

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 \$103,000, 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 \$103,000 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, \$166,000, 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 \$166,000. 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 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 \$103,000 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, Waterfront Management & Programming.

8. **Accounting/Report.** The RECIPIENT shall provide the Department and the Council Auditor with a full accounting in a form approved by the Council Auditor 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 30th 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.

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 agrees to uphold 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, Waterfront Management & Programming
214 N. Hogan Street, Suite 3102
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

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).