel pursuant to a separate planned unit development

agreement. GlassHouse's redevelopment of the Property and, if applicable, the Option Parcel, consistent with this Agreement and in furtherance of the RFP and Downtown Community Redevelopment Plan is a material inducement for the City and the CRA to enter into this Agreement. The ability of GlassHouse to redevelop the Property and, if applicable, the Option Parcel, consistent with this Agreement is a material inducement for GlassHouse to enter into this Agreement. GlassHouse shall develop each Project on the Property in a manner which is consistent with the Conceptual Development Plan, attached hereto as Exhibit C and incorporated by reference (the "CDP"). The conceptual development plan for the Option Parcel has not yet been developed, and development of the Option Parcel will be governed by a separate planned unit development agreement that will need to be approved by the City. The obligations as set forth in Sections 3.4.3, 3.5, 5.2.2, 5.2.4, 5.3, 5.6, 5.7, 5.9, 5.10, 5.11, 6.3 and any other provision of this Agreement which expressly survives or by its terms is logically and necessarily intended to survive the conveyance of the Property and, as applicable, the Option Parcel, shall in fact survive the conveyance of the Property and, as applicable, the Option Parcel, to GlassHouse.

3.1. Right to Market. Prior to the earlier of conveyance of the Property and the Option Parcel, or termination of this Agreement, GlassHouse shall have the right to market the Property and the Option Parcel for sale or lease consistent with the CDP. In conducting such marketing activities, GlassHouse shall make clear that it does not act on behalf of, or as an agent of, the City or the CRA. The City agrees that it will not market the Property or the Option Parcel during the term of this Agreement. The City and others on its behalf shall, however, be entitled to advertise, promote and otherwise refer to the redevelopment of the Property and Option Parcel as contemplated by this Agreement. GlassHouse shall also have the right to seek any development order associated with redevelopment of the Property or the Option Parcel consistent with the CDP for the Project, as applicable. The City shall not, during the term of this Agreement, market the Property or the Option Parcel, or attempt to sell or lease either of them, except pursuant to this Agreement or with the express written consent of GlassHouse. GlassHouse's rights to market and redevelop the Property and the Option Parcel consistent with this Agreement is a material term of this Agreement.

3.2. Land Use and Zoning.

3.2.1. The parties intend that the Property and, if applicable, the Option Parcel, be redeveloped as described in this Section 3 and as to the Property as shown on the CDP. The parties understand that the Projects, as may be modified pursuant to the terms of this Section, are not currently consistent with the Property's and Option Parcel's C-2A with Historic Overlay zoning designation but are consistent with their "Downtown Commercial" Future Land Use classifications under the City's Comprehensive Plan. GlassHouse's obligations hereunder are contingent upon obtaining rezoning of the Property and, as applicable, the Option Parcel, to PD, with a PD Agreement in form and content satisfactory to GlassHouse in its sole and absolute discretion, as well as all other necessary Development Orders for Phase 1 and 2, as required for each Project under that Phase as described in

this Agreement. Should the City not approve a PD Agreement acceptable to GlassHouse in its sole and absolute discretion within twelve (12) months of the Effective Date, then GlassHouse may terminate this Agreement by providing notice of termination to the City within thirteen (13) months of the Effective Date, following which this Agreement shall be of no further force or effect. The permitted uses for the Property shall be as provided in the PD Agreement, and for the Option Parcel as provided in a separate planned unit development agreement, provided that nothing herein prevents future amendment of the PD Agreement or any other planned unit development agreement through the City's amendment process. Open space requirements for the Property shall be satisfied with the Green Square/water feature area/gathering space and pedestrian walkway proposed on Parcel 1 and 2, as shown on the CDP. Landscape and hardscape areas, site design, and architectural design shall all be consistent with the CDP.

- 3.2.2. The parties acknowledge that the CDP represents only conceptual development plans for the Property, based on the parties' reasonable understanding of market demands, design feasibility, and urban planning best practices. Additional engineering and market feasibility studies shall be required to ensure an economically viable redevelopment program, which is in all parties' best interests. Therefore, layouts and design of each Project may be modified pursuant to the City's development review process, which changes shall not require amendment of this Agreement provided that the changes are consistent with the other provisions of this Section 3, including those concerning section 3.4.1.

3.3. Parcels.

3.3.1. The Property and the Option Parcel are currently two (2) separate legal lots each of which shall be the location for construction of the Project(s) described with reference thereto, but in the future they may be combined or further subdivided in accordance with the City's subdivision ordinance. The CDP depicts the approximate configurations of the Parcels for the Property.

3.3.2. Each Project shall be constructed on a Parcel. Concurrent with submission of site plan applications for each Project to be developed on the Property and, as applicable, the Option Parcel, GlassHouse shall submit to the City, together with all other documents required by the City's Land Development Regulations, a survey of the legal description of the Parcel or portion of the Parcel upon which the Project is to be constructed.

- 3.4. Redevelopment Program for the Property and Option Parcel. GlassHouse shall redevelop the Property and, as applicable, the Option Parcel, consistent with the CDP, and the provisions of this Section. GlassHouse shall seek to reasonably maximize the redevelopment potential of the Property and, if applicable, the Option Parcel, consistent with economic conditions and in an architectural style that is complementary to the brick architecture which currently exists along Georgia Avenue, as determined by GlassHouse in its reasonable discretion. Except as

otherwise provided in this Agreement, GlassHouse shall undertake the development program set forth in this Section 3 at its sole cost and expense.

3.4.1. The Redevelopment Program for the Property shall be for mixed-use, allowing a variety of uses including office, entertainment, commercial, and if applicable, for the Option Parcel shall allow for such uses and for residential uses, to be developed in Phases, consistent with the terms set forth in the PD Agreement or, as it relates to the Option Parcel, a separate planned unit development agreement, as exists from time to time.

a. The anticipated redevelopment of the Property is described as follows:

PROJECT/ PHASE	PARCEL	STORIES (NOT TO EXCEED)	PERMITTED USE(S)
Phase 1: Building 1	1	3, plus rooftop assembly use space	FIRST FLOOR Up to 10,000 GSF Office*/Commercial to be further defined in the PD Agreement *No more than 30% of 1 st floor space to be office.
			SECOND FLOOR Up to 10,000 GSF office/commercial to be further defined in the PD Agreement
			THIRD FLOOR Up to 10,000 GSF office/commercial to be further defined in the PD Agreement
			ROOFTOP Up to 10,000 GSF Rooftop assembly use space (event space) to be further defined in the PD Agreement. Rooftop space is contemplated to have an elevator landing, enclosed restroom and other incidental enclosures, and all enclosures shall be set back an appropriate distance, to be identified in the PD Agreement, from the edge of

PROJECT/ PHASE	PARCEL	STORIES (NOT TO EXCEED)	PERMITTED USE(S)
			the roof. The top of all enclosures shall be less than eighty (80') feet above the finished floor elevation of the first floor of the building.
			Up to 1,500 GSF of Gallery/ event space.
Phase 2: Building 2	2	2	Ground floor up to 3,500 GSF Office*/Commercial to be further defined in the PD Agreement *No more than 30% of 1 st floor space to be office.
			Second floor up to 5,000 GSF office/commercial, Gallery/event space and/or up to 5 "Artist's Lofts" to be further defined in the PD Agreement
Phase 1: Gathering Space		N/A	Green square / water feature area and/or other gathering space to be further defined in the PD Agreement
Phase 1: Pedestrian Walkway		N/A	To be further defined in the PD Agreement, to include provisions for an easement (the "Easement") for underground utilities, stormwater vaults, emergency access and the right to grant temporary ingress and egress to adjacent property owners with zero lot line buildings for periodic maintenance of those buildings. It is GlassHouse's current intention that the pedestrian walkway will generally remain open for access by members of the public as invitees as is the case with the nearby Artisan Alley. It is also GlassHouse's intention to construct a portion of Building 2 over a portion of

PROJECT/ PHASE	PARCEL	STORIES (NOT TO EXCEED)	PERMITTED USE(S)
			the pedestrian walkway, leaving approximately 14' of airspace from the ground level to the overhanging portion of Building 2.
Phase 1: Private Parking Lot		N/A	Private parking lot to serve needs of GlassHouse, location to be determined in the PD Agreement.

- b. Building 1 in Phase 1 shall be not less than two (2) stories and not less than 20,000 gross square feet.
- c. The anticipated redevelopment of the Option Parcel, if applicable, shall be in accordance with a PD agreement to be entered into in accordance with rezoning of the Option Parcel, and if applicable, other lands. Buildings on the Option Parcel shall be limited to three (3) stories and shall not have any rooftop event space.
- d. Parking may be provided off-site to each Parcel to be developed. Except as otherwise provided, specific parking ratios and standards shall be addressed in the PD Agreement applicable to each Parcel.
- e. Any residential units shall be constructed to provide exterior sound attenuation to standards to be addressed in the PD Agreement. There shall be no residential units on the first floor adjacent to Georgia Avenue.
- f. The references to square feet of non-residential use and number of residential units in Section 3.4.1. are only estimates. Adoption of square footages in the PD Agreement approved by the City through the normal rezoning / development review process shall be deemed to modify this Agreement without the need for any written amendment to this Agreement. If GlassHouse fails within 180 days of the Effective Date to make a complete application for a planned development rezoning, then the City may follow the procedures outlined under Section 9.2 of this Agreement regarding notice and opportunity to cure, and City shall thereafter be entitled to terminate this Agreement.

- 3.4.2. The order of Phases described in Section 3.4.1. is the presently anticipated order of development and is used only for descriptive purposes. For example, GlassHouse may, in its sole discretion, commence development of Phase 2 as the initial Phase of development for the Property. In addition, GlassHouse may commence development of more than one Phase consistent with the terms of this Agreement. In any event, development of the Phases shall be designed to minimize the disruption to the existing public parking on the Option Parcel without unreasonably interfering with construction of the Project(s). The site plan for each Phase shall include measures to mitigate disruption to such existing public parking, which shall be part of the City's review process and shall be depicted on the site plan for each respective Phase. Such mitigation measures may include Glasshouse maintaining its laydown area and all construction staging operations on the Property or on the City's lot located at 224 South Florida Avenue and possibly other measures to avoid impacts to Georgia Avenue. GlassHouse will use its best efforts to ensure that, prior to its provision of substitute public parking that is reasonably equivalent to that which is currently on the Option Parcel, as set forth in Section 3.5 below, its construction force does not park in the public parking currently located on the Option Parcel. The City may implement additional off-site mitigation measures including, but not limited to, informational signage directing visitors to alternative public parking areas. The City shall allow Glasshouse to use the City owned vacant lot located at 224 South Florida Avenue at no cost to Glasshouse for construction staging and construction worker parking. GlassHouse shall provide liability insurance in an amount no less than one million (\$1,000,000.00) dollars per occurrence, two million (\$2,000,000.00) dollars annual aggregate limit covering property damage and personal injury liability for that lot during the time that it is used for construction parking and such insurance shall name the City of DeLand as an additional insured.
- 3.4.3. The City represents that as of the Effective Date, neither the City's land development regulations, nor any other applicable regulation of the City, imposes any on site storm water treatment or storage requirements which are in any way greater than the requirements of the St. Johns River Water Management District. The City shall have the option to install, or upsize as the case may be, and maintain, stormwater vaults underneath the Easement area, and beneath the Pedestrian Walkway, to the extent space is available therefor, as determined by sound engineering principles. The cost for installation thereof, or the cost related to upsizing as the case may be, shall be the sole cost of the City. The City shall pay all costs for future maintenance if it installs its own stormwater vaults, or for its proportionate share (determined by the percent of total capacity comprised of the City's upsizing) of future maintenance costs, if it upsizes Glasshouse's Stormwater Vaults.

3.5. Public Parking Lot. If GlassHouse exercises its option to purchase the Option Parcel and the City conveys the Option Parcel to GlassHouse as provided herein, GlassHouse will replace all currently existing regular and handicap accessible public parking spaces displaced by any Project to be developed on the Option Parcel with an equal number of such parking spaces, at its sole cost and expense. In addition to the provisions of Section 6, closing on the Option Parcel shall be in accordance with the following standards:

3.5.1. The parking lot containing the replacement public parking spaces (the "Public Parking Lot") shall be completed not later than closing on the Option Parcel or, at GlassHouse's option, GlassHouse may grant to the City a temporary easement for such public parking on the Option Parcel until the replacement public parking is provided and receive title to the Option Parcel. The term of such temporary parking easement shall have a duration which is no longer than the term of the Option or the date that title to the Option Parcel is reconveyed to the City, all as set forth in Section 5.10. If any public parking spaces located on the Option Parcel are agreed, in the PD Agreement for the Option Parcel, to be left in service for public parking after closing on the Option Parcel, City shall reserve an easement as to those spaces and the existence of those spaces shall be addressed in the PD Agreement on the Option Parcel.

3.5.2. GlassHouse shall construct the Public Parking Lot on lands to be conveyed to the City, which lands shall be located within two hundred fifty (250') feet of the Option Parcel. After closing on the Option Parcel, City shall be responsible for the operation and maintenance of the Public Parking Lot. If any public parking spaces are left on the Option Parcel after closing on the Option Parcel, GlassHouse shall maintain those spaces pursuant to a separate maintenance agreement with the City, executed prior to closing on and conveyance of the Option Parcel to GlassHouse.

4. **Other GlassHouse Obligations.** Unless otherwise provided in this Agreement, GlassHouse shall undertake the actions set forth in this Section 4 at its sole cost.

4.1. Other Obligations. GlassHouse shall provide the information required in Section 6.1 and acquire the Parcels as set forth in Section 6.

4.2. Deadlines. Subject to the deadlines provided below and following closing on each respective Parcel, GlassHouse shall control the timing for construction of each Phase on the Property.

4.2.1. Within the later of nine (9) months of approval of the PD Agreement or eighteen (18) months of the Effective Date, GlassHouse shall submit the following, consistent with the CDP:

- 4.2.1.1. Preliminary and final plats - The initial plat which may divide the site into at least two (2) lots will be prepared during the first phase. The two (2) lots will consist of the sites for Parcel 1 (for Building 1), and Parcel 2 (for Building 2). The City will execute without delay such owner authorizations required by the City's applicable land development regulations when same are presented to the City for signature. The final plat for the Property will be fully executed at or prior to closing, and delivered to the City Attorney in escrow for recording immediately following the closing.
- 4.2.1.2. A site plan for development of the first Phase (i.e., the site improvements necessary for the preliminary and final plats for the Parcel and associated easements). The City will execute without delay such owner authorizations required by the City's applicable land development regulations when same are presented to the City for signature.
- 4.2.1.3. Complete construction plans for Building 1 (recognizing that any part of the interior of Building 1 may be unfinished shell space).
- 4.2.2. GlassHouse shall make commercially reasonable efforts to obtain approval for the above permit applications for the first Phase within twenty-four (24) months of the Effective Date.
- 4.2.3. GlassHouse shall make commercially reasonable efforts to commence construction of the first Phase within fifteen (15) months of approval of the PD Agreement. GlassHouse shall make commercially reasonable efforts to complete construction of the first Phase within twenty-four (24) months of commencement of construction.
- 4.3. Extensions. Extensions to deadlines provided for in this Agreement can only be approved by the parties hereto in writing.
- 4.4. Report to City Commission. Until the Redevelopment Program for the Property has been completed, GlassHouse shall appear before the City Commission at least once per year to provide a report on the progress of the proposed Projects and the performance of its obligations under this Agreement.
- 4.5. Compliance with Other Provisions of Applicable Law.
 - 4.5.1. GlassHouse shall construct each Project in compliance with all applicable laws, regulations and ordinances, including but not limited to provisions of the City's Land Development Code regulating platting.
 - 4.5.2. The City shall join in any plat of the Property or, as applicable, the Option Parcel, to the extent necessitated by any easement or other rights therein retained by the City, provided that such plat(s) do not interfere with the

development or use of the Property or Option Parcel so acquired by GlassHouse under this Agreement.

5. **City and CRA Obligations.** In consideration of GlassHouse undertaking the Projects, the City and the CRA shall undertake the actions set forth in this Section. Unless otherwise provided below, the City and the CRA shall undertake such actions at their sole cost.

5.1. Joinder and Applications. The City, as owner of the Property and the Option Parcel shall join in any application for development orders associated with redevelopment of the Property and, if applicable, the Option Parcel consistent with the Redevelopment Programs, including, but not limited to, applications for final rezoning, site plan or plat approval and stormwater permits, and other Development Orders. Nothing in this Agreement shall be intended to bind the City or otherwise impose upon the City any obligation to approve any applications in which the City joins pursuant to this Agreement.

5.2. City and CRA Contributions.

5.2.1. The City shall convey the Property and, if applicable, the Option Parcel, to GlassHouse pursuant to the terms of Section 6, free and clear of any liens or encumbrances except as otherwise provided in Section 6.7. Conveyance of the Property shall occur prior to GlassHouse's commencement of construction of Phase 1.

5.2.2. GlassHouse shall pay all City application fees in regard to all applications for Development Orders, all City and County impact fees subject to any applicable credits and any other fees customarily required for obtaining development permits. GlassHouse shall be entitled to all impact fee and connection fee credits currently available to the Property and, as applicable, the Option Parcel.

5.2.3. Except as otherwise provided herein, GlassHouse shall pay all city, state or federal application or permit fees, and such general and usage fees or charges for water, sewer, or other services provided by the City to the Property or, as applicable, the Option Parcel, following closing on such lands.

5.2.4. The City and GlassHouse shall collaborate to establish a parking signage program for the public parking on the Public Parking Lot, which shall be designed to be consistent with the design and character of the Projects, and shall be installed on the Parcels as set forth on the site plan for the respective Parcels. The City shall provide such information as is necessary for inclusion on the respective site plan in a timely manner to permit GlassHouse to submit its site plans consistent with the schedule set forth in Section 4.2. The City or the CRA shall pay all costs relating to the parking signage improvements, shall install such improvements on the Parcels as set forth on the site plan for such Parcels, and shall thereafter maintain such signage, pursuant to a separate maintenance agreement.

5.2.5. The City or the CRA shall, at their sole cost and expense, procure a boundary and topographic survey of the Property. The survey shall include the boundaries of the Property, all public utilities located on public property within seventy five (75') feet of the Property including visible surface and invert depths, and elevations of the property from the edge of the buildings to the property line. The boundary survey shall be in ALTA form. The survey shall be certified to GlassHouse, its lender and title insurer. The City or the CRA shall provide the survey to GlassHouse not later than ninety (90) days from the Effective Date.

5.2.6. The City or the CRA shall, at their sole cost and expense, cause to be performed, a Phase I Environmental Site Assessment for the Property and, the Option Parcel (the "Phase I"), and a Phase 2 Environmental Site Assessment if the Phase 1 assesment identifies any Recognized Environmental Condition (as defined by the Phase I). The parties shall cooperate in good faith to fund through the Florida or federal brownfield program incentives, as available, any additional Phase II environmental site assessment and/or remediation of the Property and, if applicable, the Option Parcel and adjust the deadlines in Section 4.2 to address any delays associated with additional site assessment and/or remediation which the parties agree to undertake. Should the City reasonably determine that the length of time and or the cost to perform additional environmental assessments or remediate the site is too great, the City shall have the right in its sole discretion to terminate this Agreement upon thirty (30) days written notice. The environmental site assessments shall be certified to GlassHouse, its lender and title insurer. City and CRA shall provide three (3) originals of the Phase I environmental site assessments to GlassHouse not later than one hundred fifty (150) days from the Effective Date.

5.2.7. The City or the CRA shall, at their sole cost and expense, cause the Property to have a geotechnical survey completed. The geotechnical survey will be based upon geotechnical borings conducted in appropriate locations within the parking areas of the Property, and nothing in this Agreement shall be deemed to require the City or CRA to conduct borings within the locations on the Property that are currently occupied by structures. The geotechnical survey shall include foundation design recommendations for the planned heights of the buildings, and percolation analysis for underground exfiltration storm water systems subject to any limitations imposed by the presence of buildings being located on the Property. The geotechnical survey shall be certified to GlassHouse, its lender and title insurer. The City or the CRA shall provide three (3) originals of the Geotechnical Survey to GlassHouse not later than one hundred twenty (120) days from the Effective Date.

5.2.8. The City or the CRA shall cause the aforesaid survey, environmental inspection reports and geotechnical survey to be certified to GlassHouse and

shall name GlassHouse as an intended third-party beneficiary of the contract between the City and the provider of such reports.

5.2.9. The City or the CRA shall, at their cost and expense, cause such underground stormwater vaults as they deem appropriate, consistent with the intended use and development of the Pedestrian Walkway, to be constructed simultaneously with or prior to GlassHouse's development of the Pedestrian Walkway.

5.3. Acceptance and Maintenance of Public Improvements. If applicable, following the City's customary procedures for acceptance of public improvements, the City shall accept, and thereafter maintain pursuant to the provisions of Section 3.5, the Public Parking Lot improvements.

5.4. Other Obligations. The City shall provide technical assistance with respect to the development order applications filed by GlassHouse for the Projects. City shall maintain the Property and the Option Parcel in its current condition during the term of this Agreement prior to conveyance of the Property and, if applicable, the Option Parcel except as otherwise provided for in this Agreement. City shall comply with the provisions of Section 6 of this Agreement.

5.5. City Cooperation. The City shall exercise its best efforts and cooperate with GlassHouse in submitting and obtaining any state and federal licenses, permits, and governmental authorizations necessary to the completion of the Projects; provided, however, except as otherwise provided herein, all costs associated therewith shall be the sole responsibility of GlassHouse. The City's obligations shall not affect the City's right and authority to act in regulatory matters in accordance with applicable laws or ordinances. GlassHouse acknowledges that the City does not, and as a matter of law cannot, agree by way of a contract to pre-approve its applications. This is because the law forbids the government from contracting away its legislative authority in the land development approval process. GlassHouse acknowledges that it has no claim or cause of action against the City in the event that the Project, and all elements thereof, are not approved by the City through the development review and approval process.

5.6. Available Incentives. The City and GlassHouse shall cooperate to obtain any incentives available pursuant to the Florida Brownfields Program or the federal brownfields program, including, but not limited to, obtaining Brownfield Assessment Grant funds from the U.S. Environmental Protection Agency to conduct the Phase 1 assesment.

5.7. Easements.

5.7.1. The City shall grant to GlassHouse a temporary construction easement for the purpose of allowing GlassHouse to utilize the vacant lot located at 224 S. Florida Avenue for staging and parking related to the construction of the Projects and the Public Parking Lot, as set forth in the site plans for each respective Phase. These easements shall be identified and agreed upon not

later than approval of the PD Agreement on the Property or the Option Parcel, as applicable, and shall be delivered upon the closings on the Property and the Option Parcel, as applicable.

5.7.2. Concurrent with the conveyance of the Property as set forth in Section 6, the City shall:

5.7.2.1. Convey to GlassHouse a ten (10') foot wide easement, in a location reasonably acceptable to GlassHouse and the City, for pedestrian ingress and egress across the Option Parcel, connecting the Property to lands lying South of the Option Parcel. Such easement shall run with the land and inure to the benefit of the individual unit buyers, property owners or condominium owner's association, and successors and assigns, to the Property.

5.7.2.2. The City shall reserve the Easement over, upon, under and across the Pedestrian Walkway.

5.8. No Pledge of Full Faith and Credit. The City's and the CRA's payment obligations hereunder do not, and shall not be deemed to, constitute a general obligation of the City or the CRA, nor do they constitute a pledge of the full faith and credit of the City or the CRA within the meaning of the Constitution and laws of the State of Florida. They shall be binding obligations only to the extent that City or CRA has funds available to meet them, and shall be subject to the City's or CRA's appropriation of such funds. GlassHouse' obligations to meet the deadlines set forth in Section 4.2 shall be tolled an equal time for any period in which the City or CRA fails to appropriate such funds.

5.9. Upon GlassHouse obtaining all necessary permits, approvals and authorizations from all applicable governmental authorities for the site development of the Property and construction of Building 1, GlassHouse will provide to the City a letter from a lending institution or other party reasonably acceptable to the City ("Loan Commitment"), or other reasonably acceptable evidence of financial capacity or other reasonably acceptable security guaranteeing completion of Phase 1 of the Project ("Proof of Financial Capacity"). Thereafter, the City will demolish the former Volusia County Jail building ("Jailhouse"), leave the Property cleared and development-ready, and remove all Asbestos from the Property, to be completed not later than one hundred twenty (120) days following the City's approval of the Loan Commitment in accordance with the following standards:

5.9.1. City has caused a survey of the Property to be conducted according to Florida Statutes, Chapter 469 ("Survey"), which was performed by an Asbestos Surveyor acting under the direction of a Florida licensed Asbestos Consultant. Within thirty (30) days of the Effective Date, the City shall provide GlassHouse with a copy of the Survey.

5.9.2. Prior to demolition of the Jailhouse and not later than one hundred twenty (120) days following the Effective Date, the City shall cause Abatement

specifications for Abatement of all Asbestos on the Property to be prepared by and under the direction of a Florida licensed Asbestos Consultant. The Abatement specifications shall provide for Abatement to be by Removal and Disposal of the Asbestos on the Property and not by Encapsulation, Enclosure or other means besides Removal and Disposal. The proposed Abatement specifications shall be provided to GlassHouse for review not later than thirty (30) days prior to the City releasing bids for the demolition work. GlassHouse shall have fourteen (14) days from receipt of the Abatement specifications to comment on them, but shall have no duty to comment and shall have no duty to the City or any other party in regard to any comment which GlassHouse makes in regard to the proposed Abatement specifications. Any comment made by GlassHouse is solely for the benefit of Glasshouse and for the benefit of no other person or party.

- 5.9.3. The Removal and Disposal of all Asbestos-containing Materials must be performed by a Florida licensed Asbestos Contractor and monitored by a Florida licensed Asbestos Consultant.
- 5.9.4. All Asbestos-containing Materials must be abated according to all applicable laws, rules and regulations including, without limitation, AHERA, ASHARA, NESHAP, NIOSH, Florida Statutes Ch. 469 and FAC Ch. 61E-1, and those of the United States Environmental Protection Agency, OSHA and the Florida Department of Environmental Protection.
- 5.9.5. Prior to closing and subsequent to the Abatement, and not later than thirty (30) days following completion of the Jailhouse demolition, the City shall cause an inspection of the Property to be performed by a Florida licensed Asbestos Consultant and the City shall provide a new or updated Survey reporting the results of said inspection to GlassHouse upon receipt of said Survey to provide reasonable assurance that the Asbestos on the Property has been abated.
- 5.9.6. GlassHouse's review of and comment on the asbestos Surveys and the Abatement specifications as described herein, and all other provisions of this section or otherwise related to Asbestos on the Property, the Abatement of Asbestos on the Property, the asbestos Surveys and the Abatement specifications, or any one or more of them, are solely for the benefit of GlassHouse, and do not, and shall not, create any duty on the part of GlassHouse arising from or related thereto.
- 5.9.7. All capitalized terms in this Section 5.9 which are not otherwise defined herein shall have the meaning as defined under Section 469.001, Florida Statutes, unless the context requires otherwise.
- 5.9.8. Each Asbestos Consultant and Asbestos Contractor as described herein must be licensed and financially responsible under the provisions of Florida law including, without limitation, FAC 61E1 and Florida Statutes Chapter 469.

If the cost to demolish the Jailhouse and remove the Asbestos exceeds the sum of three hundred thousand (\$300,000.00) dollars, the City shall give notice to GlassHouse within thirty (30) days of the City's receipt of the bid therefor but not later than one hundred twenty (120) days from the Effective Date, within which to notify GlassHouse of the amount of the overage. Upon the City giving such notice, GlassHouse will have the option of paying the excess amount or terminating this Agreement. GlassHouse must exercise its option to terminate by giving written notice of its election to do so within thirty (30) days of its receipt of notice of the amount of overage from the City. Following the City's receipt of GlassHouse's notice of termination, this Agreement will be deemed terminated and of no further force or effect. If GlassHouse does not notify the City of its election to terminate in said thirty (30) day period, then GlassHouse shall be deemed to have agreed to pay the difference and the amount of such difference shall be paid by GlassHouse to the City within thirty (30) days thereafter.

- 5.10. The City grants to GlassHouse a five-year option to purchase the Option Parcel (the "Option" as further defined herein). A memorandum of the Option will be recorded in the Public Records of Volusia County at the time of conveyance of the Property. The term of the Option shall be for a period commencing with recording of the Memorandum and shall run through five (5) years following the issuance of the first certificate of occupancy for a Project. The Option shall provide that GlassHouse is entitled to buy the Option Parcel for the lesser of (a) the fair market value (based upon an MAI appraisal certified to City, GlassHouse and GlassHouse's lender paid for by GlassHouse but obtained by the City from an appraiser on the approved list of appraisers by GlassHouse's lender) of the Option Parcel as of the date of transfer of title to the Property, with an adjustment for the change in the Consumer Price Index for all Urban Consumers, published by the U.S. Bureau of Labor Statistics, from the date of the appraised value to the date the option is exercised or (b) the then current fair market value as of the exercise of the option, determined by an appraiser selected and paid in the same manner as set forth above. Conveyance of the Option Parcel to GlassHouse pursuant to this option shall be subject to the following conditions:

5.10.1. GlassHouse shall be required to replace the existing displaced parking spaces in the Option Parcel, and as set forth herein, as well as provide all parking required for the development of the Option Parcel. Such displaced parking will be within two hundred fifty (250') feet of the Option Parcel. For the sake of clarity, the nearest point on any parcel of property upon which replacement parking is located shall be within two hundred fifty (250') feet of any point on the boundary of the Option Parcel. GlassHouse shall convey to the City fee simple title to the area containing the replacement parking, which shall include a minimum of two (2) ADA compliant handicapped parking spaces, drive aisles sufficient to fully access all parking spaces, and areas to support light fixtures for the parking spaces. GlassHouse shall also grant to the City one or more perpetual easements, if

the configuration of the remainder of the parking area so requires, allowing for access to the parking spaces conveyed to the City.

5.10.2. In the event that GlassHouse does not develop the Option Parcel with a minimum of three thousand eight hundred (3,800) square feet of commercial or mixed use development within five (5) years of conveyance of the Option Parcel by the City to GlassHouse, then the City shall have the option to repurchase the Option Parcel. In order to exercise this repurchase option, the City shall, not later than twelve (12) months following the expiration of the five year development period described above in this Section 5.10.2 (ie. six (6) years from the date of conveyance of the Option Parcel to GlassHouse), provide written notice of the City's election to repurchase. GlassHouse shall have one hundred eighty (180) days following the giving of such notice to obtain a site plan and complete building permits for the Option Parcel, and if GlassHouse does obtain the same, an additional eighteen (18) months from issuance of the building permits to complete construction of the improvements on the Option Parcel. Should GlassHouse fail to meet either deadline following notice from the City as set forth in this Section 5.10.2, then GlassHouse shall convey the Option Parcel to the City. At the time of conveyance of the Option Parcel to the City, the City shall pay to GlassHouse the full amount originally paid to the City by GlassHouse for the purchase of the Option Parcel and any costs related to recording fees; documentary stamp taxes, etc. related to such purchase. At the time of the conveyance of the Option Parcel to GlassHouse by the City, a memorandum of this repurchase option, and any other document reasonably necessary to render it enforceable, shall be recorded in the Public Records.

5.10.3. Any building located on the Option Parcel shall be limited to three (3) stories in height.

5.10.4. Any residential units shall be constructed to provide exterior sound attenuation, to an identifiable standard as set forth in the applicable PD Agreement. No residential units may be located on the first floor of the building fronting West Georgia Avenue.

5.11. Commencing with the first calendar year after the year of issuance of the certificate of occupancy for Phase 1, Building 1 (for the sake of clarity, January 1 of the year immediately following issuance of the said certificate of occupancy), and for a period of ten (10) years, forty five (45) days following payment by GlassHouse of the ad valorem taxes due in that year, the CRA shall pay GlassHouse an amount equal to the "pro rata portion" of ad valorem tax collections for Volusia County and the City of DeLand millage paid into the Downtown DeLand Community Redevelopment Trust Fund for Building 1 and the underlying lot on which it sits. The "pro rata portion" shall be determined by applying the ratio of the square

footage under roof that the offices for the company or employer referred to in the next to last sentence of this Section 5.11, up to a maximum of ten thousand (10,000) gross square feet or thirty three and 1/3 percent (33.33%) of the gross square footage of the building under roof, whichever is less, bears to the total square footage under roof of Building 1. The payment due each year will be made only after the ad valorem taxes for the entire Property have been paid for that year. In the event the said taxes on the Property have not been paid for any year, the aforesaid payment to GlassHouse shall be made by the CRA within sixty (60) days after the taxes have been paid. As a condition of this payment, during the year for which the payment is due, there must have been maintained on the Property during the year for which the payment is due one company or employer with a minimum of thirty (30) full time equivalent employees with an average annual salary of at least sixty seven thousand one hundred forty two and (00/100) dollars (\$67,142.00). There shall be no extension of the term of the abatement nor any partial or pro-rated payment for any year that they do not meet the minimum employment and salary standards and GlassHouse or any subsequent owner of Parcel 1 will not seek grants from the CRA during the abatement period.

6. Conveyance of Parcels.

- 6.1. Adequate Assurances. As a condition precedent to the City's obligation to convey the Property (but not the Option Parcel) as required by Section 5.2.1, GlassHouse shall provide and deliver its proof of Financial Capacity to the City at or before closing on the Property.
- 6.2. Conveyance. Conveyance of the Property shall be subject to the City's determination that GlassHouse has obtained all permits required to construct and has the financial ability to develop Phase 1, such determination not to be unreasonably withheld. In the event that construction of Phase 1 is to be financed through a private lending institution, equity group, or by means other than a commercial lending institution, then the City's determination shall be to the City's reasonable satisfaction of the financial ability of that entity.
- 6.3. Closing Date. Unless otherwise agreed to by the parties in writing, the closing date for conveyance of the Property shall be ninety (90) days after the Jailhouse has been removed from the Property, the Abatement of the Asbestos has been completed and the Property is cleared and ready for development (the "Closing Date"). As and when applicable, the closing date for conveyance of the Option Parcel shall be the later of GlassHouse completing the improvements for the Public Parking Lot required by Section 3.5 of this Agreement (unless the temporary easement as described in Section 3.5.1 is provided) or sixty (60) days following GlassHouse providing the City with notice that it is exercising the said option. The Closing Date or the closing date for the Option Parcel may be extended for up to one month pursuant to a written agreement executed by GlassHouse and the City Manager without the necessity of amending this Agreement.

- 6.4. Form of Conveyance and Closing Costs. The City shall convey the Property and, as applicable, the Option Parcel, to GlassHouse pursuant to a special warranty deed. Documentary stamp taxes, if any, on the special warranty deed shall be the expense of GlassHouse. GlassHouse shall pay for the cost of recording curative instruments, the title insurance commitment, and the owner's title policy if issued, recording of the deed and all expenses associated with any financing. Each party shall pay its respective attorney's fees. Conveyance shall be subject to a reservation by the City of the Easement, the terms and conditions of which shall be agreed upon between the City and GlassHouse in the PD Agreement applicable to the Property (but which may be subsequently amended by agreement between them without amending the PD Agreement). The Easement shall provide for the City to restore any damage caused by or related to its use of the Easement including, without limitations, arising out of its maintenance, repair or replacement of the City's facilities within the Easement.

The conveyance of the Property shall also be subject to a reverter clause ("Reverter Clause") reserved by the City. The terms and conditions for the Reverter Clause shall be agreed upon between the City and GlassHouse prior to closing on the Property. The general conditions of the Reverter Clause shall be that, unless extended by this Agreement (including, without limitation, Sections 4.5 and 12) or by mutual agreement of City and GlassHouse, construction of Phase 1, Building 1 must have commenced within twenty four (24) months from the closing on the Property, and must be ready for occupancy within thirty six (36) months from the commencement of construction. If either deadline is not achieved, the City may at any time thereafter (while that condition continues to exist) serve GlassHouse with the City's notice of intention to invoke the Reverter Clause, which notice shall state with specificity what deadline has not been met. GlassHouse shall have one hundred-eighty (180) days after receipt of the City's notice within which to cure that condition. After the expiration of the one hundred eighty (180) day period and prior to the time the condition has been cured, City may then invoke the Reverter Clause by providing written notice to GlassHouse of such election. Within fifteen (15) days of such notice, GlassHouse shall convey title of the Property by special warranty deed. Upon the City sending such notice, the Option shall automatically terminate. Should GlassHouse fail to convey the Property to the City, the City shall be entitled to immediately seek specific performance of this provision in a court of competent jurisdiction. A memorandum setting forth the terms of the Reverter Clause shall be recorded in the Public Records of Volusia County, Florida. The City will subordinate the reversionary interests evidenced by the Reverter Clause to any commercially reasonable mortgage recorded against the Property which mortgage is solely for the development of the Property. Once development of the Property is completed, this reversionary interest will terminate and otherwise be deemed to be extinguished, and the City shall record a notice of the termination of the reversionary interest in the Public Records upon completion of the development of the Property.

- 6.5. Payment by GlassHouse. Except as otherwise set forth herein, GlassHouse shall provide payment of the following:

- 6.5.1. Closing costs as set forth herein associated with conveyance of the Property and as applicable, the Option Parcel, except that the City shall bear its own attorney fees.
- 6.5.2. City application fees associated with the entitlement process.
- 6.5.3. City and County impact fees, subject to any applicable credits.
- 6.5.4. City permit fees.
- 6.5.5. All other typical development fees related to development of the Project.
- 6.6. AS IS. Except as otherwise provided in this Agreement, the City is not making and specifically disclaims any warranties or representations of any kind or character, express or implied, with respect to the Property and, as applicable, the Option Parcel. GlassHouse agrees that with respect to the Property and the Option Parcel, GlassHouse has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty of the City (except as expressly set forth in this Agreement) or any agent of the City. GlassHouse represents that it is a knowledgeable purchaser of real estate and that (except as to the express representations and warranties as set forth in this Agreement), it is relying solely on the Geotechnical Survey, Phase 1 (and Phase 2, as applicable), and the surveys and Survey provided by City pursuant to Sections 5.2.5, 5.2.6 and 5.9, respectively), and its own expertise and that of its consultants, and that in addition to the inspection reports provided by the City, GlassHouse will conduct such inspections and investigations of the Property and, if applicable, the Option Parcel, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same, and, upon closing, shall assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, which may not have been revealed by those inspections and investigations. GLASSHOUSE ACKNOWLEDGES AND AGREES THAT UPON CLOSING, THE CITY SHALL SELL AND CONVEY TO GLASSHOUSE, AND GLASSHOUSE SHALL ACCEPT THE PROPERTY AND, AS APPLICABLE, THE OPTION PARCEL "AS IS, WHERE IS," WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES, OR REPRESENTATIONS (EXCEPT AS SPECIFICALLY PROVIDED HEREIN OR IN THE DEED TO BE DELIVERED AT CLOSING), COLLATERAL TO OR AFFECTING THE PROPERTY AND, IF APPLICABLE, THE OPTION PARCEL BY CITY, ANY AGENT OF THE CITY OR ANY THIRD PARTY ACTING FOR OR ON BEHALF OF THE CITY. The terms and conditions of this Section shall expressly survive the closing and not merge into the deed(s) to be executed and delivered at Closing.

6.7. Title Insurance.

- 6.7.1. GlassHouse shall obtain, at GlassHouse's expense, within thirty (30) days of the Effective Date, a commitment (the "First Commitment") for an

Owner's Title Insurance Policy agreeing to insure title to the Property and the Easements or, at GlassHouse's election, the Property, the Easement and the Option Parcel, in an amount that GlassHouse estimates is equal to the value of the Property, the Easement and, as applicable, the Option Parcel. The First Commitment shall be subject to: no exceptions other than those matters herein permitted; those which will be discharged prior to or at Closing; and the standard printed exceptions and exclusions from coverage customarily contained in an Owner's Policy from the title company.

- 6.7.1.1. GlassHouse shall provide the City a copy of the First Commitment within ten (10) days of receipt of same.
- 6.7.1.2. Within thirty (30) days of its receipt of the First Commitment, GlassHouse shall notify the City of any objections thereto. If GlassHouse fails to do so, it shall be deemed to have accepted the First Commitment and title to the Property and the Easements and, as applicable, the Option Parcel, as evidenced thereby.
- 6.7.1.3. GlassHouse shall take title subject to zoning, restrictions and prohibitions imposed by governmental authority which would not inhibit, restrict or prohibit redevelopment of the Property, the Easements and Option Parcel consistent with the CDP. No other restrictions and/or easements shall affect the title.
- 6.7.1.4. If the First Commitment discloses unpermitted exceptions or matters that render the title non-marketable or otherwise objectionable to GlassHouse in its sole discretion, the City, at its option, shall have forty-five (45) days from the date of receiving written notice of defects from GlassHouse within which to have the exceptions removed from the First Commitment, or the defects cured to the reasonable satisfaction of GlassHouse. If the City fails to have the First Commitment exceptions removed or the defects cured within the specified time, GlassHouse may terminate this Agreement, or GlassHouse may elect, upon notice to the City within ten (10) days after the expiration of the curative period, to take title as it then is notwithstanding such exceptions or title defects.
- 6.7.2. Thereafter, GlassHouse may obtain at GlassHouse's expense, within thirty (30) days prior to Closing on the Property, the Option Parcel, or both, an updated commitment (a "Subsequent Commitment") for an owner's title insurance policy.
 - 6.7.2.1. In the event that a Subsequent Commitment contains any unpermitted exceptions or matters that render the title non-marketable; and such exceptions or matters were not set forth in the First Commitment, the following provisions shall apply:

6.7.2.1.1. In the event that the new exceptions or matters arise by, though, under or against the Property or, as applicable, the Option Parcel, the City shall exercise reasonable diligence in the curing of any such exceptions or matters, including the payment and discharge of any liens or encumbrances affecting the title of the subject lands.

6.7.2.1.2. Otherwise, the provisions of Section 6.7.1.4 shall apply.

6.7.3. At closing, the City shall provide a standard seller's affidavit so the title company may provide GlassHouse with standard "gap" coverage in the custom as established by title insurance practices in Florida.

6.7.4. Subsequent to closing, the title company, at GlassHouse's expense, shall provide an owner's title policy showing good and marketable title in GlassHouse through the date of recording the special warranty deed and subject only to the permitted exceptions and any matters created at closing.

6.7.5. The Closing of each Parcel shall be thirty (30) days after the later of: (a) the date that the City advises GlassHouse that it elects not to cure the title defects or the expiration of the time frame for the City to cure the defects (if it elects to do so); or (b) the time for closing expressly set forth in the Agreement.

7. Representations and Warranties of the City and the CRA. The City and the CRA hereby represent and warrant the following:

- 7.1. This Agreement and each document contemplated hereby to which the City and the CRA will be a party has been duly authorized and will be executed and delivered by the City and the CRA and neither their execution and delivery, nor compliance with the terms and provisions of this Agreement: (i) require the approval and consent of any other party, except as have been obtained or as are specifically noted herein, (ii) contravene any existing law, judgment, governmental rule, regulation or order applicable to or binding upon the City or the CRA, or (iii) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance on the City or the CRA.
- 7.2. This Agreement and each document contemplated hereby to which the City and the CRA will be a party, will constitute a legal, valid and binding obligation of the City or the CRA enforceable against the City or CRA in accordance with the terms thereof, except as such enforceability may be limited by public policy or applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights and subject to usual equitable principles if equitable remedies are involved.
- 7.3. To the knowledge of the City and the CRA, there is no suit, litigation or action pending or threatened against the City or the CRA which questions the validity of this

Agreement or any document contemplated hereunder or challenges the power or any approvals of the City or the CRA to authorize the execution and delivery of same.

- 7.4. The City and the CRA shall use their best efforts to timely fulfill all of the conditions and obligations expressed in this Agreement which are within the control of the City or the CRA and shall act so as not to unreasonably delay the completion of the Projects.
- 7.5. The City and the CRA shall cause to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to and the responsibility of the City and the CRA.
- 7.6. The City shall assist GlassHouse in accomplishing the development of the Projects in accordance with this Agreement and the plans for the Projects, and will not violate any applicable laws, ordinances, rules, regulations, orders, contracts, or agreements, or approve or enter into any agreement that will result in this Agreement or any part hereof, or any other instrument contemplated hereby, to be in violation thereof.
- 7.7. The City and the CRA shall discharge, vacate, or release any lien, encumbrance, easement, right-of-way or other property interest the City or the CRA has or owns on or in the Property and, as applicable, the Option Parcel (other than those arising under this Agreement) on or before the closing of the conveyance of the Property and, as applicable, the Option Parcel to GlassHouse.
- 7.8. The City and the CRA represent that the Property and the Option Parcel are not on any "Superfund" list under any applicable environmental law, nor is the Property or the Option Parcel currently subject to any lien related to any environmental matter. Except as specifically set forth herein, the City and the CRA make no other representations or warranties, expressed or implied, concerning the environmental condition of the Property or the Option Parcel.
- 7.9. Seller is and, as of the Closing Date and the closing date for the Option Parcel, will be:
 - 7.9.1. In possession of the Property and, as applicable, the Option Parcel, free of any tenants and rights of third-parties.
 - 7.9.2. The Owner of fee simple legal and beneficial title to the Property and, as applicable, the Option Parcel.

8. Representations and Warranties of GlassHouse. GlassHouse hereby represents and warrants the following:

- 8.1. GlassHouse is a validly existing limited liability company under the laws of the State of Florida, has all requisite power and authority to carry on its business, to own and hold property, to enter into and perform its obligations under this Agreement and consents to service of process on its registered agent in Florida.

- 8.2. This Agreement and each document to which GlassHouse is or will be a party has been duly authorized and will be executed and delivered by GlassHouse and neither their execution and delivery, nor compliance with the terms and provisions: (i) requires the approval and consent of any other party, except as have been obtained or as are specifically noted herein, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on GlassHouse, or (iii) results in any default or results in the creation of any lien on the property or assets of GlassHouse which will have a material adverse effect on its ability to perform its obligations hereunder.
- 8.3. This Agreement and each document contemplated to which GlassHouse will be a party, will constitute a legal, valid and binding obligation of GlassHouse enforceable against GlassHouse in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights and subject to usual equitable principles if equitable remedies are involved.
- 8.4. To the knowledge of GlassHouse, there is no suit, litigation or action pending or threatened against GlassHouse, which questions the validity of this Agreement or which will have a material adverse effect on its ability to perform its obligations hereunder.
- 8.5. GlassHouse shall use its best efforts to timely fulfill all of the conditions and obligations expressed in this Agreement which are within the control or are the responsibility of GlassHouse.
- 8.6. During the period the obligations of GlassHouse are in effect, GlassHouse shall cause to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to and the responsibility of GlassHouse.
- 8.7. GlassHouse shall use its best efforts to accomplish the development of the Projects in accordance with this Agreement, the Proposal and the Project plans, and will not violate any applicable laws, ordinances, rules, regulations or orders in its efforts to do so.
- 8.8. GlassHouse has or will use its best efforts to obtain all state and local permits or other governmental authorizations and approvals required by law in order to proceed with the development of the Projects, subject to the fee waivers contemplated or permitted herein, if any.
- 8.9. GlassHouse shall not take any action or omit to take any action which would knowingly and intentionally cause the taxable value of the Property or, as applicable, the Option Parcel to diminish (other than the right as provided by law to petition the Value Adjustment Board or to otherwise challenge the valuation assigned to the Property or, as applicable, the Option Parcel by the Volusia County Property Appraiser).

8.10. GlassHouse shall promptly notify the City Manager in writing of any actual or reasonably anticipated delays in the construction of the Projects.

9. Default

9.1. Force Majeure. Neither party shall be held in default of this Agreement for any delay or failure of such party in performing its obligations pursuant to this Agreement if such delay or failure is caused by Force Majeure as set forth below.

9.2. Notice and Opportunity to Cure.

9.2.1. Prior to declaring a default hereunder, other than with regard to the situations specifically enumerated in Sections 3.2.1, 3.4.1, 5.2.6, 5.9 and 6.4, the non-defaulting party must provide the defaulting party with written notice and at least thirty (30) days to cure such default; provided, however, if the default is of a nature that cannot be reasonably cured within such 30-day period, then the defaulting party shall be allowed a reasonable period of time to cure such default provided that it diligently commences the cure within the 30-day period and thereafter diligently undertakes and pursues such cure to completion.

9.2.2. Further provided, however, that no prior notice or opportunity to cure needs to be provided in the event the defaulting party has previously breached a provision of this Agreement, and thereafter breaches the same provision.

9.3. Remedies. If a default occurs, the non-defaulting party may terminate this Agreement as to any portion of the Property or Option Parcel that have not yet been conveyed, institute an action to compel specific performance or seek other equitable relief, or suspend its own performance hereunder, or pursue any other remedy available at law or equity other than a suit for damages. In the event that the City shall fail to convey the Property or Option Parcel pursuant to this Agreement, and GlassHouse shall not otherwise be in material and substantial default of this Agreement, then GlassHouse shall provide the City written notice of such default. The City shall have thirty (30) days from receipt of such notice to cure its default. If the City shall fail to cure such default within the thirty (30) day time period, then GlassHouse shall be entitled to bring an action for declaratory relief, specific performance or other equitable relief as allowed by law as against a governmental entity or, notwithstanding the other provisions of this Section, terminate this Agreement and recover all reasonable fees and costs incurred in the performance of its obligations set forth in Sections 3 and 4 within thirty (30) days of written termination of this Agreement by GlassHouse as its sole remedy. The specified rights and remedies to which the City and GlassHouse are entitled under this Agreement are not exclusive and are intended to be in addition to any other means of redress which the City or GlassHouse may have, including specific performance. The foregoing notwithstanding, under no circumstances will the City or GlassHouse be liable for consequential damages, including lost profits, the right to such damages being expressly waived.

- 9.4. **No Waiver.** The failure by the City, the CRA or GlassHouse to promptly insist on strict performance of any provision of this Agreement shall not be deemed a waiver of any right or remedy that the City, the CRA or GlassHouse may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such provision.
- 9.5. **Effect of Termination.** In the event that a party terminates this Agreement under this Section 9 or any other provision of this Agreement, such termination shall not affect the obligations of the parties as to Projects the land for which has been conveyed by the City to GlassHouse.
10. **Agreement to Run with Land.** This Agreement shall run with the Property and, as applicable, the Option Parcel and any portion thereof.
- 10.1. This Agreement, and any amendments hereto, shall be binding and inure to the benefit of, and be enforceable by, the City, the CRA and GlassHouse, and the heirs, successors and assigns of the foregoing.
- 10.2. In the event of a conveyance of any portion of the Property or the Option Parcel, this Agreement may be amended by the owner of one portion thereof without the necessity of joinder or consent of other owner(s) provided that the amendment does not amend the rights or obligations of such other owner(s). This Section supplements Section 15.4 and 15.5 of this Agreement.
11. **Survival.** Notwithstanding the termination of this Agreement or the prior performance by the parties hereunder, Sections 16 through 37 of this Agreement, as well as those provisions set forth in Section 3 of this Agreement, shall survive and remain effective.
12. **Force Majeure.** Delays in performance due to: fire; flood; hurricane; tornado; earthquake; windstorm; sinkhole; unavailability of materials, equipment or fuel; war; declaration of hostilities; terrorist act; civil strife; strike; labor dispute; epidemic; archaeological excavation; declaration of a state of emergency by an applicable jurisdiction; or act of God, shall be deemed events of "Force Majeure" and such delays shall be excused in the manner herein provided. If such party is delayed in any work pursuant to this Agreement for occurrence of an event of Force Majeure, the date for action required or contemplated by this Agreement shall be extended by the number of days equal to the number of days such party is delayed. The party seeking to be excused based on an event of Force Majeure shall give written notice of the delay indicating its anticipated duration. Each party shall use its best efforts to rectify any conditions causing the delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.
13. **Insurance.**
- 13.1. In addition to the insurance required by Section 3.4.2, GlassHouse agrees to maintain during development or construction of any Project the following insurance policies:

- 13.1.1. Builder's Risk Insurance Policy for physical damage or loss, as a result of fire, flood, and other hazards or risks customarily insured against in DeLand, FL.
- 13.1.2. Comprehensive General Liability Coverage of at least one million (\$1,000,000.00) dollars per occurrence, two million (\$2,000,000.00) dollars annual aggregate.
- 13.1.3. Workers' Compensation Coverage as required by the laws of the State of Florida.
- 13.2. Prior to commencement of construction, and within ten (10) days of the City's request thereafter, GlassHouse shall furnish to the City proof of compliance with these insurance provisions.
- 13.3. All insurance policies required by this Agreement shall provide such policies or agreements cannot be substantially modified or canceled until after at least one (1) month prior written notice has been given to the City.

14. Notice.

- 14.1. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by notice complying with the terms of this Section:
 - 14.1.1. For the City and CRA: Community Development Director, City of DeLand, 120 South Florida Ave., DeLand, FL 32720.
 - 14.1.2. For GlassHouse: 801 E International Speedway Blvd., DeLand, FL 32724, Attn: Michael Prelec, Jr., with a copy to F.A. (Alex) Ford, Jr., Landis Graham French PA, 145 East Rich Avenue, Suite C, DeLand, FL 32724.
- 14.2. Each such notice shall be deemed delivered: on the date of delivery if by personal delivery; and if the notice is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; (b) the date upon which delivery is refused; or (c) the date upon which notice is designated by the postal authorities as not delivered. Notwithstanding the foregoing, service by personal delivery delivered after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.
- 14.3. If a notice is delivered by multiple means, the notice shall be deemed delivered upon the earliest date determined in accordance with the preceding subsection.
- 14.4. If the above provisions require notice to be delivered to more than one person (including a copy), the notice shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

15. Assignment.

15.1. Assignment.

15.1.1. GlassHouse shall be entitled to assign its rights and obligations under this Agreement as to one or more Projects to a parent, subsidiary, or affiliated entity in which GlassHouse or its members are the management authority and are members or interest holders, including but not limited to, a single-asset entity or joint venture entity. The foregoing or any other provision of this Agreement, GlassHouse shall not be entitled to assign its obligation to maintain its Headquarters on the Property in order to receive the payments provided for in Section 5.11.

15.1.2. Other than as provided for in Section 15.1.1, any assignment of GlassHouse's rights and obligations as to one or more Projects which is made prior to Completion of such Project shall require the consent of the City, which may be withheld or conditioned by the City in its sole discretion.

15.1.3. Otherwise, GlassHouse shall be entitled to assign its rights and obligations under this Agreement as to one or more Projects.

15.2. GlassHouse shall provide notice of a permitted assignment to the City prior to or simultaneously with making the assignment. The notice of assignment shall provide all information to the City sufficient for the City to verify that the assignment is a permitted assignment under Section 15.1 and the assignee's address for the purposes of notice under Section 14 of this Agreement. Upon the City's confirmation that the assignment is a permitted assignment, the City Manager shall execute a document acknowledging the City's acceptance of such assignment.

15.3. Upon any assignment, the rights and obligations contained herein shall be binding on successors in interest to the affected portion of the Property and, as applicable, the Option Parcel, and the terms and conditions of this Agreement shall bind and inure to the benefit of the parties hereto and any respective successors and assigns.

15.4. In the event of an assignment hereunder:

15.4.1. The assignee will have all rights and obligations of GlassHouse as to the Project that is the subject of the assignment.

15.4.2. The assignee shall be entitled to amend or terminate the provisions of this Agreement that concern the assigned Project without the necessity of joinder or consent of GlassHouse or any assignee of any other Project, provided that no such amendment or termination shall amend the rights or obligations of GlassHouse, or concerning any other Project or other portion of the Property or Option Parcel, without joinder or consent of the affected party.

- 15.5. By executing this Agreement, GlassHouse agrees, and by accepting any assignment, each assignee agrees, the foregoing provisions of this Section concerning the ability of an assignee to amend or terminate this Agreement as to the Project assigned to the assignee.
16. **Amendment.** The provisions of this Agreement may not be amended, supplemented, waived, or changed orally but only by a writing making specific reference to this Agreement signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought.
17. **City's Police Powers.** Nothing in this Agreement shall serve to affect or limit the City's police powers in the exercise of zoning or land development decisions or other governmental action associated with the proposed redevelopment of the Property or the Option Parcel, as applicable, or any development order associated therewith.
18. **Sovereign Immunity.** Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of the City's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law.
19. **Resolving any Invalidity.** The City, the CRA and GlassHouse hereby agree that in the event this Agreement or the economic incentives described herein are ever challenged by any person and held to be invalid by a court of competent jurisdiction, each will cooperate with the other, in good faith, to resolve the invalidity or pursue a valid alternative means to secure a substantially similar and equitable financial arrangement which the parties acknowledge was the inducement for GlassHouse undertaking the Projects.
20. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
21. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal or unenforceable shall be severable and shall not be construed to render the remainder to be invalid, illegal or unenforceable.
22. **Relationship.** This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture among the City, the CRA and GlassHouse, or any of them. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that the other party hereto is not acting as a fiduciary for nor as an adviser to it in respect of this Agreement.
23. **Personal Liability.** No provision of this Agreement is intended, nor shall any be construed, as a covenant of any official (either elected or appointed), director, employee or agent of the City, the CRA or GlassHouse in an individual capacity and neither shall any such individuals be subject to personal liability by reason of any covenant or obligation of GlassHouse, the City or the CRA hereunder.

24. **Exclusive Venue.** The parties agree that the exclusive venue for any litigation, suit, action, counterclaim, or proceeding, whether at law or in equity, which arises out of or concerns or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall be in Volusia County, Florida.
25. **JURY WAIVER.** EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
26. **Recording.** Except as expressly provided for herein, neither this Agreement nor any memoranda hereof, shall be recorded in the Public Records of Volusia County, Florida.
27. **Counterparts; Copies.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which shall together constitute one and the same instrument. Additionally, signed facsimiles shall have the same force and effect as a signed original, and, in lieu of an original, any party hereto may use a photocopy of this Agreement in any action or proceeding brought to enforce or interpret any of the provisions contained herein.
28. **Language.** Whenever used in this Agreement: the singular form of a term or phrase shall include the plural and the plural of a term or phrase shall include the singular, and the use of any gender shall include all genders where the context permits; references to Sections shall include all subsections (and other divisions) thereunder; the word "or" may be read "and," if the context permits or requires it; and the words "include," "includes," "including" shall be deemed to be followed by the phrase "without limitation."
29. **Attorney's Fees.** If any legal action or other proceeding (including, without limitation, appeals or bankruptcy proceedings) whether at law or in equity, which arises out of, concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby; or is brought for the enforcement of this Agreement; or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement; then the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable

as court costs, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

30. **Successors and Assigns.** All covenants, Agreements, warranties, representations, and conditions contained in this Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties to this Agreement.
31. **Waiver.** A failure to assert any rights or remedies available to a party under the terms of this Agreement shall not be deemed a waiver of such rights or remedies, and a waiver of the right to remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this Agreement, unless such waiver of such right or remedy is contained in a writing signed by the party alleged to have waived his other rights or remedies.
32. **Construction of Agreement.** Each party acknowledges that all parties to this Agreement participated equally in the drafting of this Agreement and that it was negotiated at arm's length. Accordingly, no court construing this Agreement shall construe it more strongly against one party than another.
33. **Exhibits.** Any exhibits attached to this Agreement shall, by this reference, be incorporated into this Agreement.
34. **Further Action.** Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the parties hereto.
35. **No Third Party Beneficiaries.** No person or entity other than GlassHouse, the City and the CRA and their respective assigns are intended beneficiaries of this Agreement, and no person or entity other than them shall have any right to enforce the terms of this Agreement or claim any benefit of this Agreement.
36. **Time.** Time is of the essence of all of the provisions and terms of this Agreement.
37. **Entire Understanding.** This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations (if any) made by and between the parties with the exception of those specific provisions of a PD Agreement which, to the extent of conflict herewith, shall control over this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

THEREFORE, the parties have executed this Agreement on the Effective Date set forth above.

Signed, sealed and delivered in the presence of:

Vickie Belanger
Witness 1

Vickie Belanger
Print Name of Witness 1

Teri Byrnes
Witness 2

Teri Byrnes
Print Name of Witness 2

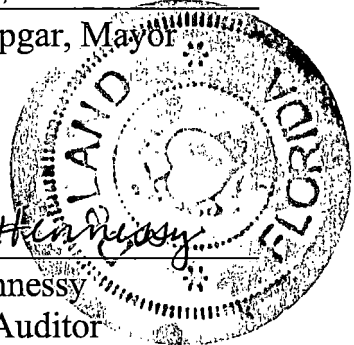
THE CITY OF DELAND,
FLORIDA, a Florida municipal
corporation

By: Robert F. Apgar
Robert F. Apgar, Mayor

Attest:

By: Julie A. Hennessy
Julie A. Hennessy
City Clerk-Auditor

Date: 7.9.2020



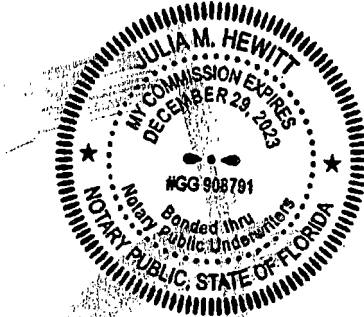
STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 9th day of July, 2020 by ROBERT F. APGAR, Mayor and JULIE A. HENNESSY, City Clerk-Auditor, respectively, of the City of DELAND, Florida, a chartered municipal corporation, on behalf of the City, who are personally known to me or who have produced _____ as identification.

Julie M. Hewitt
Notary Public
Commission No.: GS 908791

Approved as to legal form:

By: Darren J. Elkind
Darren J. Elkind, City Attorney



Signed, sealed and delivered in the presence of:

**THE DOWNTOWN
COMMUNITY
REDEVELOPMENT AGENCY
OF THE CITY OF DELAND,
FLORIDA, organized under
Chapter 163, Part III, Florida
Statutes**

Vickie Belanger
Witness 1

Vickie Belanger
Print Name of Witness 1

[Signature]
Witness 2

Teri Byrner
Print Name of Witness 2

By: [Signature]
Robert F. Apgar, Chair

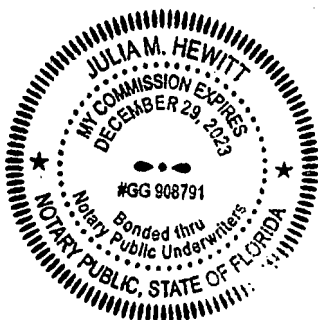
Attest:

By: Julie A. Hennessy
Julie A. Hennessy
City Clerk-Auditor

Date: 7.9.2020

**STATE OF FLORIDA
COUNTY OF VOLUSIA**

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 9th day of July, 2020 by ROBERT F. APGAR, Chair of the Community Redevelopment Agency of the City of DeLand organized under Chapter 163, part III, Florida Statutes, on behalf of the Agency, who is personally known to me or who has produced _____ as identification.



[Signature]
Notary Public
Commission No.: 95908791

Approved as to legal form:

By: [Signature]
Darren J. Elkind, City Attorney

Signed, sealed and delivered in the presence of:

**GLASSHOUSE SQUARE, LLC, a
Florida limited liability company**

Tasheldon Starke
Witness 1

Tasheldon Starke
Print Name of Witness 1

[Signature]
Witness 2

Kristen Sparks
Print Name of Witness 2

By: [Signature]
Managing Member

Date: 7/6/20

**STATE OF FLORIDA
COUNTY OF VOLUSIA**

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or ☐ online notarization, this 6 day of July, 2020 by
Michael L. Prodec, a Florida resident, as managing member of GlassHouse Square,
LLC, who is personally known to me or who has produced FLDL as identification.

P642-552-821660

[Signature]
Notary Public
Commission No.: 66283115

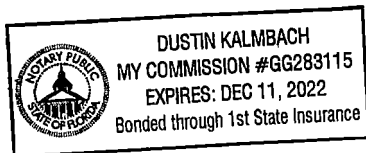


EXHIBIT A

(Legal Description for the Property)

That portion of Lot 3, Block 3, Howry's Addition to DeLand, as recorded in Deed Book "G", page 701, Public Records of Volusia County, Florida, lying West of the Westerly line of Miller Hardware Company's Re-subdivision Map Book 5, Page 156 of aforesaid Public Records, Less any portion lying within the Rights of Way of New York Avenue, a 66 foot wide R/W, and Georgia Avenue (F.K.A. Short Street). Together with that portion of Lot 4, Block 3, Howry's Addition to DeLand, as recorded in Deed Book "G", page 701, Public Records of Volusia County, Florida, lying East of the following described line; Beginning at a point on the South line of West New York Avenue, as now laid out 66 feet wide, said point being 191.9 feet East of the center line of S. Florida Avenue, said point also being 57 feet East of the established and recognized Northwest corner of said Lot 4, Block 3, Howry's Addition to DeLand, thence South at right angles to West New York Avenue 274.7 feet, more or less, to a point on the North side of Shore Street sometimes called Georgia Avenue, which point is 184.45 feet East of the center line of S. Florida Avenue, and 57 feet East of the Southwest corner of said Lot 4, Block 3, Howry's Addition as established and recognized and marked by an iron pipe.

Property Appraiser's Tax Parcel No. 7016-01-03-0030

EXHIBIT B

(Legal Description for the Option Parcel)

The Northeast $\frac{1}{4}$ of Lot 7, Block 3 and the West $\frac{1}{2}$ of Lot 7 except the South 157.7 feet, Block 3, Map of Howery's addition to DeLand, Deed Book "G", Page 701, Public Records of Volusia County, Florida.

Property Appraiser's Tax Parcel No. 7016-01-03-0070

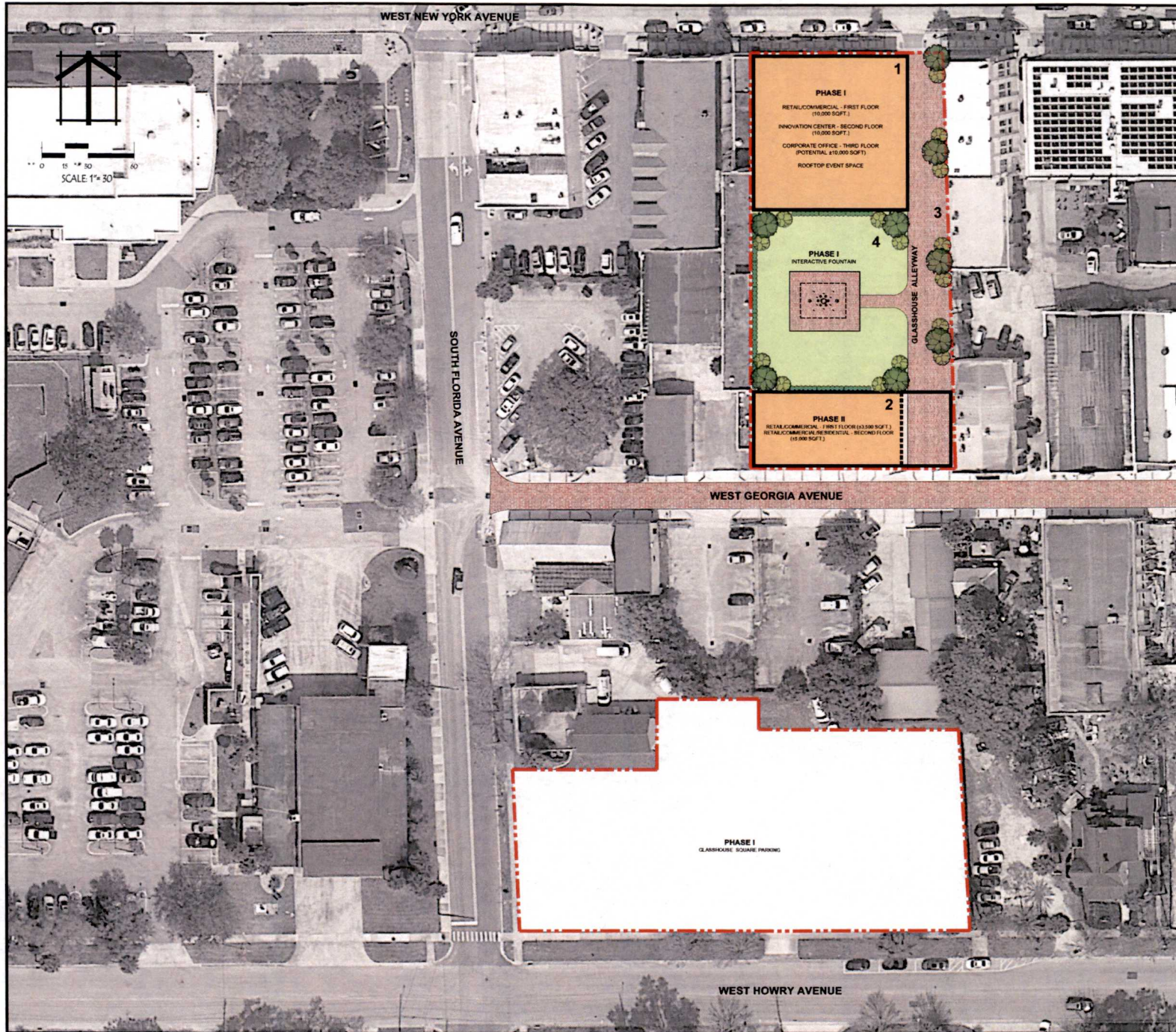


EXHIBIT C



- No. 1 (Phase I)**
BUILDING No. 1 (±30,000 SQFT)
• RETAIL/COMMERCIAL - FIRST FLOOR (10,000 SQFT.)
• INNOVATION CENTER - SECOND FLOOR (10,000 SQFT.)
• CORPORATE OFFICE - THIRD FLOOR (POTENTIAL ±10,000 SQFT.)
• ROOFTOP EVENT SPACE
- No. 2 (Phase II)**
BUILDING No. 2 (±8,500 SQFT)
• RETAIL/COMMERCIAL - FIRST FLOOR (±3,500 SQFT.)
• RETAIL/COMMERCIAL/RESIDENTIAL - SECOND FLOOR (±5,000 SQFT.)
- No. 3 (Phase I)**
GLASSHOUSE ALLEYWAY
• PEDESTRIAN CONNECTION BETWEEN WEST GEORGIA AVENUE AND WEST NEW YORK AVENUE
- No. 4 (Phase I)**
AMENITY AREA
• INTERACTIVE FOUNTAIN
• VENDORS

PRELIMINARY SITE PLAN AND PARKING





City of DeLand

"The Athens of Florida"

www.deland.org

June 21, 2023

Via e-mail to: aford@landispa.com

Via Federal Express to:

Frank Ford, Jr.
Landis Graham French, P.A.
145 E. Rich Avenue
Suite C
DeLand, FL 32724

RECEIVED
JUN 21 2023

BY: *Julia M. Smith*

RE: Z21-186; Change of Zoning for 0.868 acres from C-2A to Planned Development for the property located at 130 West New York Avenue

Dear Mr. Ford:

At its June 5, 2023 meeting, the City Commission voted to deny the above referenced application in a 4-1 vote. The decision to deny the rezoning application was based on the following:

- Lack of a defined use of the plaza;
- Lack of public access to the pedestrian walkway;
- Lack of adequate parking replacement for current parking;
- Removal of parking from the project;
- Lack of a plan for Phase 2;
- Lack of a timeline;
- Effect on other businesses during construction;
- Concern with the viability of proposed project.

Pursuant to Section 33-133.02(c) of the Land Development Regulations, no new application to rezone to the property to the PD district may be considered by the city commission within a period of 12 months from the date of such denial.

I appreciate your cooperation with City staff during the development review process. Should any questions arise regarding this or any other planning issues please feel free to contact me at the City of DeLand Planning Department. My office telephone number is (386) 626-7016. We are open Monday through Friday between 8:00 a.m. and 5:00 p.m.

Sincerely,

Deborah Glick

Deborah Glick
Interim Deputy Planning Director

120 South Florida Avenue, DeLand, FL 32720

Community Development (386) 626-7023 Planning Division (386) 626-7016 Building Division (386) 626-7009