

## COOPERATIVE AGREEMENT FOR LAND PURCHASE AND DEVELOPMENT

**THIS COOPERATIVE AGREEMENT FOR LAND PURCHASE AND DEVELOPMENT** (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”), between the CITY OF JACKSONVILLE, a consolidated political subdivision and municipal corporation existing under the laws of Florida, with its principal office at 117 West Duval Street, Jacksonville, Florida 32202 (the “CITY”), and TREE HILL, INC., a Florida not-for-profit corporation with its principal office at 7152 Lone Star Road, Jacksonville, Florida 32211-5836 (hereinafter the “RECIPIENT”), for funding assistance to acquire and improve additional property for the Tree Hill Nature Center (the “Project”).

### RECITALS:

**WHEREAS**, CITY and RECIPIENT desire to use an appropriation from the Jacksonville Recreational and Environmental Land Acquisition Capital Projects Fund in the amount of \$269,000 toward the acquisition and improvement of property for the benefit of the Tree Hill Nature Center, as more particularly described below.

**WHEREAS**, RECIPIENT has obtained an option to acquire the property and has a mutually acceptable plan for improvements to the property.

**WHEREAS**, it is in the best interests of both parties to undertake the Project.

**NOW, THEREFORE**, in consideration of the mutual promises of this Agreement, the parties agree:

1. **Incorporation of Recitals.** The recitals above are true and correct and incorporated into this Agreement.

2. **Description of Project.** The Project consists of the acquisition of property located at 7150 Lone Star Road, Jacksonville, RE# 142494-000 according to the terms of a Purchase and Sale Agreement between Adam Gilliland and Elizabeth Gilliland and Tree Hill, Inc., and the improvements specified in the plans prepared by Michele M. Agee, P.E., P.A., dated November 1, 2018, Job No. 18-021, and the Proposal by Bush Construction Company, Inc., dated February 18, 2019. The improvements for the Project are more particularly described in the “Scope of Services”, attached as **Exhibit A** (“improvements”). All construction will be subject to inspection by CITY at all reasonable times, and no construction will be considered complete until accepted as complete in writing by CITY.

3. **Effective Date.** This Agreement is effective on the day and year first above written for a term of 1 year, at which time the Project must be completed. This Agreement may be extended by the parties for an additional 6 months for unanticipated delays in construction of the improvements for the Project.

4. **Assistance with Funding the Project.** The CITY shall provide funding in a total

amount not-to-exceed \$269,000.00 ("Maximum Indebtedness) to be paid to the RECIPIENT for the purpose performing the Project. The RECIPIENT shall spend the CITY funds only on the Project and for no other purpose.

(a) **Acquisition; Title.**

i. The funding provided by the CITY shall first be spent on the acquisition of the property at \$101,500, not to include closing costs, and title to the Property shall be put in the name of the CITY.

ii. Copies of the due diligence items obtained by RECIPIENT shall be provided to the CITY's Office of General Counsel, whose comments and concerns regarding the content of the due diligence products shall be considered by the RECIPIENT in obtaining cures for any defects reflected in the products.

iii. On approval of the due diligence products by the Office of General Counsel including a marked down title insurance commitment and the closing documents including a draft closing statement, CITY will deliver \$101,500 to the closing agent to be applied toward the acquisition of the property.

iv. Title to the property shall be put in the name of the City of Jacksonville via a deed in a form approved by the City.

v. CITY and RECIPIENT agree to execute any necessary documents, including assignments, as reasonably required by the title insurance company to transfer marketable title to the Property to the CITY.

vi. The Property shall be transferred to the CITY within ninety (90) days from the effective date hereof, unless the CITY approves of a later time (the "Closing").

vii. Prior to Closing, CITY shall also have the right to enter onto the Property, upon reasonable notice to RECIPIENT, to inspect the condition of the Property.

(b) **Improvements.** Effective upon the Closing, CITY grants the RECIPIENT a license on the Property to construct the improvements. RECIPIENT agrees to construct the improvements and perform the Scope of Services in accordance with the design plans and project budget approved by the City and the construction terms attached hereto as **Exhibit E**. If any services, functions, or responsibilities not specifically set forth in this Agreement are necessary for the proper performance of the Scope of Services, then such services, functions and responsibilities shall be deemed implied by and included within the Scope of Services. The CITY funds remaining after acquisition of the property, \$167,500, shall be the last funds spent by the RECIPIENT on the Project after all other funds from whatsoever sources ("Non-City Funds"), which must be an amount no less than \$200,000.00, are spent and exhausted. If Non-City Funds in the minimum amount of \$200,000 are not first spent on the Project, then CITY may elect at any time to fund the improvements up to a maximum amount of \$167,500. Notwithstanding the foregoing, it is RECIPIENT's responsibility to complete the improvements

as described in **Exhibit A** whether or not CITY funds are sufficient to complete the project. The Parties acknowledge that at the time of executing this Agreement, Recipient has already expended \$39,500 of the \$200,000 minimum required non-city funds on the Project for a topographic survey, tree survey and the architectural project drawings approved by the City.

Expenditure of the City's funds in any manner other than expressed in this Agreement is a material breach resulting in refunds as specified in this Agreement. CITY is not bound by this Agreement to spend any funds in excess of the \$101,500 purchase price if the minimum amount of other funds is not available.

5. **Recipient Compliance.** The RECIPIENT shall comply and shall cause its contractor to comply with all applicable bond covenants and restrictions, and federal, state, and local laws, rules, regulations, and ordinances.

6. **Payment on Draw or Reimbursement Basis.** The CITY's contribution for the improvements required by the Project shall be on a "draw for work done" basis or on a "cost for reimbursement" basis. Payments will be made within 30 days after RECIPIENT submits documentation, including bills, invoices, and other documents satisfactory to the CITY's General Accounting Division to justify withdrawal or reimbursement payment to the RECIPIENT. A further condition precedent for payment by the CITY shall be a visual inspection by a CITY representative to confirm that the improvements for the Project are being constructed as described in **Exhibit A** and as represented by RECIPIENT.

7. **City Representative.** The CITY's Department of Parks and Recreation (the "Department") shall be responsible for overseeing, administering, and implementing this Agreement. CITY's contact person for the Project shall be \_\_\_\_\_, Division Chief, Natural and Marine Resources, 214 N. Hogan Street, 4<sup>th</sup> Floor, Jacksonville, Florida 32202.

8. **Accounting/Report.** The RECIPIENT shall provide the Department with a full accounting in a form approved by the Department and shall include, but not be limited to, copies of all invoices and checks, and address funds from other sources as well as CITY funds to provide a complete accounting of the construction of the improvements. Such accounting shall be submitted at 30-day intervals beginning on the 30<sup>th</sup> day after the date the property is acquired and continuing until the funds are spent in their entirety or until expiration of this Agreement, whichever occurs first. RECIPIENT consents to such audits of its financial affairs surrounding construction of the improvements as the CITY Council Auditor's Office may require.

9. **Return of Unspent City Funds.** If the Project is completed and unspent funds from the CITY's \$269,000.00 contribution are in the possession of the RECIPIENT the unspent funds shall be immediately returned to the CITY. Any funds not needed for the Project still being held by the CITY upon the completion of the Project shall lapse and be returned to Jacksonville Recreational and Environmental Land Acquisition Capital Projects Fund.

10. **Maximum Indebtedness.** The CITY shall be indebted under this Agreement to the maximum amount of \$269,000.00.

11. **Indemnification and Insurance.** The RECIPIENT indemnifies the CITY as provided on **Exhibit B** and shall carry or cause its contractor to carry the insurance required on **Exhibit C**.

13. **Recipient Responsibilities.** The RECIPIENT shall be solely responsible for all maintenance and repairs to the Project at no additional cost to the CITY, including, but not limited to, maintaining and keeping the Project in good repair, and shall provide all required maintenance and repair of whatsoever kind of nature. RECIPIENT shall possess and manage the Property according to the provisions, terms, and conditions of the Sublease Agreement between CITY and RECIPIENT, attached hereto as **Exhibit D** and incorporated herein by this reference.

14. **Non-Waiver.** Failure by either party to insist upon strict performance of any of the provisions of this Agreement, either party's failure or delay in exercising any rights or remedies provided for in this Agreement, the CITY's payment for the Project or any part or combination of the Project, or any purported oral modification or rescission of this Agreement by an employee or agent of either party shall not release either party from its obligations under this Agreement, shall not be deemed a waiver of any rights of either party to insist upon strict performance of the terms of this Agreement or of either party's rights or remedies under the provisions of this Agreement or by law, and shall not operate as a waiver of any of the provisions of this Agreement.

15. **Right of Entry.** After Closing and during Project construction, the CITY may enter onto the property at reasonable times for the purposes of viewing the property and the improvements, and of verifying compliance by the RECIPIENT with its obligations under this Agreement. Additionally, during the period of construction of the Project and with prior notice to the Recipient, representatives of the City shall have the right of access to the Recipient's records and employees, as they relate to the Scope of Services, during normal business hours.

16. **Recipient Default.** If the RECIPIENT fails to perform or observe any requirement or violate any provision of this Agreement and the default continues for 3 days after written notice of the default is given by the CITY to the RECIPIENT, then the CITY may immediately or at any time thereafter, and without further notice or demand, terminate this Agreement without prejudice to any remedy which might otherwise be used by the CITY to recover for any breach of the RECIPIENT's covenants in this Agreement. Should this Agreement be terminated as a result of the RECIPIENT's breach of its duty to spend CITY funds only on the Project, then the RECIPIENT shall return all funds provided by the CITY but not spent on the Project within 15 days after notice and request for refund by the CITY.

17. **Delays.** Neither party shall be considered in default in the performance of its obligations under the provisions of this Agreement to the extent the performance is prevented or delayed by any cause beyond the reasonable control of the affected party, and the time for performance shall be extended for a period of time equal to any time lost due to the unavoidable cause.

18. **Non-Discrimination.** In conformity with the requirements of Section 126.404, *Ordinance Code*, the RECIPIENT represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion,

sex, color, national origin, age, or handicap in all areas of employment relations throughout the term of this Agreement. RECIPIENT agrees that on written request it will permit reasonable access to its records of employment, employment advertisement, application forms, and other pertinent data and records by the Executive Director of the Community Relations Commission or successor agency or commission for the purpose of investigation to ascertain compliance with the non-discrimination provisions of this Agreement; *provided however*, that the RECIPIENT shall not be required to produce for inspection records covering periods of time more than 1 year prior to the day and year first above written. RECIPIENT agrees that if any of the services to be provided pursuant to this Agreement are to be performed by a subcontractor, the provisions of this Article 18 shall be incorporated into the subcontract.

19. **Independent Contractor.** In the performance of this Agreement, RECIPIENT shall be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venture, or associate of the CITY. RECIPIENT shall be solely responsible for the means, methods, techniques, sequences, and procedures used in the full performance of this Agreement.

20. **Notices.** All notices required by this Agreement shall be by certified mail return receipt requested, first class postage prepaid mail, or electronic mail with certified or first class mail to follow, to the following:

As to the CITY:

\_\_\_\_\_  
Division Chief, Natural and Marine Resources  
214 N. Hogan Street, 4<sup>th</sup> Floor,  
Jacksonville, FL 32202

As to the RECIPIENT:

\_\_\_\_\_  
Tree Hill, Inc.  
7152 Lone Star Road  
Jacksonville, FL 32211-5836

21. **Termination for Convenience.** The CITY shall have the absolute right to terminate this Agreement without cause upon giving 3 days' advance written notice to the RECIPIENT. If this Agreement is terminated for convenience, the RECIPIENT shall return to the CITY all unspent CITY funds in its possession.

22. **Actions of Mayor and Corporation Secretary.** The Mayor and Corporation Secretary shall have the authority to terminate this Agreement under any circumstances in which the CITY has a legal right to terminate this Agreement in accordance with the provisions hereof.

23. **Construction of Agreement Terms.** The parties agree that they have had meaningful discussion and negotiations about the provisions, terms, and conditions contained in this Agreement. Therefore, doubtful or ambiguous provisions, if any, contained in this Agreement shall not be construed against the party who physically prepared this Agreement.

24. **Severability.** If any section, paragraph, sentence, or other part of this Agreement is declared to be unenforceable or unlawful by a court of competent jurisdiction, then that section, paragraph, sentence, or other part shall be severed from this Agreement and shall not affect other terms and conditions herein provided the purposes of this Agreement remain

unaffected.

25. **Section/Paragraph Headings.** All section/paragraph headings herein are provided for convenience only and shall not be used in the interpretation or construction of the Agreement.

26. **Exhibits.** All exhibits attached to this Agreement are incorporated into and a part of this Agreement.

27. **Survival of Provisions.** The provisions of Sections 8, 11, 13, and 14 shall survive the termination of this Agreement, whether this Agreement terminates naturally by the passage of time or is earlier terminated as provided herein.

29. **Prompt Payment.**

(a) **Generally.** When RECIPIENT receives payment from the CITY for labor, services, or materials furnished by contractors or subcontractors and suppliers hired by RECIPIENT, RECIPIENT shall remit payment due, less proper retainage, to those contractors, subcontractors, and suppliers within 15 calendar days after RECIPIENT's receipt of payment from the CITY. Nothing in this Agreement prohibits the RECIPIENT from disputing all or any portion of a payment alleged to be due to its contractors, subcontractors, and suppliers. In the case of a dispute, RECIPIENT shall provide written notice to the CITY and to the contractor, subcontractor, or supplier whose payment is in dispute within 10 calendar days after receipt of CITY funds, stating the amount in dispute and describing the actions required to cure the dispute. The RECIPIENT shall pay all undisputed amounts due within the time limits imposed by this Section.

(b) **Jacksonville Small and Emerging Business Enterprise and Minority Business Enterprise Participation.** Notwithstanding Chapter 126, Part 6, *Ordinance Code*, RECIPIENT shall pay all contracts awarded to certified Jacksonville Small and Emerging Business Enterprises ("JSEB") and Minority Business Enterprises ("MBE"), as defined in the Code, their pro rata share of their earned portion of the progress payments made by the CITY under this Agreement within 7 business days after RECIPIENT's receipt of payment from the CITY, less proper retainage. The pro rata share shall be based on all work completed, materials and equipment furnished, or services performed by the certified JSEB or MBE at the time of payment. As a condition precedent to progress and final payments to RECIPIENT, RECIPIENT shall provide to the CITY with its requisition for payment, documentation that sufficiently demonstrates that RECIPIENT has made proper payments to its certified JSEB's or MBE's from all prior payments RECIPIENT has received from the CITY. RECIPIENT shall not unreasonably withhold payments to certified JSEB's and MBE's if such payments have been made to RECIPIENT. If RECIPIENT withholds payment of CITY funds to its certified JSEB's or MBE's, RECIPIENT shall return the withheld payment to the CITY. Within 5 days after receipt by RECIPIENT of CITY funds, RECIPIENT shall provide written notice to the CITY and to the certified JSEB's or MBE's whose payment is in dispute stating the amount in dispute and specifically describing the actions required to cure the dispute. RECIPIENT shall pay all undisputed amounts due within the time limits imposed in this section. The failure to

pay undisputed amounts to the JSEB's or MBE's within 7 business days is a breach of this Agreement, compensable by one per-cent (1%) of the outstanding invoice being withheld by the CITY, not as a penalty but as liquidated damages to compensate for the additional contract administration by the CITY.

(c) **Third Party Liability.** The Prompt Payment requirements in this Agreement shall in no way create any contractual relationship or obligation between the CITY and any contractor, subcontractor, supplier, JSEB, MBE, or any third party or create any CITY liability for RECIPIENT's failure to make timely payments hereunder. However, RECIPIENT's failure to comply with the Prompt Payment requirements shall constitute a material breach of RECIPIENT's contractual obligations to the CITY. As a result of that breach, the CITY, without waiving any other available remedy it may have against RECIPIENT, may issue joint checks and charge RECIPIENT a 0.2% daily late payment interest charge or the charges specified in Chapter 126, *Ordinance Code*, for JSEB's or MBE's, and in Chapter 218, Florida Statutes, for non-JSEB's or non-MBE's, whichever is greater.

30. **Entire Agreement.** This Agreement represents the entire agreement between the parties concerning the receipt and expenditures of the funds to be provided by CITY for the Project. No agreement, statement, representation, course of action, statement, representation, or course of conduct by either of the parties or by their authorized representatives is binding unless it is in writing and contained in this Agreement. This Agreement may be amended by written instrument signed by the parties or their lawfully authorized representatives. No amendment to this Agreement is required, however, to change the names or addresses of the contact persons named in this Agreement.

**[Remainder of page left blank intentionally. Signature page follows immediately.]**

IN WITNESS WHEREOF, the parties, by and through their lawfully authorized representatives, have executed this Agreement on the day and year first above written.

ATTEST:

CITY OF JACKSONVILLE

By: \_\_\_\_\_  
James R. McCain, Jr.  
As Corporation Secretary

By: \_\_\_\_\_  
Lenny Curry as Mayor

WITNESS:

TREE HILL, INC.

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

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

\_\_\_\_\_  
Type/Print Name

\_\_\_\_\_  
Type/Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_

In compliance with the *Ordinance Code* of the City of Jacksonville, I certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement, and provision has been made for the payment of the monies provided by the Agreement to be paid.

\_\_\_\_\_  
As Director of Finance

City Contract # \_\_\_\_\_

Form Approved:

\_\_\_\_\_  
Office of General Counsel

GC-#1267198-v4-Tree\_Hill\_acquisition\_agreement.doc



## **EXHIBIT A**

### **The Improvements**

- Permitting and permit fees
- Dumpster and dump fees
- Demolition and haul off home additions
- Create and install a new parking lot
- Furnish and install new landscaping
- Furnish and install new wooden walkway
- Renovate interior of home to create two new meeting rooms, one restroom, and one break room/copy room
- New plumbing, new AC, new Electrical, new flooring, new paint interior and exterior, new interior glass walls

All as provided in plans prepared by Michele M. Agee, P.E., P.A., dated November 1, 2018, Job No. 18-021.

**EXHIBIT B**

*City Risk Management Division to provide indemnity and insurance provisions*

**EXHIBIT C**

*City Risk Management Division to provide insurance requirements*

**EXHIBIT D**

**Sublease Agreement**

**SUBLEASE AGREEMENT**

Sublease Number 4115-01

THIS SUBLEASE AGREEMENT is entered into this 24<sup>th</sup> day of January, 1997 by and between the CITY OF JACKSONVILLE, a municipal corporation, hereinafter referred to as "SUBLESSOR", and TREE HILL, INC., a Florida non-profit corporation, hereinafter referred to as "SUBLESSEE".

**WITNESSETH:**

In consideration of the covenants and conditions set forth herein, SUBLESSOR subleases the below described premises to SUBLESSEE on the following terms and conditions:

1. **ACKNOWLEDGMENTS:** The parties acknowledge that title to the subleased premises is held by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (TRUSTEES) and is currently managed by SUBLESSOR as the Tree Hill Park.

2. **DESCRIPTION OF PREMISES:** The property subject to this sublease agreement, is situated in the County of Duval, State of Florida and is more particularly described in Exhibit "A" attached hereto and hereinafter referred to as the "subleased premises".

3. **SUBLEASE TERM:** The term of this sublease shall be for a period of fifty (50) years commencing on February 18, 1997, and ending on February 17, 2047, unless sooner terminated pursuant to the provisions of this sublease.

4. **PURPOSE:** SUBLESSEE shall manage the subleased premises only for the establishment and operation of an urban wilderness preserve and nature study center, along with other related uses necessary for the accomplishment of this purpose as designated in the Management Plan required by Paragraph 7 of this sublease.

5. **CONFORMITY:** This sublease shall conform to all terms and conditions of that certain lease between the TRUSTEES and SUBLESSOR dated February 18, 1997, a copy of which is attached hereto as Exhibit "B", and SUBLESSEE shall through its agents and employees prevent the unauthorized use of the subleased premises or any use thereof not in conformance with this sublease.

6. **QUIET ENJOYMENT AND RIGHT OF USE:** SUBLESSEE shall have the right of ingress and egress to, from and upon the subleased premises for all purposes necessary to full quiet enjoyment by said SUBLESSEE of the rights conveyed herein.

7. **MANAGEMENT PLAN:** SUBLESSEE shall prepare and submit a Management Plan for the subleased premises in accordance with Chapters 18-2 and 18-4, Florida Administrative Code, within twelve months of the effective date of this sublease. The Management Plan shall be submitted to the TRUSTEES for approval through SUBLESSOR and the Division of State Lands. The subleased premises shall not be developed or physically altered in any way other than what is necessary for security and maintenance of the subleased premises without the prior written approval of the TRUSTEES and SUBLESSOR until the Management Plan is approved. SUBLESSEE shall provide SUBLESSOR with an opportunity to participate in all phases of preparing and developing the Management Plan for the subleased premises. The Management Plan shall be submitted to SUBLESSOR in draft form for review and comments within ten months of the effective date of this sublease. SUBLESSEE shall give SUBLESSOR reasonable notice of the application for and receipt of any state, federal, or local permits as well as any public hearings or meetings relating to the development or use of the subleased premises. SUBLESSEE shall not proceed with development of said subleased premises including, but not limited to, funding, permit application, design or building contracts, until the Management Plan required herein has been submitted and approved. Any financial commitments made by SUBLESSEE which are not in compliance with the terms of this sublease shall be done at SUBLESSEE'S own risk. The Management Plan shall be prepared in accordance with the concept as approved by the TRUSTEES at the time of acquisition which established the original management plan. See Supplemental Exhibit 2

purpose for which the subleased premises are to be managed. The approved Management Plan shall provide the basic guidance for all management activities and shall be reviewed jointly by SUBLESSEE, SUBLESSOR and the TRUSTEES at least every five years. SUBLESSEE shall not use or alter the subleased premises except as provided for in the approved Management Plan without the advance written approval of the TRUSTEES and SUBLESSOR. The Management Plan prepared under this sublease shall identify management strategies for exotic species, if present. The introduction of exotic species is prohibited, except when specifically authorized by the approved Management Plan.

8. **ASSIGNMENT**: This sublease shall not be assigned in whole or in part without the prior written consent of the TRUSTEES and SUBLESSOR. Any assignment made either in whole or in part without the prior written consent of the TRUSTEES and SUBLESSOR shall be void and without legal effect.

9. **RIGHT OF INSPECTION**: The TRUSTEES and SUBLESSOR or their duly authorized agents, representatives or employees shall have the right at any and all times to inspect the subleased premises and the works and operations thereon of SUBLESSEE in any matter pertaining to this sublease.

10. **PLACEMENT AND REMOVAL OF EQUIPMENT**: All buildings, structures, improvements and signs shall be constructed at the expense of SUBLESSEE in accordance with plans prepared by professional designers and shall require the prior written approval of SUBLESSOR as to purpose, location and design. Further, no trees, other than non-native species, shall be removed or major land alterations done without the prior written approval of SUBLESSOR. Removal equipment and removable improvements placed on the subleased premises by SUBLESSEE which do not become a permanent part of the subleased premises will remain the property of SUBLESSEE and may be removed by SUBLESSEE upon termination of this sublease.

11. **INSURANCE REQUIREMENTS**: During the term of this sublease SUBLESSEE shall procure and maintain policies of fire, extended risk, worker's compensation, automobile liability, and commercial general liability insurance coverage. The extended risk and fire insurance coverage shall be in an amount equal to the full insurable replacement value of any improvements or fixtures located on the subleased premises. The worker's compensation coverage shall be in an amount not less than the statutory limit. The automobile liability insurance coverage shall be in amounts not less than \$1,000,000 per occurrence and \$1,000,000 general aggregate for bodily injury and property damage. The commercial general liability insurance coverage shall be in amounts not less than \$1,000,000 per occurrence and \$1,000,000 general aggregate for personal injury, death, and property damage. Such policies of insurance shall include medical expense coverage \$5,000 any one person. Such policies of insurance shall name SUBLESSEE, the TRUSTEES, SUBLESSOR and the State of Florida as co-insureds. SUBLESSEE shall submit written evidence of having procured all insurance policies required herein prior to the effective date of this sublease and shall submit annually thereafter, written evidence of maintaining such insurance policies to SUBLESSOR and the Bureau of Land Management Services, Division of State Lands, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 130, Tallahassee, Florida 32399. SUBLESSEE shall purchase all policies of insurance from a financially-responsible insurer duly authorized to do business in the State of Florida. SUBLESSEE further agrees to immediately notify SUBLESSOR, the TRUSTEES and the insurer of any erection or removal of any structure or other fixed improvement on the subleased premises and any changes affecting the value of any improvements and to request said insurer to make adequate changes in the coverage to reflect the changes in value. SUBLESSEE shall be financially responsible for any loss due to failure to obtain adequate insurance coverage, and the failure to maintain such policies in the amounts set forth shall constitute a breach of this sublease.

12. **LIABILITY**: SUBLESSEE shall indemnify, defend and hold TRUSTEES and SUBLESSOR harmless from and against any and all loss, cost, damage or expense (including, without limitation, court costs, expenses and reasonable attorneys' fees) arising out of injury to or death of persons and damage to or destruction of property in any manner caused by or arising from SUBLESSEE'S use, management or occupancy of the subleased premises.

13. **PAYMENT OF TAXES AND ASSESSMENTS:** SUBLESSEE shall assume full responsibility for and shall pay all liabilities that accrue to the subleased premises or to the improvements thereon, including any and all drainage and special assessments or taxes of every kind and all mechanic's or materialman's liens which may be hereafter lawfully assessed and levied against the subleased premises.

14. **NO WAIVER OF BREACH:** The failure of SUBLESSOR to insist in any one or more instances upon strict performance of any one or more of the covenants, terms and conditions of this sublease shall not be construed as a waiver of such covenants, terms and conditions, but the same shall continue in full force and effect, and no waiver of SUBLESSOR of any of the provisions hereof shall in any event be deemed to have been made unless the waiver is set forth in writing, signed by SUBLESSOR.

15. **TIME:** Time is expressly declared to be of the essence of this sublease.

16. **NON-DISCRIMINATION:** As a condition of obtaining this sublease, SUBLESSEE hereby agrees not to discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the subleased premises or upon lands adjacent to and used as an adjunct of the subleased premises.

17. **UTILITY FEES:** SUBLESSEE shall be responsible for the payment of all charges for the furnishing of gas, electricity, water and other public utilities to the subleased premises and for having all utilities turned off when the subleased premises are surrendered.

18. **MINERAL RIGHTS:** This sublease does not cover petroleum or petroleum products or minerals and does not give the right to SUBLESSEE to drill for or develop the same, and SUBLESSOR and TRUSTEES specifically reserve the right to lease the subleased premises for purpose of exploring and recovering oil and minerals by whatever means appropriately provided. However, SUBLESSEE shall be fully compensated for any and all damages that might result to the subleasehold interest of SUBLESSEE by reason of such exploration and recovery operations.

19. **RIGHT OF AUDIT:** SUBLESSEE shall make available to the TRUSTEES and SUBLESSOR all financial and other records relating to this sublease, and SUBLESSOR and or the TRUSTEES shall have the right to audit such records at any reasonable time or require the submittal of an annual independent audit by a Certified Public Accountant during the term of the sublease. This right shall be continuous until this sublease expires or is terminated. This sublease may be terminated by SUBLESSOR should SUBLESSEE fail to allow public access to all documents, papers, letters or other materials made or received in conjunction with this sublease, pursuant to the provisions of Chapter 119, Florida Statutes.

20. **CONDITION OF PROPERTY:** SUBLESSOR assumes no liability or obligation to SUBLESSEE with reference to the condition of the subleased premises or the suitability of the subleased premises for any improvements. The subleased premises hereinafter are subleased by SUBLESSOR to SUBLESSEE in an "as is" condition, with SUBLESSOR assuming no responsibility for bidding, contracting, permitting, construction, and the care, repair, maintenance or improvement of the subleased premises for the benefit of SUBLESSEE.

21. **NOTICES:** All notices given under this sublease shall be in writing and shall be served by certified mail including, but not limited to, notice of any violation served pursuant to Section 253.04, Florida Statutes, to the last address of the party to whom notice is to be given, as designated by such party in writing. SUBLESSOR and SUBLESSEE hereby designate their address as follows:

SUBLESSOR: City of Jacksonville  
ATTN: Corporation Secretary  
1300 City Hall  
Jacksonville, Florida 32202

SUBLESSEE: Tree Hill, Inc.  
7152 Lone Star Road  
Jacksonville, Florida 32211

22. BREACH OF COVENANTS, TERMS, OR CONDITIONS: Should SUBLESSEE breach any of the covenants, terms, or conditions of this sublease, SUBLESSOR shall give written notice to SUBLESSEE to remedy such breach within forty-five days of such notice. In the event SUBLESSEE fails to remedy the breach to the satisfaction of SUBLESSOR within forty-five days of receipt of written notice, SUBLESSOR may either terminate this sublease and recover from SUBLESSEE all damages SUBLESSOR may incur by reason of the breach including, but not limited to, the cost of recovering the subleased premises and attorneys' fees or maintain this sublease in full force and effect and exercise all rights and remedies herein conferred upon SUBLESSOR.

23. DAMAGE TO THE PREMISES: (A) SUBLESSEE shall not do, or suffer to be done, in, on or upon the subleased premises or as affecting said subleased premises or adjacent properties, any act which may result in damage or depreciation of value to the subleased premises or adjacent properties, or any part thereof. (B) SUBLESSEE shall not generate, store, produce, place, treat, release, or discharge any contaminants, pollutants or pollution, including, but not limited to, hazardous or toxic substances, chemicals or other agents on, into, or from the subleased premises or any adjacent lands or waters in any manner not permitted by law. For the purposes of this sublease, "hazardous substances" shall mean and include those elements or compounds defined in 42 USC Section 9601 or which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (EPA) and the list of toxic pollutants designated by the United States Congress or the EPA or defined by any other federal, state or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance, material, pollutant or contaminant. "Pollutants" and "pollution" shall mean those products or substances defined in Florida Statutes, Chapter 376 and Chapter 403 and the rules promulgated thereunder, all as amended or updated from time to time. In the event of SUBLESSEE'S failure to comply with this paragraph, SUBLESSEE shall, at its sole cost and expense, promptly commence and diligently pursue any legally required closure, investigation, assessment, cleanup, decontamination, remediation, restoration and monitoring of (1) the subleased premises, and (2) all off-site ground and surface waters and lands affected by SUBLESSEE'S such failure to comply, as may be necessary to bring the subleased premises and affected off-site waters and lands into full compliance with all applicable federal, state or local statutes, laws, ordinances, codes, rules, regulations, orders and decrees, and to restore the damaged property to the condition existing immediately prior to the occurrence which caused the damage. SUBLESSEE'S obligations set forth in this paragraph shall survive the termination or expiration of this sublease. This paragraph shall not be construed as a limitation upon SUBLESSEE'S obligations regarding indemnification and payment of costs and fees as set forth in Paragraph 12 of this sublease, nor upon any other obligations or responsibilities of SUBLESSEE as set forth herein. Nothing herein shall relieve SUBLESSEE of any responsibility or liability prescribed by law for fines, penalties and damages levied by governmental agencies, and the cost of cleaning up any contamination caused directly or indirectly by SUBLESSEE'S activities or facilities. Upon discovery of a release of a hazardous substance or pollutant, or any other violation of local, state or federal law, ordinance, code, rule, regulation, order or decree relating to the generation, storage, production, placement, treatment, release or discharge of any contaminant, SUBLESSEE shall report such violation to all applicable governmental agencies having jurisdiction, and to SUBLESSOR, all within the reporting period of the applicable agency.

24. SURRENDER OF PREMISES: Upon termination or expiration of this sublease, SUBLESSEE shall surrender the subleased premises to SUBLESSOR. In the event no further use of the subleased premises or any part thereof is needed, SUBLESSEE shall give written notification to SUBLESSOR and the Bureau of Land Management Services, Division of State Lands, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 130, Tallahassee, Florida 32399 at least six months prior to the release of any or all of the subleased premises. Notification shall include a legal description, this sublease number and an explanation of the release. The release shall only be valid if approved by SUBLESSOR and the TRUSTEES through execution of a release of sublease instrument with the same formality as this



sublease. Upon release of all or any part of the subleased premises or upon termination or expiration of this sublease, all improvements, including both physical structures and modifications of the subleased premises, shall become the property of the TRUSTEES and SUBLESSOR, unless SUBLESSOR gives written notice to SUBLESSEE to remove any or all such improvements at the expense of SUBLESSEE. The decision to retain any improvements upon termination of this sublease shall be at SUBLESSOR'S sole discretion. Prior to surrender of all or any part of the subleased premises a representative of SUBLESSOR shall perform an on-site inspections and the keys to any building on the subleased premises shall be turned over to SUBLESSOR. If the subleased premises do not meet all conditions required in this sublease, SUBLESSEE shall, at its expense, pay all costs necessary to meet the prescribed conditions.

25. **BEST MANAGEMENT PRACTICES:** SUBLESSEE shall implement applicable Best Management Practices for all activities conducted under this sublease in compliance with paragraph 18.2.004(1)(d), Florida Administrative Code, which have been selected, developed, or approved by SUBLESSOR, the TRUSTEES or other land managing agencies for the protection and enhancement of the subleased premises.

26. **SOVEREIGNTY SUBMERGED LANDS:** This sublease does not authorize any use of lands located waterward of the mean or ordinary high water line of any lake, river, stream, creek, bay, estuary, or other water body or the waters or the air space thereabove.

27. **PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES:** Fee title to the subleased premises is held by the TRUSTEES. SUBLESSEE shall not do or permit anything to be done which purports to create a lien or encumbrance of any nature against the real property contained in the subleased premises including, but not limited to, mortgages or construction liens against the subleased premises or against any interest of the TRUSTEES and SUBLESSOR therein.

28. **CONDITIONS AND COVENANTS:** All of the provisions of this sublease shall be deemed covenants running with the land included in the subleased premises, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

29. **PARTIAL INVALIDITY:** If any term, covenant, condition or provision of this sublease shall be ruled by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

30. **ENTIRE UNDERSTANDING:** This sublease sets forth the entire understanding between the parties and shall only be amended with the prior written approval of the TRUSTEES and SUBLESSOR.

31. **EASEMENTS:** All easements including, but not limited to, utility easements are expressly prohibited without the prior written approval of the TRUSTEES and SUBLESSOR. Any easement not approved in writing by the TRUSTEES and SUBLESSOR shall be void and without legal effect.

32. **SUBSUBLEASES:** This sublease is for the purposes specified herein and any subsubleases of any nature are prohibited, without the prior written approval of the TRUSTEES and SUBLESSOR. Any subsublease not approved in writing by the TRUSTEES and SUBLESSOR shall be void and without legal effect.

33. **MAINTENANCE OF IMPROVEMENTS:** SUBLESSEE shall maintain the real property contained within the subleased premises and any improvements located thereon, in a state of good condition, working order and repair including, but not limited to, maintaining the planned improvements as set forth in the approved Management Plan, keeping the subleased premises free of trash or litter, meeting all building and safety codes in the location situated and maintaining any and all existing roads, canals, ditches, culverts, risers and the like in as good condition as the same may be on the effective date of this sublease.

34. COMPLIANCE WITH LAWS: SUBLESSEE agrees that this sublease is contingent upon and subject to SUBLESSEE obtaining all applicable permits and complying with all applicable permits, regulations, ordinances, rules, and laws of the State of Florida or the United States or of any political subdivision or agency of either.

35. ARCHAEOLOGICAL AND HISTORIC SITES: Execution of this sublease in no way affects any of the parties' obligations pursuant to Chapter 267, Florida Statutes. The collection of artifacts or the disturbance of archaeological and historic sites on state-owned lands is prohibited unless prior authorization has been obtained from the Department of State, Division of Historical Resources. The Management Plan prepared pursuant to Chapters 18-2 and 18-4, Florida Administrative Code, shall be reviewed by the Division of Historical Resources to insure that adequate measures have been planned to locate, identify, protect and preserve the archaeological and historic sites and properties on the subleased premises.

36. GOVERNING LAW: This sublease shall be governed by and interpreted according to the laws of the State of Florida.

37. SECTION CAPTIONS: Articles, subsections and other captions contained in this sublease are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this sublease or any provisions thereof.

38. ADMISSION: SUBLESSEE shall not adopt a requirement that admission fees be paid for the use of the subleased premises without approval of SUBLESSOR'S Director of Parks, Recreation and Entertainment. SUBLESSEE shall determine, subject to the approval of the Director of Parks, Recreation and Entertainment Department, reasonable standards for the admission of members of the public to the subleased premises in a manner that will insure the preservation of the subleased premises for its intended uses.

39. USE BY PROFIT MAKING ORGANIZATIONS: SUBLESSEE shall not permit the commercial use of the subleased premises by any profit making organization, except with the written consent of the TRUSTEES and the SUBLESSOR'S Director, Parks, Recreation and Entertainment Department.

IN WITNESS WHEREOF, the parties have caused this sublease to be executed on the day and year first above written.

ATTEST:

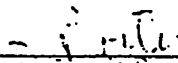
CITY OF JACKSONVILLE

  
Linnie C. Williams, Corporation Secretary

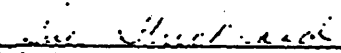
By:   
John Delaney, Mayor

WITNESSES:

TREE HILL, INC.

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

By:   
(Print Name): G. Ray Dineen  
(Title): President

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

Consented to by the TRUSTEES on 17<sup>th</sup> day of February, 1996.

Daniel T. Crabb

Daniel T. Crabb, Chief  
Bureau of Land Management Services  
Division of State Lands  
Department of Environmental Protection

Approved as to Form and Legality


By: Sam H. Hens  
DEP Attorney

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of January, 1996, by John A. Delaney and Linnie C. Williams, the Mayor and Corporation Secretary, respectively, of the City of Jacksonville, a municipal corporation, on behalf of the corporation. Such persons did not take an oath and: (notary must check applicable box)

- are personally known to me; or
- produced current \_\_\_\_\_ driver's licenses as identification; or
- produced \_\_\_\_\_ as identification

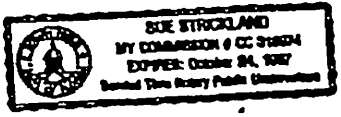
Linnie C. Williams (x)

[Print or type name]  
NOTARY PUBLIC. State of Florida at Large.  
My Commission Expires: \_\_\_\_\_  
 Linnie C. Williams  
MY COMMISSION EXPIRES  
JUNE 23, 2001  
ISSUED THROUGH PUBLIC DEFENSE, INC.

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of January, 1996, by John A. Delaney, the Mayor of Tree Hill, Inc., on behalf of the corporation. Such person did not take an oath and: (notary must check applicable box)

- is personally known to me; or
- produced current \_\_\_\_\_ driver's licenses as identification; or
- produced \_\_\_\_\_ as identification

 SUE STRICKLAND  
MY COMMISSION # CC 31824  
EXPIRES: October 24, 2007  
Issued Through Public Defense, Inc.

John A. Delaney (x)

[Print or type name]  
NOTARY PUBLIC. State of Florida at Large.  
My Commission Expires: \_\_\_\_\_

EXHIBIT "A"

The following described land, situate, lying and being in the County of Duval, State of Florida, to-wit:

All that part of Farm 25, Alderman Realty Company Farms, according to the plat recorded in plat book 5, page 99, current public records of Duval County, Florida, described as follows:

Begin at the most northerly corner of Farm 25 and run thence in a south-easterly direction along the northeasterly line of Farm 25 390 feet to a point; run thence in a southwesterly direction parallel to the northwesterly line of Farm 25 500 feet to a point; run thence in a northwesterly direction, parallel to the northeasterly line of Farm 25 390 feet to a point in the northwesterly line of Farm 25, said point also being in the southerly right-of-way line of Blackard Road; run thence in a northeasterly direction 500 feet to the point of beginning.

A part of Farms 19 and 26 and a part of the 50 foot road adjoining said Farms, all as shown on Plat of Alderman Realty Company's Farms as recorded in Plat Book 5 page 99 of the current public records of Duval County, Florida, being more particularly described as commencing at a point on the Northwest-erly boundary of said Farm 26, said point being 250 feet Northeasterly of the most westerly corner of said Farm 26; thence North  $54^{\circ}53'$  East along the Northwesterly line of said Farm 26, 241.55 feet; thence North  $34^{\circ}42'30''$  West, 13.23 feet to the Southeasterly right-of-way line of Lone Star Road as presently established; thence North  $55^{\circ}17'30''$  East along said right-of-way line 522.30 feet to a fence corner for the point of beginning; thence South  $35^{\circ}18'20''$  East, 215.55 feet; thence South  $55^{\circ}17'30''$  West, 154.0 feet to the Easterly boundary of the lands described in O.R. Vol. 3881 Page 345 of the public records of said County; thence South  $35^{\circ}08'20''$  East along said boundary, 55.7 feet to the Southeasterly corner of said lands and to an intersection with the boundary of certain lands described in O.R. Vol. 3881 Page 347; thence along the boundary of said lands, North  $55^{\circ}17'30''$  East, 242 feet; thence continue along the boundary of said lands described in O.R. Vol. 3581 Page 347, North  $15^{\circ}08'20''$  West, 270.55 feet to the Southeasterly right-of-way line of said Lone Star Road; thence South  $55^{\circ}17'30''$  West, along said right-of-way line, 55.0 feet to the point of beginning. Containing 0.74 acres more or less.

That certain tract or parcel of land being a portion of Farms 19 and 26 and a part of the 50 foot roadway lying between said Farms according to plat of Alderman Realty Company's Farms as recorded in Plat Book 5, Page 99 of the current public records of Duval County, Florida, being more particularly described as commencing at the intersection of the Northeasterly boundary of said Farm 19 with the Southeasterly right-of-way line of Lone Star Road as it is now established; thence South  $55^{\circ}17'30''$  West along the Southeasterly right-of-way line of said Lone Star Road, 217.05 feet to a point for the point of beginning; thence South  $5^{\circ}07'$  East, 596.91 feet; thence South  $44^{\circ}28'50''$  East, 204.9 feet to the Southeasterly boundary of said Farm 19; thence South  $54^{\circ}53'$  West along the Southeasterly boundary of said Farms 19 and 26, 631.71 feet to an intersection with the Easterly boundary of the lands described in Official Records Volume 497, Page 435 of said public records; thence North  $4^{\circ}19'30''$  West along said boundary, 657.3 feet; thence continue along said boundary, North  $7^{\circ}32'50''$  East, 373.05 feet; thence continue along said boundary, North  $19^{\circ}49'40''$  East, 286.86 feet to the Southeasterly right-of-way line of said Lone Star Road; thence North  $55^{\circ}17'30''$  East along said right-of-way line, 90.16 feet to the point of beginning. Containing 8 acres more or less.

PARCEL I

That certain tract or parcel of land, being a part of Farms 19 and 26, and a part of the 50 foot roads adjoining said Farms, all as shown on plat of Alderman Realty Company's Farms as recorded in Plat Book 5, page 99, of the current public records of Duval County, Florida, being more particularly described as beginning at a point on the Northwestern boundary of said Farm 26, said point being 250 feet Northwesternly of the most Westerly corner of said Farm 26; thence North 56 degrees 53 minutes East along the Northwesternly line of said Farm 26, 241.65 feet; thence North 34 degrees 42 minutes 30 seconds West, 13.23 feet to a point in the Southeastery right-of-way of the Lone Star Road (as established by the County Engineer's Office); thence North 55 degrees 17 minutes 30 seconds East along said Southeastery right-of-way line, 268.3 feet; thence South 35 degrees 08 minutes 20 seconds East, 270.55 feet; thence North 55 degrees 17 minutes 30 seconds East, 322 feet; thence North 35 degrees 08 minutes 20 seconds West, 270.55 feet to a point in said Southeastery right-of-way line of Lone Star Road; thence North 55 degrees 17 minutes 30 seconds East along said Southeastery right-of-way line, 660.29 feet; thence South 19 degrees 45 minutes 40 seconds West, 286.86 feet; thence South 7 degrees 32 minutes 50 seconds West, 373.05 feet; thence South 4 degrees 19 minutes 30 seconds East, 657.3 feet to a point in the Southeastery line of said Farm 26; thence South 54 degrees 53 minutes West along said Southeastery line of Farm 26, 668.29 feet to a point, said point being 250 feet Northeast from the most Southerly corner of said Farm 26; thence North 35 degrees 08 minutes 20 seconds West, 1000 feet to the point of beginning.

PARCEL II

That certain tract or parcel of land, being a part of Farm 26 and a part of the 50 foot road adjoining said farm, all as shown on plat of Alderman Realty Company's Farms as recorded in Plat Book 5, page 99, of the current public records of Duval County, Florida, being more particularly described as follows:  
For a point of reference begin at the Northwest corner of said Farm 26, thence run North 54 degrees 53 minutes East along the Northwesternly boundary of said Farm 26, 491.65 feet; thence North 34 degrees 42 minutes 30 seconds West, 13.23 feet to a point in the Southeastery right-of-way of the Lone Star Road (as established by the County Engineer's Office); thence North 55 degrees 17 minutes 30 seconds East along said Southeastery right of way line, 268.3 feet to the point of beginning of the tract of land being described herein.  
From said point of beginning run South 35 degrees 08 minutes 20 seconds East, 270.55 feet; thence North 55 degrees 17 minutes 30 seconds East, 80 feet; thence North 35 degrees 08 minutes 20 seconds West, 270.55 feet to a point in said Southeastery right-of-way line of Lone Star Road; thence South 55 degrees 17 minutes 30 seconds West along said Southeastery right-of-way line, 80 feet to the point of beginning.

## **EXHIBIT E**

### **Construction Terms**

Recipient shall adhere to the following construction terms during the construction of the improvements and term of this Agreement:

1. The Recipient shall furnish to the City certificate of substantial completion to establish to the City's satisfaction that the Scope of Services has been properly completed and is not subject to any violations or uncorrected conditions noted or filed in any City department;
2. The Recipient shall submit to the City a proper contractor's final affidavit and full and complete releases of liens from each contractor, subcontractor and supplier, or other proof satisfactory to the City, confirming that final payment has been made for all materials supplied and labor furnished in connection with the Project;
3. The Recipient shall fully complete the Scope of Services in all respects in accordance with the design plans approved by the City, as verified by a final inspection report satisfactory to the City, certifying that the Scope of Services has been constructed in a good and workmanlike manner and is in satisfactory condition. In the event the City determines that there is a deficiency with the Project, the City reserves the right to require that an escrow be established in an amount satisfactory to the City to remedy such deficiency.
4. Recipient shall not make any material amendment to the design plans approved by the City in connection with the Scope of Services nor shall any material change orders be made by Recipient thereunder without the prior written consent of the City.
5. The Recipient shall take all action necessary to have any mechanic's and materialmen's liens, judgment liens or other liens or encumbrances filed against any real property contemplated by this Agreement released or transferred to bond within ten (10) days of the date the Recipient receives notice of the filing of such liens or encumbrances. If any such lien or encumbrance is filed, the City shall not be required to make any draws or reimbursements until it is bonded over or removed and a copy of the recorded release thereof is received and accepted by the City. The City shall not be obligated to disburse any funds to Recipient if, in the opinion of the City, any Draw, real property contemplated by this Agreement or any other collateral for the Project Funds would be subject to a mechanic's or materialmen's lien or any other lien or encumbrance other than inchoate construction liens. The Recipient shall be fully and solely responsible for compliance in all respects whatsoever with the applicable mechanic's and materialmen's lien laws.
6. Except as otherwise expressly provided herein, the Recipient shall have discretion and control, free from interference, interruption or disturbance, in all matters relating to the management, development, redevelopment, construction and operation of the Project, provided that the same shall, in any event, conform to and comply with the terms and conditions set forth in this Agreement, and all applicable and governing federal, state and local laws, rules, regulations and policies (including without limitation, applicable zoning, subdivision, building and fire codes).