

TREASURE COAST REGIONAL PLANNING COUNCIL
BROWNFIELDS PROGRAM CLEANUP
LOAN & PROJECT AGREEMENT

THIS TREASURE COAST REGIONAL PLANNING COUNCIL BROWNFIELDS PROGRAM CLEANUP LOAN & PROJECT AGREEMENT, (the "Agreement"), made and entered into this _____ day of _____, 2016, by and between the FORT PIERCE REDEVELOPMENT AGENCY a Florida community redevelopment agency under the Community Redevelopment Act of 1969 under Part III of Chapter 163 of Florida Statutes (2014) (hereinafter referred to as "BORROWER" or 'AGENCY'), and the TREASURE COAST REGIONAL PLANNING COUNCIL, a body corporate and politic of the State of Florida, (hereinafter referred to as "LENDER", "COUNCIL" or "Council") and this Agreement is joined into by Cardno, Inc. (see **Exhibit J**).

WHEREAS, BORROWER is the owner of fee simple title of certain lands situate and lying in Fort Pierce, Florida as more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property") and agrees to continuously retain fee simple ownership of the Property until the following have been completed: (i) completion of the Work Plan (hereinafter defined), (ii) approval by LENDER, FDEP and EPA of all work performed and completed in connection with the Work Plan, (iii) completion of all close out matters under the Grant Agreement (hereinafter defined) with respect to the Property and (iv) LENDER has approved a Transfer (hereinafter defined); and

WHEREAS, LENDER is a recipient of a Grant Agreement (hereinafter defined), from the U.S. Environmental Protection Agency ("EPA") and is authorized to make certain loans from the grant funds; and

WHEREAS, BORROWER has applied for a loan from LENDER in the principal amount of three hundred thousand (\$300,000.00) dollars; and

WHEREAS, LENDER has approved granting the loan to BORROWER in a principal sum not to exceed three hundred thousand (\$300,000.00) dollars to provide funding for the Cleanup Activities (hereinafter defined) subject to all terms, conditions and provisions in this Agreement and all other the Loan Documents (hereinafter defined); and

WHEREAS, the loan is evidenced by a certain Promissory Note in the principal amount of three hundred thousand (\$300,000.00) dollars, and is secured by, among other things, the Irrevocable Letter of Credit (hereinafter defined); and

WHEREAS, BORROWER has entered into a Brownfields Site Rehabilitation Agreement with the Florida Department of Environmental Protection designating the Property with Brownfield Site Identification Number BF561101001 ("Cleanup Agreement") in which BORROWER has agreed, to conduct cleanup activities regarding the environmental contamination of the Property consistent with state and federal laws and rules and to conduct the site rehabilitation in a timely manner according to the Rehabilitation Schedule (as defined in the Cleanup Agreement); and

WHEREAS, the Property was designated by City of Fort Pierce Resolution 11-44 (as corrected by Resolution 12-37), as a Brownfield Area.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration exchanged between the parties, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

ARTICLE I

The above WHEREAS clauses are true and correct and are incorporated into this Agreement.

DEFINITIONS

1.1 As used in this Agreement, the terms listed below shall have the following meanings:

1.1.1 Approved Budget Amount. Is the total amount approved for expenditure for completion of the Work Plan. The Approved Budget Amount is the sum of three hundred thousand (\$300,000.00) dollars.

1.1.2 BORROWER. Fort Pierce Redevelopment Agency, with an address of CITY HALL 100 North U.S. 1, Ft. Pierce, FL. 34954-1480 and its permitted successors and assigns.

1.1.3 BORROWER Cost Share. Not Applicable.

1.1.4 Budget. The budget for completion of the Work Plan reflecting an amount for each element or component of the Work Plan. The Budget is set forth in Exhibit I which is also the Exhibit containing the Work Plan. The Budget is in the same total amount as the Approved Budget Amount.

1.1.5 Cleanup Activities. Means activities eligible for EPA funding under the Grant Agreement and under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) and its implementing regulations and which are included in the Work Plan or are otherwise required by EPA in connection with or related to completion of the Work Plan.

1.1.6 Closing. Shall mean and refer to closing as that term is customarily used in connection with real estate transaction closings and loan transaction closings.

1.1.7 LENDER, COUNCIL or Council. The Treasure Coast Regional Planning Council, with its offices located at 421 SW Camden Ave., Stuart, Fl. 34994, and its successors and assigns.

1.1.8 Default Rate or Default Interest Rate. Shall mean the Default Interest Rate as specified in the Note. BORROWER agrees that any payment not paid when due, whether such payment is due under the Note or this Agreement, shall bear interest at the Default Interest Rate from the due date thereof until paid.

- 1.1.9 Governmental Authority. Any federal, state, county, municipal or other government, and including but not limited to all departments, commissions, boards, bureaus, courts, agencies, and instrumentalities thereof.
- 1.1.10 Governmental Requirements. Any law, statute, code, ordinance, order, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered or issued.
- 1.1.11 Grant Agreement. EPA Cooperative Agreement bearing #BF-96431305, as amended by #BF-96431305-1, as amended by #BF-96431305-2, as amended by BF-96431305-3, as amended by BF-96431305-4, and as amended by #BF-96431305-5 together with EPA General Terms and Conditions Effective October 6, 2015, and all applicable administrative conditions that are part of the above referenced EPA Assistance Amendments, and all Revolving Loan Fund (RLF) Terms and Conditions that are part of EPA Cooperative Agreement #BF-96431305.
- 1.1.12 Indebtedness. This term used in this Agreement shall have the same meaning as this term has under the Note.
- 1.1.13 Irrevocable Letter of Credit or Irrevocable Letters of Credit is used to include the irrevocable letter of credit attached hereto as **Exhibit B** in the amount of \$300,000.00 and all renewal, replacement, extended and other irrevocable letters of credit which are required by this Agreement or required by LENDER. All renewal, replacement, extended and other irrevocable letters of credit shall be in such form as required by LENDER, shall be in the amount of \$300,000.00 and be issued by a financial institution(s) approved by LENDER. The singular term Irrevocable Letter of Credit shall also include the plural Irrevocable Letters of Credit and the plural Irrevocable Letters of Credit shall also include the singular Irrevocable Letter of Credit as the context may require. The BORROWER must continuously maintain the Irrevocable Letter of Credit in full force and effect from the date of this Agreement through February 1, 2021.
- 1.1.14 LEP or Licensed Environmental Professional-this term shall have the meaning set forth in the Grant Agreement. All fees and costs of the LEP or Licensed Environmental Professional shall be paid by BORROWER. Unless and until LENDER approves another LEP (which shall be in LENDER'S sole and absolute discretion), the BORROWER shall employ the firm of Cardno as the LEP.
- 1.1.15 Loan Funds. Funds originating from the U.S. Environmental Protection Agency ("EPA") pursuant to the Grant Agreement which are being loaned by LENDER to BORROWER in a principal sum not to exceed \$300,000.00 pursuant to the Loan Documents.
- 1.1.16 Loan. As hereinafter defined.

- 1.1.17 Loan Documents. This term shall mean: (i) the Note, (ii) this Agreement, and (iii) the Irrevocable Letter of Credit.
- 1.1.18 Note. The Promissory Note executed by BORROWER to LENDER in the original principal sum of \$300,000.00.
- 1.1.19 Project Schedule. The schedule that describes when the work or components of the work or other items, set forth in the Work Plan, are to be completed. The Project Schedule is shown on Exhibit I which contains the Work Plan.
- 1.1.20 Property. That certain real property described on Exhibit A, annexed hereto and made a part hereof.
- 1.1.21 Work Plan. All work, services and other items set forth or referred to in Exhibit I, which is attached hereto and made a part hereof relating to the environmental cleanup of the Property.
- 1.1.22 Other Definitional Provisions. (a) The terms "material" and "materially" when used in reference to financial matters shall have the meanings ascribed to such terms under GAAP (as the term GAAP is used by certified public accountants) as such would be applied to the business of the BORROWER, except as the context shall clearly otherwise set forth; and (b) accounting terms, to the extent not otherwise defined, shall have the respective meanings given them under, and shall be construed in accordance with, GAAP.

ARTICLE II

- 2.1 Loan. LENDER is lending to BORROWER and BORROWER is borrowing from and is indebted to the LENDER (subject to 2.2) in the amount of the principal sum of Three Hundred Thousand and 00/100 Dollars (U.S. \$300,000.00) (the "Loan") payable in accordance with this Agreement, the Note and other Loan Documents and secured by, among other things, the Irrevocable Letter of Credit.
- 2.1.1 Security. The Loan is secured by among other things, the Irrevocable Letter of Credit. The BORROWER shall continuously maintain in full force and effect, from the date of this Agreement through February 1, 2021, in LENDER's favor, the Irrevocable Letter of Credit in the amount of \$300,000.00 issued by financial institution(s) approved by LENDER. The BORROWER shall continuously and repeatedly provide LENDER with additional Irrevocable Letters of Credit not later than 90 days prior to the expiration of: (i) the Irrevocable Letter of Credit, (ii) all renewal Irrevocable Letters of Credit, (iii) all replacement Irrevocable Letters of Credit (iv) all extended Irrevocable Letters of Credit and (v) all other Irrevocable Letters of Credit. All additional Irrevocable Letters of Credit to be in such form as required by LENDER, be in the amount of \$300,000.00 and be issued by a financial institution(s) approved by LENDER and be continuously maintained in full force and effect through February 1, 2021.

In addition to the above, in the event that LENDER draws down funds from the Irrevocable Letter of Credit to apply to any default of BORROWER, then BORROWER within 10 days of a written demand from LENDER, shall deliver to LENDER a replacement Irrevocable Letter of Credit so that LENDER continuously has in full force and effect from the date of this Agreement through February 1, 2020 an Irrevocable Letter of Credit, in its favor, in the amount of \$300,000.00. All additional and replacement Irrevocable Letters of Credit to be in such form as required by LENDER and issued by a financial institution(s) approved by LENDER.

- 2.2 Disbursement of the Loan. The Loan Funds shall be disbursed to BORROWER in progress payment disbursements in accordance with, and limited by, the terms of this Agreement, the Note and other Loan Documents. At any time BORROWER is in default LENDER shall have no obligation to make any disbursement to BORROWER.
- 2.3 Prepayment. BORROWER may prepay the Loan as set forth in the Note.
- 2.4 Purpose of the Loan and Compliance with Grant Agreement Requirements. The proceeds of the Loan shall be used only for the approved Cleanup Activities as set forth in the Work Plan for the Property and as set forth in and in strict compliance with the Grant Agreement and TCRPC's EPA Approved Work Plan, the Budget, this Agreement and the other Loan Documents. BORROWER hereby represents and warrants that BORROWER has received a copy of the Grant Agreement and agrees to comply with all requirements thereof. All plans and specifications in regard to the Cleanup Activities shall comply with all applicable Governmental Requirements and the Grant Agreement.
- 2.4.1 There is attached hereto as Exhibit C (consisting of 1 page), Exhibit D (consisting of 3 pages), Exhibit E (consisting of 3 pages) and Exhibit F (consisting of 19 pages) respectively: the administrative conditions attached to EPA Assistance Amendment bearing #BF-96431305-2, the administrative conditions attached to EPA Assistance Amendment bearing #BF-96431305-1, the administrative conditions attached to EPA Cooperative Agreement bearing #BF-96431305-0 and the Region 4 Revolving Loan Fund (RLF) Terms and Conditions attached to EPA Cooperative Agreement #BF-96431305-0 all of which are part of the Grant Agreement. Exhibit C, D, E and F are incorporated herein. Exhibits C, D, and E are collectively referred to in the next paragraph as "Administrative Conditions" and Exhibit F is referred to in paragraph 2.4.3 below as "RLF Terms and Conditions".
- 2.4.2 The terms "recipient", "recipients", "recipient's", "subrecipient", "subrecipients", "grantee," "grantees", "recipient agency", "agency", "political subdivision" and "recipient organization" as used in the Administrative Conditions Exhibits C, D and E (whether such terms are in lowercase, are capitalized or are in all caps) shall mean the BORROWER for the purposes of this Agreement and the BORROWER agrees that the BORROWER shall comply with, be subject to and shall perform, all requirements and obligations (in the time and manner required) that are required of or applicable to "recipient", "recipients", "recipient's", "subrecipient",

“subrecipients”, “grantee”, “grantees”, “recipient agency”, “agency”, “political subdivision” or “recipient organization” (whether such terms are in lowercase, are capitalized or are in all caps) under the Administrative Conditions except that all documents, reports, forms and information required or permitted to be provided to, or submitted to, EPA shall instead be provided and submitted by BORROWER to LENDER and LENDER in its discretion may provide such documents, reports, forms or information to EPA. BORROWER understands and agrees that EPA has no obligations to the BORROWER. BORROWER shall not make any subawards, grants, subgrants or subloans.

- 2.4.3 The terms “Cooperative Agreement Recipients”, “CAR”, “recipient”, “recipients”, “recipient’s”, “borrower”, “borrowers”, “grantee”, “grantees”, “subgrantee”, “subgrantees”, “subgrant recipient”, or “subgrant recipients” (whether such terms are in lowercase, are capitalized or are in all caps) used in RLF Terms and Conditions Exhibit F shall mean BORROWER for the purposes of this Agreement and BORROWER agrees that the BORROWER shall comply with, be subject to and shall perform, all requirements and obligations (in the time and manner required) that are required of or applicable to “Cooperative Agreement Recipients”, “CAR”, “recipient”, “recipients”, “recipient’s”, “borrower”, “borrowers”, “grantee”, “grantees”, “subgrantee”, “subgrantees”, “subgrant recipient” or “subgrant recipients” (whether such terms are in lowercase, are capitalized or are in all caps) under the RLF Terms and Conditions except modified as follows: (i) all reports (including but not limited to quarterly progress reports), documents, forms or information required to be provided to or submitted to EPA shall instead be provided to and submitted by BORROWER to LENDER and LENDER in its discretion may provide such documents, reports, forms or information to EPA (BORROWER quarterly reports do not have to address items 8, 9, & 10 under Article II. D. 1.e.) , (ii) the term of this Agreement is not governed by the term of the Grant Agreement referred to in Article II A. 1. nor does the BORROWER have 2 years to make sufficient progress referred to in Article II A. 2., (iii) BORROWER shall not be required to act as or appoint a qualified “fund manager referred to in Article II. C. 2., (iv) the term “CAR” under Article II. C. 3. shall mean the LENDER, (v) under Article III. Financial Administration Requirements a cost share is not required of BORROWER in connection with this Agreement, (vi) under Article III. Financial Administration Requirements BORROWER shall not use Loan funds to capitalize a revolving loan fund, (vii) under Article III. Financial Administration Requirements item 3 and item 4 under B. shall not apply to BORROWER, (viii) under Article III. Financial Administration Requirements item 5 under B. BORROWER may expend Loan funds for the eligible programmatic expenses only to the extent such eligible expenses are included in the Work Plan and Budget, (ix) under Article III. Financial Administration Requirements paragraphs 1. & 2. under C. do not apply to BORROWER, (x) under Article III. Financial Administration Requirements as to paragraphs 1 & 2 under E. BORROWER represents and warrants that it owns the Property in fee simple and will retain such ownership throughout the period by this Agreement (and as to item 3 under E. BORROWER represents and warrants that BORROWER is not potentially liable under CERCLA section 107 for cleanup activities at the

Property), (xi) under Article III. Financial Administration Requirements items G. H. & I. shall not apply to BORROWER, (xii) under Article IV. RLF Environmental Requirements in paragraph E. 1. second sentence “CAR” shall mean only the LENDER, in E. 2. “CAR” shall mean LENDER, (xiii) under Article V. Revolving Loan Fund Requirements, paragraphs under A. of this Article shall not apply to BORROWER except BORROWER shall deliver to LENDER upon request an explanation as to how the subject project would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment (BORROWER shall also deliver to LENDER upon LENDER’s request information describing BORROWER’s environmental compliance history), (xiv) under Article V. Revolving Loan Fund Requirements under B. of this Article subparagraphs 1. a.-g. (inclusive) are incorporated herein as BORROWER obligations and BORROWER does hereby make all the certifications required in such paragraphs, (xv) under Article V. Revolving Loan Fund Requirements paragraphs under C. and D. shall not apply to BORROWER, (xvi) Article VI. Disbursement, Payment and Closeout shall not apply to BORROWER (except that BORROWER shall deliver to LENDER within 5 days of a written request from LENDER all information, documentation, records and reports so that LENDER can comply with the provisions of this Article) and the term “CAR” and “recipient” used throughout this Article shall mean only “LENDER”, (xvii) BORROWER shall have no authority to make any grants, subawards, subgrants or subloans, (xviii) the term “work plan” used in RLF Terms and Conditions for purposes of this Agreement shall mean the Work Plan as defined in the definitions section of this Agreement, (the Work Plan is intended to be a part of LENDER’s overall EPA work plan under the Grant Agreement). The loan funds to be disbursed to BORROWER hereunder shall not include any reimbursement for nor shall BORROWER use such funds to pay for any ineligible programmatic expenses or any other ineligible expenses nor shall BORROWER use such funds to pay for any eligible programmatic expenses or any other eligible expenses referred to in the RLF Terms and Conditions except to the extent that such reimbursement or expenditure would be in accordance with the Work Plan and Budget under this Agreement.

- 2.4.4 There is attached hereto and incorporated herein an **Exhibit G** consisting of 26 pages. **Exhibit G** contains (i) Administrative Conditions, (ii) Programmatic Conditions, (iii) General Federal Requirements, (iv) General Cooperative Agreement Administrative Requirements, (v) Financial Administration Requirements, (vi) RLF Environmental Requirements, (vii) Revolving Loan Fund Requirements, and (viii) Disbursement, Payment and Closeout provisions that are attached to and a part of the BF-96431305-3 which is part of the Grant Agreement. The terms “Cooperative Agreement Recipients”, “CAR”, “RLF recipient” “RLF recipients”, “recipient”, “recipients”, “recipient’s” “subrecipient”, “subrecipients”, “borrower”, “borrowers”, “grantee”, “grantees”, “subgrantee”, “subgrantees”, “subgrant recipient”, “subgrant recipients” “recipient agency”, “agency”, “political subdivision” and “recipient organization” (whether such terms are in lowercase, are capitalized or are in all caps) used in **Exhibit G** shall mean BORROWER for the purposes of this Agreement and BORROWER agrees that the BORROWER shall

comply with, be subject to and shall perform, all of the requirements and all obligations (in the time and manner required) set forth in **Exhibit G** that are required of or applicable to “Cooperative Agreement Recipients”, “CAR”, “RLF recipient”, “RLF recipients”, “recipient”, “recipients”, “recipient’s”, “subrecipient”, “subrecipients” “borrower”, “borrowers”, “grantee”, “grantees”, “subgrantee”, “subgrantees”, “subgrant recipient”, “subgrant recipients”, “recipient agency”, “agency”, “political subdivision” or “recipient organization” (whether such terms are in lowercase, are capitalized or are in all caps). **Exhibit G** contains some of the same or similar provisions that are contained in RLF Terms and Conditions **Exhibit F**. To the extent that **Exhibit G** contains the same or similar provisions as are included in RLF Terms and Conditions Exhibit F, then the provisions of paragraph 2.4.3 above relating to such provisions shall also be applicable with respect to such provisions in **Exhibit G**. BORROWER hereby makes all the representations and warranties and certifications that are required under **Exhibit G**. BORROWER shall have no authority to make any grants, subawards, subgrants or subloans.

2.4.5 There is attached hereto and incorporated herein an **Exhibit H** consisting of 43 pages. **Exhibit H** contains (i) Administrative Conditions, (ii) Programmatic Conditions, (iii) General Federal Requirements, (iv) Site/Borrower/Subgrantee Eligibility, (v) General Cooperative Agreement Administrative Requirements, (vi) Financial Administration Requirements, (vii) RLF Environmental Requirements, (viii) Disbursement, Payment and Closeout provisions, (ix) Davis Bacon Term and Condition Addendum for Revolving Loan Fund Grants to Governmental/Quasi Governmental Organizations, (x) Davis Bacon Term and Condition for Hazardous Waste Cleanup Grants to Governmental Entities, and (xi) Davis Bacon Term and Condition for Petroleum Grants to Nonprofits. All of the foregoing provisions are attached to and a part of the BF-96431305-4 which is part of the Grant Agreement. The terms “Cooperative Agreement Recipients”, “CAR”, “RLF recipient” “RLF recipients”, “recipient”, “recipients”, “recipient’s” “subrecipient”, “subrecipients”, “borrower”, “borrowers”, “grantee”, “grantees”, “subgrantee”, “subgrantees”, “subgrant recipient”, “subgrant recipients” “recipient agency”, “agency”, “political subdivision” and “recipient organization” (whether such terms are in lowercase, are capitalized or are in all caps) used in **Exhibit H** shall mean BORROWER for the purposes of this Agreement and BORROWER agrees that the BORROWER shall comply with, be subject to and shall perform, all of the requirements and all obligations (in the time and manner required) set forth in **Exhibit H** that are required of or applicable to “Cooperative Agreement Recipients”, “CAR”, “RLF recipient”, “RLF recipients”, “recipient”, “recipients”, “recipient’s”, “subrecipient”, “subrecipients” “borrower”, “borrowers”, “grantee”, “grantees”, “subgrantee”, “subgrantees”, “subgrant recipient”, “subgrant recipients”, “recipient agency”, “agency”, “political subdivision” or “recipient organization” (whether such terms are in lowercase, are capitalized or are in all caps). **Exhibit H** contains some of the same or similar provisions that are contained in RLF Terms and Conditions Exhibit F. To the extent that **Exhibit H** contains the same or similar provisions as are included in RLF Terms and Conditions Exhibit F, then the provisions of paragraph 2.4.3 above relating to such provisions shall also be applicable with

respect to such provisions in **Exhibit H**. BORROWER hereby makes all the representations and warranties and certifications that are required under **Exhibit H**. BORROWER shall have no authority to make any grants, subawards, subgrants or subloans.

2.4.6 There is attached hereto and incorporated herein an **Exhibit K** (consisting of 43 pages). **Exhibit K** contains the EPA General Terms and Conditions Effective October 6, 2015, which is part of the Grant Agreement, and which is hereby incorporated herein. BORROWER shall comply with all terms and conditions of **Exhibit K** to the extent such terms and conditions are directly applicable to BORROWER. In addition, BORROWER shall fully cooperate with LENDER regarding LENDER'S obligations thereunder, including but not limited to the provision of reports, records and other documentation as required thereby.

2.5 **Condition Precedent to Loan Disbursements Clause.** *Notwithstanding any provisions of this Agreement and notwithstanding any provisions of the Loan Documents the following shall control: it shall be a condition precedent to any obligation of the LENDER to make any Loan disbursement or Loan disbursements to the BORROWER under or in connection with the Loan Documents, that LENDER has actually received the funds from EPA for such Loan disbursement or Loan disbursements. If the EPA has not paid the LENDER for any reason whatsoever, including but not limited to EPA's unwillingness to pay or EPA's inability to pay or EPA's determination that a request for payment is for ineligible or unallowable costs under the Grant Agreement or EPA's termination of the Grant Agreement with or without cause or for any other reason whatsoever whether related to BORROWER or not, the BORROWER agrees that the LENDER shall not be liable for any such Loan disbursement or Loan disbursements, nor be indebted to the BORROWER. BORROWER assumes the credit risk and all other risks of non disbursement by EPA. In no event shall the LENDER be obligated to use its own funds to fund its obligations under this Agreement or under the Loan Documents.*

2.6 **BORROWER Refunding Provision.** In addition to the above Condition Precedent to Loan Disbursements Clause-BORROWER agrees to immediately upon demand from LENDER (notwithstanding the time for repayment of the Loan as set forth in the Note) repay to LENDER the amount of all funds which were received by BORROWER as to which EPA determines that the disbursement to the BORROWER was for ineligible, unallowable or improper uses or purposes (including but not limited to any overpayment to BORROWER) under the laws, rules or regulations governing the use of funds under EPA Grant Agreement.

2.7 **BORROWER Contracting, Subcontracting and Assigning.** LENDER by its execution of this Agreement hereby gives its approval to BORROWER subcontracting work and services referred to in the Work Plan to Cardno ("Cardno"). BORROWER shall be responsible to ensure that the subcontract with Cardno complies in all respects with this Agreement, the Loan Documents and the Grant Agreement. The approval by LENDER of BORROWER subcontracting with Cardno shall not release or discharge the BORROWER from any duty or responsibility under this Agreement or Loan Documents. BORROWER

shall continue to be responsible for the completion of the Work Plan and performance of BORROWER's other obligations under this Agreement and the Loan Documents.

BORROWER may also contract with or subcontract with such other qualified and properly licensed contractors and subcontractors as BORROWER deems appropriate to complete all of the work and services referred to in the Work Plan without any further consent being required of LENDER on the condition that BORROWER shall employ throughout completion of the Work Plan (set forth in **Exhibit I.**) the firm of Cardno. BORROWER shall be responsible to ensure that any contract or subcontract entered into by BORROWER complies in all respects with this Agreement, the Loan Documents and the Grant Agreement. Such contracting or subcontracting shall not release or discharge the BORROWER from any duty or responsibility under this Agreement or Loan Documents. BORROWER shall continue to be responsible for the completion of the Work Plan and performance of BORROWER's other obligations under this Agreement and the Loan Documents.

Other than as set forth in the above two paragraphs of this 2.7 BORROWER shall not assign, subcontract, sublet, or transfer any of its obligations, rights or interests under this Agreement or the Loan Documents, without the prior written consent of the LENDER which consent LENDER may grant or withhold in its sole and absolute discretion.

Exhibit G which is attached hereto contains, among other things, a Davis Bacon Term and Condition for Revolving Loan Fund Grants to Governmental/Quasi Governmental Organizations consisting of eight pages and **Exhibit H** which is attached hereto contains, among other things, a Davis Bacon Term and Condition Addendum for Revolving Loan Fund Grants to Governmental/Quasi Governmental Organizations and a Davis Bacon Term and Condition for Hazardous Waste Cleanup Grants to Governmental Entities which together under **Exhibit H** total 16 pages (all of the foregoing provisions under **Exhibit G** and **Exhibit H** are collectively referred to in this section 2.7 as "DB Requirements"). In addition to the other obligations of BORROWER set forth in this Agreement regarding the provisions of **Exhibit G and Exhibit H** the BORROWER must comply with all of the DB Requirements. These DB Requirements which BORROWER must comply with include but are not limited to: (a) obtaining and using correct wage determinations in all solicitations, contracts, subcontracts, task orders, ordering instruments, work assignments, or similar instruments (including the required insertion of correct wage determinations in all lower tier solicitations, contracts, subcontracts, task orders, ordering instruments, work assignments, or similar instruments), (b) requiring all contractors, subcontractors, lower tier contractors, and others to obtain and use correct wage determinations in all solicitations, contracts, subcontracts, task orders, ordering instruments, work assignments, or similar instruments (including the required insertion of correct wage determinations in all lower tier solicitations, contracts, subcontracts, task orders, ordering instruments, work assignments, or similar instruments), (c) reviewing for compliance with DB Requirements all solicitations, contracts, subcontracts, task orders, ordering instruments, work assignments or similar instruments (including all lower tier solicitations, contracts, subcontracts, task orders, ordering instruments, work assignments or similar instruments) (d) inserting and requiring the insertion of all required provisions and clauses which are required by the DB Requirements to be included in or inserted into contracts, subcontracts, task orders, ordering instruments,

work assignments or similar instruments (including the required insertion in all lower tier contracts, subcontracts, task orders, ordering instruments, work assignments or similar instruments), (e) requiring in contracts and subcontracts that any class of laborers or mechanics, including helpers, which are not listed in the wage determination which is to be employed under the contract or subcontract shall be classified in conformance with the wage determination, (f) requiring contractors and subcontractors maintain payroll and other required records in compliance with DB Requirements during the course of their work and for a period of 3 years after completion of their work and also to maintain payroll and other records required in the event that this Agreement or any contract or subcontract is subject to the Contract Work Hours and Safety Standards Act, (g) requiring contractors and subcontractors to include in all payroll and other required records all of the information required in the DB Requirements, (h) requiring contractors and subcontractors to allow access to the payroll and other required records, by LENDER, EPA, and U.S. Dept. of Labor for inspection, copying and transcription and to allow LENDER, EPA and U.S. Dept. of Labor to interview employees during working hours, (i) requiring contractors and subcontractors to submit to BORROWER and LENDER weekly for each week in which work is performed a copy of all required payroll information and data, and (j) requiring simultaneously with the weekly submission of all payroll information and data the required "Statement of Compliance" with all required certifications.

Furthermore, in regard to the DB Requirements there are provisions that indicate the RLF Recipient shall perform or comply with various obligations or that the RLF Recipient shall ensure or require or may require that borrowers and subgrantees perform the obligations and comply with various DB Requirements. In regard to all of these provisions BORROWER shall have the obligation to perform and comply with all such provisions without any further notice from LENDER.

In addition, the BORROWER as to the DB Requirements shall also have the obligations: (aa) to conduct all interviews required by DB Requirements, (bb) establish and follow an interview schedule that complies with the DB Requirements, (cc) to spot check weekly (beginning within two weeks of contractors and subcontractors initial submission) all payroll data of contractors and subcontractors for compliance as required by DB Requirements and including verifying evidence of fringe benefit plans and payments by contractors and subcontractors who claim credit for fringe benefit contributions, (dd) to periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification and that contractors and subcontractors are not using a disproportionate number laborers, trainees, and apprentices, (ee) to verify that contractors and subcontractors comply with DB Requirements, (ff) to immediately report potential violations of Davis Bacon prevailing wage requirements to EPA and U.S. Dept. of Labor as set forth in the DB Requirements, and (gg) to comply with and perform all other terms, provisions, conditions, and requirements of the DB Requirements.

2.8 Transaction fees, Closing Costs and Taxes.

2.8.1 Loan Fees and Closing Costs. BORROWER shall pay at closing all closing costs, required by the LENDER, which shall include, but are not limited to, documentary stamps, intangible taxes, all other taxes, LENDER's closing fee in the amount of

two thousand (\$2,000.00) dollars, document preparation fees, escrow fees, LENDER'S attorney fees and costs and all other costs, which may be deducted by LENDER from BORROWER's loan proceeds disbursement at closing or LENDER may require BORROWER to pay these sums separately via wire transfer or cashier's check.

2.8.2 Other Fees, Costs and Taxes. LENDER may, at its option and in addition, charge BORROWER transaction fees and other costs which relate in any way to the closing of the Loan or thereafter including, but not limited to, those pertaining to any demands, notices, financing statements, notices of assignment and LENDER may, at its option and in addition, charge BORROWER other costs and expenses that LENDER requires from time to time that are related in any way to facilitating the performance of the terms and provisions of this Agreement, the Note or other Loan Documents. If in connection with or related to the Loan or any of the Loan Documents, the State of Florida or any federal or other governmental agencies require any taxes (whether pursuant to laws or regulations in force at the time of making the Loan or the time of the execution of the Loan Documents or laws or regulations enacted after the making of the Loan or execution of the Loan Documents) to be paid in connection therewith that had not been previously been paid by BORROWER including but not limited to documentary stamp taxes and intangible taxes the BORROWER shall pay to LENDER all of such taxes together with any interest and penalties that may be required thereon. Payments required by LENDER under this paragraph shall be due and payable from BORROWER when a written demand for payment has been made by LENDER.

2.9 Signage.

2.9.1 Within twenty (20) days subsequent to the execution of the Loan Documents, the BORROWER shall erect and maintain a sign on the Property adjacent to the area where the Cleanup Activities are to take place, readable from adjacent streets and roadways, stating that the project is financed in part by the Treasure Coast Regional Planning Council Brownfields Program. The sign shall also include appropriate contacts for obtaining information on activities being conducted at the site and for reporting suspected criminal activities. The sign shall comply with all requirements of the state and local law applicable to on-premise outdoor advertising as well as 40 CFR Subpart O §35.6105(a)(2)(ii).

2.10 Inspection and Right to Stop Work. The COUNCIL, its employees, agents, contractors and subcontractors and EPA (including its employees, agents, contractors and subcontractors) shall have the right at any time without prior notice to have access to and to enter upon the Property for the purpose of conducting inspections of the work at the Property during and upon completion of the Cleanup Activities. BORROWER shall provide written notice to COUNCIL when completion of the Cleanup Activities is imminent (not later than five days prior). If COUNCIL finds that the work is unsatisfactory or is not substantially in accordance with the Work Plan, COUNCIL shall have the right to order the work on the Cleanup Activities to stop, and order work as a replacement or correction thereof by BORROWER at BORROWER's expense. COUNCIL shall not be

obligated to make any disbursements unless or until all work to be paid from such disbursement is completed and satisfactory to the COUNCIL, has been approved in writing by the LEP (see subsection 2.13 as to progress payment requests) and BORROWER has complied with all terms and conditions in the Loan Documents in regard to disbursements.

- 2.11 Inspection and Other Services Benefit Only LENDER. All inspections and other services by or on behalf of LENDER and whether or not paid for by BORROWER shall be rendered solely for the benefit of LENDER and BORROWER shall not be entitled to claim any loss or damage against LENDER, its board members, officers or employees in regard to any inspections or other services by or on behalf of LENDER.
- 2.12 Loan Funds. The Loan Funds shall be disbursed to BORROWER in installments as hereinafter set forth for work on the Cleanup Activities in compliance with the Work Plan.

Disbursements under this Agreement to BORROWER shall only be made for Cleanup Activities which have been commenced and completed after the COUNCIL has executed this Agreement and only after all other contingencies to disbursement have been met and only if such disbursement is in compliance with all requirements of this Agreement and the Loan Documents. No installments shall be paid to BORROWER from the COUNCIL if the BORROWER is in default under this Agreement or any of the other Loan Documents.

- 2.13 Payment Disbursements. Attached to this Agreement as Exhibit I is a Work Plan, Budget and Schedule that describes the work and services to be conducted. The payment amount and schedule for completion of said work and services contemplates that all work (excavation, transportation and disposal of up to 3,970.88 tons of contaminated soil) will be completed on or about March 31, 2016, and that all payment (\$300,000.00) will occur at that time.

The LENDER shall make full payment in one disbursement on the date indicated above, provided that the work and services have been completed and all requirements for disbursement as set forth in the Loan Documents have been complied with. BORROWER shall cause all of the above work and services to be completed in compliance with all Government Requirements and the Grant Agreement and be approved by all applicable Government Authority by the deadlines shown above. Failure to do so shall constitute a default of BORROWER, provided however, that BORROWER may apply to LENDER for extensions of time which LENDER may grant or deny in LENDER's sole and absolute discretion.

All requests by BORROWER for disbursements shall be in writing and shall be only for amounts actually incurred by BORROWER. Only one request may be submitted to LENDER in regard to the work and services to be performed. Such written request shall be accompanied by: (i) the signed and sealed certification (in such form as required by LENDER) of Cardno or other LEP approved by LENDER that certifies to LENDER that the work and services have been completed in compliance with all Governmental Requirements, have been approved by all applicable Governmental Authority and have been done in compliance with the Grant Agreement, and (ii) the signed and sealed

certification (in such form as required by LENDER) of the Fort Pierce City Engineer certifying that the work and services (or the required percentage of Task 1) have been completed and that Fort Pierce and the BORROWER have approved completion thereof. LENDER shall disburse to BORROWER only the amount BORROWER has actually incurred, not to exceed the Approved Budget Amount.

Notwithstanding anything to the contrary in this Agreement or the other Loan Documents the LENDER shall be under no obligation to make any disbursement if: (i) any of the above preconditions and requirements for disbursement have not been complied with or met, or (ii) the BORROWER is in default or an Event of Default has occurred under any of the provisions of this Agreement or the Loan Documents, or (iii) if the LENDER has not received the funds from EPA to disburse to BORROWER.

- 2.14 Adherence to Budget. BORROWER agrees to keep all expenditures from Loan Funds within the amount allocated per Task and each subpart thereof as shown on the Budget attached hereto.
- 2.15 BORROWER agrees that all Loan Funds provided by the LENDER shall be used only for the conduct and performance of Cleanup Activities pertaining to the Property in accordance with the Work Plan, Budget and Project Schedule. Any other use of the Loan Funds by BORROWER shall be a default.

ARTICLE III **PRE-DISBURSEMENT OBLIGATIONS**

- 3.1 After this Agreement and the Loan Documents have been executed and delivered by the BORROWER, the BORROWER shall prepare and deliver to LENDER the items referred to in a), b) and c) below all of which must be approved by the LENDER and EPA prior to BORROWER commencing any work on the Work Plan and prior to BORROWER being eligible for any disbursements under the Loan Documents:
- a) Health and Safety Plan in compliance with EPA requirements;
 - b) Quality Assurance Project Plan (“QAPP”) – A QAPP in accordance with the Grant Agreement, --Environmental Protection Agency (EPA) Approval will be required if sampling and analysis will be conducted, or any other activity requiring a QAPP will be conducted in connection with the Work Plan; and
 - c) Any other plans, analyses, tests, or documentation required by EPA under the Grant Agreement as a prerequisite for BORROWER to perform and complete the Work Plan.

ARTICLE IV **REPRESENTATIONS AND WARRANTIES**

- 4.1 BORROWER makes the following continuing representations and warranties to LENDER:
- 4.1.1 Environmental Representations and Warranties. BORROWER certifies that:

- a) Neither the Property or BORROWER are subject to an ongoing formal judicial or administrative enforcement action or corrective action pursuant to federal authority as referred to in Florida Statute 376.82(1)(a) nor is the BORROWER or Property ineligible for liability protection or ineligible to participate in a brownfield program under Florida law for any of the other reasons, or based upon any other criteria or eligibility requirements set forth in Florida Statute 376.82.
- b) The Property is not listed, or proposed for listing on the National Priorities List of the U.S. Environmental Protection Agency (EPA);
- c) BORROWER is not a generator or transporter of the contamination at the Property and BORROWER has not caused or contributed to the contamination of the Property by: (i) any hazardous substance, hazardous material, or hazardous waste or other pollutant or contaminant including without limitation the following: petroleum, petroleum related materials or substances, petroleum constituents, petroleum products or compounds containing them, including gasoline, diesel fuel and oil, explosives, flammable materials, radioactive materials, polychlorinated biphenyls ("PCBs") and compounds containing them, (ii) lead or lead-based paint, (iii) asbestos or asbestos-containing materials in any form that is or could become friable, (iv) any substances or materials utilized by or discharged or disposed of by the H.D. King Power Plant, (iv) underground or above-ground storage tanks, whether empty or containing any substance, (v) any substance or material the presence of which in, on or under the Property is prohibited by any federal, state or local authority, (vi) any substance or material that requires special handling, or (vii) any other substance or material defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" by any Governmental Authority;
- d) BORROWER is not an owner or operator of the site, as defined by Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA);
- e) BORROWER purchased or acquired the Property after the time of disposal or placement of any substances or materials referred to in c) above in, on or under the Property;
- f) BORROWER is not potentially liable under CERCLA section 107 or other provisions of CERCLA;
- g) The Cleanup Agreement is in full force and effect, the BORROWER is in full compliance therewith and the BORROWER has not received any communication or notice from the Florida Department of Environmental Protection or any other Governmental Authority that alleges or would indicate that BORROWER is not in compliance with the Cleanup Agreement.

4.1.2 Legal Status. BORROWER is a Florida community redevelopment agency under the Community Redevelopment Act of 1969 under Part III of Chapter 163 of Florida Statutes (2014).

- 4.1.3 Duly Organized and Authorization The BORROWER does hereby represent and warrant that it is duly organized, validly existing and in good standing under the laws of the State of Florida. The BORROWER does also hereby represent and warrant that no loan or other agreements to which the BORROWER is a party, requires the consent of any creditor or consent of any other party with whom it has any agreement, in order for BORROWER to borrow the Loan Funds and to issue, execute and deliver the Note, this Agreement and the other Loan Documents or to procure and deliver to LENDER the Irrevocable Letter of Credit. The BORROWER does also hereby represent and warrant that the issuance, execution and the delivery of the Note, this Agreement, the Loan Documents and the Irrevocable Letter of Credit have been duly authorized in accordance with the laws, rules, articles, bylaws and other requirements governing BORROWER's entering into the transaction evidenced by the Note, this Agreement, the Loan Documents and the Irrevocable Letter of Credit and that all of the Loan Documents are valid and enforceable obligations of the BORROWER or other party issuing such documents enforceable in accordance with their terms.
- 4.1.4 No Violation. The entering into and performance by BORROWER of this Agreement and the other Loan Documents does not violate any provisions of Federal, Florida or local laws, or any Governmental Requirements, or result in a breach of or constitute a default under any agreement, indenture or other instrument to which BORROWER is a party or by which BORROWER is bound.
- 4.1.5 Litigation. There are no pending or threatened actions or proceedings before any court or administrative agency which may adversely affect the financial condition or operation of BORROWER or BORROWER's performance under this Agreement or the other Loan Documents, other than those heretofore disclosed by BORROWER to LENDER in writing.
- 4.1.6 Correctness of Financial Statement. The financial statements of BORROWER, submitted to LENDER with or in connection with the loan application accurately represent the current financial condition of BORROWER and have been prepared in accordance with generally accepted accounting principles consistently applied. Since the date of such financial statements there has been no material adverse change in the financial condition of BORROWER
- 4.1.7 Property Free and Clear of Liens. That the Property is unencumbered and not subject to any mortgage or other liens and BORROWER covenants and agrees that the Property shall be kept free and clear of all liens through the completion of the Work Plan and approval thereof by COUNCIL, FDEP, and EPA (if approval required by EPA).

ARTICLE V
CONDITIONS PRECEDENT

- 5.1 The obligations of LENDER to make the Loan contemplated hereunder, in addition to the other conditions or contingencies precedent set forth in this Agreement and the other Loan Documents, are subject to the fulfillment of the following conditions:
- 5.1.1 Approval of LENDER'S Legal Counsel. All legal matters incidental to LENDER'S making the Loan shall be satisfactory to the legal counsel of LENDER, including but not limited to the form, substance, validity and enforceability of this Agreement and the Loan Documents.
- 5.1.2 No Default, Etc. No Default shall have occurred and be continuing as of the closing date or will result from the making of the Loan; the representations and warranties made by the BORROWER are continuing representations and warranties which shall be true and correct in all material respects on and as of the closing date, as if made on and as of such date and if not true and correct as of closing date BORROWER shall be in default.
- 5.1.3 BORROWER's Execution and Delivery of the Loan Documents. The obligations of LENDER to make the Loan are contingent upon the execution and delivery of the Note, this Agreement, and other Loan Documents by BORROWER in form and substance as required by LENDER.
- 5.1.4 Action. The LENDER shall have received copies of all action taken by the BORROWER approving the issuance, execution and delivery by the BORROWER of the Note, this Agreement and the other Loan Documents, in each case certified as complete and correct as of the closing date.
- 5.1.5 Incumbency of Officers. The LENDER shall have received an incumbency certificate of the BORROWER in respect of each of the officers who is authorized to sign the Note, this Agreement and the other Loan Documents on BORROWER'S behalf.
- 5.1.6 Receipt of Opinion of BORROWER's Counsel. The obligations of COUNCIL to make the Loan are contingent upon the receipt by COUNCIL of an opinion letter of BORROWER's counsel addressed to COUNCIL authorizing the COUNCIL to rely on it as the final legal opinion of such counsel and to be in form and substance as required by COUNCIL.
- 5.1.7 Receipt of Opinion of Counsel for Harbor Community Bank. The obligations of COUNCIL to make the Loan are contingent upon the receipt by COUNCIL of an opinion letter of counsel for Harbor Community Bank addressed to COUNCIL authorizing the COUNCIL to rely on it as the final legal opinion of such counsel and to be in form and substance as required by COUNCIL.

5.1.8 COUNCIL Receipt of Written EPA Approval. COUNCIL shall have no obligations under this Agreement or the other Loan Documents unless and until COUNCIL has received written approval from EPA in such form and substance as is satisfactory to COUNCIL which authorizes the COUNCIL to enter into this loan transaction. COUNCIL before or after execution and delivery of this Agreement and the other Loan Documents shall have the absolute and unqualified right to cancel and terminate this loan transaction and to cancel and terminate this Agreement and the other Loan Documents if such written approval is not received from EPA.

ARTICLE VI **OTHER COVENANTS**

- 6.1 BORROWER does acknowledge that it is familiar with and shall comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations relating to Federally assisted contracts.
- 6.2 Punctual Payments. BORROWER shall punctually pay the principal and any interest of the Note and the Indebtedness (as defined in the Note) at the times and place and in the manner specified in the Note.
- 6.3 Accounting Records. BORROWER shall document all the uses of the Loan Funds, and maintain adequate books, accounts, financial records and supporting documentation in accordance with generally accepted accounting principles consistently applied and BORROWER's accounting system must track site-specific cost, and track specific cost activity and the specific purpose of each expenditure so that there can be determined from an examination thereof the specific amounts that have been expended from the Loan Funds and the specific purpose or purposes for each expenditure. BORROWER shall permit any representative of COUNCIL and EPA including but not limited to their employees, their agents, their contractors, and their subcontractors, at any time, with twenty three hours advance notice, to inspect, audit and examine and make copies (at BORROWER's expense) of such books, accounts, financial records, and supporting documentation. BORROWER shall maintain the books, accounts, financial records and supporting documentation on the use of the Loan Funds for a minimum of ten (10) years after the completion of the Cleanup Activities in accordance with the Work Plan and approval thereof by COUNCIL, FDEP and EPA (if EPA required to approve). BORROWER must obtain written approval from COUNCIL prior to destroying any such records.
- 6.4 Financial Statements and Ongoing Reporting. In addition the BORROWER shall furnish LENDER, so long as amounts remain due under the Note and subsequently thereafter when requested by LENDER:
- a) Quarterly reports that document that the BORROWER and the work being done pursuant to the Work Plan are in compliance with all relevant Governmental Requirements including environmental requirements.
 - b) Quarterly financial statements, including basic accounting and control mechanisms to track the use of the Loan Funds and to document that the Loan Funds are and have been expended for the purposes authorized by this

Agreement. Quarterly financial statements for the purposes hereof shall include but not be limited to: (i) Income Statements, (ii) Balance Sheets, (iii) Cash Flow Statements, (iv) PAID invoices and billing statements reflecting actual expenditures, and (v) copies of such other books, accounts, financial records and supporting documentation that will prove that the Loan Funds have been expended for the purposes authorized by this Agreement (with the right in the LENDER and EPA to at any time inspect the originals thereof and BORROWER shall make copies thereof (at BORROWER's expense) and furnish them to LENDER

- c) From time to time such other information as LENDER may request.
- d) After the Work Plan has been completed and approved by LENDER, FDEP and EPA (if EPA approval is required) the Quarterly reports and Quarterly financial statements will not have to be delivered to LENDER unless LENDER notifies BORROWER in writing that these requirements or either of them will continue.

6.5 Compliance with All Laws. BORROWER will carry out the Work Plan in accordance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) in (42 USC 9601 et seq.); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (40 CFR Part 31); Cooperative Agreements for Superfund Response Actions (40 CFR Part 35, Subpart O); the National Oil and Hazardous Substances Contingency Plan (NCP) (40 CFR Part 300) and all other applicable provisions of Federal, State or Local law and all Governmental Requirements and in accordance with the Grant Agreement.

6.6 Non-discrimination and Equal Opportunity. BORROWER shall comply with the statutes prohibiting discrimination on the, grounds of race, color, national origin, sex and disability. In addition, BORROWER will undertake good faith efforts in compliance with 40 CFR §33.301, 40 CFR §35.6580 and the Grant Agreement to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE), Women's Business Enterprises (WBE) and Disadvantaged Business Enterprises (DBE) to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies. BORROWER shall submit reports of such efforts to COUNCIL at any time requested by COUNCIL but in any event BORROWER shall include such reports as part of the Quarterly Reports that BORROWER is to submit to COUNCIL.

6.7 Debarment, Suspension, Convictions, Violations. The BORROWER represents and warrants that neither the BORROWER, nor LEP, nor any of their managers, officers, directors, members, executives, partners, shareholders, employees or agents or an affiliate [as defined in Florida Statutes 287.133 (1)(a)] of any of them or a Person [as defined in Florida Statutes 287.133 (1)(e)] associated with any of them:

- a) Are presently or proposed to be debarred or suspended, declared ineligible; or voluntarily excluded from the conduct of any business with any Governmental Authority;
- b) Have within a three (3) year period preceding this Agreement, been; (i) "convicted" [as defined in Florida Statutes 287.133 (1)(b)] of a "Public

entity crime” [as defined in Florida Statutes 287.133 (1)(g)], or (ii) been on the “Convicted vendor list” [as defined in Florida Statutes 287.133 (1)(c)], or (iii) been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or public contract, or (iv) been convicted of any violation of Federal or State antitrust laws or commission of fraud, embezzlement, theft, forgery; bribery, collusion, racketeering, conspiracy, falsification or destruction of records; making false statements, or receiving stolen property;

- c) Are presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated above; or
- d) Have within the preceding three (3) years had any contract with a Governmental Authority terminated for cause or default.

6.8 Environmental Compliance. BORROWER certifies that the BORROWER has not been, subject to any penalties resulting from environmental non-compliance at the Property.

6.9 Notice to Change in Work Plans. If the COUNCIL determines that it is necessary to modify the Work Plan based on unforeseen site conditions, public comments, new information or for any other reason in the sole and absolute discretion of the COUNCIL, then the Work Plan shall be amended at BORROWER’s expense. In addition to COUNCIL required changes to the Work Plan if BORROWER believes a change in the Work Plan is warranted because of unforeseen site conditions, public comments, new information or for any other reason BORROWER will make a written request to COUNCIL for such change. COUNCIL may approve or deny a BORROWER requested change in COUNCIL’s sole and absolute discretion. After approval by COUNCIL the changes shall be incorporated into a revised Work Plan. All additional costs incurred as the result of any changes in the Work Plan shall be the responsibility of BORROWER. BORROWER will immediately report in writing any discovery of hazardous substances, pollutants or contaminants not identified in the Work Plan.

6.10 Further Assurances. That BORROWER will, at the cost of BORROWER, and without expense to LENDER, issue, execute, acknowledge and deliver to LENDER or to any other person or entity designated by LENDER any additional or replacement documents and perform any additional actions that LENDER determines are reasonably necessary or desirable in order to effectuate, complete, or perfect or to continue and preserve the obligations described in the Note, this Agreement or in the Loan Documents or to carry out the intent and facilitate the performance of the provisions of the Note, this Agreement or the Loan Documents. Such additional or replacement documents include but are not limited to all and every such further agreements, assignments, promissory notes, financing statements, Irrevocable Letters of Credit, notices of assignment, transfers and assurances as LENDER shall from time to time require.

ARTICLE VII
EVENT OF DEFAULT, REMEDIES, AND OTHER PROVISIONS

- 7.1 Event of Default. The term "Event of Default" or "default" wherever used in this Agreement or under the Loan Documents, shall mean any one or more of the following events:
- 7.1.1 failure by BORROWER to pay when due the principal, the interest, or any other amounts due under the Note;
 - 7.1.2 failure by BORROWER to pay when due any of the Indebtedness;
 - 7.1.3 failure by BORROWER to pay, prior to delinquency, any taxes, assessments, liens, or charges regarding the Property;
 - 7.1.4 failure by BORROWER to duly keep, perform, observe or comply with any of the terms, provisions, covenants, conditions or agreements in this Agreement, in the Note, or in any of the other Loan Documents;
 - 7.1.5 failure by BORROWER to deliver to LENDER not less than ninety (90) days prior to expiration of: (i) the Irrevocable Letter of Credit, (ii) all renewal Irrevocable Letters of Credit, (iii) all replacement Irrevocable Letters of Credit, (iv) all extended Irrevocable Letters of Credit and (v) all other Irrevocable Letters of Credit, an additional Irrevocable Letter(s) of Credit in such form as required by LENDER in the amount of \$300,000.00 and issued by a financial institution(s) approved by LENDER. This requirement shall apply not only to the initial Irrevocable Letter of Credit but to each and every renewal, replacement, extended and other Irrevocable Letter of Credit so that the Irrevocable Letter of Credit is continuously in full force and effect from the date of this Agreement through February 1, 2021;
 - 7.1.6 failure by BORROWER to deliver to LENDER within 10 days of a written demand by LENDER, a new Irrevocable Letter(s) of Credit in such form as required by LENDER in the amount of \$300,000.00 issued by a financial institution(s) approved by LENDER, if at any time, the LENDER determines that that the prospect of payment by the issuer of the Irrevocable Letter of Credit is impaired or in jeopardy, or payment by the issuer is unlikely [LENDER may require such additional Irrevocable Letter(s) of Credit at will];
 - 7.1.7 failure by BORROWER to deliver to LENDER within 10 days of a written demand by LENDER, a new Irrevocable Letter(s) of Credit in such form as required by LENDER in the amount of \$300,000.00 issued by a financial institution(s) approved by LENDER, if at any time, the LENDER advises BORROWER that the Irrevocable Letter of Credit has been lost, destroyed, mutilated or stolen;
 - 7.1.8 if LENDER's rights under this Agreement are assigned, voluntarily or by operation of law, failure by BORROWER to deliver to the assignee within 10 days of a

written demand by the assignee, a new Irrevocable Letter(s) of Credit in such form as required by such assignee in the amount of \$300,000.00 issued by a financial institution(s) approved by such assignee;

- 7.1.9 the commencement of levy, execution or attachment proceedings against BORROWER; or the application for or appointment of a liquidator, receiver, custodian, sequestrator, conservator, trustee, or other similar judicial officer for or in regard to the BORROWER or the Property;
- 7.1.10 the application for or appointment of a liquidator, receiver, custodian, sequestrator, conservator, trustee, or other similar judicial officer for the issuer of the Irrevocable Letter of Credit;
- 7.1.11 the insolvency of BORROWER or the insolvency of the issuer of the Irrevocable Letter of Credit;
- 7.1.12 an assignment for the benefit of creditors, or the admission in writing of an inability to pay any debts generally as they become due, or ordering or consenting to, the winding-up, or liquidation of its affairs, by BORROWER, or, by the issuer of the Irrevocable Letter of Credit;
- 7.1.13 the commencement of a case against BORROWER, under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar laws, state or federal, or the determination by BORROWER to request relief under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar proceeding, state or federal, including, without limitation, the consent by BORROWER to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or similar official for it or for any of its respective property or assets;
- 7.1.14 the commencement of a case against the issuer of the Irrevocable Letter of Credit, under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar laws, state or federal, or the determination by such issuer to request relief under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar proceeding, state or federal, including, without limitation, the consent by such issuer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or similar official for it or for any of its respective property or assets;
- 7.1.15 if the deposits or other assets of the issuer of the Irrevocable Letter of Credit are taken over, or become subject to the control of, the Federal Deposit Insurance Corporation (“FDIC”) or any other Federal agency or instrumentality or any State of Florida department, agency or instrumentality;
- 7.1.16 if the issuer of the Irrevocable Letter of Credit ceases to exist as a separate entity, or is dissolved;

- 7.1.17 if the issuer of the Irrevocable Letter of Credit sells or transfers substantially all of its assets;
- 7.1.18 if the issuer of the Irrevocable Letter of Credit merges into, or is absorbed by, or is reorganized into, in whole or in part, another entity or person;
- 7.1.19 if any warranty or representation of BORROWER contained herein or contained in any of the other Loan Documents prove to be untrue or misleading in any material respect when made or thereafter;
- 7.1.20 if any federal or state tax lien or claim of lien for labor, equipment or materials is filed of record against BORROWER or the Property and is not removed by payment or transfer of lien to bond within twenty (20) days from the date of recording or creation of the lien (whichever occurred first);
- 7.1.21 if foreclosure proceedings (whether judicial or otherwise) be instituted on any mortgage or any lien of any kind secured by any portion of the Property which is not dismissed with prejudice within 30 days of the filing thereof;
- 7.1.22 if BORROWER defaults under any other loan made by LENDER to BORROWER;
- 7.1.23 the determination by LENDER that a material adverse change has occurred with respect to the Property (financial, physical or otherwise) or in the financial condition of BORROWER from the conditions set forth in the most recent financial statements of BORROWER heretofore furnished to LENDER (or which are subsequently furnished to LENDER from time to time during the term hereof) or from the condition heretofore or subsequently disclosed to LENDER from time to time during the term hereof in any manner;
- 7.1.24 non payment by the issuer of the Irrevocable Letter of Credit of any written demand for payment made by LENDER in conformity with the Irrevocable Letter of Credit;
- 7.1.25 the LENDER'S discovery of the BORROWER'S failure in any application of the BORROWER to the LENDER to disclose any fact reasonably deemed by the LENDER to be material;
- 7.1.26 any Transfer of the Property or any part thereof or any interest therein without the prior written consent of the LENDER which consent LENDER may grant or withhold in LENDER'S sole and absolute discretion. A "Transfer" for the purposes of this paragraph is defined as any sale, grant, lease, conveyance, assignment, or other transfer of, or any encumbrance on, or pledge against, the Property or any interest in the Property, in each instance whether voluntary or involuntary, direct or indirect, by operation of law or otherwise and including the grant of an option or the execution of an agreement relating to any of the foregoing matters, and, LENDER shall have the absolute right to require as one of the conditions to grant any consent that the proceeds from any Transfer be paid to LENDER to apply towards the Indebtedness;

7.1.27 any other act or omission or any other matter whatsoever that is characterized, labeled, or designated in this Agreement, the Note, or any of the Loan Documents as being a default or an Event of Default.

- 7.2 Loan Documents, Cross Default, Cross Collateralization. BORROWER shall perform, comply with and abide by each of the stipulations, agreements, conditions and covenants contained in the Note, this Agreement and all other Loan Documents. A default or delinquency under the Note or this Agreement or under any other of the Loan Documents shall automatically and immediately constitute a default under this Agreement, the Note, and all other Loan Documents.
- 7.3 Acceleration. If any Event of Default shall have occurred then the entire Indebtedness shall, at COUNCIL's option, and without notice, time being of the essence, become immediately due and payable in full without presentment, notice of presentment, demand for payment, notice of demand, notice of dishonor, notice of protest, notice of nonpayment or protest and diligence in collection, all of which are hereby expressly waived by BORROWER, and the obligations, if any, of COUNCIL to make any further principal disbursements, shall immediately cease and terminate. No omission on the part of the LENDER to exercise such option when entitled to do so shall be construed as a waiver of such right. If an Event of Default has occurred LENDER may invoke any other remedies permitted in this Agreement, the Note, or in any of the other Loan Documents and any other remedies provided at law, equity or otherwise.
- 7.4 No Waiver and Other Matters. (a) No delay or omission of LENDER or of any holder of the Note to exercise any right, power or remedy accruing upon any default hereunder or under the Loan Documents shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power, and remedy given by this Agreement, the Note or the other Loan Documents to LENDER may be exercised from time to time and as often as may be deemed expedient to LENDER. No consent or waiver, express or implied, by LENDER to or of any breach or default by BORROWER in the performance of the obligations hereunder or under the Loan Documents shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligation of BORROWER hereunder or under the Loan Documents. Failure on the part of LENDER to complain of an act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by LENDER of its rights hereunder or impair any rights, powers or remedies consequent on any breach or default by BORROWER. (b) If LENDER (i) grants forbearance or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment of any sums secured hereby; (iii) waives or does not exercise any right granted herein or in the Note or in the Loan Documents; (iv) changes any of the terms, covenants, conditions or agreements of the Note or this Agreement or the Loan Documents; any such act or omission shall not release, discharge, modify, change or affect the original liability BORROWER, or the liability of any maker, co-signer, endorser, surety or guarantor, under the Note, this Agreement or the Loan Documents; nor shall any such act or omission

preclude LENDER from exercising any right, power, or privilege granted hereunder or under the Loan Documents.

- 7.5 LENDER'S Remedies. If an Event of Default shall have occurred, LENDER may without notice to BORROWER pursue any and all remedies including but not limited to: (a) to declare all or any portion of the principal under the Note immediately due and payable in full, (b) to declare all or any portion of the Indebtedness immediately due and payable in full, (c) to institute any proceeding and take any actions deemed necessary to enforce payment of the Indebtedness, (d) to make a written demand or demands for payment under the Irrevocable Letter of Credit in such amounts as determined by LENDER, (e) to require the BORROWER to cause to be issued and delivered to LENDER additional Irrevocable Letter(s) of Credit in such form as required by LENDER in the amount of \$300,000.00 issued by a financial institution(s) approved by LENDER, (f) to institute any proceeding for specific performance of any obligation of BORROWER, (g) to exercise any and all rights and remedies granted a secured party under the Uniform Commercial Code, (h) to pursue any other remedy or remedies, legal, equitable or otherwise available to LENDER regarding a default whether such remedy is set forth in this Agreement, the other Loan Documents, or is available under applicable law or in equity.
- 7.6 Remedies Exercisable Concurrently, Independently, or Successively, in any order. Each right and remedy provided in this Agreement is distinct from all other rights or remedies under this Agreement and is distinct from all other rights or remedies under the other Loan Documents and is distinct from all other rights and remedies afforded by applicable law or in equity, and all such rights and remedies (under all of the foregoing instruments, Loan Documents and at law or in equity), shall be cumulative and may be exercised concurrently, independently, or successively, in any order. The enumeration in this Agreement or in the Note or in the Loan Documents of any specific rights and remedies will not be construed to limit the general rights, remedies or powers or impair LENDER'S rights with respect to any remedies or powers. LENDER shall not be liable for any act or omission of LENDER, its employees or agents in connection with the exercise of any remedies except for gross negligence of LENDER, its employees or agents.
- 7.7 BORROWER to Deliver Estoppel Certificate. The BORROWER, within seven (7) days upon written request from LENDER will furnish promptly an estoppel certificate in form satisfactory to the LENDER, signed by the BORROWER and duly acknowledged, indicating: (i) the amount then owing on the Note and the Indebtedness, (ii) that there are no defaults or events which, with the passage of time or the giving of notice, would constitute an Event of Default (except as disclosed in the certificate), (iii) that there are no offsets or defenses against any obligations of BORROWER under the Note, this Agreement or other Loan Documents (except as may be disclosed in the certificate), (iv) the Maturity Date for payment of the Note, and (v) the date and amount of the last payment made to LENDER.
- 7.8 Secure the Property. In an Event of Default (including but not limited to failure to timely complete all elements of the Work Plan or the required remediation of the environmental contamination of the Property), BORROWER shall secure the Property. The cost of securing the Property is the responsibility of the BORROWER. If BORROWER fails to

secure the Property within twenty-four (24) hours, COUNCIL shall have an additional right of access to and inspection of the Property and site of the work and may (but shall not be obligated to) secure the Property at the sole cost of BORROWER. If COUNCIL secures the Property then the BORROWER shall upon written demand of COUNCIL pay COUNCIL in full all of its costs and expenses related to securing the Property. Any amounts not immediately paid upon written demand shall bear interest at the rate of 10% per annum until paid.

ARTICLE VIII
INDEMNIFICATION AND HOLD HARMLESS

8.1 Indemnification and Hold Harmless:

8.1.1 The following paragraph under this 8.1.1 shall be the indemnification and hold harmless provisions that are applicable to tort claims except: (i) tort claims that are related in any way to the fact that the Property is environmentally contaminated or (ii) tort claims that are based in whole or in part on federal law:

BORROWER at BORROWER's expense, shall indemnify, defend, and hold harmless the COUNCIL, all of its council members, officers, agents and employees (all collectively "Indemnified Parties") from any and all claims, demands, fines, penalties, losses, liabilities, expenses, damages, and causes of action, of whatsoever kind, and, for all attorneys fees, expert witness fees, other professional fees, charges, and costs of every kind (all attorneys fees and other fees, charges and costs being collectively referred to herein as "Attorneys Fees and Costs") which are incurred, paid, or suffered by the Indemnified Parties or any of them, related to any tort claims arising out of or which are related in any way to, any act, error, omission, negligence, or other wrongdoing of BORROWER, its agents, employees, contractors or subcontractors including but not limited to those resulting in any personal injury, death or property damage, which arise out of or are related in any way to this transaction (excluding tort claims that are subject to the provisions of 8.1.2). Provided that: if the claims, demands, fines, penalties, losses, liabilities, expenses, damages, and causes of action, of whatsoever kind and Attorneys Fees and Costs which are incurred, paid, or suffered by the Indemnified Parties, collectively, in regard to any claim or judgment by any one person or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments arising out of the same incident or occurrence do not exceed the maximum sovereign immunity limits in 768.28(5) Florida Statutes, respectively, in the current amounts of \$200,000 per claim or judgment by any one person and \$300,000 in the aggregate for all claims and judgments arising out of the same incident or occurrence, then, the obligation of BORROWER to the Indemnified Parties, in regard thereto, shall be limited to those amounts, otherwise, BORROWER's obligation to the Indemnified Parties shall not be limited. The foregoing limitation to BORROWER's obligation shall also not apply in the event that a legislative claims bill is approved for a higher amount.

- 8.1.2 The following paragraph under this 8.1.2 shall be the indemnification and hold harmless provisions applicable to all other claims and causes of action of whatsoever kind including but not limited to tort claims (except for tort claims that are expressly made subject to 8.1.1):

BORROWER shall, at BORROWER's expense, indemnify, defend and hold harmless the COUNCIL, all of its council members, officers, agents and employees (all collectively "Indemnified Parties") from any and all claims, demands, fines, penalties, losses, liabilities, expenses, damages, and causes of action, of whatsoever kind, and, all attorneys fees, expert witness fees, other professional fees, charges, and costs of every kind (all attorneys fees and other fees, charges and costs being collectively referred to herein as "Attorneys Fees and Costs") which are incurred, paid, or suffered by the Indemnified Parties or any of them, arising out of or which are related in any way to any of the following: (i) any act, error, omission, negligence, or other wrongdoing of BORROWER, its agents, employees, contractors or subcontractors including but not limited to those resulting in any personal injury, death or property damage, which arise out of or are related in any way to this transaction, (ii) the presence, use, generation, recycling, reuse, release, emission, treatment, processing, storage (including storage in above ground and underground storage tanks), removal, cleanup, handling, transportation, disposal, escape, leakage, spillage, discharge, or injection---above, on, in, under, or to or from the Property--- of any substance or material defined by any Governmental Authority as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant", or (iii) the presence, use, generation, recycling, reuse, release, emission, treatment, processing, storage (including storage in above ground and underground storage tanks), removal, cleanup, handling, transportation, disposal, escape, leakage, spillage, discharge, or injection---above, on, in, under, or to or from the Property---of any petroleum, petroleum constituents, petroleum materials, or substances containing them (including but not limited to gasoline, diesel fuel and oil). The maximum obligation of BORROWER under this paragraph shall not be limited to the maximum sovereign immunity limits set forth in Section 768.28, Florida Statutes.

- 8.2 The Attorneys Fees and Costs which shall be payable by BORROWER under 8.1.1, 8.1.2, and other provisions of the Loan Documents shall include but not be limited to all Attorneys Fees and Costs incurred in connection with any suit, trial, judicial proceedings, administrative proceedings, appellate proceedings, bankruptcy proceedings, creditors' reorganization, or arrangement proceedings, as well as, Attorneys Fees and Costs incurred before, during and after suit, trial, judicial proceedings, administrative proceedings, appellate proceedings, bankruptcy proceedings, creditors' reorganization, or arrangement proceedings. All the Attorneys Fees and Costs shall be payable whether any suit, trial, judicial proceedings, administrative proceedings, appeals, bankruptcy proceedings, creditors' reorganization, or arrangement proceedings are actually commenced or not.

- 8.3 Any defense provided by BORROWER to COUNCIL, COUNCIL members, officers, agents or employees shall be with such counsel as shall be subject to the reasonable approval of the party defended but notwithstanding the foregoing or anything contained herein or the Loan Documents to the contrary the COUNCIL, a COUNCIL member, officer, agent or employee may elect not to be defended by counsel selected by BORROWER but may select their own counsel and the BORROWER in such instances shall also pay all Attorneys Fees and Costs paid or incurred by COUNCIL, any COUNCIL member, any officer, any agent or any employee before, during and after suit, trial, judicial proceedings, administrative proceedings, appellate proceedings, bankruptcy proceedings, creditors' reorganization, or arrangement proceedings. The foregoing Attorneys Fees and Costs shall be payable by BORROWER whether any suit, trial, judicial proceedings, administrative proceedings, appeals, bankruptcy proceedings, creditors' reorganization, or arrangement proceedings are actually commenced or not.
- 8.4 All amounts payable by BORROWER under Article VIII shall be paid upon demand.
- 8.5 All of the provisions of this Article VIII shall survive all of the following: (i) payment of Indebtedness (defined in the Note), (ii) exhaustion, release, expiration or termination of the Irrevocable Letter of Credit, (iii) the Maturity Date set forth in the Note, (iv) Transfer of the Property or any interest therein pursuant to foreclosure proceedings (whether judicial or non-judicial), by deed in lieu of foreclosure, or any other voluntary or involuntary transfer of the Property or any interest therein, (v) expiration or termination of this Agreement, and (vi) expiration or termination of any of the other Loan Documents.

ARTICLE IX
MISCELLANEOUS

- 9.1 AMOUNT OF IRREVOCABLE LETTER OF CREDIT NOT A LIMIT TO BORROWER'S OBLIGATIONS. Notwithstanding any provisions of this Agreement or in the Loan Documents the amount of the Irrevocable Letter of Credit shall not be a limit on the financial or other obligations of BORROWER under this Agreement or Loan Documents.
- 9.2 WAIVER. No delay or failure of LENDER, or any holder of the Note in exercising any right, power privilege hereunder or under the Loan Documents shall affect such right, power or privilege; nor shall any single or partial exercise thereof or discontinuance of steps to enforce such a right, power or privilege affect such right, power or privilege. The rights and remedies of LENDER being cumulative and not exclusive.
- 9.3 SUCCESSORS. This Agreement shall be binding upon the permitted successors and assigns of BORROWER. Neither this Agreement nor any right or interest hereunder shall be assignable or transferable by BORROWER without the prior written consent of LENDER and any purported assignment or transfer without such prior written consent

shall be void. The consent of LENDER to any assignment or transfer by BORROWER may be granted or denied in the sole and absolute discretion of LENDER. The LENDER may assign all of its rights and interests and obligations under this Agreement without the consent of BORROWER.

9.4 Notices.

- a) All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under the Loan Documents shall be in writing and addressed as follows:

BORROWER: Rebecca Grohall, AICP
Planning Director and FPRA Administrator
Fort Pierce Redevelopment Agency
100 North U.S. 1
City of Fort Pierce, FL 34954
Telephone No. (772) 467-3730
RGrohall@City-FtPierce.com

COPY TO: Rob Schwerer
City Attorney
100 North U.S. 1
City of Fort Pierce, FL 34954
Telephone No. (772) 460-2200
schwererlaw@aol.com

COUNCIL: Michael Busha, AICP
Executive Director
Treasure Coast Regional Planning Council
421 SW Camden Ave.
Stuart, FL 34994
Telephone No. (772) 221-4060
mbusha@tcrpc.org

COPY TO: Keith W. Davis, Esquire
General Counsel
1111 Hypoluxo Road, Suite 207
Lantana, FL 33462
Telephone No. (561) 586-7116
Keith@CWDA-legal.com

- b) Any notices, requests, consents, demands and other communications authorized or required to be given or furnished hereunder shall be deemed given or furnished when addressed to the party intended to receive the same at the above address, (i) on the day of delivery, if hand-delivered; or (ii) one day after being delivered to an expedited courier for overnight delivery; or (iii) three days after being deposited in the United

States mail as first class certified mail, return receipt requested, postage paid; whether or not the same is actually received by such party.

- c) Each party may change the address to which any such notices, requests, consents, demands and other communications is to be delivered or mailed, by furnishing written notice of such change to the other party, but no such notice of change shall be effective unless and until received by such other party.
- d) The provisions of this 9.4 shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Agreement or in any of the other Loan Documents or to require giving of notice or demand to or upon any person in any situation or for any reason.

9.5 Attorney's Fees, Other Fees and Costs. BORROWER will pay LENDER for all attorneys fees, expert witness fees, other professional fees, charges, and costs of every kind ("Attorneys Fees and Costs") LENDER incurs in regard to any and all of the following: (i) enforcing or attempting to enforce any of the provisions of the Note, this Agreement or the other Loan Documents, (ii) in collecting or attempting to collect any sums which are due the LENDER under the Note, this Agreement or under any of the other Loan Documents, (iii) in making a demand for payment and obtaining (or attempting to obtain) payment under the Irrevocable Letter of Credit, (iv) pursuing any remedy or remedies related to any Event of Default, (v) in actions for declaratory relief, or (vi) related in any way to any act, error, omission, or negligence or other wrongdoing of BORROWER, its agents, contractors, or employees. The obligation to pay Attorneys Fees and Costs hereunder shall include but not be limited to such Attorneys Fees and Costs incurred before, during and after suit, trial, judicial proceedings, administrative proceedings, appeals, bankruptcy proceedings, creditors' reorganization, or arrangement proceedings. All the Attorneys Fees and Costs shall be payable whether any suit, trial, judicial proceedings, administrative proceedings, appeals, bankruptcy proceedings, creditors' reorganization, or arrangement proceedings are actually commenced or not. The provisions of this paragraph shall survive: (i) payment of Indebtedness (defined in the Note), (ii) exhaustion, release, expiration or termination of the Irrevocable Letter of Credit, (iii) the Maturity Date set forth in the Note, (iv) Transfer of the Property or any interest therein pursuant to foreclosure proceedings (whether judicial or non-judicial), by deed in lieu of foreclosure, or any other voluntary or involuntary transfer of the Property or any interest therein, (v) expiration or termination of this Agreement, and (vi) expiration or termination of any of the other Loan Documents.

9.6 Waiver of Statute of Limitations. BORROWER hereby waives the right to assert any statute of limitations as a bar to the enforcement of this Agreement, the Note or to any of the other Loan Documents.

9.7 Construction, Time of the Essence and other Miscellaneous. Except as to defined terms under Article I, the captions and headings of paragraphs of this Agreement are for convenience only and shall be disregarded in construing this Agreement. Any reference in this Agreement to an "Exhibit" or a "paragraph" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Agreement or to a paragraph of this Agreement. All Exhibits attached to or referred to in this Agreement are

incorporated by reference into this Agreement. Any reference in this Agreement to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Time is of the essence of this Agreement. The singular shall include the plural and plural the singular, and pronouns shall be read as masculine, feminine or neuter, all as the context may require. The validity, enforcement, and interpretation of this Agreement, shall for all purposes be governed by and construed in accordance with the laws of the State of Florida and applicable United States federal law. The terms "hereof" "herein" "hereto" "hereunder" and any similar words refer to this instrument in its entirety. This instrument shall not be construed more strictly against one party than against the other by virtue of the fact that it may have been prepared by counsel for one party, all parties acknowledging that they had the opportunity to participate in the preparation hereof. As used in this Agreement, the term "including" means "including, but not limited to."

- 9.8. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, when assembled together, shall constitute one agreement, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.
- 9.9 Relationship. The relationship of LENDER and BORROWER is that of lender and borrower. No party hereto intends to create any other relationship hereby, and the parties disavow and negate any intention to create a partnership, joint venture or any other relationship other than lender and borrower.
- 9.10 Entire Agreement. This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements. There are no unwritten oral agreements between the parties. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and the other Loan Documents. Neither this Agreement nor any of its provisions nor any of the provisions in any other of the Loan Documents may be waived, modified, amended, discharged, or terminated except by an agreement in writing signed by the party against which the enforcement of the waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in that agreement.
- 9.11 Severability. In case any one or more provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.
- 9.12 Joinder by Consultant. There is attached hereto as **Exhibit J** the Joinder in and to this Agreement by Cardno. If Cardno does not fully comply with the provisions of Exhibit J this shall constitute a default of the BORROWER, and LENDER shall be under no obligation to disburse Loan Funds to the BORROWER.
- 9.13 WAIVER OF TRIAL BY JURY. BORROWER AND LENDER HEREBY MUTUALLY, KNOWINGLY, WILLINGLY AND VOLUNTARILY WAIVE THEIR RIGHT TO

TRIAL BY JURY FOR THEMSELVES, THEIR SUCCESSORS, ASSIGNS, HEIRS AND LEGAL REPRESENTATIVES (BORROWER, LENDER, THEIR SUCCESSORS, ASSIGNS, HEIRS AND LEGAL REPRESENTATIVES ARE COLLECTIVELY HEREINAFTER IN THIS PARAGRAPH REFERRED TO AS THE "PARTIES"). THE PARTIES SHALL NOT SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEEDING BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE NOTE, OR ANY LOAN DOCUMENTS OR ANY INSTRUMENT EVIDENCING, SECURING OR RELATING TO THE INDEBTEDNESS OR OTHER OBLIGATIONS SECURED HEREBY OR ANY COURSE OF ACTION, COURSE OF DEALING, OR STATEMENTS (WHETHER VERBAL OR WRITTEN). BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date first hereinabove written.

Signed, sealed and delivered in our presence:

Signature of Witness (1)

Print Name of Witness (1)

Signature of Witness (2)

Print Name of Witness (2)

BORROWER:
FORT PIERCE REDEVELOPMENT
AGENCY

By: _____
it's Chair

ATTEST:
By: _____ Agency Clerk

Fort Pierce Redevelopment Agency
Attorney's office Approved
as to form and correctness

By: _____

STATE OF FLORIDA
COUNTY OF ST. LUCIE

The foregoing instrument was acknowledged before me this _____ day of _____, 2016
by, _____, as Chair of the Fort Pierce Redevelopment Agency who
[] is personally known to me or [] who has produced a Florida driver's license, as
identification. (place check mark or "x" in appropriate box)

Notary Public: State of Florida
Print Name: _____
My Commission Expires: _____
My Commission No.: _____

LENDER:

TREASURE COAST REGIONAL PLANNING
COUNCIL

BY: _____
MICHAEL BUSHA
AS ITS EXECUTIVE DIRECTOR